

Small Business Regulatory Review Board Meeting

Thursday, July 18, 2019

10:00 a.m.

Leipapa A Kamehameha Building

(State Office Tower)

Conference Room 405 – 235 South Beretania Street,

Honolulu, HI 96813



SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)
No. 1 Capitol District Building, 250 S. Hotel Street, Fifth Floor, Honolulu, HI 96813
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AGENDA

Thursday, July 18, 2019 ★ 10:00 a.m.

Leiopapa A Kamehameha Building - State Office Tower
Conference Room 405
235 South Beretania Street, Honolulu, HI 96813

David Y. Ige
Governor

Michael McCartney
DBEDT Director

Members

Robert Cundiff
Chairperson
O'ahu

Garth Yamanaka
Vice Chairperson
Hawai'i

William Lydgate
2nd Vice Chairperson
Kaua'i

Harris Nakamoto
O'ahu

Dr. Nancy Atmospera-
Walch
O'ahu

Mary Albitz
Maui

James (Kimo) Lee
Hawai'i

Jonathan Shick
O'ahu

Director, DBEDT
Voting Ex Officio

I. Call to Order

II. Approval of June 20, 2019 Meeting Minutes

III. Old Business – After Public Hearing

- A. Discussion and Action on Proposed Amendments and the Small Business Statement After Public Hearing to Hawaii Administrative Rules (HAR) Title 4 Chapter 66, **Pesticides**, promulgated by Department of Agriculture – **Discussion Leader – Will Lydgate**

IV. New Business – Before Public Hearing

- A. Discussion and Action on Proposed Amendments to Part IV, **Rules and Regulations Governing Commercial Boating Activities at County Beach Parks**, Sections 30 to 36, promulgated by County of Kauai Department of Parks and Recreation – **Discussion Leader – Will Lydgate**
- B. Discussion and Action on Proposed New HAR Title 11 Chapter 148.1, **Certification of Adult Foster Homes**, promulgated by Department of Health – **Discussion Leader – Dr. Nancy Atmospera-Walch**

V. Administrative Matters

- A. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, Hawaii Revised Statutes, on the following:
1. Review of "Discussion Leader Assignments" for Board Members' State and County Agencies' Administrative Rule Review
 2. Meetings with Board Members and State Department Directors
- B. Discussion and Approval of Board's Proposed New Website Prior to Anticipated Launch Date, August 15, 2019

VI. Next Meeting: Thursday, August 15, 2019, at 10:00 a.m., 235 South Beretania Street, Leiopapa A Kamehameha Building (State Office Tower), Conference Room 405, Honolulu, HI 96813

VII. Adjournment

If you require special assistance or auxiliary aid and/or services to participate in the public hearing process (i.e., sign language, interpreter, wheelchair accessibility, or parking designated for the disabled), please call (808) 586-2419 or email dbedt.sbrrb.info@hawaii.gov at least three (3) business days prior to the meeting so arrangements can be made.

II. Approval of June 20, 2019 Meeting Minutes

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING - DRAFT

June 20, 2019

Conference Room 405, 235 South Beretania Street, Leiopapa A Kamehameha Building
(State Office Tower), Honolulu, Hawaii 96813

- I. **CALL TO ORDER:** Chair Borge called the meeting to order at 10:00 a.m., with a quorum present.

MEMBERS PRESENT:

- Anthony Borge, Chair
- Robert Cundiff, Vice Chair
- Harris Nakamoto
- Dr. Nancy Atmospera-Walch
- Mary Albitz
- Jonathan Shick
- James (Kimo) Lee
- William Lydgate
- Mark Ritchie

ABSENT MEMBERS:

- Garth Yamanaka,
Second Vice Chair

STAFF: DBEDT

Dori Palcovich
Jet'aime Alcos

Office of the Attorney General

Jennifer Polk-Waihee

II. APPROVAL OF MAY 16, 2019 MINUTES

Chair Borge welcomed and introduced Deputy Director Randall Tanaka who brings a wealth of knowledge to DBEDT due to his working at the Hawaii Convention Center and with both small and large businesses.

Deputy Director Tanaka stated that Hawaii's small businesses are the backbone of the state's revenues. While the state can conceivably lose the eighteen percent of the state's gross domestic product derived from tourism revenue, it cannot lose its small businesses.

Vice Chair Cundiff made a motion to accept the May 16, 2019 minutes, as presented. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

III. OLD BUSINESS – After Public Hearing

- A. Discussion and Action on Proposed Amendments and the Small Business Statement After Public Hearing to HAR Title 11 Chapter 186, Certificate of Need Program, promulgated by Department of Health (DOH)

Discussion leader Mr. Nakamoto stated that these rules are a follow-up to the public hearing where no one attended and no one from the small business community provided testimony either for or against the amendments.

Mr. Nakamoto made a motion to move the proposed amendments onto the Governor for adoption. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

IV. NEW BUSINESS – Before Public Hearing

A. Discussion and Action on Proposed Amendments to HAR Title 11 Chapter 5, Environmentally-Related Illness and Injury Reporting, promulgated by Department of DOH

Ms. Diana Felton, State Toxicologist at DOH's Hazard Evaluation and Emergency Response Office, explained that the proposed amendments refer to the mandatory reporting of exposure to certain heavy metals and pesticides. Much of the reporting relates to lead poisoning cases for children. DOH follows up on every single incident, particularly the elevated ones, either with the families or the physicians; in some cases, where the poisoning level is particularly high, an environmental investigation will be performed.

When the original rules were created in 1990, only reporting of positive tests was required. However, this did not give DOH the denominator to understand how many people are being tested and an overall true prevalence of any specific problems. Therefore, the main change in the rules requires laboratories and physicians to report all the tests; currently, laboratories are performing the required electronic reporting to DOH.

The monetary impact to businesses would be the purchase of a \$30,000 bed-side point-of-care laboratory lead-testing device, although not required by law. So, if a new private practice (doctor's office) wanted to invest in one of these test screening machines, they would then be required to report their results to DOH. In terms of how many test facilities are small business, Ms. Felton stated that a large portion of the facilities testing for lead poisoning are non-profit community health centers.

Currently, only one private practice has chosen to purchase this device and six non-profit community health centers. Although most of the testing is performed by the laboratories, many of the small businesses send the lab work directly to laboratories for testing. Ms. Felton added that there is no requirement for children to be lead-tested before going to school. One area where Department of Education is involved relates to lead exposure problems, however, there is currently a push for a broader testing of children.

Mr. Nakamoto made a motion to move the proposed rules to public hearing. Vice Chair Cundiff seconded the motion, and the Board members unanimously agreed.

- B. Discussion and Action on Proposed Amendments to HAR Title 12 Subtitle 8 Part 10, as follows, promulgated by Department of Labor and Industrial Relations
1. Adoption:
 - a. Chapter 221.1 Existing Pressure Retaining Items
 - b. Chapter 222.1 Power Boilers
 - c. Chapter 223.1 Heating Boilers – Steam Heating Boilers, Hot Water Heating Boilers, Hot Water Supply Boilers, and Potable Water Heater
 - d. Chapter 224.1 Pressure Vessels
 - e. Chapter 225.1 Pressure Systems
 2. Amendment and Compilation:
 - a. Chapter 220 General Administrative and Legal Provisions
 3. Deletion:
 - a. Chapter 221 Existing and New Boilers and Pressure Vessels
 - b. Chapter 222 Power Boilers
 - c. Chapter 223 Heating Boilers
 - d. Chapter 224 Pressure Vessels
 - e. Chapter 225 Pressure Systems

Discussion leader, Ms. Albitz, stated that the many changes to the rules are for updating purposes. Mr. William Kunstman, DLIR's Assistant to the Director, explained the history of the elevator rules which began in 2014 and included substantial changes and increases in fees. Thus, in keeping in-line with the amendments to the elevator rules, the proposed amendments are for the subject boiler rules.

Changes will bring the rules up-to-date with the national codes and increase the fees. While some of the increases are significant, there are good reasons for the large increases because they relate to improved public safety and will assist in maintaining the operation's self-sufficiency, which entails staffing requirements such as salaries, fringe benefits, rent expense, etc.

Vice Chair Cundiff noted that because DLIR reached out to the shareholders earlier during the year it likely boded well with prepping the impacts to the companies needing to understand the huge changes to comply with the processes and procedures of boilers, which is detrimental for safety and health concerns.

Mr. Julius Dacanay, Chief Boiler Inspector, explained that the biggest business impact is with the larger companies. The businesses that attended DLIR's outreach meetings included both large and small businesses and also representatives from the insurance companies because pursuant to Hawaii Revised Statutes, insurance companies are required to make boiler inspections. It was noted that inspection fees are already incorporated into insurance premiums.

Mr. Albitz made a motion to move the proposed rules onto public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

V. ADMINISTRATIVE MATTERS

A. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, HRS, as follows:

1. Meetings with Board Members and State Department Directors

Chair Borge encouraged the members to set up meetings with the state directors, and offered assistance in setting up meetings, if needed, by DBEDT staff.

2. Status and Changes to the Board's Website

Mr. Ritchie reported that the Board's website taskforce is making good progress with Hawaii Information Consortium (HIC) in the upgrading of the website. It was suggested that the members review the test website and let DBEDT staff know if there are any change suggestions.

The Regulatory Review Card section is in the process of being revamped as the public is likely not sure exactly what it is, and if a submission is sent it is unknown exactly what happens and way. Therefore, a better description is needed to explain what the regulatory review card is and how it can help a small business owner. Suggestions such as "Submitting a Regulation for Review" and "Got input?" were suggested.

3. Voting and Action for Board Chair under Section 201M-5(d), HRS, and Voting and Action for Vice Chair and Second Vice Chair

Mr. Lydgate made a motion to elect Mr. Cundiff as Chair of the Board under Section 201M-5(d), HRS, and Mr. Ritchie seconded the motion. Mr. Cundiff abstained, and the remaining Board members agreed with the motion; the action passed.

Mr. Lydgate made a motion to elect Mr. Yamanaka as Vice Chair of the Board. Mr. Ritchie seconded the motion and the Board members unanimously agreed.

Mr. Nakamoto made a motion to elect Mr. Lydgate as the Second Vice Chair of the Board. Mr. Cundiff seconded the motion and the Board members unanimously agreed.

Mr. Cundiff stated how appreciative the Board members are of Tony's leadership and wanted to thank him for his outstanding direction and passion towards the small business community. Additionally, Mr. Cundiff read the *Special Recognition from Governor David Y. Ige – Presented to Anthony Borge*, date July 18, 2019, which read:

“Mahalo nui loa for sharing the Aloha Spirit and making a difference in our island home. Your outstanding service as a member and chairperson of the Small Business Regulatory Review Board, contributions to our community and strong leadership are proof that when we work together, we can do great things. You are part of the reason that makes Hawai'i a special place where future generations can choose to call home.”

4. Review of “Discussion Leader” Assignments for Board Members’ State and County Agencies’ Administrative Rule Review

The following changes were made to the Board Members’ Discussion Leader listing:

Office of the Governor - Discussion Leader is Robert Cundiff;

Office of the Lieutenant Governor - Discussion Leader is Garth Yamanaka;

Department of the Attorney General - Discussion Leader is William Lydgate;

Department of Budget & Finance - Discussion Leader is Mark Ritchie;

Department of Commerce & Consumer Affairs - Discussion Leader is Nancy Atmospera-Walch and Back-up is Mary Albitz;

Department of Defense - Discussion Leader is Jonathan Shick;

Department of Land and Natural Resources - Discussion Leader is Mary Albitz and Back-up is Jonathan Shick;

Department of Transportation - Discussion Leader is James Kimo Lee and Back-up is Jonathan Shick;

University of Hawai'i - Discussion Leader is Nancy Atmospera-Walch and Back-up is Mark Ritchie.

VI. NEXT MEETING – The next meeting is scheduled for Thursday, July 18, 2019 in Conference Room 405, 235 South Beretania Street, Leio papa A Kamehameha Building (State Office Tower), Honolulu, Hawaii at 10:00 a.m.

VII. ADJOURNMENT – Mr. Ritchie made a motion to adjourn the meeting and Mr. Nakamoto seconded the motion; the meeting adjourned at 11:23 a.m.

III. Old Business – After Public Hearing

A. Discussion and Action on Proposed Amendments and the Small Business Statement After Public Hearing to HAR Title 4 Chapter 66, Pesticides, promulgated by DoAg

**SMALL BUSINESS STATEMENT
"AFTER" PUBLIC HEARING TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD**
(Hawaii Revised Statutes (HRS), §201M-3)

Department or Agency: Hawaii Department of Agriculture

Administrative Rule Title and Chapter: HAR 4-66

Chapter Name: Pesticides

Contact Person/Title: John McHugh / Program Manager

Phone Number: 808-973-9404

E-mail Address: john.mchugh@hawaii.gov **Date:** 06/26/2019

A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.

B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7?

Yes **No**

(If "Yes," please provide webpage address and when and where rules may be viewed in person. Please keep the proposed rules on this webpage until after the SBRRB meeting.)

I. Rule Description: **New** **Repeal** **Amendment** **Compilation**

II. Will the proposed rule(s) affect small business?

Yes **No** (If "No," no need to submit this form.)

* "Affect small business" is defined as "any potential or actual requirement imposed upon a small business . . . that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business." HRS §201M-1

* "Small business" is defined as a "for-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that: (1) Is domiciled and authorized to do business in Hawaii; (2) Is independently owned and operated; and (3) Employs fewer than one hundred full-time or part-time employees in Hawaii." HRS §201M-1

III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance?

Yes **No**

(If "Yes" no need to submit this form. E.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives. HRS §201M-2(d))

IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a))

Yes **No**

(If "Yes" no need to submit this form.)

V. Please explain how the agency involved small business in the development of the proposed rules.

Public Hearings were held in each county, with 2 hearing in Maui and Hawaii counties. Public Testimony was also accepted at numerous Board of Agriculture meetings.

a. Were there any recommendations incorporated into the proposed rules? If yes, explain. If not, why not?

Yes. There were request that the reporting requirement only included what was required by Act 45 (signed into law in 2018), we incorporated this change.

VI. If the proposed rule(s) affect small business, and are not exempt as noted above, please provide the following information:

1. A description of how opinions or comments from affected small businesses were solicited.

Opinions and comments were solicited through public hearings and Board of Agriculture meetings.

2. A summary of the public's and small businesses' comments.

(See attachment.) We are also including a copy of the Hearing Officer's Report for more detailed information.

3. A summary of the agency's response to those comments.

(See attachment.)

4. The number of persons who:

(i) Attended the public hearing: 25

(ii) Testified at the hearing: 9

(iii) Submitted written comments: 21

5. Was a request made at the hearing to change the proposed rule in a way that affected small business?

(i) If "Yes," was the change adopted? Yes No

(ii) If No, please explain the reason the change was not adopted and the problems or negative result of the change.

Small Business Regulatory Review Board / DBEDT
Phone: (808) 586-2594 / Email: DBEDT.sbrrb.info@hawaii.gov

This statement may be found on the SBRRB Website at:
<http://dbedt.hawaii.gov/sbrrb-impact-statements- pre-and-post-public-hearing>

Items VI.1 and 3**SUMMARY OF THE PUBLIC'S AND SMALL BUSINESSES' COMMENTS AND SUMMARY OF AGENCY'S RESPONSE TO THOSE COMMENTS.**

A number of issues were identified during the public hearing process. Issues relevant to the proposed rule amendments included the following:

I. The Requirements and Impact of 2018 Haw. Sess. Laws Act 045 ("Act 045").

Testimony regarding Act 045 included:

- The additional burden, in terms of time and cost, for annually reporting RUP use;
- Reporting location by Tax Map Key seen as unnecessary; reporting by address was more accurate;
- Address information was already collected under current rules;
- The definition of "school" is too broad; and
- Small size of buffer zone around schools (should be expanded);
- The language from Act 045 was not reflected in the rules; public disclosure of more information may allow competitors to take advantage of confidential business information.

AGENCY RESPONSE:

Some of the concerns were required or defined by law and could not be changed through the rules.

- Annual RUP report required by Act 045, cannot be undone by rules.
- The collection of geographic location where restricted use pesticides are applied, by "including, at a minimum, the tax map key number," is a statutory requirement of Act 045 that may not be amended by rule.
- Act 045 defines "school" as "any public or private preschool, kindergarten, elementary, intermediate, middle, secondary, or high school."
- Act 045 sets the size of the buffer zones.

With regard to the concern that the language in the proposed amendments to 4-66-62, HAR, did not mirror the language from Act 045, the purpose of the draft rules were to ease the extra burdens caused by Act 045 as the rules were amended to simply add one item ("a general description of the geographic location including, at a minimum, the tax map key number, at which the restricted use pesticides were used") to the records already maintained by Restricted Use Pesticide ("RUP") applicators (pursuant to

section 4-66-62, HAR (2006)) and required that the records be submitted to HDOA in the annual report (rather than HDOA collecting the information during inspections).

However, some public testimony raised concern with the language not reflecting the language of Act 045 and going beyond the reporting requirements of Act 045.

Because of the amount of information being provided to HDOA, protection of CBI was the real concern. Although HDOA redacts any information it believes to be CBI before releasing to the public (under HRS Chapter 92F requests), to alleviate concern that HDOA would publicly disclose CBI, the Hearings Officer initially recommended that a mechanism be developed by which CBI can be identified by the applicator as confidential and not subject to disclosure.

However, at its meeting on June 25, 2019, the Board of Agriculture instead voted to limit the information provided by RUP applicators to only those records required to be submitted by RUP applicators under Act 045, except that the Board included the total area treated for each pesticide use because that information was required to be provided by the Department of Agriculture in the Department's annual summary (required under Act 045).

II. **Definitions.**

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

AGENCY RESPONSE:

The definition of "runoff" was revised by the Board to read as follows:

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

was replaced with:

"Runoff" means rainfall or snowmelt events that flow over land or impervious surfaces, such as paved streets, parking lots, and building roof tops, that directly enters into lakes, rivers, wetlands, coastal waters, or other surface waters, and does not soak into the ground.

The Agency did not revise the definition of “drift” as the suggested change did not improve upon the EPA definition proposed for adoption. The Agency did not revise section 4-66-32(b)(3), HAR, regarding State *Restricted Use Pesticides* candidate criteria as the requested change was previously considered by the Pesticide Advisory Committee and rejected as exceeding HDOA’s statutory authority. The Agency did not create a definition for “agricultural operation” as it found the term “agricultural operation” to be self-explanatory.

III. Buffer Zones.

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

AGENCY RESPONSE:

No changes were made. HDOA was unable to amend the statutorily prescribed 100-foot buffer zone by rule as it was defined by law and could not be changed through the rules.

IV. Penalties.

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

AGENCY RESPONSE:

No changes were made. All penalties and fines included in the Enforcement Action and Penalty Assessment Schedule are prescribed by statute. Only the Hawaii legislature can change the penalties. Employers are already subject to liability along with the employee pursuant to section 149A-41(d).

V. Adoption of Federal Standards.

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

AGENCY RESPONSE:

No changes were made. Pesticide regulation falls under federal jurisdiction. The State has been given the authority by EPA to regulate pesticide registration and use. The amendments made to the pesticide rules related to labeling, certification standards, and worker protection were the result of changes to EPA regulations under 40 CFR part 156, 40 CFR part 170, and 40 CFR part 171. HDOA is required to work within the parameters established by EPA. In regards to labeling, pursuant to 7 USC section 136v (b), states “shall not impose or

continue in effect any requirements for labeling or packaging in addition to or different from those required under this subchapter.” Adopting federal standards acknowledges federal authority over pesticides.

VI. Mixing of Pesticide Products.

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

AGENCY RESPONSE:

No changes were made. EPA, not HDOA, has the authority to prohibit mixtures of pesticides. In cases where toxicity is known to be increased to hazardous levels by mixing of pesticides the EPA approved label carries an advisement prohibiting the mixture. EPA is responsible for determining what constitutes a hazardous pesticide mixture and labeling the product accordingly.

VII. Consultation with the Pesticide Advisory Committee.

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

AGENCY RESPONSE:

No changes were made. Section 4-66-32(d) does not prevent the head of HDOA, or more accurately the administrative head of the division of plant industry of HDOA, from consulting with the Pesticide Advisory Committee. In fact, the Chair of the Hawaii Board of Agriculture, or his designated representative, chairs the Pesticide Advisory Committee.

VIII. Continuing Education Credit Approval.

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

AGENCY RESPONSE:

No changes were made. The decision to increase the time period for approval of education credit was done in consideration of limited pesticide branch staff and increased workloads. A provision was added to the fee schedule that will allow HDOA to charge a fee of up to \$100 to expedite approval of provider offered continuing education classes. Encouraging advance planning and preparation for providers of education classes will lessen the time commitment by HDOA staff. Last minute training opportunities may still be submitted for approval, but at a cost. The amount of the fee is left to the discretion of HDOA. The fee can be waived if the approval process does not interfere with staff responsibilities.

IX. Removing the RUP List from the Rules and Including the Internal Review Process in the Rules.

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

AGENCY RESPONSE:

No changes were made. Pesticides designated by EPA as restricted use are required to receive identical treatment by HDOA. Pesticides that are classified as general use pesticides by EPA may be designated as a state restricted use pesticide product when HDOA finds science based evidence that the product may harm Hawaii's environment. The Pesticide Advisory Committee reviews all pesticide products proposed for state restricted use. These meetings are noticed and the public are encouraged to attend. The Hawaii Board of Agriculture will make the final decision on whether the pesticide product will be listed as a state restricted use product before sales may commence. The Board meetings are also noticed and the public is encouraged to attend. It appears that the volume of products considered for State restricted use has been overestimated. Since 2006, less than 10 pesticide products have been proposed for addition to the list. The public's ability to provide comments on the adoption of proposed state restricted use pesticides is commensurate with the quantity of products under review. The suggestion that the internal review process be made a part of the rules suffers from the same problem caused by maintaining the RUP list in the rules. Scientific developments and investigative improvements would be held in abeyance until the rules could be amended.

X. Increase in Licensing Fees.

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

AGENCY RESPONSE:

No changes were made. The proposed fee increase is in-line with fees charged by other states. As the testifier noted, the increased fees will enhance the pesticide branch's ability to serve the pesticide community through training, education, increased services, and establish new programs such as disposal of unwanted or unused pesticides. In consideration of the time that has elapsed

since the last increase, and the anticipated length of time before the next rule amendment, the increased fees are not excessive.

XI. Retail Warning Sign Requirements.

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

AGENCY RESPONSE:

No changes were made. The retail signage requirements are the result of legislative directive and have been the law since 2007. See section 149A-15.5, HRS. HDOA cannot amend the statute by rule. Only the Hawaii legislature can change the retail signage requirements.

XII. Certified Applicator Qualification Standards.

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

AGENCY RESPONSE:

The language in section 4-66-57(a), HAR, was revised by the Board to read as follows:

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

was replaced with:

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

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

May 16, 2018

Conference Room 436 - No. 1 Capitol District Building, Honolulu, Hawaii

- I. **CALL TO ORDER:** Chair Borge called the meeting to order at 10:00 a.m., with a quorum present.

MEMBERS PRESENT:

- Anthony Borge, Chair
- Garth Yamanaka, 2nd Vice Chair
- Kyoko Kimura
- Reg Baker
- Mary Albitz
- William Lydgate
- Mark Ritchie

ABSENT MEMBERS:

- Robert Cundiff, Vice Chair
- Harris Nakamoto
- Nancy Atmospera-Walch

STAFF: DBEDT
Dori Palcovich

Office of the Attorney General
Dawn Apuna

II. APPROVAL OF APRIL 18, 2018 MINUTES

Mr. Baker made a motion to accept the April 18, 2018 minutes, as presented. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

III. NEW BUSINESS

- A. Discussion and Action on Proposed Amendments to HAR Title 4 Chapter 66, Pesticides, promulgated by Department of Agriculture (DoAg)

Ms. Victoria Matsumura, Environmental Health Specialist at DoAg, stated that of the chapter's 56 proposed rule changes, 8 were identified as having small business impact. Of the 8 changes, the most significant change was a new, one-time licensing fee for pesticide devises.

Fee increases apply to permits, examinations, educational services, and certifications. The department head currently has the authority to waive or reduce the fees for businesses that have financial hardship; in the past, this authority was delegated to the branch manager. While a repeal process is not included in the rules, it was explained there have never been any instances where a repeal was required.

Testifier, Mr. Tim Lyons, Executive Director of the Hawaii Pest Control Association, which represents 95% of the State's total licensed pest control companies, complimented DoAg for an admirable job in formulating the proposed rule changes; however, the Association has one concern. Under Section 4-66-60(c) (1) (3), HRS, it requires that submission of a speaker's biography and break-out presentation for continuing education purposes be made in 30 days.

Mr. Lyons stated that 10 days would be a more manageable period of time; the rules also do not allow for leeway in the time when submitting the required speaker information if a change is needed from the original speaker to a new speaker within that 30-day period. The Board of Agriculture was approached with this proposal, but to no avail.

Chair Borge applauded DoAg's willingness to work with the stakeholders during the rule promulgation period. He agreed with Mr. Lyons that the 30-day submission for a speaker's information is quite lengthy.

Mr. Ritchie made a motion to encourage dialogue between the agency and stakeholders prior to going to public hearing regarding the timeframe under Section 4-66-60(c)(a)(3) that will be mutually acceptable to all. Ms. Kimura seconded the motion, and board members unanimously agreed.

IV. OLD BUSINESS

B. Discussion and Action on Proposed Amendments to HAR Title 19 Chapter 20.1, Commercial Services at Public Airports, promulgated by Department of Transportation (DOT)

Discussion leader, Ms. Kimura, reminded the members that a memorandum was sent to DOT after last month's board meeting with several questions to be addressed. Mr. Ross Higashi, Deputy Director for DOT Airports Division thanked the members and introduced Ms. Rosemary Neilson-Nenezich, DOT's Operations Manager and Mr. John Price, deputy attorney general. He explained that a consultation meeting was held on May 11th where ten stakeholders, who attended this board's meeting last month, were present.

Mr. Higashi was following up on last month's meeting due to this Board deferring any action pending conferring with the stakeholders and answering the Board's questions raised at the last meeting to establish a level playing field for all companies that provide transportation services at the airport in order to eliminate double standards in the permitting process and discuss consistency with trade dress logos and insurance coverage requirements.

Further, in consideration of the concerns raised at the last meeting and from the stakeholder consultation meeting, DOT has decided to redraft the rule amendments and cancel the public hearings scheduled for the end of May in order for DOT to clarify the concerns in a fair manner. The new proposal is expected to be completed by mid- to late-June; Chair Borge appreciated DOT responding back to this Board.

D. Discussion and Action on Proposed Amendments to HAR Title 4 Chapter 66 Pesticides, promulgated by Department of Agriculture (DoAg)

Mr. John McHugh, Branch Manager at DoAg's Pesticides Branch, reminded the members that this Board reviewed and approved the proposed "Pesticides" rules in May of this year, but since then, Act 45, SLH was passed, which deals with new regulations for pesticide use.

Specifically, the changes are associated with reporting all users of restricted pesticides, which include farmers, parks and recreations, pest control companies, golf courses, companies that work with sanitation of drinking water, and utility pole companies, are impacted.

Another rule change, taken verbatim from the law, relates to buffer zones as it restricts spraying pesticides no closer than within 100 feet of a school's property. This may potentially impact small businesses; i.e., a farm, if its operations are near a school as it restricts applications of pesticides before 7:00 a.m., and after 4:00 p.m., to avoid potential drift of the pesticides.

All users of restricted-use pesticides were provided an email from DoAg's Pesticide Branch. Those businesses with no e-mail accessibility were mailed notifications of the rule changes. Any of the postal letters that came back "undelivered" will be hand-delivered by DoAg.

Mr. Lydgate made a motion to move the proposed rules to public hearing. Ms. Albitz seconded the motion, and the Board members unanimously agreed

E. Discussion and Action on Proposed Amendments to HAR Title 11 Chapter 178, Clean and Sober Homes Registry, promulgated by Department of Health (DOH)

Discussion leader Chair Borge stated that this program is a voluntary service, used by many small businesses. Mr. Eddie Mersereau, Chief at DOH's Alcohol and Drug Abuse Division, explained that the rules establish a voluntary clean and sober homes registry to assist persons recovering from substance abuse to have a safe, clean, and sober environment that supports recovery.

Currently, because many of the clean and sober homes follow a wide range of individual standards as to the processes that are followed and how the homes are operated, the proposed rules were created for the minimum base-line standards that all clean and sober home operators are required to follow.

The website for registering as a clean and sober home operator is already established; so currently anyone in the community can go onto it to see if a home is registered and in good standing. While other states offer these same types of registries, because some have gotten sued due to violations of fair housing laws, DOH is hoping to prevent the same type of violations and lawsuits to occur. Running the website is not expensive for the State as it is run by only one employee; also noted was that there is a standard \$1 million insurance policy required for clean and sober homes.

