

**Small Business Regulatory Review Board Meeting**

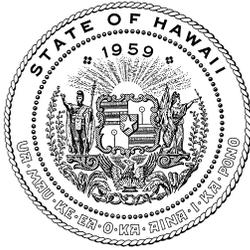
**Wednesday, October 17, 2018**

**10:00 a.m.**

**No. 1 Capitol District Building**

**250 South Hotel Street, Honolulu, HI**

**Conference Room 436**



## SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)  
No. 1 Capitol District Bldg., 250 South Hotel St. 5<sup>th</sup> Fl., Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804  
Email: [dbedt.sbrb.info@hawaii.gov](mailto:dbedt.sbrb.info@hawaii.gov)  
Website: [dbedt.hawaii.gov/sbrb](http://dbedt.hawaii.gov/sbrb)

Tel 808 586-2594

### AGENDA

**Wednesday, October 17, 2018 ★ 10:00 a.m.**

**No. 1 Capitol District Building**

**250 South Hotel Street - Conference Room 436**

**David Y. Ige**  
Governor

**Luis P. Salaveria**  
DBEDT Director

#### Members

Anthony Borge  
Chairperson  
Oahu

Robert Cundiff  
Vice Chairperson  
Oahu

Garth Yamanaka  
2nd Vice Chairperson  
Hawaii

Harris Nakamoto  
Oahu

Nancy Atmospera-Walch  
Oahu

Mary Albitz  
Maui

William Lydgate  
Kauai

Director, DBEDT  
Voting Ex Officio

#### **I. Call to Order**

#### **II. Approval of September 19, 2018 Meeting Minutes**

#### **III. New Business**

- A. Discussion and Action on Proposed New **Rules and Regulations Governing the Operation of Commercial Food Truck Concessions in County Parks, Part VI**, promulgated by Department of Parks and Recreation, County of Kauai – **Discussion Leader – Will Lydgate**
- B. Discussion and Action on Proposed Amendments to HAR Title 13 Subtitle 11 Ocean Recreation and Coastal Areas, promulgated by Department of Land and Natural Resources, as follows: – **Discussion Leader – Mary Albitz**
  1. Part I Small Boat Harbors - Chapter 234 **Fees and Charges**
  2. Part III Ocean Waters, Navigable Streams and Beaches - Chapter 253 **Catamaran Registration Certificate, Other Registration, and Commercial Use Permit Fees**
- C. Discussion and Action on Proposed Amendments to HAR Title 18, Chapter 235 **Income Tax Law**, promulgated by Department of Taxation, as follows: – **Discussion Leader – Garth Yamanaka**
  1. Section 235-98 **Returns; form, verification and authentication, time of filing**
  2. Section 235-1.14 (d) **“Substantial gainful business or occupation”, defined**
- D. Discussion and Action on Proposed Amendments to HAR Title 4 Chapter 66 **Pesticides**, promulgated by Department of Agriculture (DoAg) – **Discussion Leader – Will Lydgate**
- E. Discussion and Action on Proposed New HAR Title 11 Chapter 178, **Clean and Sober Homes Registry**, promulgated by Department of Health – **Discussion Leader – Tony Borge**
- F. Discussion and Action on Proposed New HAR Title 4 Chapter 70, **Plant and Non-Domestic Animal Quarantine, Plant Import Rules**, Subchapter 15, **“Introduction to Myrtaceae” (Myrtle Family Plants and Plant Parts)**, promulgated by DoAg – **Discussion Leader – Will Lydgate**

**IV. Administrative Matters**

- A. Discussion and Action on the Board's 2018 Draft *201M-7 Periodic Review; Evaluation Report* pursuant to Section 201M-7, Hawaii Revised Statutes (HRS)
- B. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, HRS
  - 1. Discussion of Possible Changes to the Board's Monthly Meetings

- V. Next Meeting:** Scheduled for Wednesday, November 21, 2018, at 10:00 a.m.,  
No. 1 Capitol District Building, Conference Room 436, Honolulu,  
Hawaii

**VI. 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) 586-2399 at least three (3) business days prior to the meeting so arrangements can be made.

## **II. Approval of September 19, 2018 Meeting Minutes**

## Small Business Regulatory Review Board

### MINUTES OF REGULAR MEETING - Draft

September 19, 2018

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

- I. **CALL TO ORDER:** Chair Borge called the meeting to order at 10:08 a.m., with a quorum present.

**MEMBERS PRESENT:**

- Anthony Borge, Chair
- Robert Cundiff, Vice Chair
- Garth Yamanaka, Second Vice Chair
- Mary Albitz
- William Lydgate
- Mark Ritchie

**ABSENT MEMBERS:**

- Harris Nakamoto
- Nancy Atmospera-Walch

**STAFF:** DBEDT

Dori Palcovich  
Ashleigh Garcia

Office of the Attorney General

Jennifer Waihee-Polk

### II. APPROVAL OF AUGUST 15, 2018 MINUTES

Mr. Ritchie made a motion to accept the August 15, 2018 minutes, as presented. Vice Chair Cundiff seconded the motion, and the Board members unanimously agreed.

### III. OLD BUSINESS

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to Chapter I – V, Board of Water Supply rules and Regulations, in compliance with Sections 54 – 26, Hawaii Revised Statutes, for the Adoption of New Water Rates and Charges, promulgated by Board of Water Supply, City and County of Honolulu

Mr. Ernest Lau, Manager and Chief Engineer at the City and County of Honolulu’s Board of Water Supply, stated that five public hearings were held with a total of 65 attendees, with only one person providing testimony. Subsequently, the proposed rules have been adopted with an effective date for the new water rates of September 15, 2018. Chair Borge complimented Mr. Lau for the good job BWS has done in notifying the community of the rate changes and for engaging small businesses in the process.

Ms. Albitz made a motion to support the adoption of the proposed administrative rules. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

#### IV. NEW BUSINESS

A. Discussion and Action on Proposed New Amendments to HAR Title 18 Chapter 237 General Excise Tax, promulgated by Department of Taxation (DoTax)

Mr. Jacob Herlitz, DoTax Administrative Rules Specialist, explained that the proposed new rule section defines where intangible property is used for purposes of the general excise tax exemption for gross income received from intangible property used outside the state; pursuant to Act 183, SLH 2018. He further explained that this law was intended to close a “loophole” in the tax law for clarification purposes where different states are involved.

Specifically, the new rule section defines where intangible property is used based on whether the customer is a business, individual, military or government; examples of how this new rule would take effect were discussed. Mr. Lydgate requested that when Mr. Herlitz reports back to this Board, after the public hearing, that information be provided as to why the rule amendments came about and to whom the changes may affect.

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

B. Discussion and Action on Proposed Amendments to HAR Title 12 for the following chapters, promulgated by Department of Labor and Industrial Relations:

1. Chapter 229, General, Administrative and Legal Provisions;
2. Chapter 230.1, Elevators, Escalators, Dumbwaiters, Moving Walks, and Material Lifts and Dumbwaiters with Automatic Transfer Devices; and
3. Chapter 240, Elevator Requirements for Individuals with Disabilities

Mr. Norman Ahu, DLIR's HIOSH Administrator, explained that one of the branches he oversees under HIOSH (Hawaii Occupational Safety and Health) Division covers the rules on elevators and escalators, etc. While many of the proposed rule changes mirror existing practices, changes also include fee increases, averaging approximately 7.5%.

Mr. Ahu noted that fee increases are intended to pay for the self-sustaining branch expenses which have increased over the years. It was also noted that small business stakeholders were involved in the rule promulgating process; these stakeholders were essentially fine with the proposed changes, particularly with the fee increases, as it is generally understood that overall prices and costs have gone up.

Mr. William Kunstman, Assistant to the Director, stated that the biggest changes to the rules occurred in 2014; so, the current rule proposals are mostly minor housekeeping measures, aside from the fee increases. There are approximately 7,000 elevators in the State of Hawaii with all of them requiring annual permits and either three- or five-year safety tests.

Vice Chair Cundiff commended DLIR for getting the stakeholders involved and questioned whether the 7.5% increase was sufficient enough to sustain the branch's ongoing expenses. Chair Borge added that HIOSH may want to look ahead and determine the cost demand

versus the cost efficiencies of the updated software, etc. Mr. Ahu concurred, noting that on a technological level, HIOSH has the “leading edge” in the industry.

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

## **V. LEGISLATIVE MATTERS**

### **A. Update on Proposed Amendments to Chapter 201M, HRS for the 2019 Hawaii Legislative Session, “Relating to the Small Business Regulatory Review Board”**

Chair Borge explained that this legislative bill is a housecleaning measure that was heard during this past legislative session. It clarifies the powers of this Board by adding that the Board may consider any request from small business owners for review of a rule that is proposed and amended as well as adopted by a state agency; it also changes “ordinance” to “rules” when making recommendations to the county council or the mayor for appropriate action.

The Board members will make an effort to reach out to those legislators involved in the approval process of this measure.

Vice Chair Cundiff made a motion to reactivate this proposed bill during the 2019 legislative session, Ms. Albitz seconded the motion, and the Board members unanimously approved.