Amendment and Compilation of Chapter 4-66
Hawaii Administrative Rules

_____, 2019

1. Chapter 4-66, Hawaii Administrative Rules, entitled "Pesticides" is amended and compiled to read as follows:

"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	<u>Incorporation of 40 CFR part 156 (2017); contents of the pesticide label; generally</u>
§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 for approval of [~~non-chemical~~] nonchemical pest control devices
 §4-66-35 Pesticide licensing; effective date

§4-66-36 Pesticide [~~licensing~~] licenses;
 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 the
 Environmental Protection Agency
(EPA)
 §4-66-42 Repealed
 §4-66-42.1 Coloration of [~~Pesticides~~]
pesticides
 §4-66-43 Enforcement
 §4-66-44 Notice of [~~judgment~~] enforcement
action
 §4-66-45 Experimental use permits; generally
 §4-66-46 Experimental use permits;
 prohibitions
 §4-66-47 Experimental use permits;
 exceptions
 §4-66-48 Experimental use permits;
 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 and
dealer representative
 §4-66-53 [~~Dealer's~~] Dealers' records and
 reports
 §4-66-54 Storage, display, and sale of
 pesticides
 §4-66-55 Disposal of pesticides and empty
 pesticide containers
 §4-66-56 Certification of applicators
 §4-66-57 General standards for certification
 of applicators

§4-66-58	Specific standards for certification of applicators
§4-66-59	Repealed
§4-66-60	Certification procedures; <u>certificate renewal</u>
§4-66-61	Conditions on the use of restricted use pesticides <u>by non-certified applicator</u>
§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] <u>aerial application of restricted use pesticides</u>
<u>§4-66-64.1</u>	<u>Conditions and limitations on pesticide application by means other than aerial treatment</u>
<u>§4-66-64.2</u>	<u>Conditions and limitations on restricted use pesticide application within buffer zones</u>
§4-66-65	Repealed
§4-66-66	Fees
§4-66-66.1	[Proposed enforcement penalty guidelines] <u>Enforcement action and penalty assessment schedule</u>
§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 (HRS), which provides for the registration, licensing, certification, recordkeeping, usage, and other activities related to the safe and efficacious use of pesticides. [Eff 7/13/81; comp 12/16/06; am and comp] (Auth: HRS §149A-33) (Imp: HRS §149A-33)

§4-66-2 Definitions. As used in this chapter: "Act" means the Hawaii Pesticides Law, chapter 149A, Hawaii Revised Statutes[+;-].

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

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

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

"Board" means board of agriculture.

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

"Certification standard" means a requirement for certification.

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

"Chemigation" means applying pesticides through irrigation systems.

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

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

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

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

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

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

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

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

"EPA" means the United States Environmental Protection Agency.

"FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, [~~7 U.S.C.~~] title 7 United States Code (USC) sections 136 et[er] seq., as amended.

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

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

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

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

Products not considered fungicides include:

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

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

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

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

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

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

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

"License" [for the purposes of sections 4-66-52, 4-66-53 and 4-66-66 Hawaii Administrative Rules (HAR), means and is interchangeable with a permit under sections 149A-17 and 149A-18] means the process of being allowed to register a pesticide product pursuant to provisions of chapter 149A, Hawaii Revised Statutes.

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

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

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

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

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

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

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

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

"Personal protective equipment" (PPE) means devices and apparel that are worn to protect the body from contact with pesticides or pesticide residues, including, but not limited to, coveralls, chemical-resistant suits, chemical-resistant gloves, chemical-resistant footwear, respiratory protection devices, chemical resistant aprons, chemical-resistant headgear, and protective eyewear, as further defined in title 40, Code of Federal Regulations section 170.507 (2018).

~~"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.]~~

means:

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

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

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

(a) Deodorizers, bleaches, and cleaning agents;

(b) Products not containing toxicants, intended only to attract pests for survey or detection purposes, and labeled accordingly; and

(c) Products that are intended to exclude pests only by providing a physical barrier against pest access, and that contain no toxicants, such as certain pruning paints to trees.

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

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

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

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

"Runoff" means rainfall or snowmelt events that flow over land or impervious surfaces, such as paved streets, parking lots, and building roof tops, that directly enters into lakes, rivers, wetlands, coastal waters, or other surface waters, and does not soak into the ground.

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

it exits from the spring onto the earth's surface.

"Under the direct supervision of a certified applicator" [means,] means that, unless otherwise prescribed by a pesticide's labeling, [that] a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is [available if and when needed] immediately able to communicate with the non-certified applicator, even though the certified applicator is not physically present at the time and place the pesticide is applied, and as further defined in section 171.201 of title 40, Code of Federal Regulations (2018).

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

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

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

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

- (1) Pre-application activities involving mixing and loading the pesticide.
- (2) Applying the pesticide, including, but not limited to, supervising the use of a pesticide by a non-certified applicator.
- (3) Other pesticide-related activities, including, but not limited to, transporting or storing pesticide containers that have been opened, cleaning equipment, and disposing of excess pesticides, spray mix, equipment wash waters,

pesticide containers, and other pesticide-containing materials.

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

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

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

§4-66-4 Incorporation of 40 CFR part 156 (2017);

[Contents] 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.]~~

(a) Title 40, part 156, Code of Federal
Regulations (CFR), published by the Office of the Federal
Register, as amended as of July 1, 2017, is made a part
of this chapter subject to the substitutions and
amendments set forth in sections 4-66-4 to 4-66-31. 40
CFR part 156 (2017), adopted _____, is appended
at the end of this chapter.

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

"Act" includes the Hawaii Pesticides Law,
chapter 149A, Hawaii Revised Statutes. [Eff
7/13/81; am and comp 12/16/06; am and comp
_____] (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.]~~

40 CFR section 156.10(b)(1) (2017) is incorporated in
this section. The federal terms "Administrator" and
"Registration" in 40 CFR section 156.10(b)(1) (2017) are
supplemented with the indicated state term, as
incorporated and amended in this section:

(1) "Administrator" includes the administrative
head of the division of plant industry, Hawaii
department of agriculture, or any officer or
employee to whom authority has been duly
delegated.

(2) "Registration" includes the state term "license", which means the process of being allowed to register a pesticide product pursuant to the provisions of chapter 149A, Hawaii Revised Statutes. [Eff 7/13/81; comp 12/16/06; am and comp] (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.] 40 CFR section 156.10(c) (2017) is incorporated in this section. [Eff 7/13/81; comp 12/16/06; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§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.]~~ 40 CFR section 156.10(d) (2017) is incorporated in this section. [Eff 7/13/81; am and comp 12/16/2006; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

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

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

S4-66-10 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.]~~

40 CFR section 156.10(g)(1) (2017) is incorporated in this section. [Eff 7/13/81; comp 12/16/06; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149-33; 40 CFR §156.10)

S4-66-11 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.]~~ 40 CFR section 156.10(g)(2)(i) to (ii) (2017) is incorporated in this section. [Eff 7/13/81; comp 12/16/06; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

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

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

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

§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.]~~

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

§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.]~~ 40 CFR section 156.10(g) (7) (2017) is incorporated in this section.

[Eff 7/13/81; comp 12/16/06; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§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.]~~ 40 CFR section 156.60 (2017) is incorporated in this section. [Eff 7/13/81; am and comp 12/16/06; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.60) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.60)

§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 LD₅₀..... Up to and including 50 mg/kg~~
~~Inhalation LC₅₀..... Up to and including 0.2 mg/liter~~
~~Dermal LD₅₀..... Up 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.] 40 CFR sections 156.62, 156.64, 156.66, and 156.68 (2017) are incorporated in this section. [Eff 7/13/81; am and comp 12/16/06; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §§156.60 to 156.68) (Imp: HRS §§149A-15, 149A-33; 40 CFR §§156.60 to 156.68)~~

§4-66-19 Label; other required warnings and precautionary statements. [~~(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.]~~

40 CFR sections 156.70 and 156.78 (2017) are incorporated in this section. [Eff 7/13/81; comp 12/16/06; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §§156.70, 156.78, 156.80 and 156.85) (Imp: HRS §§149A-15, 149A-33; 40 CFR §§156.70, 156.78, 156.80 and 156.85)

§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.]~~ 40 CFR section

156.10(i)(1)(i) (2017) is incorporated in this section.

[Eff 7/13/81; am and comp 12/16/06; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§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.]~~

40 CFR section 156.10(i)(1)(ii) (2017) is incorporated in this section. [Eff 7/13/81; am and comp 12/16/06; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-22 Label; [~~exception~~] exceptions 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 hand of the general public except after incorporation into finished products; and~~
- ~~(4) The head determines that the directions are not necessary to prevent unreasonable adverse effects on humans or the environment.~~

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

40 CFR section 156.10(i)(1)(iii)(A) to (C) (2017) is incorporated in this section. [Eff 7/13/81; am and comp 12/16/06; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-23 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, 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.]~~~~

40 CFR section 156.10(i)(2) (2017) is incorporated in this section. Eff 7/13/81; am and comp 12/16/06; am and

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

§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.]~~ 40 CFR section 156.10(j) (2017) is incorporated in this section. The federal term "General use" in 40 CFR section 156.10(j) (2017) is replaced by the indicated state term, as incorporated and amended in this section:

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

§4-66-25 Repealed. [R 12/16/06]

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

~~[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.]~~

40 CFR section 156.10(j)(2) (2017) is incorporated in this section. 40 CFR section 156.10(j)(2)(i)(B) (2017) is replaced by the indicated paragraph, as incorporated and amended in this section:

"Directly below this statement on the front panel, a summary statement of the terms of restriction imposed as a precondition to registration shall appear. If use is restricted to certified applicators, the following statement is required: "For retail sale to and use only by Certified Applicators or persons under their direct supervision and only for those uses covered by the Certified Applicator's certification." If the head determines that other State regulatory restrictions shall be imposed for the protection of the public, the head may require appropriate terms of restriction as a condition of licensing. [Eff 7/13/81; comp 12/16/06; am and comp]
(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.]~~

40 CFR section 156.10(a)(2) (2017) is incorporated in this section. The federal terms "Act" and "Regulation" in 40 CFR section 156.10(a)(2) (2017) are supplemented with the indicated state terms, as incorporated and amended in this section:

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

S4-66-28 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.]~~
40 CFR section 156.10(a)(3) (2017) is incorporated in this section. The federal term "Agency" in 40 CFR section 156.10(a)(3) (2017) is supplemented with the indicated state term, as incorporated and amended in this section:

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

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

~~(b)~~ While a pesticide product is in transit, the appropriate parts of the United States Code of Federal Regulations, Title 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.]

40 CFR section 156.10(a)(4)(i) to (ii) (2017) is incorporated in this section. The federal term "Act" in 40 CFR section 156.10(a)(4)(i) to (ii) (2017) is supplemented by the indicated state term, as incorporated and amended in this section:

"Act" includes the Hawaii Pesticides Law, chapter 149A, Hawaii Revised Statutes. [Eff 7/13/81; am and comp 12/16/06; am and comp] (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".]~~

(a) 40 CFR section 156.10(a)(5) (2017) is incorporated in this section.

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

(1) "Act" includes the Hawaii Pesticides Law, chapter 149A, Hawaii Revised Statutes, and citation to section 149A-2, Hawaii Revised Statutes.

(2) "Regulation" includes the state term "rule", which refers to title 4, Hawaii Administrative Rules.

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

(1) "Device" is replaced with the state term "nonchemical pest control device". [Eff 7/13/81; am and comp 12/16/06; am and comp] (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.]~~ (a) 40 CFR section 156.10(a)(6)(i) to (ii) (2017) is incorporated in this section.

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

(1) "Agency" includes the state term "head", which means the administrative head of the division of plant industry, Hawaii department of

agriculture, or any officer or employee to whom authority has been duly delegated.

- (2) "Registration" includes the state term "license", which means the process of being allowed to register a pesticide product pursuant to the provisions of chapter 149A, Hawaii Revised Statutes.

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

- (1) "Microfilm" is replaced with the state term "text.PDF or similar format". [Eff 7/13/81; am and comp 12/16/06; am and comp]
(Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

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

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

- (1) Pesticides in toxicity categories I and II as defined in section 4-66-18 (40 CFR sections 156.62, 156.64, 156.66, and 156.68 (2017));
- (2) Pesticides or pesticide uses [~~which~~] that are determined by the head, in consultation with the director of the department of health, to be a health hazard for one or more reasons including, but not limited to, toxicity, body storage, oncogenicity, mutagenicity, and teratogenicity or other reproductive effects;
- (3) Pesticides or pesticide uses [~~which~~] that can reasonably be anticipated to result in contamination of groundwater or significant reductions in [~~non-target~~] non-target organisms, or fatality to members of endangered species; and
- (4) Pesticides or pesticide uses authorized under section 18, the Emergency Exemption provision,

of FIFRA.

~~[(c) 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.]~~

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

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

~~[(e) 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% eation
Picloram	All
Simazine	All]

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

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

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

§4-66-32.1 Evaluation of pesticides uses. (a)

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

(b) The head shall evaluate ~~[a licensed]~~ any pesticide when unreasonable adverse effects to humans or the environment have been ~~[documented and]~~ found and documented to a reasonable degree of scientific certainty as being associated with the use of that pesticide.

Unreasonable adverse effects to humans or the environment shall include, but not be limited to, the following circumstances:

- (1) Public or worker health hazard;
- (2) Pesticide residues in drinking water are present in levels [~~which~~] that are equal to or exceed twenty [~~(20) percent~~] per cent of the established [~~Federal~~] federal or [~~state~~] State health standards or advisories;
- (3) Pesticide residues in food or feed are present in levels exceeding the established tolerances; [~~Fish or wildlife hazard, including hazards to endangered species;~~]
- (4) Fish or wildlife hazard, including hazards to endangered species;
- ~~[(4)]~~ (5) Toxicity to [~~non-target~~] non-target organisms;
- ~~[(5)]~~ (6) Hazardous packaging;
- ~~[(6)]~~ (7) Misbranded as established in sections 4-66-4 to 4-66-30 (40 CFR part 156 (2017));
- ~~[(7)]~~ (8) Other information suggesting unreasonable adverse effects on humans or the environment associated with the use of a specific pesticide; and
- ~~[(8)]~~ (9) Discovery that data upon which a license was issued are false, misleading, or incomplete.

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

] (Auth: HRS §§149A-14, 149A-33) (Imp:

§4-66-33 Pesticide licensing; exceptions.

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

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

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

comp] (Auth: 40 CFR §152.30;
HRS §§149A-13, 149A-19, 149A-33) (Imp: HRS
§§149A-13, 149A-19, 149A-33)

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

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

pesticide license shall provide the complete formula of the pesticide, including active and inert ingredients, and a description of tests and ~~the~~ test results thereof on which claims are based, including efficacy, residue, safety, and other supporting data that shows the pesticide shall perform its intended function without causing unreasonable adverse effects on humans or the environment.

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

- identification of the diet for the test animals or fertilization and irrigation schedules for plants used in the test;
- (G) Treatments, such as the test frequency and volume for nonchemical pest control devices, and the method and frequency of administration;
 - (H) The type and frequency of data collection, and measurements to be made;
 - (I) The records to be maintained;
 - (J) The date of approval by the sponsor and the signature of the test director; and
 - (K) A statement of the proposed statistical analyses to be used.
- (8) The department may test nonchemical pest control devices to determine the reliability, efficacy and safety of the nonchemical pest control device. The applicant shall provide any nonchemical pest control devices to the department [~~upon its request in order to conduct~~] for testing upon request.
- (9) The department shall provide the applicant with [~~a written estimate of the costs necessary to conduct testing,~~] a description of the tests to be conducted, and estimated schedule to complete the tests.
- ~~[(10) If the applicant agrees to have the device tested by the department or its authorized representative, half of the estimated costs of the tests shall be paid to the department before the tests are started. The balance shall be paid to the department upon completion of the tests.~~
- ~~[(11)]~~ (10) The applicant may initiate tests required pursuant to (8) above, using qualified testing facilities, with the concurrence of the department. [Eff 7/13/81; am and comp 12/16/06; am and comp]
 (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~~] in the pesticide product's directions for use, [its] use classification, and other information contained in [~~its labeling~~] the labeling, do not differ from those made in conjunction with the license currently in effect; and

(3) Any change in the labeling or formula of a licensed pesticide shall be submitted in advance to the head provided:

(A) The licensee shall describe the exact change and upon request, shall submit test results to support any change in labeling claims; and

(B) After the effective date of any change in labeling or formulas, the pesticide shall be marketed only under the new label or formula [~~, provided, the~~]. The head may permit a reasonable time for disposition of stocks, if in the opinion of the head, such disposition does not result in any unreasonable adverse effects on humans or the environment. [Eff 7/13/81; am and comp 12/16/06; am and comp]
(Auth: HRS §§149A-13, 149A-19, 149A-33)
(Imp: HRS §§149A-13, 149A-19, 149A-33)

§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]~~ these rules, or when necessary to prevent any unreasonable adverse effect on humans or the environment.

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

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

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

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

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

§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[~~7~~]; [~~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[~~7~~] if the application is for a new product; and any other information specified by the head [~~which~~] that is required to be reviewed prior to registration under this section.

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

(c) The head shall determine [~~that the product warrants the claims made for it in the registration application.~~] whether the claims made for the product in the registration application are warranted. [Eff 7/13/81; comp 12/16/06; am and comp]
(Auth: HRS §§149A-19, 149A-22, 149A-33; 7 USC §136v (c); 40 CFR §§162.152, 162.153) (Imp: HRS §§149A-19, 149A-22, 149A-33; 7 USC §136v (c); 40 CFR §§162.152, 162.153)

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

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

(b) The [~~Determination~~] determination required by [~~section 4-66-38~~] subsection (a) shall be based on data and criteria consistent with federal regulations applicable to the type of product or use under consideration. [Eff 7/13/81; am and comp 12/16/06; am and comp] (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~~ For distribution and use only within the [~~state~~] State of Hawaii" and the assigned special local need number.
- (3) For a registration of an additional use of a federally registered product, labeling from the federally registered product shall be

accompanied at the time of use by supplemental labeling [~~which~~] that contains:

- (A) A statement identifying "For distribution and use only within the State of Hawaii";
 - (B) Directions for use to meet the special local need which satisfy the criteria of sections 4-66-10 to 4-66-31;
 - (C) The trade name of the product;
 - (D) The name and address of the special local need registrant;
 - (E) The EPA registration number of the federally registered product;
 - (F) The assigned special local need number;
 - (G) A statement requiring a person using the product to comply with all applicable directions, restrictions, and precautions found in the labeling of the federally registered product; and
 - (H) A statement prohibiting the use of the product in a manner inconsistent with federal and accompanying supplemental labeling.
- (4) If the head classifies for restricted use a product or product use registered by the head, which is not required to be classified as restricted use by section 4-66-32, then the head shall require supplemental labeling for the product or product use to have additional appropriate precautions, and a statement that the product or product use is for restricted use.

(b) All products registered by the head shall meet all appropriate federal packaging standards as well as all appropriate standards for coloration established and contained in section [~~4-66-42~~] 4-66-42.1. Prior to issuing any registration, the head shall determine that the product conforms to these requirements. [Eff 7/13/81; am and comp 12/16/06; am and comp]
(Auth: HRS §§149A-19, 149A-22, 149A-33; 7 USC §136v (c); 40 CFR §162.153) (Imp: HRS §§149A-19, 149A-22, 149A-33; 7 USC §136v (c); 40 CFR §162.153)

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

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

(b) A product or product use thereof registered by the head shall be classified by the head for restricted use if the product is identical or similar in composition to a federally registered product for which the use has been classified as restricted under federal law or for which a use similar to the registered use has been classified as [~~registered~~] restricted use under federal law, and the registered product or product use meets the criteria for classification as restricted use pesticides under section 4-66-32. [Eff 7/13/81; am and comp 12/16/06; am and comp] (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 [~~of~~] of registration shall indicate the effective date of revocation, and shall state the reasons for revocation.

(d) Within fifteen working days from receipt of a request from EPA, the head shall submit any data used to determine that any unreasonable adverse effect on humans

or the environment shall not be caused by a registration of a product with a composition not similar to any federally registered product, or an additional use of a federally registered product, or a use of a product with a composition similar to that of a federally registered product, or if registration of other uses of the federally registered product has been denied, suspended, or canceled [~~registration~~] because of health, safety, or environmental concerns. [Eff 7/13/81; am and comp 12/16/06; am and comp] (Auth: HRS §§149A-19, 149A-22, 149A-33; 7 USC §136v (c); 40 CFR §162.153) (Imp: HRS §§149A-19, 149A-22, 149A-33; 7 USC §136v (c); 40 CFR §162.153)

§4-66-42 Repealed. [R 12/16/06]

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

- (b) Seed Treatment products.
 - (1) Pesticide products intended for use in treating seeds must contain an EPA-approved dye to impart an unnatural color to the seed, unless appropriate tolerances or other clearances have been established [~~under the Federal Food, Drug and Cosmetic Act~~] for residues of the pesticide under title 21 United States Code section 346a (a) to (q) (2017), the Federal Food, Drug and Cosmetic Act.
 - (2) The following products are exempt from the requirement of paragraph (b)(1) of this section:
 - (A) Products intended and labeled for use solely for commercial seed treatment, provided that the label bears a statement requiring the user to add an EPA-approved dye with the pesticide during the seed treatment process.
 - (B) Products intended and labeled for use solely as at-planting or hopper box

treatments.

- (C) Products, which are gaseous in form or are used as fumigants.
- (3) EPA-approved dyes for seed treatment are those listed in ~~[Title 40 of the Code of Federal Regulations, Part 180.1001 (c) or (d) or 180.2010]~~ title 40, Code of Federal Regulations sections 180.910, 180.920, or 180.2020 (2017). [Eff and comp 12/16/06; am and comp] (Auth: HRS §§149A-16, 149A-33; 40 CFR §§153.140, 153.155) (Imp: HRS §§149A-16, 149A-33; 40 CFR §§153.140, 153.155)

S4-66-43 Enforcement. (a) ~~[The]~~ As allowed by law, the head may enter any place or conveyance where pesticides or nonchemical pest control devices are manufactured, stored, packed, delivered for transportation, transported, offered for sale or sold, and may inspect and take samples of the pesticides and nonchemical pest control devices. An unbroken package ~~[shall]~~ may be taken as the official sample where the pesticide is packed in small bottles, or small packages. Where the pesticide is packed in large containers, the official samples ~~[shall]~~ may be a portion taken from one original unopened package in a lot. A chain-of-custody for each sample, from collection through analysis and final disposition, shall be maintained on forms prescribed by the head.

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

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

complies with the Act or [~~this rule~~] these rules.

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

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

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

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

~~[-(e)]~~ (f) The head may seize any pesticide or nonchemical pest control device that is distributed, sold, offered for sale, transported, or delivered for transportation in violation of the Act or [~~this rule~~] these rules. No notice or hearing shall be required prior to the seizure of a pesticide or nonchemical pest control device. [Eff 7/13/81; am and comp 12/16/06; am and comp] (Auth: HRS §§149A-11, 149A-20, 149A-21, 149A-33) (Imp: HRS §§149A-11, 149A-20, 149A-21, 149A-33)

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

Publication of judgments of the courts in cases arising under the criminal or seizure provisions of the Act or ~~[this rule]~~ these rules, and any final order issued by the department for violation of the Act or these rules, may be made in the form of notices, circulars, or bulletins as the head may direct. [Eff 7/13/81; comp 12/16/06; am and comp] (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]~~ that is to be tested further to determine the scope and limitations of its usefulness and the effect of its use on humans and the environment. Permits may be issued for products for use in experimental programs under the supervision of applicators certified in demonstration and research pest control and broad scale testing under normal conditions of use. The head may require the information and data concerning the product and the proposed testing program ~~[which]~~ that is deemed necessary to make determinations on the merits of the proposals. [Eff 7/13/81; am and comp 12/16/06; am and comp] (Auth: HRS §§149A-19, 149A-22, 149A-33; 40 CFR §§172.20 to 172.26) (Imp: HRS §§149A-19, 149A-22, 149A-33; 40 CFR §§172.20 to 172.26)

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

No permits shall be issued for any of the following:

- (1) A product containing an active or inert ingredient ~~[which]~~ that is currently subject to an EPA cancellation or suspension of registration order, or ~~[which]~~ that is currently subject to an EPA notice of intent to suspend or cancel registration because of human health, environmental, or efficacy consideration; except that a permit may be

issued for such a product for a purpose or in a formulation [~~which~~] that:

- (A) Is not specifically considered in, or [~~which~~] that is not subject to, suspension or cancellation proceedings, after consultation with appropriate EPA officials; or
 - (B) Was specifically considered during the proceedings but not suspended, canceled, or subject to a notice of intent to suspend or cancel.
- (2) A use of a product [~~which~~] that has been the subject of a notice of denial of registration under FIFRA; and
- (3) A use of a product, which may involve use in or on food or feed other than as authorized in section 4-66-47. [Eff 7/13/81; am and comp 12/16/06; am and comp] (Auth: HRS §§149A-19, 149A-22, 149A-33; 40 CFR §172.24) (Imp: HRS §§149A-19, 149A-22, 149A-33; 40 CFR §172.24)

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

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

~~[These]~~ If these three criteria are met, the substances or mixture of substances are not considered to

be pesticides within the meaning of the Act or [~~this rule~~] these rules. No State experimental use permit is required if an experimental use permit has been issued by the EPA for the proposed trial(s).

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

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

- (1) A tolerance or exemption from the requirements of a tolerance has been established under section 408 of the Federal Food, Drug, and Cosmetic Act[~~+~~], codified at title 21 United States Code section 346a (2017), or a regulation established under section 409 of the Federal Food, Drug, and Cosmetic Act, codified at title 21 United States Code section 348 (2017); or
- (2) The food or feed product derived from the experimental use permit shall be destroyed or used as feed only for laboratory or experimental animals for testing purposes; or
- (3) Convincing evidence is submitted by the applicant that the proposed use shall not result in residues in or on food or feed that would be in excess of that authorized under section 408 of the Federal Food, Drug, and Cosmetic Act, codified at title 21 United States Code section 346a (2017), or a regulation established under section 409 of the Federal Food, Drug, and Cosmetic Act, codified at title 21 United States Code section 348 (2017), which would be hazardous to [~~man~~] humans, other animals, or the environment.

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

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

- (1) Name and address of the shipper, ~~[and]~~ the consignee, and place or places from which the shipment shall be made;
- (2) Proposed date of shipment, or proposed shipping period that shall not ~~[to]~~ exceed one year from the permit application date, and quantity to be shipped;
- (3) A statement of the composition of material to be covered by the permit, which ~~[should]~~ shall apply to a single material or similar formulations of the material;
- (4) The name, address and telephone number and qualification of the person responsible for conducting the test;
- (5) Available data or reference to available data on the analytical method and toxicity of the pesticide;
- (6) The purpose or objective of the proposed tests; a description of the proposed testing program including test parameters; a designation of the pest organism or organisms involved; the amount of pesticide product proposed for use; the crops, fauna, flora, sites, modes, dosage rate, and situation of applications on or in which the pesticide is to be used; the number of acres, number of structure sites, or number of animals to be treated or included in the area of experimental use; the proposed dates, or period, or periods during which the testing program is to be conducted and the manner in which supervision of the program shall be accomplished; and the method of destruction or disposal of treated food or feed;
- (7) A statement that the pesticide is intended for experimental use only;

- (8) Proposed labeling [~~which~~] that shall bear:
- (A) The prominent statement [~~"for experimental use only"~~] "For Distribution and Experimental Use Only Within Hawaii" in the container label and any accompanying circular or other labeling;
 - (B) A warning or caution statement [~~which~~] that may be necessary and if complied with is adequate for the protection of those who may handle or be exposed to the experimental formulations;
 - (C) The name and address of the applicant for the permit;
 - (D) The name or designation of the formulation; and
 - (E) If the pesticide is to be sold to experimental use program participants, a statement of the names and percentages of the principal active ingredients in the product; provided[~~r~~] that, if the shipper [~~shall submit~~] submits a copy of a valid experimental use permit issued under the provisions of FIFRA, and the accepted labeling related thereto, at the head's discretion, the head may exempt the shipper from the requirement of submitting a part of the application, the data, and information [~~herein~~] specified in this subsection; and
- (9) A statement as to the disposal of any unused portions of the experimental pesticide. [Eff 7/13/81; am and comp 12/16/06; am and comp] (Auth: HRS §§149A-19, 149A-22, 149A-33; 40 CFR §172.24) (Imp: HRS §§149A-19, 149A-22, 149A-33; 40 CFR §172.24)

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

(a) The head may limit the quantity of a pesticide covered by [a] an experimental use permit to a lesser quantity than requested if available information on effectiveness, toxicity, or other hazards is not sufficient to justify the scope of experimental use

proposed in the application, or make other limitations in the permit as may be determined to be necessary for the protection of the public.

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

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

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

- (1) Quantity of the pesticide shipped and used during the reporting period;
- (2) Name and address of consignee and ultimate destination and amount of each shipment;
- (3) A summary of data on effectiveness, phytotoxicity, or other pertinent information regarding usefulness obtained during the permit period;
- (4) Any additional data obtained on residue or analytical methods obtained;
- (5) Any additional data obtained on toxicity or unreasonable adverse effects to humans, non-target animals, or the environment;

- (6) Any residue data obtained on the treated crop or site on which determination can be made regarding reentry into the treated area;
- (7) Disposition of unused pesticide; and
- (8) Such other information and data as may be prescribed by the head. [Eff 7/13/81; am and comp 12/16/06; am and comp]
(Auth: HRS §§149A-19, 149A-22, 149A-33; 40 CFR §172.25) (Imp: HRS §§149A-19, 149A-22, 149A-33; 40 CFR §172.25)

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

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

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

§4-66-52 Restricted use pesticide dealer and dealer representative. (a) Persons who sell restricted use pesticides, [~~or~~] pesticides requiring an annual use permit[~~r~~] or special permit to apply restricted use pesticides by aerial application, shall obtain a [~~license~~] dealer sales permit for that purpose from the department. [~~which~~] The dealer sales permit shall expire on December 31 of each year and shall be renewed

~~[on or]~~ no less than thirty calendar days before January 1 of each year.

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

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

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

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

(e) Persons seeking to ~~[be a licensed]~~ obtain a pesticide dealer representative permit shall apply for examination on forms ~~[provided]~~ prescribed by the head. To qualify, an applicant shall pass a written examination at a time and place designated by the head. Examination shall test the applicant's knowledge of pesticide laws, rules, and regulations, pesticide hazards, proper usage, safe storage and distribution and disposal methods. The restricted use pesticide dealer shall notify the head within thirty calendar days of any personnel change in the restricted use pesticide dealer representative position.