## **VI. 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**

Chair Borge mentioned that House Speaker Scott Saiki is in the process of working on assisting in finding potential candidates for this Board as there are three vacancies from the House; there is also one vacancy from the Senate.

DBEDT staff indicated that the board meetings for 2019 were in the process of being scheduled; it was confirmed by the members that meetings on the third Wednesday of the month at 10:00 a.m. was convenient.

**VII. NEXT MEETING** – The next meeting is scheduled for Wednesday, October 17, 2018, in Conference Room 436, 250 South Hotel Street, Honolulu, Hawaii at 10:00 a.m.

**VIII. ADJOURNMENT** – Mr. Ritchie made a motion to adjourn the meeting and Vice Chair seconded the motion; the meeting adjourned at 11:17 a.m.

## **IV. New Business**

A. Discussion and Action on Proposed New **Rules and Regulations Governing the Operation of Commercial Food Truck Concessions in County Parks, Part VI**, promulgated by Department of Parks and Recreation, County of Kauai

**PRE-PUBLIC HEARING  
SMALL BUSINESS IMPACT  
STATEMENT TO THE  
SMALL BUSINESS REGULATORY REVIEW BOARD**  
(Hawaii Revised Statutes §201M-2)

**Department or Agency:** County of Kauai Department of Parks and Recreation

**Administrative Rule Title and Chapter:** Rules and Regulations Governing the Operation of Cor

**Chapter Name:** Part VI

**Contact Person/Title:** Lenny Rapozo / Director

**Phone Number:** (808) 241-4456

**E-mail Address:** lrapozo@kauai.gov      **Date:** 09-13-2018

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

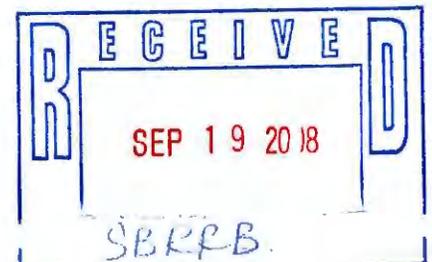
(If "Yes" no need to submit this form. E.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives. HRS §201M-2(d))

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.

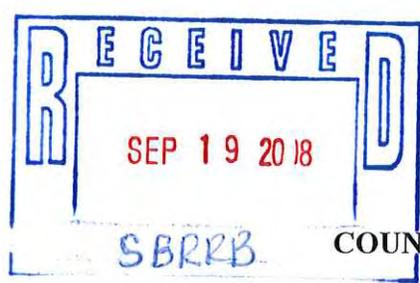
4. The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or other mitigating 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](mailto: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>



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COUNTY OF KAUAI DEPARTMENT OF PARKS AND RECREATION

Under and by virtue of the authority conferred upon him by Chapter 91, Hawaii Revised Statutes (HRS), Chapter 23, Article 3, Kauai County Code 1987 (KCC) 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 THE OPERATION OF COMMERCIAL  
FOOD TRUCK CONCESSIONS IN COUNTY PARKS**

**PART VI**

**Section 37. Applicability and Scope.** These rules and regulations shall govern commercial Food Trucks operating concessions at county parks and shall apply to all areas of the park system under the jurisdiction of the County of Kauai.

**Section 38. Definitions.**

“Food Truck” means a licensed motorized vehicle or mobile food unit from which food items are sold to the general public.

“Food Item” means any nutritious substance that people eat or drink.

**Section 39. Concessionaires Permits.** No Food Truck may operate a concession within the park system without a valid permit.

**Section 40. Scope of Lunch Wagon Concessionaires Permit.** Authorized permittees shall have the right to sell food items approved by the County of Kauai from a Food Truck. Sale of non-food items or services will not be permitted.

**Section 41. Designation of Premises.** The Director shall designate specific locations where Food Trucks may operate concessions within each individual permit. Food Truck Concessionaires are only allowed to operate within parking lot areas, road right of ways, or other areas adjacent to parks specifically designated by the Director.

**Section 42. Application for Concession Operation.** Qualified individuals may bid for a commercial lunch wagon concession permit through the bidding process described in these rules. Only one concession permit shall be issued to any one - applicant, individual, corporation, partnership, joint venture or firm. Once a successful application is granted all other applications for a particular location become null and void.

**Section 43. Award of Concession Contracts.** Bidding shall be conducted by sealed bid as provided by State and County laws for conducting concessions on public property. Only persons qualified to bid as determined by the Director of Finance, will be permitted to submit bids. Once a concession

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permit has been awarded, the successful bidder shall provide the Department with:

1. Proof of Comprehensive General Liability Insurance. The County shall be listed as additional insured.
2. Copies of all current Health Department certificates.
3. Copy State of Hawai'i General Excise Tax license.
4. Deposit equal to one (1) month fee, to be held in Escrow for the duration of the contract.
5. First month's fee.
6. All payments of fees and deposits shall be made in cash, personal check, cashier's check, certified check, postal money order, or bank money order. Checks or money orders must be made payable to the Director of Finance.

**Section 44. Hours of Operation.** The permittee shall limit their operations to the hours of 10:00 a.m. to 4:00 p.m. daily. Permittees may be authorized to provide longer hours or close concessions with approval of the Director or his designee.

**Section 45. Equipment, Furniture, Decor.** Food Trucks must meet State Department of Health approval as a mobile concession. No installation of equipment, furniture and decor of concession premises which requires alteration, modification, or affixing to premise shall be permitted without written consent of Director. Unless authorized, the placing of signs, picnic tables, or other devices around mobile concession is prohibited.

**Section 46. Sale of Items and Price Control.** It shall be the policy of the County that prices shall not be higher than the average price charged for the same quality merchandise at comparable facilities or type of business. The concessionaire shall submit for approval of the Director or designee, a list of items (including portion and size) to be sold and the prices to be charged. Request for changes to the prices shall be submitted to the Director. Such requests shall justify the proposed increase.

#### **Section 47. Permits.**

(a) Permits for operation of Food Truck concessions shall have duration of up to two years and shall expire automatically, without notice to the permit holder, on the date specified on the permit. Upon that 2 year period of expiration, the permit will come up for rebidding to the general public.

(b) The Permittee shall notify the director within five (5) business days of any changes regarding the information provided in the permit application.

(c) Permits are non-transferable. A permit issued under this section creates no property interest. A permittee may not sell or otherwise transfer a permit to another individual or entity.

#### **Section 48. General Conditions.**

All commercial lunch wagon permits are subject to the following general conditions. The Director may impose additional special conditions upon individual commercial lunch wagon permits.

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- (a) Special events authorized by permit shall take precedence over commercial Lunch Wagon concessions 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.
- (b) All authorized concessionaires are prohibited from selling or conducting any part of their operations in any area other than the area specified within their permit without the written consent of the director.
- (c) At the Director's discretion, no commercial Lunch Wagon concession activity shall occur within the County parks during periods when maintenance or repair of County park property or equipment is being performed or when a park is closed.
- (d) Concessionaires must possess any and all license(s) required to conduct business in the State of Hawaii. Copies of all license(s) shall be provided to the Parks Permit Section of the Department prior to any permit being issued.
- (e) Engaging in or soliciting any business within the County Park or other applicable area except in accordance with the provisions of a concession permit or other written agreement with the County of Kauai is prohibited.
- (f) Commercial notices or advertisements for commercial Lunch Wagon activities shall not be displayed, posted or distributed within any of the county parks, beach parks, parking lots or other areas under County jurisdiction. This prohibition shall not prohibit art work painted on the Food Truck or a menu affixed to the Food Truck itself. However, signs, sandwich boards or other similar separate methods of advertisement detached or removable from the Food Truck are not allowed.
- (g) Food Truck concessionaires and their employees operating under a concessionaire 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 or Federal governmental agency.
- (h) Should it be adjudged that harm or death has resulted from the concessionaires' negligence or use of faulty equipment, the permit issued to the concessionaire shall be immediately revoked upon notice, review and consideration by the Department of Parks and Recreation without the possibility of future permits. Such revocations are not appealable.
- (i) Concessionaires shall comply with all Federal, State and County laws and ordinances and the rules of the Department.
- (j) Concessionaires shall conduct operations so as to impose no more than minimal impact upon public facilities and the physical features of the County parks. No, washing or storage repair and or other maintenance of Food Truck equipment and/or supplies are permitted in the County parks parking lots or in road rights of way.
- (k) The concessionaire assumes all risk of any loss or damage to his property left on the premises. The County of Kauai, its officers, agents and employee shall not be responsible or liable for any loss of/or damage to the aforesaid property while on the premises, regardless of how or the manner in which any such loss or damage is sustained.
- (l) The concessionaire shall not sublet the whole or any part of the premises, nor any of rights thereunder. The concessionaire shall not make any alterations or repairs to the premises without prior written consent of the Director of Parks and Recreation.

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(m) Non-compliance with any and all terms and conditions of the concessionaires' permit of any state county or federal law may result in revocation of the permit at the Director's discretion. If the Director decides to revoke the permit the concessionaire shall be required to cease and desist all commercial operations immediately upon notification by the Department. Such revocations are not appealable.

(n) Insurance. The concessionaire shall at his own expense, procure the insurance listed below from insurance companies authorized to do business in Hawaii, and maintain such insurance through the term of concession operation contract. Copies of/or certificates of insurance policies shall be filed with the Director; such policies shall contain a clause whereby the insurance company agrees to give notice in writing to the Director or designee of any cancellation or alteration of such policies of at least thirty (30) days prior to cancellation or alteration.

1. Comprehensive General Liability Insurance: This policy shall cover the concessionaire with the County of Kauai and State of Hawaii as additionally insured and shall include products liability coverage's with single limit liability of not less than \$1,000,000.00 for bodily injuries or death and damage to property per occurrence and \$2,000,000.00 for aggregate.
2. Automobile Liability Insurance: This policy shall cover the concessionaire with the County of Kauai and the State of Hawaii as additional insured with minimum limits of \$1,000,000.00 for bodily injury or death per person and \$1,000,000.00 for Property damage per occurrence.
3. Workers Compensation Insurance: This policy shall cover against all claims of the concessionaire working in any capacity whose duties require their presence on the premises.

(o) The concession shall provide a minimum of two (2) plastic lined trash receptacles or containers for all garbage, rubbish and other refuse in the immediate vicinity of the concession premises. The concessionaire shall be responsible for cleaning and removing litter, trash, and debris generated from the operation of the concession daily.

(p) Failure to use a permit at the designated time and place for any reason shall not result in a refund or credit of fees previously paid.

**Section 49. Severability.** If any section, subsection, sentence, clause, phrase or portion of these rules is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

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ADOPTED this \_\_\_ day of \_\_\_\_\_ 2018, by the Director of Parks and Recreation,  
County of Kauai, State of Hawaii.

\_\_\_\_\_  
LEONARD A. RAPOZO, JR.,

Director Department of Parks and Recreation County of Kaua'i

APPROVED AS TO FORM:

\_\_\_\_\_  
County Attorney

APPROVED this \_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
BERNARD P. CARVALHO, JR.,

Mayor County of Kaua'i

CERTIFICATION

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I, LEONARD A. RAPOZO, JR., in my capacity as Director of Parks and Recreation, County of Kaua'i, do hereby certify that the foregoing is a full, true and correct copy of the rules and regulations governing commercial Food Trucks in City beach parks, which were adopted on \_\_\_\_\_, following a public hearing held on \_\_\_\_\_, after public notice was given on \_\_\_\_\_ in the \*state newspaper.

\_\_\_\_\_  
LEONARD A. RAPOZO, JR.,  
Director Department of Parks and Recreation County of Kaua'i

Received this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
JADE K. FOUNTAIN-TANIGAWA,  
County Clerk

## **IV. New Business**

B. Discussion and Action on Proposed Amendments to HAR Title 13 Subtitle 11 Ocean Recreation and Coastal Areas, promulgated by DLNR, as follows:

- 1. Part I Small Boat Harbors – Chapter 234 Fees and Charges**
- 2. Part III Ocean Waters, Navigable Streams and Beaches – Chapter 253 Catamaran Registration Certificate, Other Registration, and Commercial Use Permit Fees**



PRE-PUBLIC HEARING
SMALL BUSINESS IMPACT STATEMENT
TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD
(Hawaii Revised Statutes §201M-2)

Department or Agency: Department of Land and Natural Resources, Division of Boating and Ocean Recreation (DOBOR)

Administrative Rule Title and Chapter: 13-234; 13-253

Chapter Name: Fees and Charges; Catamaran Registration Certificate, Other Registration, and Commercial Use Permit Fees

Contact Person/Title: Todd Tashima/Legal Research Specialist

Phone Number: 808-587-0142

E-mail Address: todd.h.tashima@hawaii.gov Date: September 12, 2018

- 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 [checked] No [ ] (If Yes, please provide webpage address and when and where rules may be viewed in person)
http://dlnr.hawaii.gov/dobor/draft-rules; rules may be viewed in person at a DOBOR district office, 8:00 am to 3:30 pm, Monday through Friday, except state Holidays
(Please keep the proposed rules on this webpage until after the SBRRB meeting.)

I. Rule Description: New [ ] Repeal [checked] Amendment [checked] Compilation [checked]

II. Will the proposed rule(s) affect small business? Yes [checked] 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 [checked] (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 [checked] (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](mailto: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>

**Pre-Public Hearing Small Business Impact Statement Attachment**

Department of Land and Natural Resources, Division of Boating and Ocean Recreation  
Proposed amendments to Hawai'i Administrative Rules Chapters 13-234 and 13-253

2. The commercial use permit fee amount in HAR § 13-234-25 would increase from the greater of \$200 per month or 3% of gross receipts to the greater of \$300 per month or 3% of gross receipts (increase of the minimum fee amount by \$100).

The passenger fee amount in HAR § 13-234-26 would increase as follows:

\$0.30 per passenger embarking or disembarking for passenger vessels engaging only in interisland commerce to \$3.00 per passenger embarking or disembarking per day for the Lahaina small boat harbor (increase of \$2.70 applied to Lahaina small boat harbor only and per passenger per day).

\$1.00 per passenger embarking or disembarking for passenger vessels engaging in international or interstate commerce to \$2.00 per passenger embarking or disembarking per day for small boat harbors other than Lahaina small boat harbor (increase of \$1.00 for small boat harbors other than Lahaina small boat harbor and per passenger per day).

The commercial ramp use fee amount in HAR § 13-234-31 would increase from the greater of \$75 per month or 2% of gross receipts to the greater of \$300 per month or 3% of gross receipts.

- 2a. Current fee in HAR § 13-234-25: The greater of \$200 per month or 3% of gross receipts; there has been no increase since the section was adopted in February 1994.

Current fee in HAR § 13-234-26: \$0.30 per passenger embarking or disembarking for passenger vessels engaging only in interisland commerce.

\$1.00 per passenger embarking or disembarking for passenger vessels engaging in international or interstate commerce.

Fees in Section 13-234-26 have not been increased since the section was adopted in February 1994.

Current fee in HAR § 13-234-31: The greater of \$75 per month or 2% of gross receipts; there has been no increase since the section was adopted in February 1994.

- 2b. HAR § 13-234-25: Proposed fee increase to the greater of \$300 per month or 3% of gross receipts (50% increase in minimum fee amount; DOBOR is not proposing to increase the percentage rate for gross receipts).

HAR § 13-234-26: Proposed fee increase to \$3.00 per passenger per day for the Lahaina small boat harbor only (900% increase).

Proposed fee increase to \$2.00 per passenger per day for small boat harbors other than Lahaina small boat harbor (100% increase).

HAR § 13-234-31: Proposed fee increase to the greater of \$300 per month or 3% of gross receipts (300% increase in minimum fee amount; DOBOR is not proposing to increase the percentage rate for gross receipts).



**Pre-Public Hearing Small Business Impact Statement Attachment**

Department of Land and Natural Resources, Division of Boating and Ocean Recreation  
Proposed amendments to Hawai'i Administrative Rules Chapters 13-234 and 13-253

- 2c. Increased fees are intended to align DOBOR fees for small boat harbors and other boating facilities with current market rates. DOBOR has not raised its fee in several years and therefore is not maximizing the revenue-generating potential of its small boat harbors and facilities.
  
- 2d. Calculation of mooring fees was done in accordance with HRS § 200-10, which requires mooring fees to be established by appraisal by a state-licensed appraiser approved by the department. Calculation of fees other than mooring fees was done by analyzing fee collections and payments to DOBOR, then comparing those amounts to DOBOR costs and expenditures. DOBOR intended to increase fees by a fair amount that would allow it to put revenues towards the specific revenue source from which it was collected. This will allow DOBOR to avoid using revenues from its other revenue sources, such as leases, to pay for state boating facility improvements, repairs, and maintenance.
  
- 7a. One business recommended that for the commercial use permit fees, the percentage of gross receipts be increased rather than the minimum dollar amount be increased.



DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to and compilation of chapters 13-234 and  
13-253

Hawaii Administrative Rules

[Date of adoption by agency]

1. Chapter 13-234, Hawaii Administrative Rules,  
is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 11

OCEAN RECREATION AND COASTAL AREAS

PART 1

SMALL BOAT HARBORS

CHAPTER 234

FEES AND CHARGES

Historical note

- \$13-234-1 General statement
- \$13-234-2 Payment<sup>[7]</sup> and delinquency [~~and liens~~]
- \$13-234-3 Mooring rates
- \$13-234-4 Mooring rates for offshore mooring and anchoring
- \$13-234-5 Mooring fees for vessels assigned temporary moorings or occupying moorings without permission
- \$13-234-6 Fees for vessel absent for more than fourteen days

§13-234-7 Mooring fee for vessels owned by nonresident  
 §13-234-8 Stay aboard or principal habitation fee  
 §13-234-9 Stay-aboard or principal habitation fee for offshore mooring or anchoring  
 §13-234-10 Electricity fee  
 §13-234-11 Shower fee  
 §13-234-12 Dry storage  
 §13-234-13 Gear locker fee  
 §13-234-14 Mooring fees - facilities constructed by others  
 §13-234-15 Waiver or return of fees  
 §13-234-16 Permit processing fees  
 §13-234-17 Fees for vessels moored at yacht club berths and other areas covered by specific agreements  
 §13-234-18 Excessive water usage fee  
 §13-234-19 [~~Parking fees - reserved stall~~] Repealed  
 §13-234-20 Salvage fee  
 §13-234-21 Principal habitation application fee  
 §13-234-22 Exemption from fee differential  
 §13-234-23 Application fee for moorage  
 §13-234-24 Fee for residency status appeal; refund if status determination reversed  
 §13-234-25 Fees for commercial [~~vessels using state boating facilities, Kaneohe Bay ocean waters, and beaches of the State~~] use permits  
 §13-234-26 Passenger fees; anchorage, dockage, and station keeping fees  
 §13-234-27 [~~Fees for copies of rules~~] Repealed  
 §13-234-28 Negotiable instruments; service charge  
 §13-234-29 Marine inspection fee  
 §13-234-30 Application fee for approved marine surveyor  
 §13-234-31 Fees for commercial use of boat launching ramps and other boating facilities  
 §13-234-32 Small boat harbor facility [-] key deposits  
 §13-234-33 Business transfer fee  
 §13-234-34 [~~User~~] Fee for [~~recreational~~] use of state boat launching ramps

§13-234-35 Fees for signs and ticket booths

Historical note: [~~This chapter is based on the schedule of fees and charges of the small boat harbors rules, effective November 5, 1981, and as amended thereafter, under the jurisdiction of the Department of Transportation, Harbors Division.~~] The administrative jurisdiction for recreational boating and related vessel activities were transferred from the Department of Transportation, Harbors Division to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, effective July 1, 1992, in accordance with Act 272, SLH 1991. [Eff 2/24/94, am and comp ]

§13-234-1 General statement. (a) The fees and charges relative to the use of state property and facilities at a small boat harbor are:

- (1) Calculated to produce an amount [~~at least~~] sufficient to pay the expenses of operating, maintaining, and managing the facilities and services and the cost including interest, of amortizing capital improvements for boating facilities [~~appropriated after July 1, 1975,~~] including, but not limited to, berths, slips, launch ramps, [~~and~~] related accommodations, [~~exclusive of the costs of constructing, operating, and maintaining~~] general navigation channels, [~~protective~~] breakwaters, aids to navigation, and other harbor structures [~~, and aids to navigation~~]; and
- (2) Fixed with due regard to the primary purposes of providing public recreational facilities [~~and promoting the fishing industry. See sections 200-2 and 200-08, Hawaii Revised Statutes~~].
- [~~(3) The mooring fees shall be set by categories, schedule A and schedule B, to be determined by the department, provided that:~~

- ~~(A) Schedule A shall include existing mooring holders with an annual increase toward schedule B rates of twenty per cent per year; and~~
- ~~(B) Schedule B shall apply to all new mooring applicants and transient slips on or after the effective date of these 2010 rule amendments.]~~

(b) Nothing contained in this subchapter shall be construed to limit the authority and power of the department to waive any late fees~~[r]~~ and related interest, or to assess any reasonable fees and charges in addition to those specifically provided in this subchapter for trivial or infrequent uses of state property, facilities, or services~~[r]~~ if fees for the uses are not contained herein~~[r]~~ or as the circumstances may warrant.

(c) The acceptance of payment, or billings therefor, shall not waive the nature of trespass or ratify or permit illegal mooring, docking, storage, or parking. [Eff 2/24/94; am 1/22/10; am and comp ] (Auth: HRS §§200-2, 200-3, 200-4, 200-8, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-8, 200-10)

~~§13-234-2~~ Payment~~[r]~~ and delinquency ~~[and liens]~~. (a) Security deposit and method of payment:

(1) Security deposit. A permittee upon being issued a use permit~~[r]~~ shall, in addition to paying fees and charges as they become due, deposit with the State in legal tender or in such other form as may be acceptable to the State, an amount equal to two months' fees and charges at the rate prescribed in the rules in effect on the date of issuance of the permit as security for the faithful performance on the permittee's part of all the terms and conditions, specified therein. On the effective date of any increase in fees and charges, the permittee shall deposit such additional amount to cover the

increase. The State shall refund any excess deposit if the fees and charges are reduced. The deposit will be returned, without interest, to the permittee upon the termination of the permit only if the terms and conditions have been faithfully performed to the satisfaction of the department. In the event the permittee does not so perform, the department may declare the deposit forfeited or apply it as an offset to any amounts owed by the permittee to the State under the use permit, or to any damages or loss caused to the State by the permittee. The exercise of the permittee's option is without prejudice to the right of the State to institute action for debt or damages against the permittee or to take any other or further action against the permittee as may be provided by law or these rules for the enforcement of the rights of the State under the use permit.

- (2) [~~Advance payment required.~~] As a prerequisite to the issuance of a use permit the permittee shall make a security deposit pursuant to section 13-234-2, pay the permit processing fee, one month's fees and charges, and any other fees and charges that may be due and payable to the State; provided that if the effective date of the use permit is other than the first day of the month, charges shall be properly prorated for the balance of the month and these prorated charges shall be paid.
- (3) Method of payment of fees and charges. The following fees and charges shall be paid [~~in advance~~] without notice or demand on the [~~first~~] last day of each and every month during the life of the use permit, except that the amounts due for the first month shall be paid prior to the issuance of the permit as described in section 13-234-2:
  - (A) Mooring;

- (B) Residence;
- (C) Electricity;
- (D) Shower;
- (E) Dry storage;
- (F) Gear locker; and
- (G) [~~Facilities constructed by others; and~~
- ~~(H)]~~ Rent and other fixed recurring fees and charges.

(b) Permit processing fees are due and payable in advance.

(c) All [~~other~~] fees and charges are due and payable on [~~the first~~] or before the last day of the month [after] in which they are incurred.

(d) Fees and charges for the last month shall be properly prorated. If the termination is at the owner's option, unless a written notice of intent to vacate has been received by the department from the boat owner at least thirty calendar days in advance of the termination date as prescribed in section 13-231-9 the owner shall be liable for the full amount of the monthly fees and charges.

(e) All fees and charges shall become delinquent [~~thirty~~] four calendar days after they become due and payable. All delinquent accounts will be referred to the Credit Bureau Services if they remain unpaid [~~on~~] twenty-five calendar days from the day the account becomes [delinquent.] delinquent.

(f) [~~Without prejudice to any other remedy available to the State, interest and, regardless of the amount of the delinquency, a \$25.00 per month service charge shall be assessed on all delinquencies. The interest shall be computed at a rate of one per cent per month, annual percentage rate of twelve per cent, on the the delinquent amount. The interest and service charges shall continue to be assessed until the delinquency is paid in full.] For all delinquent payments due to the department, interest shall be charged at the rate of one per cent per month on the unpaid balance, including prior interest charges and delinquent account service charges, beginning on the first day payment is delinquent and continuing monthly thereafter until the amount due is paid.~~

Additionally, regardless of the delinquency amount and without prejudice to any other remedy available to the department, a delinquent account service charge of the greater of five per cent of the amount owed or \$100 per month shall be assessed on any delinquency. The interest charge and delinquent account service charge shall continue to be assessed until the delinquency is paid in full.

(g) In the event the fees and charges which ~~[shall]~~ have accrued in favor of the department ~~[shall not be]~~ have not been paid as provided in these rules, the department may, after reasonable notice, take possession of the vessel, its tackle, apparel, fixtures, equipment, and furnishings, and may retain such possession until all charges then ~~[owing]~~ owed and any charges which ~~[shall]~~ thereafter accrue are fully paid. The remedy ~~[thus]~~ provided in this section ~~[is]~~ shall be in addition to and not in lieu of any other remedies which the department may ~~[have]~~ pursue by ~~[virtue of]~~ statute or otherwise. [Eff 2/24/94; am and comp \_\_\_\_\_] (Auth HRS §§200-2, 200-3, 200-4, 200-10) (Imp HRS §§200-2, 200-3, 200-4, 200-10)

§13-234-3 Mooring rates. (a) ~~[The mooring fees shall be set by categories, schedule A and schedule B, provided that:~~

- ~~(1) Schedule A shall include existing mooring holders with an annual increase toward schedule B rates of twenty per cent per fiscal year; and~~
- ~~(2) Schedule B shall apply to all new mooring applicants and transient slips on or after the effective date of these 2010 rule amendments.]~~

The mooring rate schedule in this subsection ~~[is]~~ shall be per foot of vessel length overall ~~[per month effective upon the applicant's acceptance of the offer of an available berth.]~~ or maximum length of berth or mooring, whichever is greater. All mooring rates shall be determined by a state-licensed appraiser in

accordance with section 200-10, Hawaii Revised Statutes. ~~[Mooring rates shall apply to the harbor facilities in the following categories: Category "A," Ala Wai; Category "B," Kechi Lagoon, Honokohau, Maalaea, & Lahaina; Category "C," Haleiwa, Heeia Kea, Waianae, Nawiliwili, Port Allen, Kailua-Kona, Keauhou, and Manele; Category "D," Wailoa, Kikiaola, Kaunakakai, North Kawaihae, and Kukuiula; Category "E," South Kawaihae, Hana, & Hale O Lono.~~