(f) A ~~[license]~~ permit issued to a restricted use pesticide dealer representative shall be valid for ~~[5]~~ five years. Renewal shall be by examination.

Applications for renewal of restricted use pesticide dealer representative permits shall be submitted no less than thirty days prior to the permit expiration date.

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

(h) Restricted use pesticide dealer sales outlets shall only distribute, solicit, sell, offer for sale, hold for sale, receive order for sale, or transport restricted use pesticides to a certified pesticide applicator, or non-certified applicator under the supervision of a certified pesticide applicator, and only those restricted use pesticides that are relevant to the certification category of the certified applicator.

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

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

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

(b) Records shall show the name and address of

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

(c) A copy of the [~~licensed~~] permitted sales outlet's [~~record~~] records as specified in this section shall be submitted to the head within [~~45~~] fifteen calendar days after the end of each calendar month for which the record is being kept. A copy shall be kept at the [~~licensed~~] permitted sales outlet where the sales were made for a period of one year.

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

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

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

home.

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

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

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

The warning sign shall be no less than seventeen inches by twenty two inches and contain lettering of sufficient size, no less than sixteen point bold type, which will enable the sign to be read from a distance of six feet under all lighting conditions normally encountered during business hours. [Eff 7/13/81; am and comp 12/16/06; am and comp] (Auth: HRS §§149A-15.5, 149A-31, 149A-33) (Imp: HRS §§149A-15.5, 149A-31, 149A-33)

§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]~~ 11-262.1, 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.]~~

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

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

§4-66-56 Certification of applicators. (a) No person shall apply restricted use pesticides unless certified in the category appropriate to the application or under the direct supervision of a certified applicator certified in the appropriate category. An applicator applying restricted use pesticides shall be certified ~~[either as a commercial pesticide applicator or a private pesticide applicator.]~~ as:

(1) A commercial pesticide applicator; or

(2) A private pesticide applicator.

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

- (1) Category 1, agricultural pest control, which includes the following subcategories:
- (A) [A plant] Crop pest control.
[subcategory for] For persons using or supervising the use of restricted use pesticides in production of agricultural [food and feed crops, including,] commodities, including but not limited to grains, seeds, soybeans, feed and forage crops, vegetables, fruits, trees and nuts, as well as non-crop agricultural lands;
 - (B) [An animal] Animal pest control.
[subcategory for] For persons using or supervising the use of restricted use pesticides to control pests on animals including, but not limited to, beef and dairy cattle, swine, sheep, horses, goats, and poultry, and to [premises] places on or in which animals are confined; and doctors of veterinary medicine engaged in the business of application for hire, publicly holding themselves out as pesticide applicators or engaged in large scale use of pesticides;
 - (C) Soil and non-soil fumigant pest control.
For persons using or supervising the use of restricted use pesticides to fumigate soil and to fumigate anything other than soil;
- (2) Category 2, forest pest control~~[, for]~~. For persons using or supervising the use of restricted use pesticides in forests, forest nurseries, and forest seed [producing areas] production;
- (3) Category 3, ornamental and turf pest control~~[, for]~~. For persons using or supervising the use of restricted use pesticides to control pests [of] in the maintenance and production of ornamental plants, trees, shrubs, flowers and turf;

- (4) Category 4, aerial pest control [~~7, for~~]. For persons using or supervising the use of restricted use pesticides [~~applied by aircraft~~] by aerial application;
- (5) Category 5, aquatic pest control [~~7, for~~]. For persons using or supervising the use of restricted use pesticides purposefully applied to standing or running water, excluding applicators engaged in public health related activities included in [~~section~~] sections 4-66-56(8) and 4-66-56(9);
- (6) Category 6, right-of-way pest control [~~7, for~~]. For persons using or supervising the use of restricted use pesticides in the maintenance of [~~public roads, electric power lines, pipelines, railway rights-of-way or other similar areas,~~] roadsides, powerlines, pipelines, and railway rights-of-way, and similar areas, but excluding aquatic rights-of-way;
- (7) Category 7, industrial, institutional, and structural pest control, which includes the following subcategories:
 - (A) Fumigation pest [~~control, for~~] control. For persons using or supervising the use of fumigant restricted use pesticides to control termites and other pests in or around food handling establishments, human dwellings, institutions such as schools and hospitals, industrial sites such as warehouses, grain elevators, and any other structures and adjacent area, public or private, and for the protection of stored, processed or manufactured products. The corresponding branch of pest control established pursuant to section 460J-12, Hawaii Revised Statutes, is Branch 1, Fumigation;
 - (B) Termite pest [~~control, for~~] control. For persons using or supervising the use of restricted use pesticides other than by fumigation to control subterranean and drywood termites in or

around human dwellings, institutions such as schools and hospitals, hotels, industrial sites, and any other structures and adjacent area, public or private. The corresponding branch of pest control established pursuant to section 460J-12, Hawaii Revised Statutes, is Branch 3, Termite;

- (C) General pest [~~control, for~~] control. For persons using or supervising the use of restricted use pesticides to control pests, in or around food establishments, human dwellings, institutions such as schools, hospitals, industrial sites such as warehouses, and any other structures and adjacent area, public or private; and for the protection of stored, processed or manufactured products, excluding those applicators certified in category 3, ornamental and turf pest control, and subcategories [~~7A~~] 7(A) and [~~7B~~] 7(B). The corresponding branch of pest control established pursuant to section 460J-12, Hawaii Revised Statutes, is Branch 2, General Pest;
- (D) Institutional pest [~~control, for~~] control. For persons using or supervising the use of restricted use pesticides exclusive of fumigants to control pests at institutions (e.g., schools, hotels, hospitals, warehouses, industrial sites), or establishments (e.g., grain elevators, restaurants, bakeries, fast food outlets) where they are employed;
- (E) Vault fumigation pest [~~control, for~~] control. For persons using or supervising the use of restricted use pesticides [~~and fumigants in~~] to fumigate vaults or chambers, to control pests in agricultural commodities or structural materials, and including

stored, processed or manufactured products, exclusive of those individuals licensed as pest control operators and certified in [~~category 7a, 7b, or 7e~~] subcategories 7(A), 7(B), or 7(C);

- (F) Specialty [~~categories, for~~] categories. For persons using or supervising the use of restricted use pesticides where the scope of application is typically limited to a single active ingredient, a single site, a single facility or a single application method, such as using restricted use pesticides for controlling roots in sewer lines, prevention of pests on marine surfaces through the use of restricted use coatings, controlling wood pests through the use of pressure or submergence treatment, and persons who use chlorine gas;
- (8) Category 8, public health pest control[~~for~~]. For federal, state or other governmental employees and contractors using or supervising the use of restricted use pesticides in public health programs for the management and control of pests having medical and public health importance;
- (9) Category 9, regulatory pest control[~~for~~]. For state, [~~federal,~~] federal, or other government employees and contractors using or supervising the use of restricted use pesticides in the control of regulated pests prescribed under the Hawaii Plant Quarantine Law, chapter 150A, Hawaii Revised Statutes, and the Federal Plant [~~Pest Act~~] Protection Act, title 7 United States Code chapter 104 sections 7701 to 7786 (2017);
- (10) Category 10, demonstration, research and instructional pest control[~~for~~]. For persons who demonstrate to the public the proper use and techniques of application of restricted use pesticides or supervise such demonstration, and persons conducting field

research with pesticides, and in doing so, use or supervise the use of restricted use pesticides; and

- (11) Category 11, chemigation pest control~~[7 for]~~. For persons using or supervising the use of restricted use pesticides applied through an irrigation system. Certification in this category requires concurrent certification in category ~~[1A]~~ 1(A), 2, 3, or 10.

(c) Private pesticide applicators ~~[are]~~ shall be further divided into categories based on general patterns of use and sites where specific knowledge related to the use pattern or site is required to demonstrate competency. A person may be certified in as many categories as necessary~~[7 upon qualification]~~. The categories are as follows:

- (1) Category 1, general agricultural pest control~~[7 for]~~. For private applicators using or supervising the use of restricted use pesticides in the production of agricultural commodities;
- (2) Category 2, agricultural pest control with fumigants~~[7 for]~~. For private applicators using or supervising the use of restricted use pesticides for soil fumigation in the production of an agricultural commodity and the application of restricted use pesticides for fumigation of agricultural products. Certification in this category requires concurrent certification in category 1, general agricultural pest control; and
- (3) Category 3, chemigation ~~[for]~~. For persons conducting agricultural pest control, with pesticides applied through irrigation systems. Certification in this category requires concurrent certification in category 1, general agricultural pest control. [Eff 7/13/81; am and comp 12/16/06; am and comp] (Auth: HRS §149A-33; 40 CFR §§171.5, 171.101) (Imp: HRS §149A-33; 40 CFR §§171.5, 171.101)

§4-66-57 General standards for certification of applicators.

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

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

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

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

- proctor during the examination period;
- (7) Only reference materials approved by the department may be used during the examination; and
- (8) In addition to the written examination the department may employ additional methods for determining applicator competency.

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

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

~~be taken to prevent children from having access to pesticides and pesticide containers; and procedures for confining and cleaning up pesticide spills;]~~

- (2) Safety measures. An understanding of the risks of acute toxicity, chronic toxicity, and long-term effects of pesticides; an understanding that risk is a function of exposure and pesticide toxicity; recognition of ways in which dermal, inhalation, and oral exposure may occur; knowledge of common types and causes of pesticide mishaps; precautions to prevent injury to applicators and other individuals in or near treated areas; the need for and proper use of personal protective equipment and clothing; symptoms of pesticide poisoning; first aid and other procedures to be followed in case of a pesticide mishap; proper identification, storage, transport, handling, mixing procedures, and disposal methods for pesticides and used pesticide containers; and precautions to be taken to prevent children from having access to pesticides and pesticide containers;
- (3) Environment. An understanding of the potential environmental consequences of the use and misuse of restricted use [pesticides, for example, the role of such factors as climatic conditions, types of terrain, soil and substrate, the presence of various non-target organisms, and the potential for surface and ground water contamination;] pesticides; an understanding of the influence of weather and other indoor and outdoor climatic conditions; the influence of types of terrain, soil, or other substrate; presence of fish, wildlife, and other non-target organisms; and, drainage patterns;
- ~~[(4) The ability to identify pests and knowledge of the importance of the biology of pests relevant to the applicant's areas of operations;]~~
- (4) Pests. An understanding of the importance of correctly identifying target pests and

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

techniques, formulations, and methods to prevent drift and pesticide loss into the environment;

~~[-(8) A practical understanding of how to apply pesticides in various formulations, such as dusts, wettable powders, emulsifiable concentrates, solutions, and gases, together with a knowledge of application techniques, including timing, safety precautions and restrictions;]~~

(8) Laws, rules, and regulations. Knowledge of all applicable federal and State laws, rules, and regulations;

~~[-(9) A practical understanding of pesticide drift potential and its effect on non-target organisms, including but not limited to, wildlife, apiaries, and human habitation; and techniques and formulations which reduce drift;]~~

(9) Responsibilities of supervisors of non-certified applicators. Knowledge of the responsibilities of certified applicators supervising non-certified applicators using restricted use pesticides; understanding and complying with title 40 Code of Federal Regulations section 171.201 (2018); knowledge and understanding of the recordkeeping requirements of pesticide safety training for non-certified applicators who use restricted use pesticides under the direct supervision of a certified applicator; providing use-specific written instructions to non-certified applicators who use restricted use pesticides under the direct supervision of a certified applicator; and explaining pertinent federal and State laws, rules and regulations to non-certified applicators who use restricted use pesticides under the direct supervision of a certified applicator; and

~~[-(10) Knowledge of applicable federal and state laws and rules; and]~~

(10) Professionalism. Knowledge and understanding of the importance of maintaining chemical security for restricted use pesticides; how to

effectively communicate information about pesticide exposures and risks; and, appropriate product stewardship for certified applicators.

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

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

(a) Commercial applicators

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

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

environmental contamination, non-target injury and ~~[community]~~ other problems resulting from the use of restricted use pesticides in agricultural areas; ~~[and]~~

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

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

- (2) [~~Forest~~] Category 2, forest pest control applicators shall demonstrate practical knowledge of the [extent and] types of forests, forest nurseries, seed production and pest involved.
~~[Applicators in this category shall demonstrate knowledge of]~~ The required knowledge shall include the cyclic occurrence of certain pests, population dynamics[, and the vulnerability of biota to pesticide application] as a basis for programming pesticide applications, the relevant organisms causing harm and the organisms' vulnerability to the pesticides to be applied, how to determine when pesticide use is proper, selection of application method, proper use of application equipment to minimize non-target exposures, and appropriate responses to meteorological factors and adjacent land use. The applicator shall demonstrate an understanding of the potential for phytotoxicity due to a wide variety of plants to be protected, for drift, for persistence beyond the intended period of pest control, and for non-target exposures. Because forest stands frequently include watersheds [~~and~~], aquatic situations, and harbor wildlife, the applicator shall demonstrate knowledge of pest control methods[~~7~~] that will minimize the possibility of secondary problems such as surface or ground water contamination and unintended effects on wildlife[~~. Proper use of specialized equipment must be demonstrated, especially as it may relate to meteorological factors and adjacent land use~~];
- (3) [~~Ornamental~~] Category 3, ornamental and turf pest control applicators shall demonstrate practical knowledge of pesticide problems associated with the

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

- (4) ~~[Aerial]~~ Category 4, aerial pest control applicators shall demonstrate ~~[broad-knowledge of the principles of drift and drift control, including the effects of weather, application equipment and techniques, pesticide formulations and adjuvants. Applicators in this category shall also demonstrate knowledge of the potential for an aerial application to cause unreasonable adverse effects to the environment, such as to beneficial insects, wildlife, livestock, non-target plants and people in or near sensitive areas such as schools, parks, playgrounds, hospitals, rest-homes, churches and residential areas,]~~ practical knowledge of pest problems and pest control practices associated with performing aerial application of restricted use pesticides. Applicators shall also demonstrate the ability to read and understand labeling requirements specific to aerial

applications, how to choose, operate and maintain aerial application equipment, knowledge of factors to consider before and during aerial application such as weather conditions, wind velocity, and how to minimize drift, demonstrate competency in performing an aerial pesticide application, and knowledge of restricted use pesticide recordkeeping requirements;

- (5) [~~Aquatic~~] Category 5, aquatic pest control applicators shall demonstrate [~~understanding of the secondary effects which can be caused by improper application rates, incorrect formulations, and faulty application of restricted use pesticides used to control aquatic pests. Applicators in this category shall demonstrate special awareness of the possibility of oxygen depletion and an understanding of possible pesticide effects on fishes, birds, beneficial arthropods, and desirable plants and other organisms, which may be present in aquatic environments.~~] practical knowledge of the characteristics of various aquatic use situations, and the potential for adverse effects on non-target plants, fish, birds, beneficial insects and other organisms in the immediate aquatic environment and downstream. [They] Applicators shall also demonstrate [an understanding] the principles of limited area applications;
- (6) [~~Right-of-way~~] Category 6, right-of-way pest control applicators shall demonstrate [~~knowledge of a wide variety of environments because rights-of-way can traverse many different terrains, including waterways. Applicators in this category shall demonstrate knowledge of~~

~~problems of runoff, drift, and excessive foliage destruction and shall be able to correctly identify target and non-target organisms.]~~ practical knowledge of the types of environments (terrestrial and aquatic) traversed by rights-of-way, recognition of target pests, and techniques to minimize non-target exposure, runoff, drift, and excessive foliage destruction. [They] Right-of-way pest control applicators shall also demonstrate knowledge of the ~~[nature of herbicides.]~~ potential for phytotoxicity due to a wide variety of plants and pests to be controlled, and for persistence beyond the intended period of pest control. [~~Aerial-applicators~~] Applicators doing right-of-way work shall demonstrate knowledge of application equipment, containment of the pesticide within the right-of-way area, and [special] drift control methods and procedures;

- (7) [~~Industrial~~] Category 7, industrial, institutional, and structural [and health-related] pest control applicators shall demonstrate [special knowledge of a wide variety of pests, including their life cycles, as well as types of formulations appropriate for the control and methods of application that avoid contamination of food and habitation and do not cause hazards to humans and pets. Specific requirements may vary depending on the subdivisions of this category. As human exposure is frequently a potential problem in this area, applicators must demonstrate knowledge of the toxicity of the pesticides used and factors which may constitute a hazard.] a practical knowledge of industrial, institutional, and structural pests, including recognizing those pests and signs of the

pest's presence, habitats, life cycles, biology, and behavior as it may be relevant to problem identification and control. Applicators shall demonstrate practical knowledge of types of formulations appropriate for control of industrial, institutional and structural pests, and methods of application that avoid contamination of food, minimize damage to and contamination of areas treated, minimize acute and chronic exposure of people and pets, and minimize environmental impacts of outdoor application. Applicators in this category shall also demonstrate knowledge of the pesticide labeling of the products typically used in [their] the applicator's operations, including hazards to the environment, emergency procedures, application methods, disposal, and pertinent laws [and], rules, and regulations;

- (8) [~~Public~~] Category 8, public health pest control applicators shall demonstrate [knowledge of pests of public health importance, vector-disease relationships, and etiology of disease-host relationships. Because a wide variety of pests are involved, public health pest control applicators must demonstrate knowledge and recognition of these pests, as well as an understanding of their life cycles and habitats. Applicators in this category shall demonstrate familiarity with a great variety of environmental conditions ranging from streams to dwellings. They] practical knowledge of pests that are important vectors of disease, including recognizing the pests and signs of the pests' presence, habitats, life cycles, biology and behavior as it may be relevant to problem identification and control. The required knowledge also

- includes how to minimize damage to and contamination of areas treated, acute and chronic exposure of people and pets, and non-target exposures. Applicators shall [also] demonstrate competency in [non-chemical] nonchemical control methods such as sanitation, waste disposal, and drainage[.]. Applicators shall also demonstrate knowledge of hazards to the environment, emergency procedures, application methods, disposal, and pertinent laws, rules, and regulations;
- (9) [Regulatory] Category 9, regulatory pest control applicators shall demonstrate [broad general] practical knowledge of [applicable laws, safety,] regulated pests, [pesticides and the impact of restricted use pesticides on the environment. Applicators in this category shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. Applicators shall demonstrate knowledge over and above that required by their immediate duties, because emergency measures are frequently required and individual judgments in new situations must be made; and] applicable laws relating to quarantine and other regulation of regulated pests, and the potential impact on the environment of restricted use pesticides used in suppression and eradication programs. Applicators shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of regulated pests;
- (10) [Demonstration] Category 10, demonstration, research, and instructional pest control applicators [are required to meet particularly high standards since their use of pesticides is presumed to be exemplary. Broad knowledge is required of pests and

~~population levels of pests occurring where demonstrations are to be conducted. Applicators in this category shall demonstrate competency regarding basic concepts of ecology, understanding of pesticide-organism interactions, the importance of integrating pesticide use with other methods, and the potential for various secondary problems.] shall demonstrate practical knowledge of the potential problems, pests, and population levels reasonably expected to occur in a demonstration situation and the effects of restricted use pesticides on target and non-target organisms. Applicators shall also demonstrate competency in each pest control category applicable to the applicator's demonstration. For purposes of demonstrating proper use of a particular pesticide product, [Out-of-state] out-of-state technical representatives visiting or working in the State for thirty [~~30~~] days or less per year [~~to demonstrate proper use of a particular product~~] need not be certified in this category if certified in an equivalent category by a jurisdiction authorized by the EPA to issue certifications [and upon notification to the head of their qualifications and intent to apply restricted use pesticides in the State]. The out-of-state technical representative shall present his or her certification credentials to the head for an equivalency determination prior to applying any restricted use pesticides in the State; and~~

- (11) [~~Chemigation~~] Category 11, chemigation pest control applicators shall demonstrate practical knowledge of labeling requirements specific to chemigation, how to choose, operate and maintain application equipment, the use of metering devices, strategies and

equipment for backflow prevention, and procedures for irrigation system assessment for the distribution consistency of water, or chemicals, or both.

- (b) Private ~~[Applicators:]~~ applicators
- (1) ~~[Agricultural]~~ Category 1, general agricultural pest control applicators shall demonstrate practical knowledge of agricultural commodities grown in the State and the specific pests ~~[of]~~ relevant to these commodities ~~[on which the applicators may use restricted use pesticides]~~. Applicators in this category shall demonstrate practical knowledge ~~[concerning relevant soil and water problems,]~~ of how to avoid contamination of ground and surface waters, demonstrate an understanding of preharvest intervals, restricted entry intervals, [phytotoxicity, and potential for environmental contamination and non-target injury.] and entry restricted periods and areas. The applicator shall also demonstrate a practical understanding of phytotoxicity, specific pesticide toxicity, and residue potential when pesticides are applied to animal or animal product agricultural commodities, and the relative hazards associated with using pesticides on animals or places in which animals are confined based on formulation, application technique, age of animal, stress, and extent of treatment. General agricultural pest control applicators shall demonstrate a complete understanding of the Worker Protection Standard, part 170 of title 40, Code of Federal Regulations (2018);
- (2) ~~[Agricultural fumigation]~~ Category 2, agricultural pest control fumigant applicators shall demonstrate practical knowledge of ~~[the use of personal protective equipment for fumigation,~~

~~general safety procedures, including posting, restricted entry and aeration.]~~
pest problems and pest control practices associated with soil and non-soil fumigant applications. [Further, applicators] Applicators in this category shall demonstrate knowledge of [emergency procedures and application techniques appropriate to various situations.] label and labeling comprehension, safety measures to minimize adverse health effects, characteristics of soil and non-soil fumigants, selecting appropriate application methods and timing, factors that influence fumigant activity, worker protection measures, personal protective equipment and how to use it properly, restricted entry periods, posting requirements, recordkeeping requirements, and an understanding of how applicators and bystanders can be exposed to fumigants. Applicators shall also demonstrate knowledge of signs and symptoms of exposure to fumigants, first aid procedures, emergency preparedness, the ability to calculate buffer zones, air concentrations of fumigant, and preparation of site-specific fumigant management plans and post-application summaries; and

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

demonstrate a complete understanding of the Worker Protection Standard, title 40, part 170, Code of Federal Regulations (2018).

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

§4-66-59 Repealed. [R 12/16/06]

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

- (1) For initial certification of commercial applicators and renewal of commercial applicator certificates, ~~[application]~~ the applicant shall be at least eighteen years of age. Application shall be made on forms ~~[provided]~~ prescribed by the head. Forms are available at the department or on-line at <https://hdoa.hawaii.gov>. The completed form shall be submitted to the department, with the appropriate fee. Once the form is received by the department, and the appropriate fee has been paid, the applicant will be scheduled for examination. To gain entrance to the testing facility, an applicant shall present a valid, government-issued photo identification or other similarly reliable form of identification as proof of identity and age. The applicant for certification as a commercial applicator shall pass a written examination with a score of seventy per cent or better~~[-, at a time and place designated by~~

~~the head]. [Instruction and] The core examination shall cover the general standards and procedures specified in ~~[sections]~~ section [4-66-57(e)] 4-66-57. ~~[and 4-66-57(d) in a core examination and, if applicable, section 4-66-58 in a category]~~ Category or subcategory [examination] examinations shall cover the specific standards specified in section 4-66-58(a).~~

- (2) To be eligible to take category or subcategory examinations, the applicant shall first obtain a passing score on the core examination. If the applicant fails to pass the core examination, that applicant is eligible to be re-examined no sooner than fourteen ~~[-14-]~~ calendar days after the date of the failed examination. A passing score on the core examination will be valid for six months after the date of examination. ~~[The applicant may use a passing score on the core examination to be eligible to take category or subcategory examinations.]~~
- (3) Certification in a category or subcategory under section 4-66-58 requires a passing score of seventy per cent or better on ~~[both the core examination and]~~ the category or subcategory examination. If the applicant fails to pass any examination, that applicant is eligible to be re-examined no sooner than fourteen calendar days after the date of the failed examination. A passing score on the category or subcategory examination will not be valid unless the applicant ~~[also attains]~~ first obtains a passing score on the core examination. ~~[If]~~ A certificate may be issued if the applicant passes the core examination and any other category and subcategory examinations [and], meets all other requirements for certification, ~~[a certificate will be issued subject to compliance with]~~ and complies with all other State [agency] and federal requirements.
- (4) For renewal of commercial applicator ~~[certificates]~~ certification, application for

renewal ~~[may]~~ shall be made no sooner than ninety ~~[-90]~~ days before and no later than thirty ~~[-30]~~ days after expiration of certification. ~~[To qualify for renewal prior to December 31, 2006, an applicant should contact the Department's pesticides program to determine the number of hours of training credit needed to qualify for recertification under policies valid through that date. Beginning January 1, 2007, an]~~ In order for a certified applicator's certification to continue without interruption, the certified applicator shall be recertified before the expiration of his or her current certification. An applicant for recertification ~~[must]~~ shall complete one of the following procedures:

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

Category	Applicator	Hours of Training Required
1 [A] <u>(A)</u>	[Plant] <u>Crop</u> Pest Control	25
1 [B] <u>(B)</u>	Animal Pest Control.	20
1 (C)	<u>Soil and Non-soil Fumigant Pest Control</u> .30	
2	Forest Pest Control	30
3	Ornamental and Turf Pest Control.	30
4	Aerial Pest Control	25
5	Aquatic Pest Control.	25
6	Right-of-Way Pest Control	30
7 [A] <u>(A)</u>	Fumigation Pest Control	25*
7 [B] <u>(B)</u>	Termite Pest Control.	20
7 [C] <u>(C)</u>	General Pest Control.	30
7 [D] <u>(D)</u>	Institutional Pest Control.	30
7 [E] <u>(E)</u>	Vault Fumigation <u>Pest Control</u>	25*
7 [F] <u>(F)</u>	Specialty Categories.	20
8	Public Health Pest Control.	24
9	Regulatory Pest Control	20
10	Demonstration, Research, & Instructional Pest Control.	30
11	Chemigation <u>Pest Control</u>	5*

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

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

(5) [~~If~~] A certificate may be renewed if the applicant has accumulated the required number of credits prior to the expiration date on the applicator's certificate, or passed the written examination [and], meets all other requirements for certification, [a certificate may be issued] and complies with any other State and federal requirements.

(b) The [~~procedure~~] procedures for certifying private applicators [~~is~~] and renewal of private applicator certifications are as follows:

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

State and federal requirements, a certificate may be issued.

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

- (A) ~~[Accumulate]~~ Continuing education. A certified applicator may be found eligible for recertification upon successfully completing a continuing education program by accumulating twenty [-20] hours of training credits. Applicators certified in agricultural fumigation, [and] or agricultural chemigation, or both, must accumulate five [-5] hours of training specific to each applicable category. Completion of training must be verified by documentation approved by the head. The training must be completed prior to the expiration date shown on the applicator's certificate[. If the applicant has accumulated the required number of training credits, and meets all other requirements for certification, a certificate may be issued.] and the continuing education program shall be of the quality, content, and quantity that will ensure the applicator continues to maintain the level of competency required by sections 4-66-57 and 4-66-58; or
- (B) Written examination. Pass a written examination as provided in section 4-66-60 (b) (1).

~~[-(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 restricted use products chosen by the applicant.]~~

- (4) Certification of private applicator under special circumstances. An applicant for private applicator certification who is unable to pass a written examination may request that the department provide certain testing accommodations. The head shall review requests for testing accommodation on a case-by-case basis. The applicant may be offered the opportunity for testing under special circumstances if the head finds the accommodation request is reasonable and will not result in public safety being compromised. A finding by the head that the requested accommodation is unreasonable or that public safety may be compromised by providing the requested accommodation shall be in writing. Restrictions may be placed on a private applicator who successfully passes

certification testing under special circumstances as deemed necessary by the head for the protection of the public and environment. The head shall be solely responsible for determining what constitutes successful passage of certification testing under special circumstances. Renewal of certificates issued under this section can be granted only through the procedures described in this paragraph. Any applicant aggrieved by a determination of the head relative to certification of private applicator under special circumstances may request a hearing as provided in section 149A-34, Hawaii Revised Statutes.

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

- (1) A training class sponsor or provider shall submit a written application ~~[for]~~ to the head, requesting approval of certification credits for each training [elasses to the head- at least fourteen (14) days before the- scheduled date of each] class no less than thirty calendar days prior to the scheduled date of each class. A fee for expedited approval of certification credits may be assessed for approval requests received less than thirty calendar days prior to the scheduled date of each class. Appropriate subject matter for training classes is set forth in sections 4-66-57 and 4-66-58.
- (2) The written application shall include the name and contact information of the sponsor or provider, instructor credentials, a [class- description (outline)] substantive class description or outline of sufficient detail so evaluation of the course content can be made, a sample of any materials to be provided to the participants, who may attend the class, if any fee will be charged, class evaluation method, and the dates, times, and location of the class. The head shall [issue] approve or deny credits within ten ~~[-10-]~~ business days

following receipt of the ~~[request]~~ written application for certification credit.

- (3) Approval of training class credit shall be valid for two years, after which time a new written application requesting approval of certification credit shall be submitted.
- (4) The number of credits issued for a training session shall be based on an evaluation of course content, instructor qualifications, and the duration of the course [~~(normally 1 credit for each 50 minutes)~~] by the head. The ~~[head may adjust the]~~ number of credits ~~[assigned]~~ approved by the head may be adjusted if department monitoring of the course demonstrates that content and duration either exceeds or fails to meet course description as approved [~~by the head~~].
- (5) Credits shall be awarded to those applicators whose attendance at the session is documented. The training class sponsor or provider shall maintain a record of attendance at the approved sessions.
- (6) The record shall show the name, certification number, arrival and departure time for each attendee desiring credits toward certification renewal. The ~~[sponsor will]~~ training class sponsor or provider shall forward the record of attendance to the head within [~~10~~] thirty calendar days following the course. Failure to timely forward the training class attendance record to the head may result in denial of future training class or certification credit.
- (7) Requests to obtain training credit towards certification renewal from sources other than in-person training class attendance may be approved on a case-by-case basis at the sole discretion of the head.