~~TYPE OF MOORING AND STATE BOATING FACILITIES~~

~~A = Ala Wai~~

~~B = Kechi Lagoon, Honokohau, Maalaea, & Lahaina~~

~~C = Haleiwa, Heeia Kea, Waianae, Nawiliwili, Port Allen, Kailua-Kona, Keauhou, North Kawaihae & Manele~~

~~D = Wailoa, Kikiaola, Kaunakakai, North Kawaihae, & Kukuiula~~

~~E = South Kawaihae, Hana, Hale O Lono~~

Schedule A Mooring Rates:					
Category	A	B	C	D	E
<del>Along catwalk:</del>	<del>\$5.67</del>	<del>\$4.32</del>	<del>\$4.05</del>	<del>\$3.78</del>	<del>\$1.62</del>
<del>Bow-stern mooring:</del>	<del>\$4.67</del>	<del>\$3.82</del>	<del>\$3.55</del>	<del>\$3.28</del>	<del>\$1.62</del>
<del>—On state buoy, anchor or cable</del>					
<del>—Minimum fee per month:</del>	<del>\$56.00</del>	<del>\$47.00</del>	<del>\$41.00</del>	<del>\$39.00</del>	<del>\$21.00</del>
<del>On owner's buoy or anchor:</del>	<del>\$2.97</del>	<del>\$2.48</del>	<del>\$2.16</del>	<del>\$2.00</del>	<del>\$1.62</del>
<del>—Minimum fee per month:</del>	<del>\$39.00</del>	<del>\$36.20</del>	<del>\$33.50</del>	<del>\$31.30</del>	<del>\$21.00</del>
<del>In harbor basin:</del>	<del>\$4.32</del>	<del>\$3.68</del>	<del>\$3.24</del>	<del>\$3.00</del>	<del>\$1.62</del>
<del>—On state cable, buoy or anchor</del>					
<del>—Minimum fee per month:</del>	<del>\$52.00</del>	<del>\$43.00</del>	<del>\$38.00</del>	<del>\$35.00</del>	<del>\$21.00</del>
<del>On owner's buoy or anchor:</del>	<del>\$2.92</del>	<del>\$2.27</del>	<del>\$2.10</del>	<del>\$2.05</del>	<del>\$1.62</del>
<del>—Minimum fee per month:</del>	<del>\$35.60</del>	<del>\$27.00</del>	<del>\$25.40</del>	<del>\$23.70</del>	<del>\$21.00</del>

<del>Skiff and dinghy moorings fore and aft, all types:</del>	<del>\$1.95</del>	<del>\$1.84</del>	<del>\$1.68</del>	<del>\$1.57</del>	<del>\$0.55</del>
<del>—Minimum fee per month:</del>	<del>\$26.00</del>	<del>23.20</del>	<del>21.35</del>	<del>18.80</del>	<del>\$5.25</del>
<del>Work docks (per foot/vessel length/day):</del>	<del>\$0.60</del>	<del>\$0.55</del>	<del>\$0.43</del>	<del>\$0.38</del>	<del>\$0.32</del>
<del>—Minimum fee per month:]</del>	<del>\$7.50</del>	<del>\$6.50</del>	<del>\$5.40</del>	<del>\$4.30</del>	<del>\$3.25</del>

[Schedule B Mooring Rates:]					
Category	A	B	C	D	E
<del>Along catwalk:</del>	<del>\$9.14</del>	<del>\$7.79</del>	<del>\$7.52</del>	<del>\$7.25</del>	<del>\$5.09</del>
<del>Bow-stern mooring:</del>	<del>\$5.12</del>	<del>\$4.17</del>	<del>\$3.87</del>	<del>\$3.58</del>	<del>\$1.75</del>
<del>—On state buoy, anchor or cable</del>					
<del>—Minimum fee per month:</del>	<del>\$60.00</del>	<del>\$50.00</del>	<del>\$45.00</del>	<del>\$42.00</del>	<del>\$22.00</del>
<del>On owner's buoy or anchor:</del>	<del>\$3.20</del>	<del>\$2.68</del>	<del>\$2.33</del>	<del>\$2.16</del>	<del>\$1.75</del>
<del>—Minimum fee per month:</del>	<del>\$42.00</del>	<del>\$39.00</del>	<del>\$36.00</del>	<del>\$33.00</del>	<del>\$22.00</del>
<del>In harbor basin:</del>	<del>\$4.67</del>	<del>\$4.00</del>	<del>\$3.50</del>	<del>\$3.25</del>	<del>\$1.75</del>
<del>—On state cable, buoy or anchor</del>					
<del>—Minimum fee per month:</del>	<del>\$56.00</del>	<del>\$46.00</del>	<del>\$42.00</del>	<del>\$38.00</del>	<del>\$22.00</del>
<del>On owner's buoy or anchor:</del>	<del>\$3.15</del>	<del>\$2.45</del>	<del>\$2.27</del>	<del>\$2.21</del>	<del>\$1.75</del>
<del>—Minimum fee per month:</del>	<del>\$38.50</del>	<del>\$29.00</del>	<del>\$27.00</del>	<del>\$25.00</del>	<del>\$22.00</del>
<del>Skiff and dinghy moorings fore and aft, all types:</del>	<del>\$2.10</del>	<del>\$2.00</del>	<del>\$1.81</del>	<del>\$1.70</del>	<del>\$0.60</del>
<del>—Minimum fee per month:</del>	<del>\$28.00</del>	<del>\$25.00</del>	<del>\$23.00</del>	<del>\$20.00</del>	<del>\$5.50</del>
<del>Work docks (per foot/vessel length/day):</del>	<del>\$0.65</del>	<del>\$0.60</del>	<del>\$0.46</del>	<del>\$0.41</del>	<del>\$0.35</del>
<del>—Minimum fee per month:]</del>	<del>\$8.00</del>	<del>\$7.00</del>	<del>\$6.00</del>	<del>\$5.00</del>	<del>\$3.50</del>

<u>Small Boat Harbor</u>	<u>District</u>	<u>Catwalk (\$/foot)</u>	<u>Tahiti Moor (\$/foot)</u>
<u>Nawiliwili</u>	<u>Kauai</u>	<u>12.00</u>	<u>N/A</u>
<u>Port Allen</u>	<u>Kauai</u>	<u>11.00</u>	<u>N/A</u>
<u>Ala Wai</u>	<u>Oahu</u>	<u>13.00</u>	<u>8.00</u>
<u>Keehi</u>	<u>Oahu</u>	<u>13.00</u>	<u>N/A</u>
<u>Haleiwa</u>	<u>Oahu</u>	<u>10.00</u>	<u>6.00</u>
<u>Heeia Kea</u>	<u>Oahu</u>	<u>10.00</u>	<u>6.00</u>
<u>Waianae</u>	<u>Oahu</u>	<u>11.00</u>	<u>N/A</u>
<u>Manele</u>	<u>Lanai</u>	<u>10.00</u>	<u>N/A</u>
<u>Lahaina</u>	<u>Maui</u>	<u>11.00</u>	<u>7.00</u>
<u>Maalaea</u>	<u>Maui</u>	<u>10.00</u>	<u>6.00</u>
<u>Manele</u>	<u>Maui</u>	<u>10.00</u>	<u>N/A</u>
<u>Kaunakakai</u>	<u>Molokai</u>	<u>9.00</u>	<u>5.00</u>
<u>Honokohau</u>	<u>Hawaii</u>	<u>10.00</u>	<u>6.00</u>
<u>Kailua-Kona</u>	<u>Hawaii</u>	<u>N/A</u>	<u>6.00</u>
<u>Kawaihae, North</u>	<u>Hawaii</u>	<u>N/A</u>	<u>5.00</u>
<u>Kawaihae, South</u>	<u>Hawaii</u>	<u>10.00</u>	<u>6.00</u>
<u>Wailoa</u>	<u>Hawaii</u>	<u>9.00</u>	<u>5.00</u>

(b) The mooring rate schedule in subsection (a) shall apply to single-hulled vessels, except as otherwise provided in this section, or in sections 13-234-5, 13-234-7, and 13-234-25. The fees for a vessel moored in any state small boat harbor not listed in the mooring rate schedule in subsection (a) shall be a flat rate of ten dollars per foot for catwalks and six dollars per foot for tahiti moorings, until such time as an appraisal can be completed.

(c) A multi-hulled vessel shall be charged mooring fees in proportion to berths used in increments of one, one and one-half, or two times the fee prescribed in ~~[subsection (a)]~~ subsection (a) or subsection (b) for a single-hulled vessel of equal length.