(d) All certifications and renewals issued under this section shall be valid for five years following date of issuance, unless revoked. The date of issuance is the date the examination was passed. Application for renewal shall be on forms ~~[provided]~~ prescribed by the head. Forms are available at the

department or on-line at <https://hdoa.hawaii.gov>.

(e) Changes to Certificates and Replacement Certificates. A certification is valid only for the name, category, address, and employer, if applicable, shown on the certificate or recorded on the application for certification or certification renewal. Any changes to the certificate must be reported to the head by the certificate holder within thirty [~~30~~] calendar days of [the] any change [~~, on forms provided by the head~~]. Forms to update the certificate holder's information shall be prescribed by the head. Forms are available at the department or on-line at <https://hdoa.hawaii.gov>. Failure to notify the head within thirty days of any change in name, applicator category, address, or employer may result in certification revocation, or may subject the certificate holder to additional penalties as provided by law. Applicators may request a replacement certificate to update information, to replace lost certificates, and to consolidate certifications on different certificates. The replacement certificate with appropriate changes shall be issued after payment of appropriate fees. A replacement certificate will expire on the same date as the original certification [~~, unless~~]. If the [applicant] certificate holder requests [consolidating certifications] consolidation of certificates onto a single certificate, then those certifications will expire on the earliest certificate's expiration date.

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

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

- (1) The person is under the direct supervision of an applicator certified in [a] each category [~~appropriate~~] applicable to the restricted use

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

requirements specified in title 40, part 171, Code of Federal Regulations (2018).

- [(-4)] (5) The label of the pesticide being used [~~does~~] must not prohibit its use by a non-certified [person] applicator under the direct supervision of a certified applicator[~~, and in the manner prescribed by the label~~].
- (6) Failure to abide by chapter 149A, Hawaii Revised Statutes and these rules may result in certification revocation, or subject the certification holder to additional penalties as provided by law. [Eff 7/13/81; am and comp 12/16/06; am and comp] (Auth: HRS §149A-33; 40 CFR §171.201) (Imp: HRS §149A-33; 40 CFR §171.201)

§4-66-62 Certified pesticide applicator

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

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

(c) Recordkeeping information shall include:

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

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

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

(e) Commercial applicators shall retain a copy of the written record furnished to the agricultural employer in compliance with subsection (d). These records must be kept for a period of two years and shall be made available for inspection and copying by the head during reasonable working hours.

(f) Beginning January 1, 2019, every certified restricted use pesticide applicator shall submit to the department, for departmental use, an annual report of all use of restricted use pesticides. The report shall be submitted to the department no later than thirty days following the end of each calendar year on a form prescribed by the head. The report shall include:

- (1) Name of certified applicator and his or her certification number;
- (2) EPA registration number of each restricted use pesticide used;
- (3) Commercial product name of each restricted use pesticide used;
- (4) Active ingredient(s) of each restricted use pesticide used;
- (5) The total quantities for each restricted use pesticide used;
- (6) The total area treated for each restricted use pesticide used;
- (7) The date on which the restricted use pesticide

application occurred; and
(8) A general description of the geographic location, including, at a minimum the tax map key number, at which the restricted use pesticides were used.

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

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

(h) Certified pesticide applicators shall create or verify the existence of records documenting that each non-certified applicator who mixes, loads, transfers, or applies restricted use pesticides has the qualifications required under section 4-66-61(4).

(i) Failure to comply with the recordkeeping requirements may result in certification revocation and subject the certified pesticide applicator to additional penalties as provided by law. [Eff 7/13/81; am and comp 12/16/06; am and comp] (Auth: HRS §149A-33; 40 CFR §171.201) (Imp: HRS §§149A-33, 149A-__ ; 7 CFR §§110.1 to 110.9, 40 CFR §171.201)

§4-66-63 Repealed. [R 12/16/06]

§4-66-63.1 Annual Use Permit. (a) A pesticide may be designated~~[, by rule,]~~ by the board as requiring an annual use permit for purchase if the department, after an evaluation of pesticide uses in accordance with section 4-66-32.1, determines that existing controls over the pesticide may be inadequate to prevent potential unreasonable adverse effects on humans or the environment and that tracking and controlling use is appropriate~~[+]~~.

(b) An annual use permit is required for the purchase and use of picloram. Additional pesticides may be designated as requiring an annual use permit as

provided in section 4-66-63.1(a). The board, upon designation of any additional pesticide product as requiring an annual use permit, shall maintain a list of such pesticide products at the department Office of the Chairperson. The list of pesticide products that require an annual use permit shall also be posted on the department's website.

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

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

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

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

- (1) [~~A written statement shall be filed by an applicant for such permit~~] Application for a special permit to apply restricted use pesticides by aerial application shall be made on forms [~~provided~~] prescribed by the head[~~+~~].

Forms are available at the department or on-line at <https://hdoa.hawaii.gov>;

- (2) The ~~[statement]~~ special permit application shall include date, name, address and certification number of ~~[applicant]~~ the applicator, purpose of aerial treatment, restricted use pesticide formulation, dosage, method of aerial treatment ~~[and]~~, the proposed number of treatments to be made, and a sketch or map ~~[to indicate]~~ that indicates general wind directions, proposed site or sites to be treated, homes, roadways, waterways, and crop plantings in the vicinity;
- (3) The head may refuse to issue a special permit for aerial application of restricted use pesticides if it is determined that the proposed aerial treatment may cause unreasonable adverse effects to humans or the environment or will create a hazard. All refusals shall be in writing and the reasons for refusal stated;
- (4) A special permit ~~[issued under this subsection]~~ for aerial application of restricted use pesticides shall specify the time period for which the special permit is valid. The head may specify and limit a special permit for aerial application of restricted use pesticides to cover a single, multiple, or continual treatments when conditions are not expected to change or vary during subsequent treatments that are conducted in the same designated area or areas;
- (5) Any special permit ~~[issued under this subsection]~~ for aerial application of restricted use pesticides may be canceled or revoked by the head before its stated expiration date for reasonable cause. Such cancellation or revocation shall be in writing and reasons for cancellation or revocation stated;
- (6) The head shall be notified ~~[at least]~~ no less than twenty-four hours ~~[before]~~ in advance of the aerial treatment ~~[is made]~~ unless another

time period is specified as a permit condition; and

- (7) The issuance of a special permit [to apply] for aerial application of a restricted use pesticide [by aircraft under this subsection] shall not relieve the permittee from the penalty provisions of the Act or any liability for any damage or contamination of crops or plants, animals, [man] humans, and the environment resulting from the aerial treatment or contamination of crops or plants, animals, [man] humans, and the environment resulting from the aerial [treatment] application of restricted use pesticides.

(b) The following provisions shall apply to the operating conditions of [aircraft, power rigs, mist blowers, and other] manned or unmanned aircraft and equipment used [to apply] for aerial application of restricted use pesticides:

- (1) Spray equipment on manned or unmanned aircraft shall be leakproof. Spray nozzles shall be equipped with a device to prevent dribble when spray is turned off;
- ~~[(2) 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]~~
- (2) All aerial pesticide dispersal equipment shall be inspected and maintained in good working order according to the manufacturer's instructions; and [with no excessive leaks along the pesticide material flow route.]
- (3) Manned or unmanned aircraft used to apply restricted use pesticides, and manned or unmanned aircraft operators, shall comply with all Federal Aviation Administration Regulations.

~~[(c) 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.]~~

- (c) The head may add further permit conditions as

deemed necessary for the protection of the public, or environment, or both.

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

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

- (1) All pesticide applications shall be made in accordance with the product label;
- (2) Spray equipment nozzles shall be equipped with a device to prevent leakage when spray is turned off;
- (3) Self-propelled power rigs used for inter-row or broad-cast applications shall be equipped with a pressure control device and a pressure gauge;
- (4) Reasonable methods necessary to minimize the risk of off-target pesticide product movement shall be utilized; and
- (5) Power rigs, mist blowers, and other equipment used to disperse any pesticide product shall be inspected and maintained in good working order according to the manufacturer's instructions. [Eff and comp] (Auth: HRS §149A-33) (Imp: HRS §149A-33)

§4-66-64.2 Conditions and limitations on restricted use pesticide application within buffer zones. (a) Beginning January 1, 2019, no person shall apply a restricted use pesticide on or within one hundred feet of a school property during normal school hours.

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

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

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

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

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

As used in this section:

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

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

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

§4-66-65 Repealed. [R 12/16/06]

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

- (1) ~~[A fee of \$270 shall be assessed for each product licensed in State for the three year licensing periods beginning on January 1, 2007 and January 1, 2008.] A fee of [\$330] \$930~~

shall be assessed for each product licensed in the State for [~~the three-year licensing period beginning January 1, 2009 and~~] each three-year licensing period [~~thereafter~~]. A licensee who desires to continue to have the license in effect shall submit an application for renewal and [~~\$330~~] \$930 for each pesticide product license to be renewed[+]. A one-time fee of \$330 shall be assessed for each nonchemical pest control device submitted for approval.

- (2) A fee of [~~\$250~~] \$500 shall be assessed annually for [~~the license of~~] each principal sales outlet permit and a fee of [~~\$100~~] \$200 for each branch sales outlet of restricted use pesticide dealers[+].
- (3) A fee of [~~\$25~~] \$50 shall be assessed for each examination taken for certification or renewal of certification[+].
- (4) A fee of [~~\$25~~] \$50 will be assessed for the issuance of a replacement applicator certificate or replacement of dealer representative [~~license+~~] permit.
- (5) A fee of [~~\$50~~] \$100 shall be assessed for the issuance of an initial pesticide applicator certificate or initial restricted use pesticide dealer representative [~~license for restricted-use pesticides~~] permit[+], which shall be valid for [5] five years[+].
- (6) A fee of [~~\$50~~] \$100 shall be assessed for renewal of a pesticide applicator certificate or renewal of restricted use pesticide dealer representative [~~license~~] permit [←], which shall be valid for [5] five years[+].
- (7) A fee of [~~\$25~~] \$50 shall be assessed for each examination taken for pesticide dealer representative [~~license~~] permit.
- (8) A fee of \$.25 cents per page shall be assessed to copy documents in either paper or electronic format.
- (9) A fee of up to [~~\$25~~] \$50 per hour may be assessed for [~~each hour of~~] educational services, testing, or training provided by the department staff, or independent contractors hired by the department to provide such

services.

(10) A fee of up to \$100 may be assessed for expedited approval of sponsor or provider offered continuing education training classes.

(b) Fees shall be waived, ~~[with]~~ upon approval of the head, for personnel of state agencies ~~[and]~~, the University of Hawaii, and other government agencies, who apply restricted use pesticides for quarantine purposes, public health and forestry pest control, utility and roadway maintenance, ~~[and]~~ research, and demonstration. The head may waive or reduce fees based upon demonstrated financial hardship. [Eff 7/13/81; am and comp 12/16/06; am and comp] (Auth: HRS §149A-33)
(Imp: HRS §149A-33)

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

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

(c) For private applicators and other persons referred to in section 149A-41(b) (2), Hawaii Revised Statutes, the penalty assessment shall apply after the written warning or citation requirement of section 149A-41(b) (2) has been satisfied. [Eff 7/13/81; comp 12/16/06; am and comp] (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 12/16/06; am and comp]
(Auth: HRS §149A-52) (Imp: HRS §149A-52)

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

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

4. These amendments to and compilation of chapter 4-66, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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

SCOTT E. ENRIGHT
Chairperson
Board of Agriculture

APPROVED AS TO FORM:

DEPUTY ATTORNEY GENERAL

APPENDIX A

ENFORCEMENT ACTION AND PENALTY ASSESSMENT SCHEDULE

**Section 4-66-66.1 of the
Hawaii Administrative Rules**

Adopted: _____, 2019

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

(a) Warning Notice - First Violation

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

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

(b) Administrative Penalties

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

- (A) A licensee or registrant of any pesticide product pursuant to Chapter 149A, Hawaii Revised Statutes;
- (B) A certified commercial pesticide applicator;
- (C) A licensee or permittee authorized to sell or distribute restricted use pesticides; or

(D) A wholesaler, retailer, or other distributor of any pesticide product, that person may be assessed an administrative penalty of not more than \$5,000.00 per offense.

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

1st Occurrence:

Monetary penalty: Up to \$5,000.00;
Certificate suspension: Up to 6 months;

2nd Occurrence:

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

3rd or more Occurrences:

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

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

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

1st Subsequent Occurrence:

Monetary penalty: Up to \$1,000.00;
Certificate suspension: Up to 6 months;

2nd Subsequent Occurrence:

Monetary penalty: Up to \$1,000.00;
Certificate suspension: Up to 12 months;

3rd or more Subsequent Occurrences:

Monetary penalty: \$1,000.00;
Certificate suspension: 18 months.

(3) Upon finding of any subsequent violation of any provision of Chapter 149A, Hawaii Revised Statutes, or any rule issued thereunder, by any person who is a certified private pesticide applicator, or any other person not included in paragraph (b) (1) (A)-(D) above, where the subsequent violation is related to licensing, transport, sale, distribution, or application of a pesticide for commercial purposes may be assessed an administrative penalty of not more than \$5,000.00 per offense.

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

1st Subsequent Occurrence:

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

2nd Subsequent Occurrence:

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

3rd or more Subsequent Occurrences:

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

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

Any occurrence:

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

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

- (A) Seriousness of the offense;
- (B) Quantity of offenses;
- (C) Violation history;
- (D) Appropriateness of the penalty to the size of the business;
- (E) Effect an administrative penalty may have on the business's ability to continue operation;
- (F) Adverse effects to humans or the environment resulting from offense;
- (G) Corrective action taken and timeliness of corrective action; and
- (H) Administrative penalties assessed against similarly situated persons.

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

- (A) Certificate suspension or revocation for not more than thirty-six months;
- (B) License suspension or revocation for not more than twelve months;
- (C) Permit suspension or revocation for not more than twelve months; and

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

c. Criminal Penalties

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

- (A) Has registered or licensed any pesticide product pursuant to Chapter 149A, Hawaii Revised Statutes;
- (B) Is a certified commercial pesticide applicator;
- (C) Is licensed or permitted to sell or distribute restricted use pesticides; or
- (D) Is a wholesaler, retailer, or other distributor of any pesticide product,

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

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

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

- (A) Is a certified private pesticide applicator; or,
- (B) Other person not included in paragraph (1) above,

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

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

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

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

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

(5) General penalty. Any person violating any of the provisions of chapter 149A, Hawaii Revised Statutes for which violation a penalty is not otherwise provided, or violating any rule of the department of agriculture, shall be fined not more than \$500.00 per offense. [Eff and comp]
(Auth: HRS §§141-7, 149A-20, 149A-33, 149A-41) (Imp: HRS §§141-7, 149A-20, 149A-33, 149A-41)

APPENDIX B

Part 156 of Title 40, Code of Federal Regulations (2017)

Incorporation by reference into Sections 4-66-4 to 4-66-31 of the Hawaii Administrative Rules

Adopted: _____, 2019

Subpart A – General Provisions

[73 FR 64224, Oct. 29, 2008]

Section 156.3 Definitions.

Terms used in this part have the same meaning as in the Act and part 152 of this chapter. In addition, as used in this part, the following terms shall have the meanings set forth below.

Dilutable means that the pesticide product's labeling allows or requires the pesticide product to be mixed with a liquid diluent prior to application or use.

Transport vehicle means a cargo-carrying vehicle such as an automobile, van, tractor, truck, semitrailer, tank car or rail car used for the transportation of cargo by any mode.

[40 FR 28268, July 3, 1975; 40 FR 32329, Aug. 1, 1975; 40 FR 36571, Aug. 21, 1975, as amended at 43 FR 5786, Feb. 9, 1978. Redesignated and amended at 53 FR 15991, 15999, May 4, 1988; 57 FR 38146, Aug. 21, 1992; 60 FR 32096, June 19, 1995; 63 FR 9082, Feb. 23, 1998; 66 FR 64764, Dec. 14, 2001; 71 FR 47420, Aug. 16, 2006; 73 FR 75596, Dec. 12, 2008]

Section 156.10 Labeling requirements.

(a) *General*—(1) *Contents of the label*. Every pesticide product shall bear a label containing the information specified by the Act and the regulations in this part. The contents of a label must show clearly and prominently the following:

(i) The name, brand, or trademark under which the product is sold as prescribed in paragraph (b) of this section;

(ii) The name and address of the producer, registrant, or person for whom produced as prescribed in paragraph (c) of this section;

(iii) The net contents as prescribed in paragraph (d) of this section;

(iv) The product registration number as prescribed in paragraph (e) of this section;

(v) The producing establishment number as prescribed in paragraph (f) of this section;

(vi) An ingredient statement as prescribed in paragraph (g) of this section;

(vii) Hazard and precautionary statements as prescribed in subpart D of this part for human and domestic animal hazards and subpart E of this part for environmental hazards.

(viii) The directions for use as prescribed in paragraph (i) of this section; and

(ix) The use classification(s) as prescribed in paragraph (j) of this section.

(2) *Prominence and legibility.*

(i) All words, statements, graphic representations, designs or other information required on the labeling by the Act or the regulations in this part must be clearly legible to a person with normal vision, and must be 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.

(ii) All required label text must:

(A) Be set in 6-point or larger type;

(B) Appear on a clear contrasting background; and

(C) Not be obscured or crowded.

(3) *Language to be used.* All required label or

labeling text shall appear in the English language. However, the Agency may require or the applicant may propose additional text in other languages as is considered necessary to protect the public. When additional text in another language is necessary, all labeling requirements will be applied equally to both the English and other-language versions of the labeling.

(4) *Placement of Label-*

(i) *General.* 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" shall mean 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 must also be securely attached to such outside wrapper or container, if it is a part of the package as customarily distributed or sold.

(ii) *Tank cars and other bulk containers-*

(A) *Transportation.* While a pesticide product is in transit, the appropriate provisions of 49 CFR parts 170-189, concerning the transportation of hazardous materials, and specifically those provisions 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 must be attached to the shipping papers, and left with the consignee at the time of delivery.

(B) *Storage.* 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

of labeling, including all appropriate directions for use, shall be securely attached to the container in the immediate vicinity of the discharge control valve.

(5) *False or misleading statements.* Pursuant to section 2(q)(1)(A) of the Act, a pesticide or a device declared subject to the Act pursuant to section 152.500, is misbranded if its labeling is false or misleading in any particular including both pesticidal and non-pesticidal claims. Examples of statements or representations in the labeling which constitute misbranding include:

(i) A false or misleading statement concerning the composition of the product;

(ii) A false or misleading statement concerning the effectiveness of the product as a pesticide or device;

(iii) A false or misleading statement about the value of the product for purposes other than as a pesticide or device;

(iv) A false or misleading comparison with other pesticides or devices;

(v) Any statement directly or indirectly implying that the pesticide or device is recommended or endorsed by any agency of the Federal Government;

(vi) 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 names of the other ingredients are stated elsewhere in the labeling;

(vii) A true statement used in such a way as to give a false or misleading impression to the purchaser;

(viii) Label disclaimers which negate or detract from labeling statements required under the Act and these regulations;

(ix) 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 such a

qualifying phrase as "when used as directed";
and

(x) Non-numerical and/or 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";

(C) "Pollution approved".

(6) *Final printed labeling.* (i) Except as provided in paragraph (a)(6)(ii) of this section, final printed labeling must 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 Agency.

(ii) Clearly legible reproductions or photo reductions will be accepted for unusual labels such as those silk-screened directly onto glass or metal containers or large bag or drum labels. Such reproductions must be of microfilm reproduction quality.

(b) *Name, brand, or trademark.* (1) The name, brand, or trademark under which the pesticide product is sold shall appear on the front panel of the label.

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

(i) Is false or misleading, or

(ii) Has not been approved by the Administrator through registration or supplemental registration as an additional name pursuant to section 152.132.

(c) *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 must 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.

(d) *Net weight or measure of contents.* (1) 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.

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

(3) If the pesticide is solid or semisolid, 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.

(4) 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."

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

(6) 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.

(7) For a pesticide product packaged in a refillable container, an appropriately sized area on the label may be left blank to allow the net weight or measure of content to be marked in by the refiller according to 40 CFR 165.65(h) or 165.70(i) prior to distribution or sale of the pesticide. As required in paragraph (a)(1)(iii) of this section, the net contents must be shown clearly and prominently on the label.

(e) *Product registration number.* The registration number assigned to the pesticide product at the time of registration 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. The registration number and the required identifying phrase shall not appear in such a manner as to suggest or imply recommendation or endorsement of the product by the Agency.

(f) *Producing establishment's 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 must 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 such wrapper or container. For a pesticide product packaged in a refillable container, an appropriately sized area on the label may be left blank after the phrase "EPA Est." to allow the EPA establishment registration number to be marked in by the refiller according to 40 CFR 165.65(h) or 165.70(i) prior to distribution or sale of the pesticide.

(g) *Ingredient statement—*

(1) *General.* The label of each pesticide product must 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. The active ingredients must 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 100 percent active ingredients. 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.

(2) *Position of ingredient statement.* (i) 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 must also appear on such 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.

(ii) The text of the ingredient statement must run parallel with other text on the panel on which it appears, and must be clearly distinguishable from and must not be placed in the body of other text.

(3) *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 will the use of a trademark or proprietary name be permitted unless such name has been accepted as a common name by the Administrator under the authority of section 25(c)(6).

(4) *Statements of percentages.* The percentages of ingredients shall be stated in terms of weight-to-weight. The sum of percentages of the active and the inert ingredients shall be 100. 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.

(5) *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.

(6) *Deterioration.* Pesticides which change in chemical composition significantly must meet the following labeling requirements:

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

(ii) The product must meet all label claims up to the expiration time indicated on the label.

(7) *Inert ingredients.* The Administrator may require the name of any inert ingredient(s) to be listed in the ingredient statement if he determines that such ingredient(s) may pose a hazard to man or the environment.

(h) [Reserved]

(i) *Directions for Use-*

(1) *General requirements-*

(i) *Adequacy and clarity of directions.* Directions for use must 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 must be adequate to protect the public from fraud and from personal injury and to prevent unreasonable adverse effects on the environment.

(ii) *Placement of directions for use.* 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. Directions for use may appear on printed or graphic matter which accompanies the pesticide provided that:

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

(B) The label bears a reference to the directions for use in

accompanying leaflets or circulars, such as "See directions in the enclosed circular:" and

(C) The Administrator determines that it is not necessary for such directions to appear on the label.

(iii) *Exceptions to requirement for direction 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(s) 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 will not come into the hands of the general public except after incorporation into finished products; and

(4) The Administrator determines that such directions are not necessary to prevent unreasonable adverse effects on man or the environment.

(B) Detailed directions for use may be omitted from the labeling of pesticide products 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 Administrator determines that such directions are not necessary to prevent unreasonable adverse effects on man 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(s) of pesticide products involved;

(3) The product as finally manufactured, formulated, mixed, or repackaged is registered; and

(4) The Administrator determines that such directions are not necessary to prevent

unreasonable adverse effects on man or the environment.

(2) *Contents of Directions for Use.* The directions for use shall include the following, under the headings "Directions for Use":

(i) The statement of use classification as prescribed in paragraph (j) of this section immediately under the heading "Directions for Use."

(ii) Immediately below the statement of use classification, the statement "It is a violation of Federal law to use this product in a manner inconsistent with its labeling."

(iii) The site(s) of application, as for example the crops, animals, areas, or objects to be treated.

(iv) The target pest(s) associated with each site.

(v) The dosage rate associated with each site and pest.

(vi) The method of application, including instructions for dilution, if required, and type(s) of application apparatus or equipment required.

(vii) The frequency and timing of applications necessary to obtain effective results without causing unreasonable adverse effects on the environment.

(viii) Worker protection statements meeting the requirements of subpart K of this part.

(ix) Specific directions concerning the storage, residue removal and disposal of the pesticide and its container, in accordance with subpart H of this part. These instructions must be grouped and appear under the heading, "Storage and Disposal." This heading must be set in type of the same minimum sizes as required for the child hazard warning. (See table in section 156.60(b))

(x) Any limitations or restrictions on use required to prevent unreasonable adverse effects, 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 total release foggers as defined in section 156.78(d)(1), the following statements must be included in the "Directions for Use."

DO NOT use more than one fogger per room. DO NOT use in small, enclosed spaces such as closets, cabinets, or under counters or tables. Do not use in a room 5 ft. × 5 ft. or smaller; instead, allow fog to enter from other rooms. Turn off ALL ignition sources such as pilot lights (shut off gas valves), other open flames, or running electrical appliances that cycle off and on (*i.e.*, refrigerators, thermostats, etc.). Call your gas utility or management company if you need assistance with your pilot lights."

(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, unless the Agency has determined that the pesticide may only be applied under the direct supervision of a certified applicator who is physically present.

(F) Other pertinent information which the Administrator determines to be necessary for the protection of man and the environment.

(j) *Statement of use classification.* Any pesticide product for which some uses are classified for general use and others for restricted use shall be separately labeled according to the labeling standards set forth in this subsection, and shall be marketed as separate

products with different registration numbers, one bearing directions only for general use(s) and the other bearing directions for restricted use(s) except that, if a product has both restricted use(s) and general use(s), both of these uses may appear on a product labeled for restricted use. Such products shall be subject to the provisions of paragraph (j)(2) of this section.

(1) *General Use Classification.* Pesticide products bearing directions for use(s) classified general shall be labeled with the exact words "General Classification" immediately below the heading "Directions for Use." And reference to the general classification that suggests or implies that the general utility of the pesticide extends beyond those purposes and uses contained in the Directions for Use will be considered a false or misleading statement under the statutory definitions of misbranding.

(2) *Restricted Use Classification.* Pesticide products bearing direction for use(s) classified restricted shall bear statements of restricted use classification on the front panel as described below:

(i) *Front panel statement of restricted use classification.*

(A) 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 (see table in paragraph (h)(1)(iv) of this section), and appearing with sufficient prominence relative to other text and graphic material on the front panel to make it unlikely to be overlooked under customary conditions of purchase and use, the statement "Restricted Use Pesticide" shall appear.

(B) 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 Administrator will define the appropriate wording for the terms of restriction by regulation.

Subparts B - C [Reserved]

Subpart D - Human Hazard and Precautionary Statements

SOURCE: 66 FR 64764, Dec. 14, 2001, unless otherwise noted.

Section 156.60 General.

Each product label is required to bear hazard and precautionary statements for humans and domestic animals (if applicable) as prescribed in this subpart. Hazard statements describe the type of hazard that may occur, while precautionary statements will either direct or inform the user of actions to take to avoid the hazard or mitigate its effects.

(a) *Location of statements*—(1) *Front panel statements.* The signal word, child hazard warning, and, in certain cases, the first aid statement are required to appear on the front panel of the label, and also in any supplemental labeling intended to accompany the product in distribution or sale.

(2) *Statements elsewhere on label.* Hazard and precautionary statements not required on the front panel may appear on other panels of the label, and may be required also in supplemental labeling. These include, but are not limited to, the human hazard and precautionary statements, domestic animal statements if applicable, a Note to Physician, and physical or chemical hazard statements.

(b) *Placement and prominence*—(1) *Front panel statements.* All 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 table below shows the minimum type size requirements for the front panel warning statements for various front panel sizes.

TYPE SIZES FOR FRONT PANEL WARNING STATEMENTS

Size of Label Front Panel (Square Inches)	Point Size	
	Signal Word (All Capital Letters)	Child Hazard Warning
5 and under	6	6
Over 5 to 10	10	6
Over 10 to 15	12	8
Over 15 to 30	14	10
Over 30	18	12

(2) *Other required statements.* All other hazard and precautionary statements must be at least 6 point type.

Section 156.62 Toxicity Category.

This section establishes four Toxicity Categories for acute hazards of pesticide products, Category I being the highest toxicity category. Most human hazard, precautionary statements, and human personal protective equipment statements are based upon the Toxicity Category of the pesticide product as sold or distributed. In addition, toxicity categories may be used for regulatory purposes other than labeling, such as classification for restricted use and requirements for child-resistant packaging. In certain cases, statements based upon the Toxicity Category of the product as diluted for use are also permitted. A Toxicity Category is assigned for each of five types of acute exposure, as specified in the table in this paragraph.

ACUTE TOXICITY CATEGORIES FOR PESTICIDE PRODUCTS

Hazard Indicators	I	II	III	IV
Oral LD ₅₀	Up to and including 50 mg/kg	>50 thru 500 mg/kg	>500 thru 5,000 mg/kg	>5,000 mg/kg
Dermal LD ₅₀	Up to and including 200 mg/kg	>200 thru 2000 mg/kg	>2000 thru 20,000 mg/kg	>20,000 mg/kg
Inhalation LC ₅₀	Up to and including 0.2 mg/liter	>0.2 thru 2 mg/liter	>2 thru 20 mg/liter	>20 mg/liter
Eye irritation	Corrosive; corneal opacity not reversible within 7 days	Corneal opacity reversible within 7 days; irritation persisting for 7 days	No corneal opacity; irritation reversible within 7 days	No irritation
Skin irritation	Corrosive	Severe irritation at 72 hours	Moderate irritation at 72 hours	Mild or slight irritation at 72 hours

Section 156.64 Signal word.

(a) *Requirement.* Except as provided in paragraph (a) (4), each pesticide product must bear on the front panel a signal word, reflecting the highest Toxicity Category (Category I is the highest toxicity category) to which the product is assigned by any of the five routes of exposure in section 156.62. The signal word must also appear together with the heading for the human precautionary statement section of the labeling (see section 156.70).

(1) *Toxicity Category I.* Any pesticide product meeting the criteria of Toxicity Category I for any route of exposure must bear on the front panel the signal word "DANGER." In addition, if the product is assigned to Toxicity Category I on the basis of its oral, inhalation or dermal toxicity (as distinct from skin and eye irritation), the word "Poison" must appear in red on a background of distinctly

contrasting color, and the skull and crossbones symbol must appear in immediate proximity to the word "Poison."

(2) *Toxicity Category II.* Any pesticide product meeting the criteria of Toxicity Category II as the highest category by any route of exposure must bear on the front panel the signal word "WARNING."

(3) *Toxicity Category III.* Any pesticide product meeting the criteria of Toxicity Category III as the highest category by any route of exposure must bear on the front panel the signal word "CAUTION."

(4) *Toxicity Category IV.* A pesticide product meeting the criteria of Toxicity Category IV by all routes of exposure is not required to bear a signal word. If a signal word is used, it must be "CAUTION."

(b) *Use of signal words.* In no case may a product:

(1) Bear a signal word reflecting a higher Toxicity Category than indicated by the route of exposure of highest toxicity, unless the Agency determines that such labeling is necessary to prevent unreasonable adverse effects on man or the environment;

(2) Bear a signal word reflecting a lesser Toxicity Category associated with a diluted product. Although precautionary statements for use dilutions may be included on label, the signal word must reflect the toxicity of the product as distributed or sold; or

(3) Bear different signal words on different parts of the label.

Section 156.66 Child hazard warning.

(a) Each pesticide product must bear on the front panel of the label the statement "Keep Out of Reach of Children." That statement, or any alternative statement approved by EPA, must appear on a separate line in close proximity to the signal word, if required. The statement is required on Toxicity Category IV products that do not otherwise require a signal word.

(b) In its discretion, EPA may waive the

requirement, or require or permit an alternative child hazard warning, if:

(1) The applicant can demonstrate that the likelihood of exposure of children to the pesticide during distribution, marketing, storage or use is remote (for example, an industrial use product); or

(2) The pesticide is approved for use on children (for example, an insect repellent).

(c) EPA may approve an alternative child hazard warning that more appropriately reflects the nature of the pesticide product to which children may be exposed (for example, an impregnated pet collar). In this case, EPA may also approve placement on other than the front panel.

Section 156.68 First aid statement.

(a) *Product as sold and distributed.* Each product must bear a first aid statement if the product has systemic effects in Category I, II, or III, or skin or eye irritation effects in Category I or II.

(b) *Product as diluted for use.* If the product labeling bears directions for dilution with water prior to use, the label may also include a statement describing how the first aid measures may be modified for the diluted product. Such a statement must reflect the Toxicity Category(ies) of the diluted product, based upon data for the route of exposure (or calculations if appropriate). If the labeling provides for a range of use dilutions, only that use dilution representing the highest concentration allowed by labeling may be used as the basis for a statement pertaining to the diluted product. The statement for a diluted product may not substitute for the statement for the concentrate, but augments the information provided for the concentrate.

(c) *Heading.* The heading of the statement may be "First Aid" or "Statement of Practical Treatment."

(d) *Location of first aid statement.* The first aid statement must appear on the front panel of the label of all products assigned to Toxicity Category I by any route of exposure. Upon review, the Agency may permit reasonable variations in the placement of the first aid statement if a reference such as "See first aid statement on back panel" appears on the front panel. The first aid

statement for products assigned to Toxicity Categories II or III may appear on any panel of the label.

Section 156.70 Precautionary statements for human hazards.

(a) *Requirement.* Human hazard and precautionary statements as required must appear together on the label or labeling under the general heading "Precautionary Statements" and under appropriate subheadings similar to "Humans and Domestic Animals," "Environmental Hazards" (see subpart E of this part) and "Physical or Chemical Hazards." The phrase "and Domestic Animals" may be omitted from the heading if domestic animals will not be exposed to the product.

(b) *Content of statements.* When data or other information show that an acute hazard may exist to humans or domestic animals, the label must bear precautionary statements describing the particular hazard, the route(s) of exposure and the precautions to be taken to avoid accident, injury or toxic effect or to mitigate the effect. The precautionary paragraph must be immediately preceded by the appropriate signal word.

(c) *Typical precautionary statements.* The table below presents typical hazard and precautionary statements. Specific statements pertaining to the hazards of the product and its uses must be approved by the Agency. With Agency approval, statements may be augmented to reflect the hazards and precautions associated with the product as diluted for use. Refer to section 156.68(b) for requirements for use dilution statements.

TYPICAL HUMAN HAZARD AND PRECAUTIONARY STATEMENTS

Toxicity Category	Systemic effects (oral, dermal, inhalation toxicity)	Irritation effects (skin and eye)	Sensitizer (There are no categories of sensitization.)
I	Fatal (poisonous) if swallowed [inhaled or absorbed through skin]. Do not breathe vapor [dust or spray mist]. Do	Corrosive, causes eye and skin damage [or skin irritation]. Do not get in eyes on skin, or on clothing. Wear goggles or face shield and	If product is a sensitizer: Prolonged or frequently repeated skin contact may cause

	not get in eyes, on skin, or on clothing. [Front panel first aid statement required.]	rubber gloves when handling. Harmful or fatal if swallowed. [Front panel first aid statement required.]	allergic reactions in some individuals.
II	May be fatal if swallowed, [inhaled or absorbed through the skin]. Do not breathe vapors [dust or spray mist]. Do not get in eyes, on skin, or on clothing. [Appropriate first aid statement required.]	Causes eye [and skin] irritation. Do not get in eyes, on skin, or on clothing. Harmful if swallowed. [Appropriate first aid statement required.]	
III	Harmful if swallowed [inhaled or absorbed through the skin]. Avoid breathing vapors [dust or spray mist]. Avoid contact with skin [eyes or clothing]. [Appropriate first aid statement required.]	Avoid contact with skin, eyes or clothing.	
IV	No precautionary statements required	No precautionary statements required.	

Section 156.78 Precautionary statements for physical or chemical hazards.

(a) *Requirement.* Warning statements on the flammability or explosive characteristics of the pesticide product are required if a product meets the criteria in this section. Warning statements pertaining to other physical/chemical hazards (e.g., oxidizing potential, conductivity, chemical reactions leading to production of toxic substances) may be required on a case-by-case basis.

(b) *Pressurized products.* The table below sets out the required flammability label statements for pressurized products.

FLAMMABILITY STATEMENTS FOR PRESSURIZED PRODUCTS

Flash point/flame extension of product	Required labeling statement
—Flash point at or below 20 °F	<i>Extremely flammable.</i> Contents under pressure. Keep away from fire, sparks, and heated surfaces. Do not puncture or incinerate container. Exposure to temperatures above 130 °F may cause bursting.
OR	
—Flashback at any valve opening	
—Flash point >20 °F to 80 °F	<i>Flammable.</i> Contents under pressure. Keep away from heat, sparks and open flame. Do not puncture or incinerate container. Exposure to temperatures above 130 °F may cause bursting.
OR	
—Flame extension more than 18 in. long at a distance of 6 in from the flame	
All other pressurized products	<i>Contents under pressure.</i> Do not use or store near heat or open flame. Do not puncture or incinerate container. Exposure to temperatures above 130 °F may cause bursting.

(c) *Non-pressurized products.* The table below sets out the required flammability label statements for non-pressurized products.

FLAMMABILITY STATEMENTS FOR NON-PRESSURIZED PRODUCTS

Flash point	Required labeling statement
At or below 20 °F	<i>Extremely flammable.</i> Keep away from fire, sparks and heated surfaces.
Greater than 20 °F to 80 °F	<i>Flammable.</i> Keep away from heat and open flame.

Greater than 80 °F to 150 °F	<i>Combustible</i> . Do not use or store near heat or open flame.
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(d) *Total release fogger products*. (1) A *total release fogger* is defined as a pesticide product in a pressurized container designed to automatically release the total contents in one operation, for the purpose of creating a permeating fog within a confined space to deliver the pesticide throughout the space.

(2) If a pesticide product is a total release fogger containing a propellant with a flash point at or below 20 °F, then the following special instructions must be added to the "Physical and Chemical Hazards" warning statement, in addition to any flammability statement required by paragraph (b) of this section:

This product contains a highly flammable ingredient. It may cause a fire or explosion if not used properly. Follow the Directions for Use on this label very carefully.

(3) A graphic symbol depicting fire, such as illustrated in this paragraph, or an equivalent symbol, must be displayed along with the required language adjoining the "Physical and Chemical Hazards" warning statement. The graphic symbol must be no smaller than twice the size of the first character of the human hazard signal word.



Highly Flammable Ingredient

Ingrediente Altamente Inflamable

Subpart E – Environmental Hazard and Precautionary Statements

SOURCE: 66 FR 64767, Dec. 14, 2001, unless otherwise noted.

Section 156.80 General.

(a) *Requirement.* Each product is required to bear hazard and precautionary statements for environmental hazards, including hazards to non-target organisms, as prescribed in this subpart. Hazard statements describe the type of hazard that may be present, while precautionary statements direct or inform the user of actions to take to avoid the hazard or mitigate its effects.

(b) *Location of statements.* Environmental hazard and precautionary statements may appear on any panel of the label and may be required also in supplemental labeling. The environmental hazard statements must appear together under the heading "Environmental Hazards." Typically the statements are grouped as a sub-category within the "Precautionary Statements" section of the labeling.

(c) *Type size.* All environmental hazard and precautionary statements must be at least 6 point type.

Section 156.85 Non-target organisms.

(a) *Requirement.* Where a hazard exists to non-target organisms, EPA may require precautionary statements of the nature of the hazard and the appropriate precautions to avoid potential accident, injury, or damage.

(b) *Examples.* The statements in this paragraph illustrate the types of hazard statements that EPA may require and the circumstances under which they are typically required. These statements are not comprehensive; other statements may be required if more appropriate to the formulation or use.

(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 the 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) If a product is intended for or involves foliar application to agricultural crops, forests or shade trees, or mosquito abatement treatments, and contains a pesticide toxic to pollinating insects, the label must bear appropriate label cautions.

(6) If a product is intended for outdoor use other than aquatic applications, the label must bear the caution, "Keep out of lakes, ponds or streams. Do not contaminate water by cleaning of equipment or disposal of wastes."

Subparts F - G [Reserved]

Subpart H - Container Labeling

SOURCE: 71 FR 47420, Aug. 16, 2006, unless otherwise noted.

Section 156.140 Identification of container types.

For products other than plant-incorporated protectants, the following statements, as applicable, must be placed on the label or container. The information may be located on any part of the container except the closure. If the statements are placed on the container, they must be durably marked on the container. Durable marking includes, but is not limited to etching, embossing, ink jetting, stamping, heat stamping, mechanically attaching a plate, molding, or marking with durable ink.

(a) *Nonrefillable container.* For nonrefillable containers, the statements in paragraphs (a)(1) through (a)(4) of this section are required except as provided in paragraphs (a)(5), (c), (d), and (e) of this section. If placed on the label, the statements in paragraphs (a)(1) through (a)(3) of this section must be under an appropriate heading under the heading "Storage and Disposal." If any of the statements in paragraphs (a)(1) through (a)(3) of this section are placed on the container, an appropriate referral statement such as "See container for recycling [or other descriptive word]"

information." must be placed on the label under the heading "Storage and Disposal."

(1) *Statement identifying a nonrefillable container.* The following phrase is required: "Nonrefillable container."

(2) *Reuse statement.* One of the following statements is required. Products with labels that allow household/residential use must use the statement in paragraph (a)(2)(i) or (a)(2)(iii) of this section. All other products must use the statement in paragraph (a)(2)(i), (a)(2)(ii), or (a)(2)(iii) of this section.

(i) "Do not reuse or refill this container."

(ii) "Do not reuse this container to hold materials other than pesticides or dilute pesticides (rinsate). After emptying and cleaning, it may be allowable to temporarily hold rinsate or other pesticide-related materials in the container. Contact your state regulatory agency to determine allowable practices in your state."

(iii) The following statement may be used if a product is "ready-to-use" and its directions for use allow a different product (that is a similar, but concentrated formulation) to be poured into the container and diluted by the end user: "Do not reuse or refill this container unless the directions for use allow a different (concentrated) product to be diluted in the container."

(3) *Recycling or reconditioning statement.* One of the following statements is required:

(i) "Offer for recycling if available."

(ii) "Once cleaned, some agricultural plastic pesticide containers can be taken to a container collection site or picked up for recycling. To find the nearest site, contact your chemical dealer or manufacturer or contact [a pesticide container recycling organization] at [phone number] or [web site]." For example, this statement could be "Once cleaned, some agricultural plastic pesticide containers can be taken to a

container collection site or picked up for recycling. To find the nearest site, contact your chemical dealer or manufacturer or contact the Ag Container Recycling Council (ACRC) at 1-877-952-2272 (toll-free) or www.acrecycle.org."

(iii) A recycling statement approved by EPA and published in an EPA document, such as a Pesticide Registration Notice.

(iv) An alternative recycling statement that has been reviewed and approved by EPA.

(v) "Offer for reconditioning if appropriate."

(4) *Batch code*. A lot number, or other code used by the registrant or producer to identify the batch of the pesticide product which is distributed and sold is required.

(5) *Exemptions*. Pesticide products in the following types of nonrefillable containers, and their packaging, are exempt from the requirements in paragraphs (a) (1) and (a) (2) of this section:

(i) Aerosol cans.

(ii) Devices as defined in section 152.500 of this chapter.

(iii) One-time use caulking tubes and other one-time use squeezable tube containers for paste, gel, or other similar substances.

(iv) Foil packets for water soluble packaging, repellent wipes, and other one-time use products.

(v) One-time use portion control packets, such as polyethylene sleeve packages, or rodenticide placepacks.

(vi) One-time use bait stations.

(vii) One-time use cages for repellent or trapping strips.

(viii) Pet collars or animal ear tags, such as cattle ear tags.

(ix) One-time use semiochemical dispersion devices.

(x) Any container that is destroyed by the use of the product contained.

(xi) Any container that would be destroyed if reuse of the container were

attempted.

(b) *Refillable container.* For refillable containers, one of the following statements is required, except as provided in paragraphs (c), (d), and (e) of this section. If placed on the label, the statement must be under the heading "Storage and Disposal." If the statement is placed on the container, an appropriate referral statement, such as "Refilling limitations are on the container." must be placed under the heading "Storage and Disposal."

(1) "Refillable Container. Refill this container with pesticide only. Do not reuse this container for any other purpose."

(2) "Refillable Container. Refill this container with [common chemical name] only. Do not reuse this container for any other purpose."

(c) *Modification.* EPA may, on its own initiative or based on data or information submitted by any person, modify or waive the requirements of this section or permit or require alternative labeling statements.

(d) *Exemption for articles.* Pesticidal articles that are not exempted from FIFRA regulation by section 152.25(a) of this chapter are exempt from the requirements of this section.

(e) *Exemption for transport vehicles.* Transport vehicles are exempt from the requirements of this section.

[71 FR 47420, Aug. 16, 2006, as amended at 73 FR 64224, Oct. 29, 2008]

Section 156.144 Residue removal instructions—general.

(a) *General.* Except as provided by paragraphs (c) through (g) of this section, the label of each pesticide product must include the applicable instructions for removing pesticide residues from the container prior to container disposal that are specified in section 156.146 and section 156.156. The residue removal instructions are required for both nonrefillable and refillable containers.

(b) *Placement of residue removal statements.* All residue removal instructions must be placed under the

heading "Storage and Disposal."

(c) *Exemption for residential/household use products.* Residential/household use pesticide products are exempt from the residue removal instruction requirements in this section through section 156.156.

(d) *Modification.* EPA may, on its own initiative or based on data submitted by any person, modify or waive the requirements of this section through section 156.156, or permit or require alternative labeling statements.

(e) *Exemption for gases.* Pesticide products that are gaseous at atmospheric temperature and pressure are exempt from the residue removal instruction requirements in this section through section 156.156.

(f) *Exemption for articles.* Pesticidal articles that are not exempted from FIFRA regulation by section 152.25(a) of this chapter are exempt from the residue removal instruction requirements in this section through section 156.156.

(g) *Exemption for transport vehicles.* Transport vehicles are exempt from the requirements in this section through section 156.156.

[71 FR 47420, Aug. 16, 2006, as amended at 73 FR 64224, Oct. 29, 2008]

Section 156.146 Residue removal instructions for nonrefillable containers—rigid containers with dilutable pesticides.

The label of each dilutable (liquid or solid) pesticide product packaged in a rigid nonrefillable container must include the following residue removal instructions as appropriate.

(a) *Timing of the residue removal procedure.* One of the following statements must immediately precede the instructions required in paragraph (b) of this section and must be consistent with the instructions in paragraphs (b) and (c) of this section:

(1) "Clean container promptly after emptying."

(2) "Triple rinse or pressure rinse container (or equivalent) promptly after emptying."

(3) "Triple rinse container (or equivalent) promptly after emptying."

(b) *Triple rinse instructions.* The label of each

dilutable pesticide product packaged in rigid nonrefillable containers must include one of the following sets of instructions.

(1) For liquid dilutable pesticide products in containers small enough to shake, use the following instructions: "Triple rinse as follows: Empty the remaining contents into application equipment or a mix tank and drain for 10 seconds after the flow begins to drip. Fill the container 1/4 full with water and recap. Shake for 10 seconds. Pour rinsate into application equipment or a mix tank or store rinsate for later use or disposal. Drain for 10 seconds after the flow begins to drip. Repeat this procedure two more times."

(2) For solid dilutable pesticide products in containers small enough to shake, use the following instructions: "Triple rinse as follows: Empty the remaining contents into application equipment or a mix tank. Fill the container 1/4 full with water and recap. Shake for 10 seconds. Pour rinsate into application equipment or a mix tank or store rinsate for later use or disposal. Drain for 10 seconds after the flow begins to drip. Repeat this procedure two more times."

(3) For containers that are too large to shake, use the following instructions: "Triple rinse as follows: Empty remaining contents into application equipment or a mix tank. Fill the container 1/4 full with water. Replace and tighten closures. Tip container on its side and roll it back and forth, ensuring at least one complete revolution, for 30 seconds. Stand the container on its end and tip it back and forth several times. Turn the container over onto its other end and tip it back and forth several times. Empty the rinsate into application equipment or a mix tank or store rinsate for later use or disposal. Repeat this procedure two more times."

(c) *Pressure rinse instructions.* The label of each dilutable pesticide product packaged in rigid nonrefillable containers may include one of the following sets of instructions, and one of them must be used if the statement in paragraph (a) (2) of this section is used. If one of these statements is included on the label, it must

immediately follow the triple rinse instructions specified in paragraph (b) of this section.

(1) For liquid dilutable pesticide products, use the following label instruction: "Pressure rinse as follows: Empty the remaining contents into application equipment or a mix tank and continue to drain for 10 seconds after the flow begins to drip. Hold container upside down over application equipment or mix tank or collect rinsate for later use or disposal. Insert pressure rinsing nozzle in the side of the container, and rinse at about 40 PSI for at least 30 seconds. Drain for 10 seconds after the flow begins to drip."

(2) For solid dilutable pesticide products, use the following label instruction: "Pressure rinse as follows: Empty the remaining contents into application equipment or a mix tank. Hold container upside down over application equipment or mix tank or collect rinsate for later use or disposal. Insert pressure rinsing nozzle in the side of the container, and rinse at about 40 PSI for at least 30 seconds. Drain for 10 seconds after the flow begins to drip."

(d) *Non-water diluent.*

(1) A registrant who wishes to require users to clean a container with a diluent other than water (e.g., solvents) must submit to EPA a written request to modify the residue removal instructions of this section. The registrant may not distribute or sell the pesticide with the modified residue removal instructions until EPA approves the request in writing.

(2) The registrant must indicate why a non-water diluent is necessary for efficient residue removal, and must propose residue removal instructions and disposal instructions that are appropriate for the characteristics and formulation of the pesticide product and non-water diluent. The proposed residue removal instructions must identify the diluent. If the Directions for Use permit the application of a mixture of the pesticide and the non-water diluent, the instructions may allow the rinsate to be added to the application equipment or mix tank. If the Directions for Use do not identify

the non-water diluent as an allowable addition to the pesticide, the instructions must require collection and storage of the rinsate in a rinsate collection system.

(3) EPA may approve the request if EPA finds that the proposed instructions are necessary and appropriate.

Section 156.156 Residue removal instructions for refillable containers.

The label of each pesticide product packaged in a refillable container must include the residue removal instructions in this section. Instructions must be given for all pesticide products that are distributed or sold in refillable containers, including those that do not require dilution prior to application.

(a) *Timing of the residue removal procedure.* One of the following statements must immediately precede the instructions required in paragraph (b) of this section and must be consistent with the instructions in paragraph (b) of this section:

(1) "Cleaning the container before final disposal is the responsibility of the person disposing of the container. Cleaning before refilling is the responsibility of the refiller."

(2) "Pressure rinsing the container before final disposal is the responsibility of the person disposing of the container. Cleaning before refilling is the responsibility of the refiller."

(b) *Residue removal instructions prior to container disposal.*

(1) Instructions for cleaning each refillable container prior to disposal are required. The residue removal instructions must be appropriate for the characteristics and formulation of the pesticide product and must be adequate to protect human health and the environment.

(2) Subject to meeting the standard in paragraph (b)(1) of this section, the statement on residue removal instructions could include any one of the following:

(i) The refilling residue removal procedure developed by the registrant for the

pesticide product.

(ii) Standard industry practices for cleaning refillable containers.

(iii) For pesticides that require dilution prior to application, the following statement: "To clean the container before final disposal, empty the remaining contents from this container into application equipment or a mix tank. Fill the container about 10 percent full with water. Agitate vigorously or recirculate water with the pump for 2 minutes. Pour or pump rinsate into application equipment or rinsate collection system. Repeat this rinsing procedure two more times."

(iv) Any other statement the registrant considers appropriate.

Section 156.159 Compliance date.

Any pesticide product released for shipment by a registrant after August 16, 2011 must bear a label that complies with sections 156.10(d)(7), 156.10(f), 156.10(i)(2)(ix), 156.140, 156.144, 156.146 and 156.156.

[75 FR 62326, Oct. 8, 2010]

Subparts I - J [Reserved]

Subpart K - Worker Protection Statements

SOURCE: 57 FR 38146, Aug. 21, 1992, unless otherwise noted.

Section 156.200 Scope and applicability.

(a) *Scope.* (1) This subpart prescribes statements that must be placed on the pesticide label and in pesticide labeling. These statements incorporate by reference the Worker Protection Standard, part 170 of this chapter. The requirements addressed in these statements are designed to reduce the risk of illness or injury resulting from workers' and pesticide handlers' occupational exposures to pesticides used in the production of agricultural plants on agricultural

establishments as defined in section 170.3 of this chapter. These statements refer to specific workplace practices designed to reduce or eliminate exposure and to respond to emergencies that may arise from the exposures that may occur.

(2) This subpart prescribes interim requirements that must be placed on the pesticide label and in pesticide labeling. These interim requirements pertain to restricted-entry intervals, personal protective equipment, and notification. On a case-by-case basis, these interim requirements will be reviewed and may be revised during reregistration or other agency review processes.

(b) *Applicability.* (1) The requirements of this subpart apply to each pesticide product that bears directions for use in the production of any agricultural plant on any agricultural establishment as defined in §170.3 of this chapter, or whose labeling reasonably permits such use.

(2) The requirements of this subpart do not apply to a product that bears directions solely for uses excepted by §170.202(b) of this chapter.

(c) *Effective dates.* No product to which this subpart applies shall be distributed or sold without amended labeling by any registrant after April 21, 1994, or by any person after October 23, 1995.

[57 FR 38146, Aug. 21, 1992, as amended at 73 FR 75596, Dec. 12, 2008]

Section 156.203 Definitions.

Terms in this subpart have the same meanings as they do in the Federal Insecticide, Fungicide, and Rodenticide Act, as amended. In addition, the following terms, as used in this subpart, shall have the meanings stated below:

Fumigant means any pesticide product that is a vapor or gas or forms a vapor or gas on application and whose method of pesticidal action is through the gaseous state.

Restricted-entry interval or REI means the time after the end of a pesticide application during which

entry to the treated area is restricted.

[57 FR 38146, Aug. 21, 1992, as amended at 73 FR 75596, Dec. 12, 2008]

Section 156.204 Modification and waiver of requirements.

(a) *Modification on Special Review.* If the Agency concludes in accordance with section 154.25(c) of this chapter that a pesticide should be placed in Special Review because the pesticide meets or exceeds the criteria for human health effects of section 154.7(a)(1)(2) or (6) of this chapter, the Agency may modify the personal protective equipment required for handlers or early-entry workers or both, the restricted-entry intervals, or the notification to workers requirements.

(b) *Other modifications.* The Agency, pursuant to this subpart and authorities granted in FIFRA sections 3, 6, and 12, may, on its initiative or based on data submitted by any person, modify or waive the requirements of this subpart, or permit or require alternative labeling statements. Supporting data may be either data conducted according to Subdivisions U or K of the Pesticide Assessments guidelines or data from medical, epidemiological, or health effects studies. A registrant who wishes to modify any of the statements required in section 156.206, section 156.208, section 156.210, or section 156.212 must submit an application for amended registration unless specifically directed otherwise by the Agency.

[57 FR 38146, Aug. 21, 1992, as amended at 73 FR 75596, Dec. 12, 2008]

Section 156.206 General statements.

(a) *Application restrictions.* Each product shall bear the statement: "Do not apply this product in a way that will contact workers or other persons, either directly or through drift. Only protected handlers may be in the area during application." This statement shall be near the beginning of the DIRECTIONS FOR USE section of

the labeling under the heading AGRICULTURAL USE REQUIREMENTS.

(b) *40 CFR part 170 reference statement.* (1) Each product shall bear the reference statement: "Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR part 170." This statement shall be placed on the product label under the heading AGRICULTURAL USE REQUIREMENTS.

(2) Each product shall bear the statement: "This standard contains requirements for the protection of agricultural workers on farms, forests, nurseries, and greenhouses, and handlers of agricultural pesticides. It contains requirements for training, decontamination, notification, and emergency assistance. It also contains specific instructions and exceptions pertaining to the statements on this label [in this labeling] about [use any of the following that are applicable] personal protective equipment, restricted-entry interval, and notification to workers." These statements shall be placed immediately following the reference statement required by paragraph (b)(1) of this section, or they shall be placed in the supplemental product labeling under the heading AGRICULTURAL USE REQUIREMENTS.

(3) If the statements in paragraph (b)(2) of this section are included in supplemental labeling rather than on the label of the pesticide container, the container label must contain this statement immediately following the statement required in paragraph (b)(1) of this section: "Refer to supplemental labeling entitled AGRICULTURAL USE REQUIREMENTS in the DIRECTIONS FOR USE section of the labeling for information about this standard."

(4) If the statements in paragraph (b)(2) of this section are included in supplemental labeling, they must be preceded immediately by the statement in paragraph (b)(1) of this section under the heading AGRICULTURAL USE REQUIREMENTS in the labeling.

(c) *Product-type identification.* (1) If the product contains an organophosphate (*i.e.*, an organophosphorus ester that inhibits cholinesterase) or an *N*-methyl carbamate (*i.e.*, an *N*-methyl carbamic acid ester that

inhibits cholinesterase), the label shall so state. The statement shall be associated with the product name or product-type identification or shall be in the STATEMENT OF PRACTICAL TREATMENT or FIRST AID section of the label.

(2) If the product is a fumigant, the label shall so state. The identification shall appear:

(i) As part of the product name; or

(ii) Close to the product name, as part of the product-type identification or as a separate phrase or sentence.

(d) *State restrictions.* Each product shall bear the statement: "For any requirements specific to your State, consult the agency in your State responsible for pesticide regulation." This statement shall be under the heading AGRICULTURAL USE REQUIREMENTS in the labeling.

(e) *Spanish warning statements.* If the product is classified as toxicity category I or toxicity category II according to the criteria in §156.62, the signal word shall appear in Spanish in addition to English followed by the statement, "Si Usted no entiende la etiqueta, busque a alguien para que se la explique a Usted en detalle. (If you do not understand the label, find some one to explain it to you in detail.)" The Spanish signal word "PELIGRO" shall be used for products in toxicity category I, and the Spanish signal word "AVISO" shall be used for products in toxicity category II. These statements shall appear on the label close to the English signal word.

[57 FR 38146, Aug. 21, 1992, as amended at 58 FR 34203, June 23, 1993; 73 FR 75596, Dec. 12, 2008]

Section 156.208 Restricted-entry statements.

(a) *Requirement.* Each product with a restricted-entry interval shall bear the following statement: "Do not enter or allow worker entry into treated areas during the restricted-entry interval (REI)." This statement shall be under the heading AGRICULTURAL USE REQUIREMENTS in the labeling.

(b) *Location of specific restricted-entry interval statements.* (1) If a product has one specific restricted-entry interval applicable to all registered uses of the product on agricultural plants, the restricted-entry

interval for the product shall appear as a continuation of the statement required in paragraph (a) of this section and shall appear as follows: "of X hours" or "of X days" or "until the acceptable exposure level of X ppm or mg/m³ is reached."

(2) If different restricted-entry intervals have been established for some crops or some uses of a product, the restricted-entry statement in paragraph (b)(1) of this section shall be associated on the labeling of the product with the directions for use for each crop each use to which it applies, immediately preceded or immediately followed by the words "Restricted-entry interval" (or the letters "REI").

(c) *Restricted-entry interval based on toxicity of active ingredient—(1) Determination of toxicity category.* A restricted-entry interval shall be established based on the acute toxicity of the active ingredients in the product. For the purpose of setting the restricted-entry interval, the toxicity category of each active ingredient in the product shall be determined by comparing the obtainable data on the acute dermal toxicity, eye irritation effects, and skin irritation effects of the ingredient to the criteria of section 156.62. The most toxic of the applicable toxicity categories that are obtainable for each active ingredient shall be used to determine the restricted-entry interval for that product. If no acute dermal toxicity data are obtainable, data on acute oral toxicity also shall be considered in this comparison. If no applicable acute toxicity data are obtainable on the active ingredient, the toxicity category corresponding to the signal word of any registered manufacturing-use product that is the source of the active ingredient in the end-use product shall be used. If no acute toxicity data are obtainable on the active ingredients and no toxicity category of a registered manufacturing-use product is obtainable, the toxicity category of the end-use product (corresponding to the signal word on its labeling) shall be used.