~~(d) [When more than one vessel occupies a single berth end to end, the charge shall be computed at the rate provided in subsection (a).]~~

~~(e) Except for fees for work docks, which set out the minimum charges per day, the~~ The amounts set out in the mooring rate schedules in [subsection (a)] subsections (a) through (c) are the minimum charges

per month. [Eff 2/24/94; am 12/16/06; am 1/22/10; am and comp ] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-12, 200-22, 200-24)

§13-234-4 Mooring rates for offshore mooring and anchoring. (a) ~~[The following mooring rate schedule set forth in paragraph (1) shall become effective on the first day of the first full month occurring after the effective date of the 2006 amendments to this section and shall be increased twice thereafter, as set forth in (2) and (3) on the first day of the fiscal year(s) in which a CIP bond issue is to be funded for the small boat facilities.]~~ The mooring rate schedule is per foot of vessel length overall or maximum mooring capacity of the mooring system, whichever is greater, per month:

[ <del>(1) Offshore mooring and anchoring rates as of the first day of the first full month occurring after the effective date of the 2006 amendments to this section:</del>		
<del>Vessel Length Overall</del>	<del>On State Buoy, Anchor or Cable</del>	<del>On Owner's Own Buoy, or at Anchor</del>
<del>0 - 30'</del>	<del>\$1.31</del>	<del>\$0.88</del>
<del>31 - 40'</del>	<del>\$1.44</del>	<del>\$1.00</del>
<del>41 - 50'</del>	<del>\$1.56</del>	<del>\$1.13</del>
<del>51 - 60'</del>	<del>\$1.69</del>	<del>\$1.25</del>
<del>61 - 70'</del>	<del>\$1.81</del>	<del>\$1.38</del>
<del>71 - 80'</del>	<del>\$1.94</del>	<del>\$1.50</del>
<del>81 - 90'</del>	<del>\$2.06</del>	<del>\$1.63</del>
<del>over 90'</del>	<del>\$2.19</del>	<del>\$1.75</del>
<del>Minimum monthly fee:</del>	<del>\$31.25</del>	<del>\$20.63</del>

<del>(2) Offshore mooring and anchoring rates that will become effective on the first day of the first financial year, after the rates in paragraph (1)</del>
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<del>become effective, in which a CIP bond issue is funded for the small boat facilities:</del>		
<del>[Vessel Length Overall</del>	<del>On State Buoy, Anchor or Cable</del>	<del>On Owner's Own Buoy, or at Anchor</del>
<del>0 - 30'</del>	<del>\$1.41</del>	<del>\$0.95</del>
<del>31 - 40'</del>	<del>\$1.56</del>	<del>\$1.08</del>
<del>41 - 50'</del>	<del>\$1.68</del>	<del>\$1.22</del>
<del>51 - 60'</del>	<del>\$1.83</del>	<del>\$1.35</del>
<del>61 - 70'</del>	<del>\$1.95</del>	<del>\$1.49</del>
<del>71 - 80'</del>	<del>\$2.10</del>	<del>\$1.62</del>
<del>81 - 90'</del>	<del>\$2.22</del>	<del>\$1.76</del>
<del>over 90'</del>	<del>\$2.37</del>	<del>\$1.89</del>
<del>Minimum monthly fee:</del>	<del>\$33.75</del>	<del>\$22.28</del>

<del>(3) Offshore mooring and anchoring rates that will become effective on the first day of the second financial year, after the rates in paragraph (1) become effective, in which a CIP bond issue is funded for the small boat facilities:</del>		
<del>Vessel Length Overall</del>	<del>On State Buoy, Anchor or Cable</del>	<del>On Owner's Own Buoy, or at Anchor</del>
<del>0 - 30'</del>	<del>\$1.52</del>	<del>\$1.03</del>
<del>31 - 40'</del>	<del>\$1.68</del>	<del>\$1.17</del>
<del>41 - 50'</del>	<del>\$1.82</del>	<del>\$1.32</del>
<del>51 - 60'</del>	<del>\$1.97</del>	<del>\$1.46</del>
<del>61 - 70'</del>	<del>\$2.11</del>	<del>\$1.61</del>
<del>71 - 80'</del>	<del>\$2.26</del>	<del>\$1.75</del>
<del>81 - 90'</del>	<del>\$2.40</del>	<del>\$1.90</del>
<del>over 90'</del>	<del>\$2.56</del>	<del>\$2.04</del>
<del>Minimum monthly fee:]</del>	<del>\$36.45</del>	<del>\$24.06</del>

<u>Offshore mooring and anchoring rates shall be as follows:</u>	
<u>On state Buoy, Anchor, or Cable</u>	<u>On Permittee's Own Buoy or Anchor</u>
<u>\$5.00/foot</u>	<u>\$3.00/foot</u>

(b) The fee for barges, platforms, and commercial vessels having no operating means of propulsion shall be two times the rate listed in subsection (a).

(c) The fee for vessels anchored or moored without a permit issued by the department shall be at the rate as provided in section 13-234-5.

(d) Persons issued a mooring permit under this section shall be entitled to the use of any designated dinghy mooring area at no charge.

(e) The fee for vessels moored offshore within the confines of a state small boat harbor shall be the same as the rate listed in subsection (a). [Eff 2/24/94; am 12/16/06; am and comp ]  
(Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)  
(Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-5 Mooring fees for vessels assigned temporary moorings or occupying moorings without permission. (a) Persons assigned a mooring for a temporary period shall make the security deposit and pay mooring fees as prescribed in this chapter.

(b) [~~These~~] Persons assigned a mooring for a period of thirty calendar days or less shall not be required to make the security deposit as provided in section 13-234-2[~~7~~] but shall be required to pay fees in advance.

(c) The fees prescribed in subsection (d) shall apply for the entire period [~~the~~] that a vessel is in [~~the~~] a state boating facility.

(d) The mooring fees for a vessel assigned a mooring for thirty calendar days or less shall be as provided in section 13-234-3 or 13-234-4, plus thirty per cent for each twenty-four [~~hours~~] hour period or any fraction [~~of that time.~~] thereof.

(e) The mooring fees for a vessel moored in a state boating facility without written permission ~~[of]~~ from the department or in violation of section 13-231-17 shall be as follows:

Length of stay	Fee
(1) 30 days or less	<del>[1-1/2]</del> <u>1.5</u> times the fees stated in subsection (d);
(2) 31-60 days	2 times the fees stated in subsection (d) for the period over 30 days;
(3) More than 60 days	3 times the fees stated in subsection (d) for the period over 60 days.

~~(f) [The fees for a vessel moored in a state boating facility work dock area in violation of this section or section 13-231-17 shall be:~~

<del>Length of stay</del>	<del>Fee</del>
<del>(1) 30 days or less</del>	<del>1-1/2 times the fees stated in subsection (d);</del>
<del>(2) 31-60 days</del>	<del>2 times the fees stated in subsection (d) for the period over 30 days;</del>
<del>(3) More than 60 days</del>	<del>3 times the fees stated in subsection (d) for the period over 60 days.</del>

~~(g)]~~ In addition to any civil remedy or criminal action available to the department, vessels moored without permission shall be liable for the payment of fees chargeable to the moorage. The department's acceptance of ~~[the]~~ such a payment shall not waive the nature of trespass, or ratify or permit the unlawful or illegal mooring. [Eff 2/24/94; am 12/16/06; am 1/22/10; am and comp ] (Auth: HRS §§200-4, 200-6, 200-10, 200-12, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-6 Fees for vessel absent for more than fourteen days. Any holder of a use permit who has

applied as prescribed in section 13-231-11 to retain the permit to use the assigned berthing space and any other related use permits upon the permittee's return, and whose application has been approved by the department~~[7]~~ shall continue, during any absence of thirty calendar days or less from the assigned berth, to pay fees for the berthing space and any other use permits designated in the application at the rate established in section 13-234-3 and any other applicable sections of these rules. Where the absence permitted under section 13-231-11 exceeds thirty calendar days, then for the period in excess of thirty calendar days, the mooring fees for the berth retained~~[7]~~ and the fees prescribed in these rules for any facilities or services actually utilized by the permittee during the permittee's absence~~[7]~~ shall be due and payable to the department. During such absence, the department may issue a temporary use permit for the use of the berthing space by another vessel and charge mooring fees from the temporary permittee at the rate prescribed in these rules ~~[and credit a portion of such fees collected to the account of the permanent permittee amounting to fifty per cent of the regular mooring fee, prorated on a daily basis, for the period that temporary mooring fees are collected for the use of the berth]~~. [Eff 2/24/94; am and comp ] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-7 Mooring fee for vessels owned by nonresident. The mooring fee for vessels assigned a permanent berth in any state small boat harbor and owned by nonresidents~~[, assigned a permanent berth in any state small boat harbor,]~~ shall be ten per cent higher than the mooring rate schedule in section 13-234-3~~[(a) and (b)(1)]~~. [Eff 2/24/94; am and comp ] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-8 Stay-aboard or principal habitation fee. (a) The owner of a vessel moored in a state small boat harbor and authorized to be used as a place of principal habitation[~~7~~] shall pay, in addition to mooring or any other applicable fee or charge, a principal habitation fee computed according to vessel length [~~(not vessel length overall) which is:~~] as follows:

- (1) \$5.25 per foot of vessel length per month if the owner is a state resident; and
- (2) \$7.80 per foot of vessel length per month if the owner is a non-resident;

provided that for any calendar year beginning after January 1, 1987, upon thirty calendar days prior written notice from the department, the principal habitation fees established by this subsection shall be increased based on [~~this~~] the increase in the annual cost of living index (~~[U.S.] U.S.~~ Department of Labor, [~~U.S.] U.S.~~ City Average Urban Consumer Price Index for "all items"), but the increase for any calendar year shall not exceed five per cent.