(2) *Restricted-entry interval for sole active ingredient products.*

(i) If the product contains only one active ingredient and it is in toxicity category I by the criteria in paragraph (c)(1)

of this section, the restricted-entry interval shall be 48 hours. If, in addition, the active ingredient is an organophosphorus ester that inhibits cholinesterase and that may be applied outdoors in an area where the average annual rainfall for the application site is less than 25 inches per year, the following statement shall be added to the restricted-entry interval statement: "(72 hours in outdoor areas where average annual rainfall is less than 25 inches a year)."

(ii) If the product contains only one active ingredient and it is in toxicity category II by the criteria in paragraph (c)(1) of this section, the restricted-entry interval shall be 24 hours.

(iii) If the product contains only active ingredients that are in toxicity category III or IV by the criteria in paragraph (c)(1) of this section, the restricted-entry interval shall be 12 hours.

(3) *Restricted-entry interval for multiple active ingredient products.* If the product contains more than one active ingredient, the restricted-entry interval (including any associated statement concerning use in arid areas under paragraph (c)(2)(i) of this section) shall be based on the active ingredient that requires the longest restricted-entry interval as determined by the criteria in this section.

(d) *Exception for fumigants.* The criteria for determining restricted-entry intervals in paragraph (c) of this section shall not apply to any product that is a fumigant. For fumigants, any existing restricted-entry interval (hours, days, or acceptable exposure level) shall be retained. Entry restrictions for fumigants have been or shall be established on a case-by-case basis at the time of registration, reregistration, or other Agency review process.

(e) *Existing product-specific restricted-entry intervals.*

(1) A product-specific restricted-entry interval, based on data collected in accordance with §158.1070 or §161.390 of this chapter and

Subdivision K of the Pesticide Assessment Guidelines, shall supersede any restricted-entry interval applicable to the product under paragraph (c) of this section.

(2) Product-specific restricted-entry intervals established for pesticide products or pesticide uses that are not covered by part 170 of this chapter shall remain in effect and shall not be placed under the heading AGRICULTURAL USE REQUIREMENTS in the labeling.

(f) *Existing interim restricted-entry intervals.*

(1) An interim restricted-entry interval established by the Agency before the effective date of this subpart will continue to apply unless a longer restricted-entry interval is required by paragraph (c) of this section.

(2) Existing interim restricted-entry intervals established by the Agency for pesticide products or pesticide uses not covered by part 170 of this chapter shall remain in effect and shall not be placed under the heading AGRICULTURAL USE REQUIREMENTS in the labeling.

[57 FR 38146, Aug. 21, 1992, as amended at 58 FR 34203, June 23, 1993; 72 FR 61028, Oct. 26, 2007; 73 FR 75596, Dec. 12, 2008]

Section 156.210 Notification-to-workers statements.

(a) *Requirement.* Each product that meets the requirements of paragraph (b) of this section shall bear the posting and oral notification statements prescribed below. The statements shall be in the DIRECTIONS FOR USE section of the labeling under the heading AGRICULTURAL USE REQUIREMENTS.

(b) *Notification to workers of pesticide application.*

(1) Each product that contains any active ingredient classified as toxicity category I for either acute dermal toxicity or skin irritation potential under the criteria in section 156.62 shall bear the statement: "Notify workers of the application by warning them orally and by posting warning signs at entrances to treated areas." If no

acute dermal toxicity data are obtainable, data on acute oral toxicity of the active ingredient shall be considered instead. If no data on acute dermal toxicity, skin irritation potential, or acute oral toxicity are obtainable on the active ingredient, the toxicity category corresponding to the signal word of any registered manufacturing-use product that is the source of the active ingredient in the end-use product shall be used. If none of the applicable acute toxicity data are obtainable on the active ingredient and no toxicity category of the registered manufacturing-use product is obtainable, the toxicity category of the end-use product corresponding to the product's signal word shall be used.

(2) Each product that is a fumigant and is registered for use in a greenhouse (or whose labeling allows use in a greenhouse) shall bear the statement: "For greenhouse applications, notify workers of the application by warning them orally and by posting warning signs outside all entrances to the greenhouse."

[57 FR 38146, Aug. 21, 1992, as amended at 58 FR 34203, June 23, 1993; 73 FR 75596, Dec. 12, 2008]

Section 156.212 Personal protective equipment statements.

(a) *Requirement.* Each product shall bear the personal protective equipment statements prescribed in paragraphs (d) through (j) of this section.

(b) *Exceptions.* (1) If personal protective equipment were required for a product before the effective date of this subpart, the existing requirements shall be retained on the labeling wherever they are more specific or more protective (as specified in EPA guidance materials) than the requirements in the table in paragraph (e) of this section.

(2) Any existing labeling statement that prohibits the use of gloves or boots overrides the corresponding requirement in paragraph (e) of this section and must be retained on the labeling.

(3) If the product labeling contains uses that

are not covered by part 170 of this chapter, the registrant may adopt the personal protective equipment required in this section for those uses. However, if the personal protective equipment required in this section would not be sufficiently protective or would be onerously overprotective for uses not covered by part 170 of this chapter, the registrant must continue to apply the existing personal protective equipment requirements to those uses. The labeling must indicate which personal protective equipment requirements apply to uses covered by part 170 of this chapter and which personal protective equipment requirements apply to other uses.

(c) *Location of personal protective equipment statements—*

(1) *Personal protective equipment statements for pesticide handlers.* Personal protective equipment statements for pesticide handlers shall be in the HAZARDS TO HUMANS (AND DOMESTIC ANIMALS) section of the labeling. The required statements may be combined to avoid redundancy as long as the requirements and conditions under which they apply are identified.

(2) *Personal protective equipment statements for early-entry workers.* Personal protective equipment statements for early-entry workers shall be placed in the DIRECTIONS FOR USE section of the labeling under the heading AGRICULTURAL USE REQUIREMENTS and immediately after the restricted-entry statement required in section 156.208(a).

(d) *Personal protective equipment statements for pesticide handlers.*

(1) The table in paragraph (e) of this section specifies minimum requirements for personal protective equipment (as defined in section 170.240 of this chapter) and work clothing for pesticide handlers. This personal protective equipment requirement applies to any product that presents a hazard through any route of exposure identified in the table (acute dermal toxicity, skin irritation potential, acute inhalation toxicity, and eye irritation potential).

(2) The requirement for personal protective

equipment is based on the acute toxicity category of the end-use product for each route of exposure as defined by section 156.62. If data to determine the acute dermal toxicity or the acute inhalation toxicity are not obtainable, the acute oral toxicity shall be used as a surrogate to determine the personal protective equipment requirements for that route of exposure. If data to determine the acute toxicity of the product by a specific route of exposure (including acute oral toxicity in lieu of acute dermal or acute inhalation toxicity) are not obtainable, the toxicity category corresponding to the signal word of the end-use product shall be used to determine personal protective equipment requirements for that route of exposure. If the signal word is "CAUTION," toxicity category III will be used.

(3) The minimum personal protective equipment and work clothing requirements specified in this section shall be included in a statement such as the following: "Applicators and other handlers must wear: (body protection statement); (glove statement, if applicable); (footwear statement, if applicable); (protective eyewear statement, if applicable); (respirator statement, if applicable)." The format of statements given in this paragraph is optional, but it is recommended for clarity.

(e) *Summary of personal protective equipment requirements.* The following table 1 summarizes the personal protective equipment requirements by route of exposure and toxicity category:

TABLE 1—MINIMUM PERSONAL PROTECTIVE EQUIPMENT (PPE) AND WORK CLOTHING FOR HANDLING ACTIVITIES

Route of Exposure	Toxicity Category of End-Use Product			
	I	II	III	IV
Dermal Toxicity or Skin Irritation Potential ¹	Coveralls worn over long-sleeved shirt and long pants	Coveralls worn over short-sleeved shirt and short pants	Long-sleeved shirt and long pants	Long-sleeved shirt and long pants
	Socks	Socks	Socks	Socks

	Chemical-resistant footwear	Chemical-resistant footwear	Shoes	Shoes
	Chemical-resistant gloves ²	Chemical-resistant gloves ²	Chemical-resistant gloves ²	No minimum ⁴
Inhalation Toxicity	Respiratory protection device ³	Respiratory protection device ³	No minimum ⁴	No minimum ⁴
Eye Irritation Potential	Protective eyewear	Protective eyewear	No minimum ⁴	No minimum ⁴

¹ If dermal toxicity and skin irritation potential are in different toxicity categories, protection shall be based on the more toxic (lower numbered) category.

² For labeling language for chemical-resistant gloves, see paragraph (f) of this section.

³ For labeling language for respiratory protection device, see paragraphs (g) and (h) of this section.

⁴ Although no minimum PPE is required by this section for this toxicity category and route of exposure, the Agency may require PPE on a product-specific basis.

(f) *Chemical-resistant gloves labeling statements for pesticide handlers.* If the table in paragraph (e) of this section indicates that chemical-resistant gloves are required, the glove statement shall be as specified in paragraph (f) (2), (3), (4), or (5) of this section.

(1) *Exception.* The registrant shall specify a glove type other than that selected through the criteria in paragraphs (f) (2) through (5) of this section if information available to the registrant indicates that such a glove type is more appropriate or more protective than the glove type specified in this section. The statement must specify the particular types of chemical-resistant glove (such as nitrile, butyl, neoprene, and/or barrier-laminate).

(2) *Solid formulations.* For products formulated and applied as solids or formulated as solids and diluted solely with water for application, the glove statement shall specify: "waterproof gloves."

(3) *Aqueous-based formulations.* For products formulated and applied as a water-based liquid or formulated as a water-based liquid and diluted solely with water for application, the glove statement may specify: "waterproof gloves" instead of the statement in paragraph (f)(4) of this section.

(4) *Other liquid formulations.* For products formulated or diluted with liquids other than water, the glove statement shall specify: "chemical-resistant (such as nitrile or butyl) gloves."

(5) *Gaseous formulations and applications.* For products formulated or applied as gases, any existing glove statement established before the effective date of this subpart, including any glove prohibition statement, will continue to apply. If no glove statement or glove prohibition now exists, the glove statement shall specify "chemical-resistant (such as nitrile or butyl) gloves."

(g) *Existing respirator requirement for pesticide handlers on product labeling-*

(1) *General requirement.* If a statement placed on a product's labeling before the effective date of this subpart indicates that respiratory protection is required, that requirement for protection shall be retained. The statement must specify, or be amended to specify, one of the following respirator types and the appropriate MSHA/NIOSH approval number prefix:

(i) Dust/mist filtering respirator with MSHA/NIOSH/ approval number prefix TC-21C; or

(ii) Respirator with an organic-vapor-removing cartridge and a prefilter approved for pesticides with MSHA/NIOSH approval number prefix TC-23C or with a canister approved for pesticides with MSHA/NIOSH approval number prefix TC-14G; or

(iii) Supplied-air respirator with MSHA/NIOSH approval number prefix TC-19C or self-contained breathing apparatus (SCBA) with MSHA/NIOSH approval number TC-13F.

(2) *Respirator type already specified on labeling.* If the existing respiratory protection requirement specifies a respirator type, it shall be

retained. The respirator statement must be revised, if necessary, to conform to the wording in paragraph (g)(1) of this section.

(3) *Respirator type not already specified on labeling.* If the existing respiratory protection requirement on product labeling does not specify a respirator type as listed in paragraph (g)(1) of this section, the specific respirator type shall be that required in the criteria in paragraphs (g)(3)(ii) through (vi) of this section.

(i) *Exception.* The registrant shall specify a different type of respiratory protection device if information, such as vapor pressure value, is available to the registrant to indicate that the type of respiratory protection device selected through the criteria in paragraphs (g)(3)(ii) through (vi) of this section would not be adequately protective, or might increase risks to the user unnecessarily.

(ii) *Gases applied outdoors.* For products that are formulated or applied as a gas (space and soil fumigants) and that may be used outdoors, the respiratory protection statement shall be: "For handling activities outdoors, use either a respirator with an organic-vapor-removing cartridge with a prefilter approved for pesticides (MSHA/NIOSH approval number prefix TC-23C), or a canister approved for pesticides (MSHA/NIOSH approval number prefix TC-14G)."

(iii) *Gases used in enclosed areas.* For products that are formulated or applied as a gas (space and soil fumigants) and that may be used in greenhouses or other enclosed areas, the respiratory protection statement shall specify: "For handling activities in enclosed areas, use either a supplied-air respirator with MSHA/NIOSH approval number prefix TC-19C, or a self-contained breathing apparatus (SCBA) with MSHA/NIOSH approval number TC-13F."

(iv) *Solids.* For products that are formulated and applied as solids, the respiratory protection statement shall

specify: "dust/mist filtering respirator (MSHA/NIOSH approval number prefix TC-21C)."

(v) *Liquids in toxicity category I.* For products that are formulated or applied as liquids, and, as formulated, have an acute inhalation toxicity (or its surrogate as specified in paragraph (d)(2) of this section) in category I, the respiratory protection statement shall specify: "either a respirator with an organic-vapor-removing cartridge with a prefilter approved for pesticides (MSHA/NIOSH approval number prefix TC-23C), or a canister approved for pesticides (MSHA/NIOSH approval number prefix 14G)."

(vi) *Liquids in toxicity category II.* For products that are formulated or applied as liquids, and, as formulated, have an acute inhalation toxicity (or its surrogate as specified in paragraph (d)(2) of this section) in category II, the respiratory protection statement shall specify: "For handling activities during (select uses applicable to the product: airblast, mistblower, pressure greater than 40 p.s.i. with fine droplets, smoke, mist, fog, aerosol or direct overhead) exposures, wear either a respirator with an organic-vapor-removing cartridge with a prefilter approved for pesticides (MSHA/NIOSH approval number prefix TC-23C), or a canister approved for pesticides (MSHA/NIOSH approval number prefix 14G). For all other exposures, wear a dust/mist filtering respirator (MSHA/NIOSH approval number prefix TC-21C)."

(h) *New respirator requirement established for pesticide handlers in this part—*

(1) *General requirement.* If the table in paragraph (e) of this section indicates a respiratory protection device is required, and existing product labeling has no respiratory protection requirement, the registrant shall add a respiratory protection statement that specifies a: "dust/mist filtering respirator (MSHA/NIOSH approval number prefix TC-21C)."

(2) *Exception.* The registrant shall specify a

different type of respiratory protection device if information, such as vapor pressure value, is available to the registrant to indicate that the type of respiratory protection device required in paragraph (h)(1) of this section would not be adequately protective or might increase risks to the user unnecessarily.

(i) *Additional personal protective equipment requirements for pesticide handlers.* In addition to the minimum personal protective equipment and work clothing requirements given in the table in paragraph (e) of this section, the labeling statement for any product in toxicity category I or II on the basis of dermal toxicity or skin irritation potential (or their surrogate as specified in paragraph (d)(2) of this section), shall include the following personal protective equipment instructions, additions, or substitutions as applicable:

(1) If the product is not ready-to-use and there is no existing requirement for a chemical-resistant suit, the following statement shall be included: "Mixers/Loaders: add a chemical-resistant apron."

(2) If the application of the product may result in overhead exposure to any handler (for example, applicator exposure during airblast spraying of orchards or flagger exposure during aerial application), the following statement shall be included: "Overhead Exposure: wear chemical-resistant headgear."

(3) If any type of equipment other than the product container may be used to mix, load, or apply the product, and there is no requirement for a chemical-resistant protective suit, the following statement shall be included: "For Cleaning Equipment: add a chemical-resistant apron."

(j) *Personal protective equipment for early-entry*

workers. This paragraph specifies minimum requirements for personal protective equipment (as defined in section 170.240 of this chapter) and work clothing for early-entry workers.

(1) For all pesticide products, add the statement: "For early entry to treated areas that is permitted under the Worker Protection Standard and that involves contact with anything that has been treated, such as plants, soil, or water, wear: (list the body protection, glove, footwear, protective eyewear, and protective headgear, if applicable, statements specified for applicators and other handlers, but omit any respiratory protection statement)."

(2) If the body protection statement in the personal protective equipment requirement for handlers specifies a long-sleeved shirt and long pants, "coveralls" must be specified in the statement of personal protective equipment for early-entry workers.

(3) If there is no statement requiring gloves and no prohibition against gloves for applicators and other handlers under the heading HAZARDS TO HUMANS (AND DOMESTIC ANIMALS) in the labeling, add a requirement for "waterproof gloves" in the statement of personal protective equipment for early-entry workers.

[57 FR 38146, Aug. 21, 1992, as amended at 58 FR 34203, June 23, 1993; 73 FR 75596, Dec. 12, 2008]

IV. New Business – Before Public Hearing

A. Discussion and Action on Proposed Amendments to Part IV, Rules and Regulations Governing Commercial Boating Activities at County Beach Parks, Section 30 to 36, promulgated by County of Kauai Department of Parks and Recreation

**PRE-PUBLIC HEARING SMALL BUSINESS IMPACT STATEMENT
TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD**
(Hawaii Revised Statutes §201M-2)

Date: 7/11/2019Department or Agency: County of Kauai, Department of Parks and RecreationAdministrative Rule Title and Chapter: N/AChapter Name: Commercial Boating Activities at County Beach ParksContact Person/Title: Darcie Agaran, Executive Secretary to the DirectorE-mail: dagaran@kauai.gov Phone: (808) 241-4456

A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.

B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7?

Yes No

If "Yes," provide details: Proposed Rule Amendments are available for viewing at the...(see attachment)

I. Rule Description:

New Repeal Amendment Compilation

II. Will the proposed rule(s) affect small business?

Yes No

(If "No," no need to submit this form.)

* "Affect small business" is defined as "any potential or actual requirement imposed upon a small business . . . that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business." HRS §201M-1

* "Small business" is defined as a "for-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that: (1) Is domiciled and authorized to do business in Hawaii; (2) Is independently owned and operated; and (3) Employs fewer than one hundred full-time or part-time employees in Hawaii." HRS §201M-1

III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance?

Yes No

(If "Yes" no need to submit this form. E.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives. HRS §201M-2(d))

IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a))

Yes No

(If "Yes" no need to submit this form.)

* * *

If the proposed rule affects small business and are not exempt as noted above, please provide a reasonable determination of the following:

1. Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected.

Commercial Boating companies governed by this rule will be positively affected in that their allowable hours of operation will be extended, and rather than being subject to automatic permit revocation in the event of non-compliance, commercial boating companies will be subjected to a tiered schedule of fines prior to permit revocation.

2. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance.

In lieu of automatic permit revocation for non-compliance under the current rules, the proposed rule amendment provides greater flexibility by implementing fines for non-compliance in a range from \$200-\$2,000 per offense with a... (see attachment)

If the proposed rule imposes a new or increased fee or fine:

- a. Amount of the current fee or fine and the last time it was increased.

Current penalty is automatic permit revocation.

- b. Amount of the proposed fee or fine and the percentage increase.

Newly proposed fines range from \$200 to \$2,000 per offense

- c. Reason for the new or increased fee or fine.

The imposition of tiered fines in lieu of automatic permit revocation gives the Department enforcement flexibility while saving... (see attachment)

- d. Criteria or methodology used to determine the amount of the fee or fine (i.e.,

Consumer Price Index, Inflation rate, etc.).

Fines amounts are prescribed by the County's Peddlers and Concessionaires Ordinance, Kauai County Code section 23-3.6.

3. The probable monetary costs and benefits to the agency or other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used.

No additional fees are being imposed. The only fee we are collecting is the current permit fee for conducting commercial boating activities, which is \$100.00 per year.

4. The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or other mitigating techniques.

The proposed amendment reduces the impact on commercial boating companies by: 1) doing away with a zero tolerance policy of automatic permit revocation for non-compliance; 2) allowing extended hours of commercial operation from one-half hour before sunrise to one-half hour after sunset, rather than hard hours of 7am to 7pm, which are more restrictive for commercial operators. Note that the proposed change in hours of operation is being sought at the request of commercial boating operators; and 3) clarifying... (see attachment)

5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.

N/A

6. Consideration of creative, innovative, or flexible methods of compliance for small businesses. The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules.

N/A

7. How the agency involved small business in the development of the proposed rules.

The County met with the commercial boaters and the commercial boaters expressed their desire to not be specific with time frames as the days are longer during the summer months.

- a. If there were any recommendations made by small business, were the recommendations incorporated into the proposed rule? If yes, explain. If no, why not.

Yes, we are proposing to change the period of time that commercial boating activities would be permitted to one-half hour before sunrise to one-half hour after sunset. This was the recommendation that was agreed upon by the commercial boaters.

8. Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

N/A

If yes, please provide information comparing the costs and benefits of the proposed rules to the costs and benefits of the comparable federal, state, or county law, including the following:

- a. Description of the public purposes to be served by the proposed rule.
N/A

- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.
N/A

- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.
N/A

- d. A comparison of the monetary costs and benefits of the proposed rule with the costs and benefits of imposing or deferring to the related federal, state, or county law, as well as a description of the manner in which any additional fees from the proposed rule will be used.
N/A

- e. A comparison of the adverse effects on small business imposed by the proposed rule with the adverse effects of the related federal, state, or county law.
N/A

* * *

Small Business Regulatory Review Board / DBEDT
Phone: (808) 586-2594 / Email: DBEDT.sbrrb.info@hawaii.gov

This Statement may be found on the SBRRB Website at: <http://dbedt.hawaii.gov/sbrrb/resources/small-business-impact-statements>

Attachment

A. Statement of the Topic of the Proposed Rule:

The Department proposes to amend its existing Rules and Regulations Governing Commercial Boating Activity at County Beach Parks by: 1) moderately extending the allowable hours of operation; 2) amending compliance and enforcement provisions to allow for incremental fines rather than automatic permit revocation; 3) minor non-substantive changes in formatting and language; and 4) clarifying the scope of commercial activity that may be carried out at the County's Weke Road Boat Ramp.

B. ...Department of Parks and Recreation. In addition, the Department will send an electronic copy by email to any interested person upon request.

2. ...penalty of permit revocation for "repeated noncompliance."

c. ...commercial boating companies from the possibly drastic immediate loss of their permit to operate.

4. ...the scope of commercial activity that may be carried out at the County's Weke Road Boat Ramp.

RECEIVED

By JetaimeA at 12:03 pm, Jul 11, 2019

COUNTY OF KAUA‘I DEPARTMENT OF PARKS AND RECREATION

Pursuant to the authority granted to the Director of Parks and Recreation under Kaua‘i County Code section 19-1.18, section 23-3.3, section 23-3.5, and section 23-3.6, the Director proposes to amend the Department of Parks Rules and Regulations as set out below. Portions of existing Rules and Regulations to be deleted are bracketed in bold with strikethrough. Proposed additions to existing Rules and Regulations are underlined and will appear in red. A public hearing on proposed amendments will be held on (Date) at the Mo‘ikeha Building, Meeting Room 2A/2B, 4444 Rice Street, Lihu‘e, Kaua‘i starting at 9:00 a.m., or soon thereafter.

COUNTY OF KAUA‘I DEPARTMENT OF PARKS AND RECREATION

Under and by virtue of the authority conferred upon him by Chapter 91, Hawai‘i Revised Statutes (HRS), Chapter 23, Article 3, Kaua‘i County Code (KCC) 1987 as amended, and every other enabling power, the Director of Parks and Recreation of the County of Kaua‘i does hereby prescribe the following:

RULES AND REGULATIONS GOVERNING COMMERCIAL BOATING ACTIVITIES AT COUNTY BEACH PARKS PART IV

Section 30. Findings and Purpose.

Pursuant to section 23-3.3 of the KCC and Section 8 of these rules and regulations, a public hearing was conducted to determine the propriety of the proposed use of facilitating commercial boating activities under the jurisdiction of the State Department of Land and Natural Resources (DLNR)/Division of Boating and Ocean Recreation (DOBOR) and the United States Coast Guard at ~~[those]~~ designated County beach parks and beach ~~[right-of-ways]~~ rights-of-way ~~[listed in the attachment]~~.

The Department duly received applications from various individuals and organizations to conduct these activities, pursuant to Section 7 of these regulations.

As a result of the public hearing, the Department finds that the proposed use of the County beach parks identified herein facilitates commercial activities under the jurisdiction of the State ~~[Department of Land and Natural Resources (DLNR) Division of Boating and Ocean Recreation (DOBOR)]~~ DLNR/DOBOR and the United States Coast Guard. The Department further finds the proposed use to be essentially recreational in nature, complementary to the facilities of the parks and consistent with established park use.

These activities are hereby designated authorized activities in accordance with the definition provided in these rules, subject to the limitations and conditions hereinafter described.

Section 31. State Permit.

In order to operate a commercial boating activity operators must have in their possession a current and valid Ocean Recreational Management Area Commercial Permit issued by the State of Hawai‘i, ~~[Department of Land and Natural Resources (DLNR), Division of Boating and Ocean~~

Recreation (DOBOR)] DLNR/DOBOR. If a permittee forfeits his or her State permit and or their State permit is otherwise revoked or suspended, said permittee’s County permit will automatically expire.

Section 32. Number of Persons.

(a) The maximum number of passengers permitted to participate in a commercial boating activity authorized by these rules within the County park shall be limited to that number allowed in the operator’s current and valid Ocean Recreational Management Area Commercial Permit issued by the State of Hawai‘i, ~~[Department of Land and Natural Resources (DLNR), Division of Boating and Ocean Recreation (DOBOR)] DLNR/DOBOR~~ and any and all permits issued to the County, including but not limited to ~~[sma] SMA~~, zoning and or land use permits.

Section 33. Time of Use.

- (a) No commercial boating activities shall occur within the County parks on Sundays.
- (b) ~~[Permittees shall limit their commercial boating and accessory activities within the County parks between the hours of 7:00 a.m. and 7:00 p.m.]~~ Commercial boating activities are permitted one-half hour before sunrise to one-half hour after sunset. No commercial boaters shall operate one-half hour after sunset to one-half hour before sunrise.
- (c) Special events authorized by permit shall take precedence over commercial boating activities allowed by these rules. Permits issued under these rules shall include a provision stating that the activity may be suspended by the Director to accommodate special events.
- (d) At the Director’s discretion, no commercial boating activities shall occur within the County parks during periods when maintenance or repair of County beach park property or equipment is being performed or when a park is closed. The Department will give permittees thirty days prior notice of any such scheduled activities.
- (e) The use of Weke Boat Ramp for supply service vessels shall be allowed during the permitted timeframe referenced in 33(b).
 - (1) Each Permittee shall be allowed no more than two supply service vessel trips per day.
 - (2) Supply service vessels launching from Weke Boat Ramp shall only be used to transfer supplies to and from Permittee’s primary tour vessel. Supply service vessels shall not be used for passenger loading and unloading at Weke Boat Ramp.
- (f) In the event of an emergency, Weke Boat Ramp may be accessed. Permittee shall notify DOPR officials as soon as practicable.

Section 34. Fees.

The fees for conducting commercial boating activities shall be as stated in section 23-3.4 of the KCC.

Section 35. Permits.

(a) Permits to conduct commercial boating activities shall be issued only for ~~[those]~~ the following County beach parks and beach ~~[right-of-ways]~~ rights-of-way: ~~[listed in the attachment.]~~
Black Pot Beach Park; TMKs (4) 5-5-01:004 and (4) 5-5-01:011;

Weke Road Right-of-Way within Black Pot Beach Park

(b) Permits for operation of commercial boating activities shall have a duration of up to one year and shall expire automatically, without notice to the permit holder, on the date specified on the permit and or if a permittee forfeits his or her State permit and or their State permit is otherwise revoked or suspended.

(c) The Director, or his authorized representative, may renew a permit for additional periods of up to one year provided the permittee is in compliance with all applicable rules. Permit renewal shall also be contingent upon the permittee renewing or attaining any necessary state and federal permits. A renewed permit shall be subject to the terms and conditions of these rules and any subsequent amendments.

(d) The Permittee shall notify the Director within five ~~[(5)]~~ business days of any changes regarding the information provided in the permit application.

Section 36. General Conditions.

(a) Permittees must possess any and all license(s) required to conduct business in the State of Hawai'i. Copies of all license(s) shall be provided to the Parks Permit Section of the Department prior to any permit being issued.

(b) Permittees must have in current force and effect an insurance policy, in which the combined limit of liability for bodily injury and property damage is \$1 million per occurrence and \$2 million in the aggregate. The insurance certificate shall name the County of Kaua'i as additional insured. A copy of the certificate shall be provided to the Parks Permit Section of the Department prior to any permit being issued. Permittee shall be responsible for providing the Department with an updated copy of the certificate of insurance if such certificate expires during the term of the permit.

(c) Permittees shall use inclement weather as criteria to cease operations (i.e. continuous rain, flash flood warning, strong currents, heavy debris and high winds, or any other weather or water conditions that may cause a hazard).

(d) Picnic tables and benches and other facilities owned by the County shall not be used by permittees for commercial purposes, nor shall they be used for storage or as a staging area for commercial boating activities, equipment and or supplies. Loading or unloading of equipment at County beach parks shall be restricted to areas designated by the Department. All equipment not being utilized shall be stored at the operator's place of business. Equipment shall not, under any circumstances, be dragged across grassy recreational surfaces and slopes within County parks. County showers and ~~[hosebibs]~~ hose bibs shall not be utilized by the permittee for cleaning of equipment.

(e) Permittees shall not be allowed to store, display, ~~[show case]~~ or showcase their business in any County beach park or parking lot.

(f) Vehicles used for commercial boating activities shall not be driven onto or be parked in any County beach area. All customers and or employees shall be shuttled to and from the County parks and any and all loading and unloading of customers and or ~~[instructors]~~ employees shall take place at a loading and unloading location designated by the Department. Use of loading and unloading areas by permittees shall be limited to active loading and unloading for a period not exceeding thirty minutes. All vehicles used for shuttling ~~[instructors]~~ employees, supply service vessels, and or customers shall clearly indicate that they are owned and or operated ~~[in]~~ on behalf of the permittee and shall further display the permit issued by the Department allowing the shuttling to take place.

- (g) Trash generated by commercial operations shall be disposed of properly.
- (h) Permittees shall at all times use due care for their clientele and other users and defend, hold harmless, and indemnify the County, its officers, agents, and employees from and against all claims or demands for damages, including claims for property damage, personal injury, or death arising out of or incident to the operations permitted under any permits.
- (i) ~~[Soliciting and or conducting business is prohibited within any or the beach parks or parking lot.]~~ Permittees shall not solicit business within any beach park, beach park parking lot, or adjacent County road right-of-way.
- (j) Commercial notices or advertisements for commercial boating activities shall not be displayed, posted or distributed within any of the beach parks or parking lot.
- (k) Permittees and any ~~[instructors]~~ employees operating under their permit shall be required to present their permit, when requested, to any authorized representative of the Department, any police officer and or any individual acting under the authority of any County, State ~~[of]~~ or Federal governmental agency.
- (l) Permittees shall be responsible for the safety of persons under their charge and for determining that their physical capability and experience are adequate to safely participate under the existing sea ~~[and surf]~~ conditions.
- (m) Should it be adjudged that harm or death has resulted from the permittee's negligence or use of faulty equipment, the permit issued to the permittee shall be immediately revoked upon notice, review and consideration by the Department of Parks and Recreation without the possibility of future permits.
- (n) All permittees must possess off-site, permitted commercial staging areas and shuttle their customers to and from any County ~~[Beach Parks]~~ beach park. Solicitation of moneys and or exchanging of moneys is prohibited within the County parks.
- (o) Permittees shall comply with all Federal, State and County laws and ordinances and the rules of the Department.
- (p) Permittees shall demonstrate to the Director's satisfaction their experience and familiarity with seasonal and high surf conditions typical of the location requested.
- ~~[(q) Permittees shall complete a course provided by the Department regarding the customary and historical place names (reef, channels, rivers, landmarks, etc.) typical of the location and surrounding areas being requested.]~~
- ~~[(r)]~~ (q) Permittees shall demonstrate to the Director's satisfaction their personal years of experience, knowledge, and history of performing the requested activity for the specific location requested.
- ~~[(s)]~~ (r) Permittees and their patrons shall use designated pathways to gain access to the beach areas through park property.
- ~~[(t)]~~ (s) Permittees shall conduct operations so as to impose no more than minimal impact upon public facilities and the physical features of the County parks. No fueling, washing or storage of boats, trailers or supplies are permitted in the County parks identified herein, County parking lots, or in road ~~[rights-of-way]~~ rights-of-way.
- ~~[(u) Permittee failing to perform in accordance with the conditions of these rules and regulations shall forfeit any further use of an existing permit and will not be allowed to apply in person, member of a firm, corporation, or entity for a period of two years from the date of failure to perform.]~~

~~[(v)]~~ (t) Non-compliance with any and all terms and conditions of ~~[this agreement]~~ these rules and regulations or permits issued under these rules and regulations shall ~~[automatically]~~ subject the permit holder to civil fines of not less than two hundred dollars (\$200.00) and not more than two thousand dollars (\$2000.00) for each offense. Repeated non-compliance shall ~~[render this agreement null and void]~~ result in the revocation of any permit issued under these rules and regulations, and the permittee shall be required to cease and desist all commercial operations on County property immediately upon notification by the Department.

(u) Any permittee whose permit is revoked under these rules will not be allowed to apply for a new permit in person, or as a member of a firm, corporation, or entity for a period of two-years from the date of revocation.

IV. New Business – Before Public Hearing

**B. Discussion and Action on Proposed New HAR
Title 11 Chapter 148.1, Certification of Adult
Foster Homes, promulgated by Department of
Health**

RECEIVED

By *JetaimeA* at 6:36 am, Jul 10, 2019

**PRE-PUBLIC HEARING
SMALL BUSINESS IMPACT STATEMENT
TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD**
(Hawaii Revised Statutes §201M-2)

Department or Agency: _____

Administrative Rule Title and Chapter: _____

Chapter Name: _____

Contact Person/Title: _____

Phone Number: _____

E-mail Address: _____ **Date:** _____

- A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.
- B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7? Yes No (If Yes, please provide webpage address and when and where rules may be viewed in person☺)

(Please keep the proposed rules on this webpage until after the SBRRB meeting.)

- I. Rule Description: New Repeal Amendment Compilation**
- II. Will the proposed rule(s) affect small business? Yes No** (If No, no need to submit this form.)

* "Affect small business" is defined as "any potential or actual requirement imposed upon a small business . . . that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business." HRS §201M-1

* "Small business" is defined as a "for-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that: (1) Is domiciled and authorized to do business in Hawaii; (2) Is independently owned and operated; and (3) Employs fewer than one hundred full-time or part-time employees in Hawaii." HRS §201M-1

- III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance? Yes No** (If Yes, no need to submit this form.)

(e.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives.) HRS §201M-2(d)

- IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a)) Yes No** (If Yes, no need to submit this form.)

* * *

If the proposed rule affects small business and are not exempt as noted above, please provide a reasonable determination of the following:

1. Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected.

2. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance.

If the proposed rule imposes a new or increased fee or fine:

- a. Amount of the current fee or fine and the last time it was increased.

 - b. Amount of the proposed fee or fine and the percentage increase.

 - c. Reason for the new or increased fee or fine.

 - d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).
3. The probable monetary costs and benefits to the agency or other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used.

4. The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or other mitigating techniques.

5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.

6. Consideration of creative, innovative, or flexible methods of compliance for small businesses. The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules.

7. How the agency involved small business in the development of the proposed rules.
 - a. If there were any recommendations made by small business, were the recommendations incorporated into the proposed rule? If yes, explain. If no, why not.

8. Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

If yes, please provide information comparing the costs and benefits of the proposed rules to the costs and benefits of the comparable federal, state, or county law, including the following:

- a. Description of the public purposes to be served by the proposed rule.

- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.

- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.

- d. A comparison of the monetary costs and benefits of the proposed rule with the costs and benefits of imposing or deferring to the related federal, state, or county law, as well as a description of the manner in which any additional fees from the proposed rule will be used.

- e. A comparison of the adverse effects on small business imposed by the proposed rule with the adverse effects of the related federal, state, or county law.

* * *

Small Business Regulatory Review Board / DBEDT
Phone: (808) 586-2594
Email: DBEDT.sbrrb.info@hawaii.gov

This Statement may be found on the
SBRRB Website at:
<http://dbedt.hawaii.gov/sbrrb/small-business-impact-statements-pre-and-post-public-hearing>

RECEIVED

By JetaimeA at 6:33 am, Jul 10, 2019

HAWAII STATE DEPARTMENT OF HEALTH
DEVELOPMENTAL DISABILITIES DIVISION
Chapter 148.1, HAR, Certification of Adult Foster Homes

Small Business Impact Statement

July 10, 2019

Chapter 148.1, HAR replaces Chapter 148, HAR which was promulgated thirty-one years ago (1988). The proposed rules primarily affect adult foster homes for adults with intellectual or developmental disabilities. The Developmental Disabilities Division is responsible for certifying caregivers of adult foster homes who provide care, training, and supervision on a 24-hour basis to not more than two adults with intellectual or developmental disabilities who are unrelated to the certified caregiver.

These new rules have been updated to implement Section 321-11.8, HRS on liability insurance and coverage for adult foster homes and the Home and Community Based Services Settings regulations required by the Centers for Medicare and Medicaid Services. The rules further clarify the practice of the Division and align with current policies required by the Division.

DEPARTMENT OF HEALTH

Repeal of Chapter 11-148 and
Adoption of Chapter 11-148.1
Hawaii Administrative Rules

()

1. Chapter 11-148, Hawaii Administrative Rules, entitled "Certification of Adult Foster Homes", is repealed.

2. Chapter 11-148.1, Hawaii Administrative Rules, entitled "Certification of Adult Foster Homes", is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 148.1

CERTIFICATION OF ADULT FOSTER HOMES

Subchapter 1 General Provisions

- §11-148.1-1 Purpose
- §11-148.1-2 Definitions

Subchapter 2 Certification Requirements

- §11-148.1-3 Certification required
- §11-148.1-4 Application and documentation for certified caregiver applicant
- §11-148.1-5 Application and documentation for substitute caregiver applicant

- §11-148.1-6 Home study process
- §11-148.1-7 Liability insurance
- §11-148.1-8 Coverage amounts
- §11-148.1-9 Proof of insurance
- §11-148.1-10 Issuance of certificate of approval
- §11-148.1-11 Renewal of certificate of approval
- §11-148.1-12 Provisional certificate
- §11-148.1-13 Denial of application for or renewal of
certificate of approval
- §11-148.1-14 Denial of a substitute caregiver
application
- §11-148.1-15 Remedies
- §11-148.1-16 Revocation of certificate of approval
- §11-148.1-17 Hearing
- §§11-148.1-18 to 11-148.1-20 (Reserved)

Subchapter 3 Administration of the Adult Foster Home

- §11-148.1-21 Eligibility of individuals to be cared
for
- §11-148.1-22 Admission
- §11-148.1-23 Number of individuals to be cared for
- §11-148.1-24 Record of adult with intellectual or
developmental disabilities
- §11-148.1-25 Adult foster home record
- §11-148.1-26 Contacts with the foster home
- §11-148.1-27 Surrender of certificate
- §11-148.1-28 Change in information
- §11-148.1-29 to 11-148.1-31 (Reserved)

Subchapter 4 Care of Adult with I/DD

- §11-148.1-32 Member of foster family
- §11-148.1-33 Health
- §11-148.1-34 Emergencies and adverse events
- §11-148.1-35 Diet
- §11-148.1-36 Clothing and personal supplies
- §11-148.1-37 Recreation and social activities
- §11-148.1-38 Training and behavior supports
- §11-148.1-39 Religion
- §11-148.1-40 Accounts of adult with I/DD

- §11-148.1-41 Rights of the adult with I/DD
- §11-148.1-42 Discharge of adult with I/DD
- §§11-148.1-43 to 11-148.1-45 (Reserved)

Subchapter 5 Foster Family and Home Environment

- §11-148.1-46 Background checks
- §11-148.1-47 Training
- §11-148.1-48 References
- §11-148.1-49 Health of foster family
- §11-148.1-50 Income
- §11-148.1-51 Employment
- §11-148.1-52 Absences from the home
- §§11-148.1-53 to 11-148.1-56 (Reserved)

Subchapter 6 Housing and Sanitation

- §11-148.1-57 Requirements
- §11-148.1-58 Equipment and furnishings
- §11-148.1-59 Sleeping arrangement
- §11-148.1-60 Severability

Historical note: This chapter is based substantially upon chapter 11-148 [Eff 4/29/88; R]

SUBCHAPTER 1

GENERAL PROVISIONS

§11-148.1-1 Purpose. The purpose of this chapter is to establish rules governing adult foster homes. [Eff] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2; 42 C.F.R. §441.301)

§11-148.1-2 Definitions. As used in this chapter:

"Adult foster home" shall have the same meaning as defined in section 321-11.2, Hawaii Revised Statutes (HRS).

"Adult with intellectual or developmental disabilities" or "adult with I/DD" means any adult with intellectual or developmental disabilities, age eighteen years or older, who is not related to the certified caregiver and has been deemed eligible for services by the division.

"Adult residential care home" shall have the same meaning as defined in section 321-15.1, HRS.

"Applicant" means any person age twenty-one years or older who applies for a certificate of approval.

"Background check" shall have the same meaning as defined in section 321-15.2, HRS.

"Boarding house" means a private home or commercial facility that provides food and lodging for paying residents. Boarding house recipients are not cared for as a family member and typically do not share in the activities and responsibilities of the operator's family.

"Case management branch" means the department of health, developmental disabilities division, case management branch.

"Certificate of approval" means a certificate issued by the department's certifying agency authorizing the certified caregiver to operate an adult foster home.

"Certified caregiver" shall have the same meaning as defined in section 321-11.2, HRS.

"Certifying agency" means the department of health, developmental disabilities division, certification unit which has the responsibility and authority to establish and enforce standards of condition, management and competence, and to issue certificates as described in this chapter.

"Department" means the department of health.

"Developmental disabilities" shall have the same meaning as defined in section 333F-1, HRS.

"Director" means the director of health.

"Division" means the department of health, developmental disabilities division.

"Dual certification" means an existing licensed child foster home under section 346-17, HRS, who applies for and receives a certificate to operate an adult foster home that is certified specifically for the child with intellectual or developmental disabilities who reaches the age of eighteen years.

"Household member" means all individuals residing in the adult foster home, including the certified caregiver(s).

"Individualized service plan" shall have the same meaning as defined in section 333F-1, HRS.

"Intellectual disability" shall have the same meaning as defined in section 333F-1, HRS.

"Potable water" means water which conforms to the Safe Drinking Water Act standards set forth by the United States Environmental Protection Agency (EPA) and the State of Hawaii.

"Provisional certificate" means a temporary certificate that may be issued by the certifying agency if the certified caregiver is unable to correct deficiencies within the time frame specified by the certifying agency.

"Related" shall have the same meaning as defined in section 321-11.2, HRS.

"Residency agreement" means an agreement between the adult with I/DD or the legal representative of the adult with I/DD and the certified caregiver that outlines the rights and responsibilities between both

parties, including protections that address eviction and discharge processes comparable to those provided under chapter 521, HRS.

"Residential care facility" means a licensed adult residential care home as defined in section 321-15.1, HRS; expanded adult residential care home as defined in section 321-15.1, HRS; developmental disabilities domiciliary home as defined in section 321-15.9, HRS; assisted living facility as defined in section 323D-2, HRS; intermediate care facility for individuals with intellectual disabilities as defined in 42 C.F.R. §440.150; resource family home as defined in section 346-16, HRS; or community care foster family home as defined in section 321-481, HRS.

"Rooming house" means a commercial residential facility which provides living quarters to paying residents apart from those occupied by the rooming house operator. Residents may share facilities such as a kitchen and bathroom, but rooming house recipients are not cared for as a family member and typically do not share in the activities and responsibilities of the operator's family.

"Self-preserve" means the mental and physical capacity to follow instructions and evacuate from a facility safely without human assistance in emergency situations.

"Substitute caregiver" means an individual twenty-one years of age or older approved by the certifying agency to provide care, training, and supervision to the adult with I/DD and who temporarily takes charge of the foster home in the absence of the certified caregiver. [Eff]
(Auth: HRS §§ 321-9, 321-11.2, 321-11.8) (Imp: HRS §§321-11.2, 321-11.8)

SUBCHAPTER 2

CERTIFICATION REQUIREMENTS

§11-148.1-3 Certification required. An adult foster home shall have a valid certificate of approval or provisional certificate in order to care for adults with I/DD. No person may operate an adult foster home unless certified by the department.

[Eff _____] (Auth: HRS §§321-9, 321-1.2)
(Imp: HRS §321-11.2)

§11-148.1-4 Application and documentation for certified caregiver applicant. (a) A certified caregiver applicant shall submit a written application on forms prescribed by the certifying agency.

(b) An application is not complete until the certifying agency receives a written application which contains all information and supporting documentation required by this chapter.

(c) Applicants may mail applications and supporting documentation to the certifying agency.

(d) Incomplete applications will not be processed and will be considered closed by the certifying agency after ninety calendar days.

(e) The application shall include:

- (1) A list of all persons who reside in the home;
- (2) An application and any supporting documentation for each substitute caregiver that will provide care in the home, as outlined in section 11-148.1-5, if applicable;
- (3) A physician's statement regarding the applicant's ability to provide care to adults with I/DD;
- (4) A current and accurate floor plan of the applicant's home that has been approved by the respective county building department;

- (5) A fire evacuation plan for the applicant's home that includes the location of exits, planned evacuation routes, fire extinguishers, smoke alarms, and wheelchair ramps, if applicable;
- (6) A signed consent form and all applicable processing fees for each person undergoing a background check so that the department or its designee can conduct a background check in accordance with section 11-148.1-44, which includes fingerprinting and employment history;
- (7) Three personal references;
- (8) Verification of a current tuberculosis clearance for the applicant and all household members, including children, in accordance with current department of health examination procedures and regulations, chapter 11-164.2, Hawaii Administrative Rules (HAR);
- (9) Verification of the applicant's current certification in first aid and cardiopulmonary resuscitation;
- (10) Verification of the applicant's license to practice as a registered nurse or licensed practical nurse; or certification to practice as a certified nurses aid, if applicable; and
- (11) Any other requirements in accordance with departmental policy.

(f) An applicant may withdraw the application at any time during the application process by notifying the certifying agency in writing.

[Eff _____] (Auth: HRS §§321-9, 321-11.2)
(Imp: HRS §§321-11.2, 321-15.2, 846-2.7)

§11-148.1-5 Application and documentation for substitute caregiver applicant. (a) A substitute caregiver applicant shall submit a written application on forms prescribed by the certifying agency.

(b) An application is not complete until the certifying agency receives a written application which contains all information and supporting documentation required by this chapter.

(c) Applicants may mail applications and supporting documents to the certifying agency; and

(d) Incomplete applications will not be processed by the certifying agency.

(e) The application shall include:

- (1) A physician's statement regarding the applicant's ability to provide care to adults with I/DD;
- (2) A signed consent form and all applicable processing fees so that the department or its designee can conduct a background check in accordance with section 11-148.1-44, which includes fingerprinting and employment history;
- (3) Verification of the applicant's current tuberculosis clearance, in accordance with current department of health examination procedures and regulations, chapter 11-164.2, HAR;
- (4) Verification of the applicant's current certification in first aid and cardiopulmonary resuscitation;
- (5) Verification of the applicant's license to practice as a registered nurse or licensed practical nurse; or certification to practice as a certified nurses aid, if applicable; and
- (6) Any other requirements in accordance with departmental policy.

(f) An applicant may withdraw the application at any time during the application process by notifying the certifying agency in writing.

[Eff _____] (Auth: HRS §§321-9, 321-11.2)
(Imp: HRS §§321-11.2, 321-15.2, 846-2.7)

§11-148.1-6 Home study process. (a) After receiving a completed application for a certificate of approval, the certifying agency shall review the information submitted and inspect the home to determine its compliance with this chapter.

(b) The certifying agency shall inform the applicant in writing of any areas of noncompliance. If the certifying agency finds any areas of noncompliance, the certifying agency shall give the applicant time to correct the deficiencies that shall not exceed sixty calendar days from the date of the written notice.

(c) An applicant and the home must be in compliance with this chapter before the certifying agency may issue a certificate of approval.

(d) If the applicant fails to correct all deficiencies in the time frame specified by the certifying agency, the certifying agency shall deny the application pursuant to section 11-148.1-12 and inform the applicant in writing.

(e) A record of the home study findings shall be kept on file with the certifying agency.

[Eff _____] (Auth: HRS §§321-9, 321-11.2)
(Imp: HRS §321-11.2)

§11-148.1-7 Liability insurance. (a) Any person who operates an adult foster home shall obtain and maintain the following types of insurance:

§11-148.1-9 Proof of insurance. (a) All operators of adult foster homes shall provide the department with a copy of a certificate of insurance for the home and for vehicles used to transport adults with I/DD which indicates that the home has obtained and maintained liability insurance which meets the requirements of this chapter on an annual basis.

(b) Should the liability insurance coverages be cancelled, limited in scope, or not renewed upon expiration while the adult foster home continues to operate, the operator shall immediately procure replacement insurance that meets the requirements of this chapter and shall promptly provide the department with an updated certificate of insurance.

[Eff] (Auth: HRS §321-11.8)

(Imp: HRS §321-11.8)

§11-148.1-10 Issuance of certificate of approval. (a) The certifying agency may issue a certificate of approval after determining that the applicant and the home have met the requirements of this chapter.

(b) The certificate of approval shall specify:

- (1) The name and address of the certified caregiver to whom the certificate of approval is issued;
- (2) The number of adults with I/DD that may live in the home; and
- (3) The period for which the certificate is effective.

(c) Unless revoked, the certificate of approval shall be effective for one year from the date of issuance.

(d) The certificate of approval shall be revoked when:

- (1) The certified caregiver to whom the certificate of approval is issued ceases to operate an adult foster home;
- (2) The certified caregiver no longer lives at the address listed on the certificate of approval;

- (3) The adult foster home accepts more than the number of adults with I/DD for which the home is approved.

(e) The original certificate of approval shall be available for inspection at the adult foster home. The certification of an adult foster home shall not obligate the department to refer adults with I/DD to the home. The certification shall mean only that the certifying agency has evaluated the adult foster home and has determined that the adult foster home meets the requirements of this chapter and section 321-11.2, HRS. [Eff _____] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2)

§11-148.1-11 Renewal of certificate of approval.

- (a) A certificate of approval may be renewed if the certified caregiver:
- (1) Submits to the certifying agency a renewal application on a form and in a manner prescribed by the certifying agency ninety days prior to the expiration of the certificate of approval;
 - (2) Submits a signed consent form and all applicable fees for each person undergoing a background check so that the department or its designee can conduct a background check in accordance with section 11-148.1-44;
 - (3) Submits verification of a current tuberculosis clearance for the certified caregiver, substitute caregivers, and all household members, including children, in accordance with current department of health examination procedures and regulations, chapter §11-164.2, HAR;
 - (4) Submits proof of liability insurance for the home and for vehicles used to transport adults with I/DD which continue to meet the requirements of this chapter and section 321-11.8, HRS; and
 - (5) Continues to meet all the requirements of this chapter and section 321-11.2, HRS;

(b) Before renewing a certificate of approval, the certifying agency shall examine the information submitted and conduct an inspection of the adult foster home to determine compliance with this chapter. The certifying agency may require further information and documentation to determine that the certified caregiver continues to meet the requirements of this chapter and section 321-11.2, HRS.

(c) The certifying agency shall provide the certified caregiver with a copy of the inspection report that shall cite deficiencies, a plan of correction and a time frame for correction not to exceed thirty calendar days from the date of the inspection.

(d) The certifying agency shall issue a certificate of approval after the certifying agency has determined the adult foster home has met the requirements of this chapter.

(e) If cited deficiencies are not corrected within the time frame specified, the certifying agency may issue a provisional certificate as outlined in section 11-148.1-13. [Eff _____] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2)

§11-148.1-12 Provisional certificate. (a) The certifying agency may issue a provisional certificate to a certified caregiver if the certified caregiver is unable to correct deficiencies in the foster home according to an accepted plan of correction, and additional time is needed to complete the corrections.

(b) An initial provisional certificate shall not exceed sixty calendar days. The certifying agency may

issue an additional provisional certificate at its discretion for no more than an additional thirty calendar days. The certifying agency shall not issue more than one additional provisional certificate to a certified caregiver. [Eff] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2)

§11-148.1-13 Denial of application for or renewal of certificate of approval. (a) The certifying agency may deny an application for or renewal of a certificate of approval for any of the following reasons:

- (1) Failure to meet any provision of this chapter;
- (2) Submission of misleading, incorrect, false or fraudulent information;
- (3) An applicant, certified caregiver, substitute caregiver, or household member has a background history that the department finds would pose a risk to the health, safety, or welfare of adults with I/DD; or
- (4) Any other reason that serves the purpose of this chapter or section 321-11.2, HRS.

(b) If the certifying agency denies an application for or renewal of a certificate of approval, the certifying agency shall send written notification by certified mail to the applicant or certified caregiver, including the reason for the denial.

(c) An individual aggrieved by a decision made pursuant to this section shall have the right to appeal the certifying agency's decision. The decision to deny an application for or a renewal of a certificate of approval shall become final thirty days upon receipt of the notice of denial or revocation unless within those thirty days the applicant requests in writing a hearing in accordance with this chapter. [Eff] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2; 42 C.F.R. §441.301)

§11-148.1-14 Denial of a substitute caregiver application. (a) The certifying agency may deny an

application to be a substitute caregiver for any of the reasons listed in section 11-148.1-14.

(b) If the certifying agency denies a substitute caregiver application, the certifying agency shall send written notification by certified mail to the applicant, including the reason for denial.

(c) An individual aggrieved by a decision made pursuant to this section shall have the right to appeal the certifying agency's decision. The decision to deny a substitute caregiver application shall become final thirty days upon receipt of the notice of denial or revocation unless within those thirty days the applicant requests in writing a hearing in accordance with this chapter. [Eff _____]
(Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2)

§11-148.1-15 Remedies. (a) If the certifying agency determines that any person is violating any provision of this chapter, section 321-11.2, HRS, or the person's certificate of approval, the certifying agency shall send written notification of violation and order by certified mail to the person. The notice shall specify the alleged violation and the process to request in writing a hearing as outlined in this chapter. The order may require that the alleged violator do any or all of the following:

- (1) Cease and desist from the violation;
- (2) Follow a plan of correction and correct the violation at the alleged violator's expense;
- (3) Pay a fine not to exceed \$500 per violation;
- (4) Abide by new conditions attached to a certificate of approval. Conditions that the certifying agency may impose on a certificate of approval include but are not limited to:

- (A) Restricting the total number of adults with I/DD based upon the certified caregiver's ability to meet the health and safety needs of the adults with I/DD;
- (B) Restricting the impairment level of adults with I/DD allowed in the home based upon the certified caregiver's ability to meet the health and safety needs of the adults with I/DD;
- (C) Requiring additional caregivers to meet the needs of the adults with I/DD;
- (D) Requiring additional qualifications or training of the certified caregivers or substitute caregivers to meet specific individual care and service needs;
- (E) Requiring additional documentation; or
- (F) Restricting certified caregivers from allowing person on the premises who may be a threat to an individual's health, safety, or welfare.

(b) The order may also revoke a certificate of approval pursuant to section 11-148.1-17.

(c) Subject to subsection (a), the order shall become final thirty days upon receipt of the notice of denial or revocation unless the alleged violator requests in writing a hearing as outlined in this chapter. [Eff _____] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2)

§11-148.1-16 Revocation of certificate of approval. (a) The certifying agency may revoke a certificate of approval for any of the following reasons:

- (1) Violation of any provision of this chapter;
- (2) Submission of misleading, incorrect, false, or fraudulent information;

(3) Where immediate action is required to comply with the law or protect the health and safety of the adult with I/DD; or

(4) Any other reason that serves the purpose of this chapter or section 321-11.2, HRS.

(b) The certifying agency shall send written notification of a revocation by certified mail to the certified caregiver, and include the specific reason or reasons for the revocation and the process to request in writing a hearing as outlined in this chapter.

(c) An individual aggrieved by a decision made pursuant to this section shall have the right to appeal the certifying agency's decision. The decision to revoke a certificate of approval shall become final thirty days upon receipt of the notice of denial or revocation unless within those thirty days the applicant requests in writing a hearing in accordance with this chapter. [Eff]
(Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2)

§11-148.1-17 Hearing. Any hearing conducted under this section shall be conducted as a contested case hearing in accordance with chapter 91, HRS, and chapter 11-1. The director or a delegated representative shall preside over the hearing and issue a written decision to the aggrieved person and the department within sixty calendar days from the date of the hearing. [Eff] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2)

§11-148.1-18 to §11-148.1-20 Reserved.

SUBCHAPTER 3

ADMINISTRATION OF THE ADULT FOSTER HOME

§11-148.1-21 Eligibility of individuals to be cared for. (a) Individuals admitted into the adult foster home shall be deemed eligible by the department to receive division or Medicaid waiver services, as outlined in chapter 11-88.1, HAR.

(b) Individuals with intellectual or developmental disabilities residing in the adult foster home shall be age eighteen or older, unless the home is dually certified as a resource family home for children with intellectual or developmental disabilities pursuant to sections 321-11.2 and 346-17, HRS. [Eff _____] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2, 346-17)

§11-148.1-22 Admission. (a) The certified caregiver shall verbally notify the certifying agency within twenty-four hours of any admission and provide the certifying agency with a copy of a signed residency agreement within seventy-two hours of admission.

(b) The case management branch shall ensure that the following documents are given to the certified caregiver within seventy-two hours of admission:

- (1) A copy of the most recent individualized service plan for the adult with I/DD that documents that the residential setting was selected by the adult with I/DD among setting options, including non-disability specific settings and a private unit in a residential setting;
- (2) A copy of the results of an annual physical examination of the adult with I/DD made within the last twelve months;
- (3) A copy of current physician orders for all medications and treatments, including supplements and over the counter

- medications, diet, including enteral nutrition for the adult with I/DD;
- (4) A copy of tuberculosis clearance for the adult with I/DD, in accordance with current department of health examination procedures and regulations, chapter §11-164.2, HAR;
 - (5) Pertinent information on the health of the adult with I/DD, including but not limited to known communicable diseases and particular medical or health concerns;
 - (6) Copies of documents relating to guardianship of the adult with I/DD, or conservatorship of property, power of attorney, health care representation, personal representation or any other legal restrictions on the rights of the adult with I/DD, if applicable; and
 - (7) A copy of the most recent nurse delegated care plan, functional behavior assessment and behavior support plan, if applicable for the adult with I/DD.
- (c) The certified caregiver shall:
- (1) Ensure that a residency agreement is in place at the time of admission for each adult with I/DD. Any modification to this provision must be supported by a specific assessed need and justified in the adult with I/DD's individualized service plan;
 - (2) Make the residency agreement available to the developmental disabilities division upon request; and
 - (3) Give a copy of the signed residency agreement to the adult with I/DD or legal guardian at the time of the admission.
- [Eff _____] (Auth: HRS §§321-9, 321-11.2) (Imp: 42 C.F.R. §441.301)

§11-148.1-23 Number of individuals to be cared for. (a) Except as provided in subsection (b), an adult foster home shall care for no more than two adults with I/DD.