(b) The owner or operator of a transient vessel[~~7~~] or visiting vessel[~~7~~] shall pay a stay-aboard fee of [~~\$2.00~~] \$10.00 per person staying aboard a vessel, in addition to mooring or any other fees and charges, for each and every night that any person remains on board the vessel while the vessel is moored in a state small boat harbor. [Eff 2/24/94; am and comp ] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-9 Stay-aboard or principal habitation fee for offshore mooring or anchoring. The owner of a vessel or houseboat moored or anchored outside a small boat harbor and authorized to be used as a principal place of habitation or for staying aboard shall pay, in addition to any other applicable fee or charge, a principal habitation fee, or a stay-aboard fee as appropriate, which shall be [~~one-half~~] the same as the

rate specified in section [~~13-234-7.~~] 13-234-8. [Eff 2/24/94; am and comp ] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-10 Electricity fee. The monthly fee for the use of electricity when furnished by the State at a small boat harbor shall be as follows:

- (1) When no person lives aboard...~~[\$5.75]~~ \$50.00
- (2) When persons live aboard .....\$125.00
- (3) Commercial vessels .....\$150.00
- ~~[(2) When no person lives aboard but electricity is used for refrigeration..... \$11.00]~~
- ~~[(3) When persons live aboard but electricity is not used for cooking or refrigeration.....\$11.00]~~
- ~~[(4) When persons live aboard and use electricity for cooking or refrigeration.....\$25.00]~~

[Eff 2/24/94; am and comp ] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-11 Shower fee. (a) Showers with hot water, when provided, are [~~intended primarily~~] for [~~the~~] use [~~of~~] by persons having properly permitted vessels moored in the Ala Wai and Keehi state small boat [harbor.] harbors only. [~~If sufficient shower facilities are available, the department may permit, if reasonable under the circumstances, persons who are authorized to conduct business on small boat harbor premises pursuant to section 13-231-51 to utilize such facilities.~~]

(b) A monthly fee of [~~\$6.00~~] \$15.00 shall be assessed for each such persons using [~~the showers, except those under the age of four and those paying residence service fees. No persons shall utilize the aforementioned shower facilities unless that person has secured a use permit from the department authorizing use of the facilities.~~] shower facilities.

Shower facility keys shall be connected to mooring permits. Each person having a properly permitted vessel moored in the Ala Wai or Keehi state small boat harbor and authorized by the department to utilize [the] shower facilities, except those under the age of [four,] eighteen, may secure [one shower facility key.] no more than one male shower facility key and one female shower facility key per mooring permit.

(c) [The] Each person shall deposit the [following] amount set by section 13-234-32 with the [State] department prior to receiving [the] a shower key, as security for the prompt return of the key upon termination of the use permit[+:

- (1) \$20 if the use permit is valid for a period of more than ninety days.
- (2) \$30 if the use permit is valid for a period of ninety days or less].

This deposit shall be forfeited in the event the permittee does not return the shower key to the department on or before the date of termination of the use permit. [Eff 2/24/94; am and comp

] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-12 Dry storage [and vessel repair]. (a) [A person, holding] No person shall use any location on land under the jurisdiction of the division of boating and ocean recreation for dry storage of vessels, vessels upon trailers, empty trailers, or any other equipment or items used in connection with vessels or trailers without written authorization from the department. In order for a person's vessel or trailer, or both, to be eligible for dry storage, the following must be met:

- (1) The person holds a valid use permit allowing [the] that person to moor [a] the vessel in a state small boat harbor[τ] ;
- (2) The vessel to be stored is properly registered with the department;

- (3) Any trailer to be stored, whether holding a vessel or not, is properly registered and has a valid safety inspection; and  
(4) The vessel or trailer, or both, to be stored are properly insured, as required by section 13-231-2.

(b) If the requirements of subsection (a) are met, the department may [be authorized by the department] authorize the permittee to use a designated location on land within [such harbor] the harbor for which their use permit applies, subject to the exception in subsection (h), [for a period not to exceed ten days in any calendar year] to refurbish or repair [such] the permittee's vessel [without payment of a dry storage fee; provided that suitable space is available and any such storage will not unduly interfere with maximum and efficient public utilization of a small boat harbor facilities. The] .

(c) If a vessel, trailer, or other items are stored for a period exceeding seven calendar days per calendar year, the permittee shall be required to pay a dry storage fee, as specified in this section. State holidays shall not count towards the seven-day limit on free dry storage.

(d) A permittee whose vessel is utilizing dry storage facilities shall [however,] not be entitled to a reduction in the mooring fees applicable to [the] the permittee's temporarily vacated berth. [Saturdays, Sundays, and state holidays shall be excluded in the computation of the ten days free time.]

[~~(b) Vessels, vessels upon trailers, or empty boat trailers may, upon approval of the department be stored on land at a small boat harbor; provided that suitable space is available and such storage will not unduly interfere with maximum and efficient public utilization of small boat harbor facilities. Except as provided in subsection (a),~~ (e) Subject to any additional fees pursuant to subsection (g), the fee for the storage of vessels [or boat] and trailers on land at a state small boat harbor shall be as follows:

~~[Ala-Wai and  
Kechi Boat  
Harbors                      All others]~~

- (1) Vessels stored on land,  
per foot of vessel  
length, cradle length,  
or trailer length,  
whichever is greater,  
per month.....\$3.00;  
    ~~[paved area \$1.25                      \$1.15  
    unpaved area \$1.15                      \$1.00]~~
- (2) Empty boat trailer per  
month~~[\$20.00                      \$15.00]~~.....\$100.00;  
~~[-(3) Minimum] The minimum monthly charge  
for vessel storage shall be \$100. [\$20.00  
\$15.00~~

~~-(4)] The [charges] charge for [one-half month or  
less] a storage period of less than sixteen calendar  
days shall be one-half of the monthly rate, with a  
minimum monthly charge of \$50.~~

~~[-(c) Boating equipment or other items used in  
connection with boats moored in small boat harbors,  
upon approval of the department, may be stored at such  
harbors if it can be done without unduly interfering  
with small boat harbor operations. The] (f) Subject  
to additional fees pursuant to subsection (g), the  
charges for use of [such] storage [space] for other  
equipment or items used in connection with vessels or  
trailers shall be[+] \$1.50 per month, per square foot.  
The minimum charge per month shall be \$25. The charge  
for a storage period of less than sixteen calendar  
days shall be one half the monthly rate, with a  
minimum charge of \$12.50.~~

~~[Ala-Wai and  
Kechi Boat  
Harbors                      All others]~~

- ~~[-(1) Open storage on  
paved areas, per  
square foot per~~



area. [Eff 2/24/94; am and comp ]  
(Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)  
(Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-13 Gear locker fee. (a) The charge for the use of a gear [~~lockers~~] locker provided by the [State] department shall be[÷

- (1) ~~Standard wood..\$5.50 per month~~
- (2) ~~Triangular fiberglass locker .....\$3.00 per month~~ \$10.00 per month.

(b) [~~In the event that~~] If the department gives written permission [is given by the department] for a boat owner to [provide] construct a personal gear locker pursuant to section 13-232-44, the charge, while the owner's permit remains in effect, shall be [thirty per cent of] the same as the rate established in [subsection (a).] section 13-234-12(f). [Eff 2/24/94; am and comp ] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-14 Mooring fees - facilities constructed by others. Where a mooring facility is constructed by others pursuant to section 13-232-43 [~~the mooring rate shall be thirty per cent of the fee established in section 13-234-3 for a period of time as established by the department which will allow the permittee to amortize the capital most of the improvements.] reimbursement of costs may be authorized by the department pursuant to section 200-19, Hawaii Revised Statutes. [Eff 2/24/94; am and comp ] (Auth: HRS §§200-4, 200-6, 200-10, 200-19, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-19, 200-22, 200-24)~~

§13-234-15 Waiver or return of fees. (a) The department reserves the right to waive or reduce any late fees [or charges] and related interest contained in this chapter.