(b) To accommodate residents of a foster boarding home for children with intellectual or developmental disabilities who reach the age of eighteen years, where the home is certified as a foster boarding home for children under section 346-17, HRS, the director of health may waive the two-adult limit for certification of that home as an adult foster home, provided that:

- (1) The total number of foster children with intellectual or developmental disabilities and adults with I/DD, related or unrelated to the certified caregivers, in the dually certified home shall not exceed three; and
- (2) No new adults may be admitted into the home while there are any foster children residing in the home.

(c) An existing adult foster home shall not be given dual certification if the certification as an adult foster home precedes dual certification, unless the certification as a foster boarding home under section 346-17, HRS, is for a specific child, as provided in the department of human services' administrative rules.

(d) The certifying agency reserves the right to limit the number of adults with I/DD that may reside in the adult foster home based on the assessment of the home and certified caregiver. [Eff] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2, 346-17)

§11-148.1-24 Record of adult with I/DD. (a) The record of the adult with I/DD shall be kept by the adult foster home and shall include the following information:

- (1) The name and birth date of the adult with I/DD;
- (2) The adult foster home admission and discharge dates, if applicable, for the adult with I/DD;
- (3) The name of the primary care physician for the adult with I/DD, including the physician's address and telephone number;
- (4) Emergency contact information for the adult with I/DD;
- (5) Copies of annual medical examinations of the adult with I/DD, and other periodic examinations, evaluations, progress notes, or laboratory reports that document the presence of any known allergies, physical disabilities or limitations, specific health needs and communicable conditions, including a tuberculosis clearance, in accordance with current department of health examination procedures and regulations, chapter 11-164.2, HAR;
- (6) Written observations of the adult with I/DD regarding the adult with I/DD's response to medication, treatments, use of any restraint or prohibited restrictive intervention, diet, plan of care; any changes in the condition of the adult with I/DD; indications of illness or injury, behavior patterns including the date, time, and actions taken, if any, recorded monthly or more often as appropriate and immediately when any incident occurs;
- (7) Documentation of medications and treatments administered to the adult with I/DD. Administration of medications and treatments shall be consistent with the physician orders and the medication administration record;

- (8) Physician's signed orders for all medications and treatment given to the adult with I/DD, including supplements and diet, including enteral nutrition;
- (9) Notation of all over the counter medications;
- (10) Recording of the weight of the adult with I/DD at least once a month, or more often as directed by the physician, except in situations where the adult with I/DD is unable to bear weight;
- (11) A monthly accounting record of the adult with I/DD's money;
- (12) A current inventory of the adult with I/DD's possessions;
- (13) Notation of visits made to the adult with I/D by their family and others;
- (14) Notation of visits the adult with I/DD makes to their family and others;
- (15) Copies of any adverse event reports involving the adult with I/DD that occur in the adult foster home or while in the care of the certified or substitute caregiver; and
- (16) Residency agreement.

(b) All records concerning the adult with I/DD shall be kept confidential and locked in a secured area and shall be made available only to authorized individuals. Written consent by the adult with I/DD or legal guardian of the adult with I/DD for release of information shall be required for release of records to individuals not otherwise authorized by the department.

(c) A record of the adult with I/DD shall be kept by the adult foster home and shall be made available for inspection by representatives of the department upon request for the purpose of determining compliance with this chapter;

(d) The adult foster home shall provide the department with copies of the adult with I/DD's records:

- (1) Upon the adult with I/DD's change of residence
 - (2) Upon the death of the adult with I/DD;
 - (3) When an adult foster home ceases to be certified; or
 - (4) At the request of the department.
- [Eff _____] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2)

§11-148.1-25 Adult foster home record. (a) The certified caregiver shall maintain an adult foster home record and shall make the record available to the certifying agency upon request.

- (b) The adult foster home record shall include:
- (1) Monthly fire drill reports;
 - (2) Adult foster home inspection reports;
 - (3) Adult foster home certificate of approval;
 - (4) Training certificates for the certified caregiver and substitute caregiver, if applicable;
 - (5) First aid certification for the certified caregiver and substitute caregiver, if applicable;
 - (6) Cardiopulmonary Resuscitation (CPR) certifications for the certified caregiver and substitute caregiver, if applicable; and
 - (7) Admission/discharge forms for each adult with intellectual or disabilities living in the adult foster home.. [Eff _____]
- (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2)

§11-148.1-26 Contacts with the foster home.

(a) The foster home shall be visited by staff authorized by the department as frequently as needed to ensure:

- (1) The health, safety, and welfare of the adult with I/DD; and
- (2) That the adult foster home continues to meet the requirements for certification.

(b) The certifying agency may conduct an unannounced inspection of a certified adult foster home during or outside regular business hours without prior notice to investigate complaints or suspicion of abuse or neglect or to determine compliance with cited deficiencies.

(c) The certifying agency shall conduct unannounced annual recertification inspections during regular business hours or at intervals determined by the department. [Eff _____] (Auth: HRS §§321-9, 321-11.2, 321-1.9) (Imp: HRS §321-11.2, 321-1.9)

§11-148.1-27 Surrender of certificate. (a) A certified caregiver may voluntarily surrender a certificate of approval to the certifying agency at any time.

(b) If a certified caregiver voluntarily surrenders a certificate of approval, the certified caregiver shall:

- (1) Follow the discharge of adult with I/DD procedures outlined in this chapter;
- (2) Submit in writing, reason(s) for surrendering the certificate of approval and contact information for the person(s) responsible for the closure of the adult foster home; and
- (3) Return the certificate of approval to the certifying agency. [Eff _____]
(Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2)

§11-148.1-28 Change in information. (a) The certified caregiver shall notify the certifying agency of any changes in contact information.

(b) The certified caregiver shall notify the certifying agency in writing no less than fourteen days in advance of any change that may affect the caregiver's qualifications for certification, and submit to the certifying agency supporting documentation to prove that the certified caregiver continues to be qualified.

(c) The certified caregiver shall report to the certifying agency in writing within seventy-two hours of any change to the household, which may affect the adult with I/DD, such as, but not limited to: household composition, medical condition, employment, residence, death, and marital status.

(d) In the event of a change for which the certifying agency does not have prior notice, the certified caregiver shall notify the certifying agency immediately upon learning of the change.

[Eff _____] (Auth: HRS §§321-9, 321-11.2)
(Imp: HRS §321-11.2)

§§ 11-148.1-29 to 11-148.1-31 Reserved.

SUBCHAPTER 4

CARE OF ADULT WITH I/DD

§11-148.1-32 Member of foster family. (a) An adult with I/DD shall be cared for as a family member and shall share in the foster family's activities and responsibilities.

(b) The certified caregiver shall be responsible for providing transportation for the adult with I/DD to attend social, recreational, and medical related

activities. Before providing transportation for the adult with I/DD, the certified caregiver shall:

- (1) Possess a valid driver's license and have access to an insured vehicle which meets the requirements of this chapter; or
- (2) Submit a written alternative transportation plan to the certifying agency for approval. The transportation plan shall include use of an insured vehicle and a driver who possesses a valid driver's license.

(c) The certified caregiver shall facilitate the adult with I/DD's choice regarding services and supports, and who provides them.

(d) As a member of the family, the adult with I/DD may participate in simple home chores.
[Eff] (Auth: HRS §§321-9, 321-11.2)
(Imp: HRS §321-11.2; 42 C.F.R. §441.301)

§11-148.1-33 Health. (a) The certified caregiver shall be responsible for ensuring that the adult with I/DD has a complete physical examination by a licensed physician annually and receives follow-up care by other medical or health professionals as needed.

(b) The certified caregiver shall be responsible for ensuring that the physician's or other medical or health professional's orders for the adult with I/DD are followed.

(c) The certified caregiver shall inform physicians and other health professionals of changes in the health status of the adult with I/DD.

(d) The certified caregiver shall keep the case management branch informed of the current health status of the adult with I/DD and notify the case management branch of any significant change in the health status of the adult with I/DD.

(e) The certified caregiver shall be responsible for the safe storage and disposal of the adult with I/DD's medications. Medications must be stored in a locked container or cabinet. Refrigerated medication

must be stored in a locked container in the refrigerator.

(f) The adult with I/DD's medication shall not be stored with another person's medication.
[Eff _____] (Auth: HRS §§321-9, 321-11.2)
(Imp: HRS §321-11.2)

§11-148.1-34 Emergencies and adverse events.

(a) The certified caregiver shall obtain instructions from the case management branch and family or legal guardian regarding procedures to follow in case of sudden illness or accidents involving the adult with I/DD.

(b) If the adult with I/DD has an accident, serious injury, severe illness, or dies, the certified caregiver shall immediately contact:

- (1) The adult with I/DD's family or their legal guardian; and
- (2) The case management branch.

(c) The certified caregiver shall follow the procedures for reporting adverse events in accordance with the division's policies and on a form prescribed by the division. [Eff _____] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2)

§11-148.1-35 Diet. (a) The certified caregiver shall provide the adult with I/DD with a well-balanced, nutritious diet that is consistent with their physician's order(s).

(b) The adult with I/DD shall have access to food at any time. Any modification to this provision must be supported by a specific assessed need and justified in the adult with I/DD's individualized service plan.

[Eff _____] (Auth: HRS §§321-9, 321-11.2)
(Imp: HRS §321-11.2, 42 C.F.R. §441.301)

§11-148.1-36 Clothing and personal supplies.

The certified caregiver shall:

- (1) Ensure that the adult with I/DD's clothing is clean, in good condition, and of appropriate size; and
- (2) Provide each adult with I/DD with a comb, toothbrush, and other necessary toiletries. [Eff] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2)

§11-148.1-37 Recreation and social activities.

(a) The certified caregiver shall:

- (1) Provide a well-balanced daily program for the adult with I/DD, including appropriate time for rest, regular meal hours, and recreation;
- (2) Allow and provide access for the adult with I/DD to participate in appropriate and integrated social and recreational activities in the community; and
- (3) Allow and provide access for the adult with I/DD to have visits with relatives and friends at any time.
- (4) Ensure that the adult with I/DD has the freedom and support to control their own schedule and activities.

(b) Any modification to the provisions in subsection (a) (2) to (a) (4) must be supported by a specific assessed need and justified in the adult with I/DD's individualized service plan. [Eff] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2; 42 C.F.R. §441.301)

§11-148.1-38 Training and behavior supports.

(a) Training and behavior supports shall be carried out with kindness, understanding, and in accordance with the individualized service plan, behavior support plan, of the adult with I/DD, and the division's policy on positive behavior supports.

(b) No adult with I/DD shall be subjected to any action that would endanger their physical or emotional well-being. [Eff] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2; 42 C.F.R. §441.301)

§11-148.1-39 Religion. The religious faith of each adult with I/DD shall be respected and the adult with I/DD shall be afforded the opportunity to attend religious service of their choice. [Eff] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2)

§11-148.1-40 Accounts of the adult with I/DD. (a) The certified caregiver shall keep an accurate accounting record of the adult with I/DD's money and any disbursements on an ongoing basis, including receipts for expenditures, and a current inventory of their possessions.

(b) The certified caregiver shall obtain guidance from the case management branch and consult with the guardian or conservator, if necessary regarding use of the adult with I/DD's personal funds.

(c) No person associated with the operation of an adult foster home shall serve as a trustee for any adult with I/DD.

(d) The certified caregiver may be permitted to become a representative payee under conditions set forth by the Social Security Administration.

(e) The personal property kept by the adult foster home for safekeeping shall be released upon the adult with I/DD's request. If the adult with I/DD is legally incompetent, the personal property shall be released to their legal guardian or responsible agency. This transaction shall be documented in the record of the adult with I/DD.

[Eff] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2; 42 C.F.R. §441.301)

§11-148.1-41 Rights of the adult with I/DD. The certified caregiver shall ensure that each adult with I/DD:

- (1) Has the right to privacy, dignity, and respect, and freedom from coercion and restraint;
- (2) Is treated with understanding, respect, dignity and individuality, including privacy in treatment and in caring for the personal needs of the adult with I/DD;
- (3) Be free from abuse, neglect, humiliation, harassment, and any action that would endanger the physical or emotional well-being of the adult with I/DD;
- (4) Has personal and medical records kept confidential and subject to release only as provided in this chapter;
- (5) Not be required to perform services for the adult foster home unless agreed to by the adult with I/DD or guardian and documented in the individualized service plan;
- (6) Has the freedom and support to control their own schedule and activities;
- (7) Has a setting that is integrated in and supports full access to community, including opportunities to seek employment and work in integrated settings, engage in community life, control personal resources and receive services in the community to the same degree of access as individuals not receiving medicaid home and community based services;
- (8) Has the right to select their residential setting from among setting options, including non-disability specific settings and a private unit in a residential setting;
- (9) Retain and use personal clothing and possessions;
- (10) Be assured of privacy for visits by family and friends;
- (11) Has the right to suitable locked storage space;
- (12) Be encouraged and assisted in exercising the right to voice grievances or recommend changes in services;

- (13) Be encouraged to optimize, but not regiment individual initiative, autonomy, and independence in making life choices, including but not limited to daily activities, physical environment, and with whom to interact; and
- (14) Has these rights explained to them or their guardian, if one is appointed, and a signed acknowledgment shall be kept in the adult with I/DD's record. [Eff _____]
(Auth: HRS §§321-9, 321-11.2) (Imp: HRS §§321-11.2, 321-.15.6, 622-57; 42 C.F.R. §441.301)

§11-148.1-42 Discharge of the adult with I/DD.

- (a) An adult with I/DD may be discharged from an adult foster home when:
 - (1) The adult with I/DD undergoes physical, behavioral, or mental changes that require services that the adult foster home cannot provide;
 - (2) The certified caregiver undergoes physical, behavioral, or mental changes that leave the certified caregiver unable to provide the necessary care and supervision;
 - (3) The adult with I/DD wants to be discharged; or
 - (4) The adult foster home wants to discharge the adult with I/DD.
- (b) The certified caregiver shall give written notification of the discharge to the adult with I/DD; or their family or legal guardian, if applicable; case management branch; and certifying agency:
 - (1) In writing, at least forty-five calendar days or sooner by mutual agreement prior to any scheduled discharge or transfer; or
 - (2) Immediately in the event of an emergency discharge or transfer.

(c) The adult with I/DD or their family or legal guardian, if applicable, shall give the certified caregiver and case management branch notification of the intent to vacate the adult foster home:

- (1) In writing, at least twenty-eight calendar days or sooner by mutual agreement prior to any scheduled discharge or transfer; or
- (2) Immediately in the event of an emergency discharge or transfer. [Eff]
(Auth: HRS §§321-9, 321-11.2) (Imp: HRS §§ 321-11.2, 321-15; 42 C.F.R. §441.301)

§§11-148.1-43 to 11-148.1-45 Reserved.

SUBCHAPTER 5

FOSTER FAMILY AND HOME ENVIRONMENT

§11-148.1-46 Background checks.

(a) Applicants, certified caregivers, and substitute caregivers shall show evidence of being well-adjusted persons, capable of accepting, understanding, and caring for adults with I/DD and working with the certifying agency.

(b) All adult household members shall be of reputable character and shall not have a criminal history record or background which poses a risk to the adult with I/DD;

(c) The following are subject to background checks conducted by the department or its designee:

- (1) Each applicant;
- (2) Each certified caregiver;
- (3) All substitute caregivers;
- (4) All adult household members; and
- (5) Any direct patient access employee as defined in section 321-15.2, HRS.

(d) A person subject to background checks as provided in subsection (c) may be disqualified as an applicant, certified caregiver, or substitute

(c) Applicants must successfully complete additional training as required by the certifying agency. [Eff _____] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2)

§11-148.1-48 References. (a) Applicants shall provide three personal references from individuals who:

- (1) Have adequate knowledge of the applicant and the applicant's family background in terms of character and ability to care for adults with I/DD;
- (2) Are unrelated to the applicant;
- (3) Are not the employer of the applicant; and
- (4) Are not employed by the department.

(b) Additional references shall be furnished to the certifying agency upon request.

[Eff _____] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2)

§11-148.1-49 Health of foster family. (a) All members of the household and substitute caregivers shall be free from disease which may be communicable to others and from physical and emotional conditions which may adversely affect the certified caregiver's ability to care for the adult with I/DD.

(b) The certified caregiver shall submit the following written medical reports to the certifying agency:

- (1) A current medical clearance for the certified caregiver and substitute caregivers completed within the year by a licensed physician or nurse practitioner during the initial application process. Additional medical clearance or other reports may be requested at any time by the certifying agency; and
- (2) A tuberculosis clearance, in accordance with current department of health examination

procedures and regulations, chapter §11-164.2, HAR, shall be required for the certified caregiver, substitute caregivers, all household members, including children, and adults providing one to one emergency condition coverage at the time of the initial application and annually thereafter. [Eff] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2)

§11-148.1-50 Income. (a) A certified caregiver shall not operate a boarding house, rooming house or residential care facility on the premises.

(b) Business conducted from the home must be in accordance with applicable federal, state, and county law and regulations.

(c) Face-to-face business transactions shall not be conducted on the premises of the adult foster home. [Eff] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2)

§11-148.1-51 Employment. The certified caregiver's employment shall not interfere with the care of the adults with I/DD. A certified caregiver currently employed or contemplating either full-time or part-time employment shall provide the certifying agency with a copy of the certified caregiver's proposed work schedule. The certified caregiver shall ensure that the work schedule will not conflict with foster care responsibilities and the certified caregiver's ability to respond in emergencies involving the adult with I/DD, and coverage. [Eff] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2)

§11-148.1-52 Absences from the home. (a) An adult with I/DD shall not be left unattended or unsupervised at any time.

SUBCHAPTER 6

HOUSING AND SANITATION

§11-148.1-57 Requirements. (a) The adult foster home shall be kept in sanitary and safe condition. The adult foster home shall comply with all applicable state and county housing and sanitation laws.

(b) The adult foster home shall comply with the following safety standards:

- (1) Approved building plans that meet state and county standards shall be submitted to the certifying agency for any construction and renovation projects on the adult foster home;
- (2) There shall be an adequate number of bedrooms for all household members;
- (3) In a shared bedroom designated for two adults with I/DD, the bedroom space in the adult foster home shall be not less than fifty square feet for each adult with I/DD;
- (4) The home shall have emergency evacuation and disaster preparedness plans;
- (5) The adult foster home shall have at least two emergency exits;
- (6) For an adult with I/DD who uses a wheelchair, the adult foster home shall be wheelchair accessible. Access to the adult with I/DD's bedroom, bathroom, corridors, all common family areas, and two exits shall have a clear opening of at least thirty-four inches in width. Wheelchair ramps shall comply with the Americans with Disability Act Accessibility Guidelines (ADAAG) and shall be covered with a non-slip surface. Hand rails and grab bars may be required for safety and shall be ADAAG compliant.
- (7) The home shall be free from fire hazards. The home shall:

- (A) Have functional fire extinguishers in good working order and that are in accordance with the manufacturer's specifications;
 - (B) Conduct and document monthly fire drills; and
 - (C) Provide assistance for each adult with I/DD who cannot evacuate on their own.
- (8) Poison and other chemicals shall be clearly labeled and securely stored; and
- (9) The adult foster home shall submit to the certifying agency evidence of gun registration in accordance with state and county standards. Unloaded firearms must be stored in a locked cabinet, safe, gun vault or storage case. Ammunition should be stored and locked in a location separate from firearms.
- (c) The adult foster home shall comply with the following sanitation standards:
- (1) Hot and cold running water shall be available throughout the adult foster home and the waste from the running water shall be connected to an approved sewage system or other approved method;
 - (2) The home shall have an approved source of potable water supply;
 - (3) The home shall have acceptable facilities for the proper disposal of sewage with all plumbing connected to a public sewage system or other approved method. Where there is an adequate water supply, the adult foster home shall have sanitary flush toilets. In areas where an adequate water supply is not available, a sanitary privy or other approved method shall be used;
 - (4) The home shall have an operable washing machine available for use;
 - (5) The adult foster home shall be free from rodent and insect infestation;
 - (6) The home shall have proper facilities for the disposal of garbage and refuse;

- (7) There shall be only one kitchen per residence unless approved in accordance with state and county standards;
- (8) Preparation of food shall be in a clean and sanitary kitchen;
- (9) All eating and drinking utensils shall be thoroughly washed with dish soap and hot water after each usage; and
- (10) Perishable food shall be stored in a refrigerator.

(d) The adult foster home shall be integrated and located in the community and shall not isolate or limit the ability of the adult with I/DD to interact with the broader community. [Eff]
(Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2; 42 C.F.R. §441.301)

§11-148.1-58 Equipment and furnishings. (a)

The certified caregiver shall provide each adult with I/DD with:

- (1) A setting that is physically accessible to the adult with I/DD;
- (2) A sleeping or living unit that has an entrance door lockable by the adult with I/DD, with keys distributed only to appropriate members of the household or substitute caregivers;
- (3) Freedom to furnish and decorate their sleeping or living unit;
- (4) Privacy within their sleeping or living unit;
- (5) A choice of roommates, if sharing a unit or room;
- (6) A dresser or closet space;
- (7) A bed;

- (8) Clean, comfortable bedding and a waterproof covering, if necessary;
 - (9) Clean linens; and
 - (10) Access to a telephone;
 - (b) Any modification to the provisions in subsections (a)(1)-(a)(5) must be supported by a specific assessed need and justified in the adult with I/DD's individualized service plan.
- [Eff] (Auth: HRS §§321-9, 321-11.2)
(Imp: HRS §321-11.2; 42 C.F.R. §441.301)

§11-148.1-59 Sleeping arrangement. (a) The sleeping arrangement for an adult with I/DD shall include suitable light, ventilation, and provision for proper rest and privacy.

(b) No adult with I/DD shall sleep in the same room with:

- (1) Any member of the certified caregiver's family;
- (2) Certified or substitute caregiver; or
- (3) Children.

(c) Household members, substitute caregivers and adults with I/DD shall sleep in approved bedrooms that meet state and county standards.

(d) The bedroom of the adult with I/DD shall be on the same level of the home and in close proximity to the certified caregiver or substitute caregiver's bedroom for care and supervision purposes. If the bedroom of the adult with I/DD is not in close proximity to the certified caregiver's bedroom, a monitoring device may be required.

(e) No adult with I/DD shall sleep in a detached building or in an unfurnished attic, room, basement, hallway, or stairway.

(f) Individual beds shall be spaced at least three feet apart to provide sufficient passageway between beds. [Eff] (Auth: HRS §§321-9, 321-11.2) (Imp: HRS §321-11.2)

§11-148.1-60 Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable."

[Eff] (Auth: HRS §§321-9, 321-11.2)

(Imp: HRS §321-11.2)

3. The repeal of chapter 11-148 and the adoption of chapter 11-148.1, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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

Bruce Anderson, Director
Department of Health

APPROVED AS TO FORM:

Deputy Attorney General
State of Hawaii

V. Administrative Matters

A. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, Hawaii Revised Statutes (HRS), as follows:

- 1. Review of "Discussion Leader Assignments" for Board Members' State and County Agencies' Administrative Rule Review**
- 2. Meetings with Board Members and State Department Directors**

DISCUSSION LEADER ASSIGNMENTS

(SBRRB / SBRRB / Members / 2019 / DiscussionLeaderAssignments 2019)

1. Office of the Governor <http://governor.hawaii.gov>

Address: Governor David Y. Ige
Executive Chambers
State Capitol
Honolulu, HI 96813

Phone: (808) 586-0034
Fax: (808) 586-0006

Discussion Leader: Robert Cundiff
Back-up Discussion Leader: N/A

2. Office of the Lieutenant Governor <http://ltgov.hawaii.gov>

Address: Lieutenant Governor Josh Green
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Phone: **Oahu/** (808) 586-0255
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Hawaii/ 974-4000 ext. 60255
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Discussion Leader: Garth Yamanaka
Back-up Discussion Leader: N/A

3. Department of Accounting & General Services <http://ags.hawaii.gov>

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Discussion Leader: Mark Ritchie
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4. Department of Agriculture <http://hdoa.hawaii.gov>

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Discussion Leader: Will Lydgate
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5. Department of the Attorney General <http://ag.hawaii.gov>

Address: Clare Connors, Attorney General
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Discussion Leader: Will Lydgate
Back-up Discussion Leader: Robert Cundiff

6. Department of Budget & Finance <http://budget.hawaii.gov>

Address: Neal Miyahara, Director Phone: (808) 586-1518
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Discussion Leader: Mark Ritchie
Back-up Discussion Leader: N/A

7. Public Utilities Commission <http://puc.hawaii.gov>

Address: Leo R. Asuncion, Jr., Chair Phone: (808) 586-2020
Kekuanaoa Building Fax: (808) 586-2066
465 South King Street, Room 103 Email: puc@hawaii.gov
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8. Department of Business, Eco Dev. & Tourism <http://dbedt.hawaii.gov>

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Discussion Leader: Robert Cundiff
Back-up Discussion Leader: Will Lydgate

9. Department of Commerce & Consumer Affairs <http://cca.hawaii.gov>

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Discussion Leader: Nancy Atmospera-Walch
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10. Department of Defense <http://dod.hawaii.gov>

Address: Major General Arthur "Joe" Logan Phone: (808) 733-4246
Office of the Adjutant General Fax: (808) 733-4499
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- 11. Department of Education..... <http://hawaiipublicschools.org>**
 Address: Christina Kishimoto, Superintendent
 1390 Miller Street
 Honolulu, HI 96813
 Phone: (808) 586-3230
 Fax: (808) 586-3314
 Email: doe_info@hawaiidoe.org
Discussion Leader: Garth Yamanaka
Back-up Discussion Leader: Harris Nakamoto
- 12. Department of Hawaiian Home Lands..... <http://dhhl.hawaii.gov>**
 Address: William J. Aila, Jr., Chairperson
 P.O. Box 1879
 Honolulu, HI 96805
 Phone: (808) 620-9501
 Fax: (808) 620-9529
 Email: dhhl.hawaii@gmail.com
Discussion Leader: Robert Cundiff
Back-up Discussion Leader: Garth Yamanaka
- 13. Department of Health..... <http://health.hawaii.gov>**
 Address: Bruce Anderson, Ph.D., Director
 1250 Punchbowl Street
 Honolulu, HI 96813
 Phone: (808) 586-4410
 Fax: (808) 586-4368
 Email: webmail@doh.hawaii.gov
Discussion Leader: Harris Nakamoto
Back-up Discussion Leader: Nancy Atmospera-Walch
- 14. Department of Human Resources Development..... <http://hrd.hawaii.gov>**
 Address: Ryker Wada, Director
 235 South Beretania Street, Suite 1400
 Honolulu, HI 96813
 Phone: (808) 587-1100
 Fax: (808) 587-1106
 Email: dhrd@hawaii.gov
Discussion Leader: Harris Nakamoto
Back-up Discussion Leader: Mary Albitz
- 15. Department of Human Services..... <http://humanservices.hawaii.gov>**
 Address: Pankaj Bhanot, Director
 P.O. Box 339
 Honolulu, HI 96809-0339
 Phone: (808) 586-4993
 Fax: (808) 586-4890
 Email: dhs@dhs.hawaii.gov
Discussion Leader: Harris Nakamoto
Back-up Discussion Leader: Nancy Atmospera-Walch
- 16. Department of Labor & Industrial Relations..... <http://labor.hawaii.gov>**
 Address: Scott T. Murakami, Director
 830 Punchbowl Street
 Honolulu, HI 96813
 Phone: (808) 586-8844
 Fax: (808) 586-9099
 Email: dlir.director@hawaii.gov
Discussion Leader: Mary Albitz
Back-up Discussion Leader: Harris Nakamoto

- 17. Department of Land and Natural Resources..... <http://dlnr.hawaii.gov>**
 Address: Suzanne Case, Chairperson Phone: (808) 587-0401
 Kalanimoku Building Fax: (808) 587-0390
 1151 Punchbowl Street E-mail: dlnr@hawaii.gov
 Honolulu, HI 96813
Discussion Leader: Mary Albitz
Back-up Discussion Leader: Jonathan Shick
- 18. Department of Public Safety..... <http://dps.hawaii.gov>**
 Address: Nolan Espinda, Director Phone: (808) 587-1288
 919 Ala Moana Boulevard, 4th Floor Fax: (808) 587-1282
 Honolulu, HI 96814 Email: psd.office.of.the.director@hawaii.gov
Discussion Leader: None
Back-up Discussion Leader: N/A
- 19. Department of Taxation..... <http://tax.Hawaii.gov>**
 Address: Linda Chu Takayama, Director Phone: (808) 587-1540
 P.O. Box 259 Fax: (808) 587-1560
 Honolulu, HI 96809-0259 Email: Tax.Directors.Office@hawaii.gov
Discussion Leader: Garth Yamanaka
Back-up Discussion Leader: Will Lydgate
- 20. Department of Transportation..... <http://hidot.hawaii.gov>**
 Address: Jade Butay, Director Phone: (808) 587-2150
 Aliiimoku Building Fax: (808) 587-2167
 869 Punchbowl Street, Room 509
 Honolulu, HI 96813
Discussion Leader: James Kimo Lee
Back-up Discussion Leader: Jonathan Shick
- 21. University of Hawaii..... <http://www.hawaii.edu>**
 Address: David Lassner, President Phone: (808) 956-7651
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 2444 Dole Street
 Honolulu, HI 96822
 Address: Lee Putnam, Chair, Board of Regents Phone: (808) 956-8213
 Bachman Hall, Room 209 Fax: (808) 956-5156
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 Honolulu, HI 96822
Discussion Leader: Nancy Atmospera-Walch
Back-up Discussion Leader: Mark Ritchie

V. Administrative Matters

B. Discussion and Approval of Board's Proposed New Website Prior to Anticipated Launch Date, on or around August 15, 2019