(b) Whenever the department, through error, collects any fee not required to be paid by this chapter, the fee shall be refunded to the person paying the fee upon written application made to the department within thirty calendar days after the date of the payment. [Eff 2/24/94; am and comp ] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-16 Permit processing fees. (a) The charge for the [~~processing~~] issuance, re-issuance, and revision of a use permit shall be as follows:

- ~~[(1) Initial issuance of permanent permit for docking, mooring, or anchoring a vessel (see section 13-231-3) - \$5; initial issuance of commercial permit - \$25;~~
- ~~(2) Renewal of permanent permit for docking, mooring, or anchoring a vessel (see section 13-231-5) - \$5; renewal of commercial permit - \$15;~~
- ~~(3) Revision of permit:
  - ~~(A) At owner's request - \$5; or~~
  - ~~(B) By department's action (see section 13-231-7) - no charge; and~~~~
- ~~(4) All other use permits listed in section 13-231-3:
  - ~~(A) Initial issuance - \$5;~~
  - ~~and~~
  - ~~(B) Renewal of permit - \$3.~~~~

~~If a permittee utilizing any property or facility fails to renew a use permit on or before the date on which it expires, the applicable renewal fee plus a penalty fee of \$1 per month shall be collected from the permittee for each month or fraction of a month the permittee is late in applying for renewal of a permit and any other penalty fees provided by these rules.]~~

- (1) Issuance and re-issuance of a regular mooring permit as defined in section 13-231-3.....\$10.00;

- (2) Issuance and re-issuance of a commercial permit.....\$25.00;
- (3) Issuance and re-issuance of all other permits listed in section 13-231-3...\$10.00;
- (4) Revision of a use permit at an owner's request.....\$10.00.  
 [Eff 2/24/94; am and comp  
 ] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-17 Fees for vessels moored at yacht club berths and other areas covered by specific agreements. Owners of vessels moored or anchored in areas or portions of state small boat harbors covered by specific agreements or other arrangements with the State, as in the case of yacht clubs and the like, and who are paying mooring charges to the lessees or other parties of such agreements or arrangements, shall be exempt from the mooring fees set out in section 13-234-3; provided that the owners shall enter into an agreement and obtain use permits as required in section 13-231-3 and all fees and charges other than mooring fees shall be assessed as the same shall properly apply. [Eff 2/24/94; comp  
 ] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-18 Excessive water usage fee. (a) A fee of [~~\$10~~] ten dollars per day for each day or fraction thereof will be charged for excessive use or waste of fresh water[~~;~~ ~~such as the~~] at all state small boat harbor and launch ramp facilities, which includes, but is not limited to, use of water for the prolonged operation of ejectors to pump water out of vessels and permitting hoses to run unattended.

(b) Fresh water made available by the department at boating facilities shall only be consumed or used at the state small boat harbor or other boating facility where it is provided or while engaged in an

activity on navigable waters from that harbor or boating facility, and such consumption or use must be related to proper activities at small boat harbors and other boating facilities.

(c) Persons violating this section may be subject to penalties under Section 200-25, Hawaii Revised Statutes. [Eff 2/24/94; am and comp ] (Auth: §§200-4, 200-6, 200-10, 200-22, 200-24, 200-25) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24, 200-25)

~~[§13-234-19 Parking fees - reserved space. (a) The fee for parking a vehicle in a space reserved by the department for the exclusive use of any person shall be as follows:~~

~~(1) Reserved parking, covered \$30 per month.~~

~~(2) Reserved parking, uncovered \$20 per month.~~

~~(b) The establishment of reserved parking spaces normally does not permit maximum efficient public utilization of parking facilities. Therefore, parking spaces shall not be designated for the exclusive use of any person, other than when necessary for the parking of government or other official vehicles, unless suitable space is available and such use will not interfere with maximum and efficient public utilization of small boat harbor facilities. Any reserved spaces established shall be assigned on a "first-come, first-served" priority system. The following shall be eligible for assignment to any reserved parking space that is established for use by the public:~~

~~(1) A person holding a valid use permit authorizing the person to moor that person's vessel at the small boat harbor, the vessel owner, co-owner, and master; and~~

~~(2) An owner or employee of a business or organization operating under the provisions of a lease or other agreement authorizing the owner or employee or the business or organization to engage in a business or~~

~~commercial activity at the small boat harbor.~~

~~(c) No person shall park a vehicle in a reserved parking space so designated by a posted sign unless authorized by the department.] [Eff 2/24/94; R ] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)~~

§13-234-20 Salvage fee. The owner of a vessel in danger that is saved, rescued, or secured pursuant to section 13-231-19 shall be charged a fee for services and materials based on prevailing commercial rates plus ten per cent. [Eff 2/24/94; comp ] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-21 Principal habitation application fee. Prior to filing or renewing an application for the issuance of a principal habitation permit ~~[as provided in]~~ pursuant to section 13-231-27(a)(2), [the] an applicant shall pay to the department [an] a non-refundable application fee of [ \$15. The fee is not refundable.] fifteen dollars. [Eff 2/24/94; am and comp ] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-22 Exemption from fee differential. Nonresident members of the United States Armed Forces on active duty who are stationed in Hawaii, or on order to be stationed in Hawaii and their dependents ~~[are exempted]~~ shall be exempt from payment of the nonresident fee differential prescribed in this subchapter during the period ~~[they are]~~ that the Armed Forces member is on active duty and stationed in Hawaii [if they] ; provided that they submit relevant proof to the department [as may be necessary to the determination of such status as prescribed in section

~~13-230-16.~~] of such status. [Eff 2/24/94; am and comp  
] (Auth: HRS §§200-4, 200-6, 200-10,  
200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-  
22, 200-24)

§13-234-23 Application fee for moorage. If all  
suitable berths in a small boat harbor have been  
allocated to others, a person may apply, subject to  
the payment of application fees, for a future vacancy  
or to move in the future to another berth in the same  
harbor[~~, as prescribed in section 13-231-5~~]. In small  
boat harbors where categories of berths have been  
established [~~pursuant to section 13-231-5 only a  
single application fee or fee for renewal of an  
existing application shall be levied if any applicant  
applies for or renews applications for more than one  
category of berth, provided that all applications were  
submitted on the same date.~~] , if any applicant  
applies for or renews applications for more than one  
category of berth, a separate application fee or fee  
for renewal of an existing application shall be  
charged for each additional category.

- (1) The application fee or fee for renewal of an  
existing application for a regular mooring  
permit shall be [~~\$15~~] fifteen dollars for  
any person who is a Hawaii resident and  
[~~\$100~~] one hundred dollars for all other  
persons.
- (2) The application fee or fee for renewal of an  
existing application for a temporary mooring  
permit or an application to transfer in the  
future to another berth with the same  
characteristics in the same harbor shall be  
[~~\$5.~~] fifteen dollars.
- (3) No application for moorage, renewal of such  
application, or for berth transfer shall be  
accepted until the applicant has paid the  
prescribed fee. The fee is not refundable[~~,  
provided the application for moorage fee  
paid, less a \$5 service charge, shall be  
returned to an applicant~~] if the department

rejects the applicant's application or a renewal thereof pursuant to section 13-231-82. [Eff 2/24/94; am and comp  
] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-24 Fee for residency status appeal; refund if status determination reversed. The fee for filing an appeal concerning classification as a nonresident as [~~provided~~] defined in section [13-230-2] 13-230-8 shall be [~~\$15.~~] fifteen dollars. No petition shall be accepted until the prescribed fee has been paid. This fee shall be promptly refunded if, as a result of the appeal, the department reverses its original determination that the petitioner was a nonresident. In addition, in such instances any nonresident fee and charge differential paid by the petitioner shall be promptly refunded for the appropriate period. [Eff 2/24/94; am and comp  
] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-25 Fees for [~~commercial vessels using state boating facilities, Kaneohe Bay ocean waters, and beaches of the State~~] commercial use permits. (a) Notwithstanding the provisions of section 13-234-3, the following fees and charges shall be assessed for services provided by the department relating to commercial use of [~~mooring in or using~~] state boating facilities, [~~Kaneohe Bay ocean waters, and beaches of the State.~~] waters of the State, and navigable streams:

- (1) The fee per month per vessel for a permittee with a commercial [~~activity~~] use permit and regular mooring permit who moors in and uses a small boat harbor or any of the facilities in the harbor shall be the greater of two times the mooring fees as provided in

section 13-234-3 or three per cent of the monthly gross receipts. In addition to the mooring fee as provided in this section and section 13-234-3, the permittee shall also pay fees and charges in the amounts prescribed in these rules for any other facilities and services utilized in the small boat harbor.

- (2) The fee per month for a permittee with a commercial [~~activity~~] use permit for a boat ramp, wharf, or other state boating facility, except a state small boat harbor, or a catamaran registration certificate shall be the greater of [~~\$200~~] three hundred dollars per month or three per cent of the monthly gross receipts, [~~as of the first day of the first full month occurring after the effective date of the 2006 amendments to this section.~~] payable to the department each month in advance. The single fee assessed for the use of a state boat ramp shall entitle the permittee to use any other state boat ramp on the same island without an additional charge, except for those boat ramps listed in section 13-231-67. The department shall provide, upon issuance of a commercial [~~activity~~] use permit for a state boat ramp, a set of trailer decals that shall be displayed on each side of the forward end of the trailer tongue.
- (3) For permittees with a commercial [~~activity~~] use permit only, the fee per month [~~, for the use of a state boating facility, Kaneohe Bay ocean waters or beaches of the State,~~ shall be the greater of \$200 or three per cent of the monthly gross receipts as of the first day of the first full month occurring after the effective date of the 2006 amendments to this section.] shall be the same as prescribed in section 13-234-25(a)(2).
- (4) No commercial use permit shall be reissued unless the permittee meets the minimum gross

receipts requirements pursuant to section 13-231-61. The report of gross receipts shall be received by the department not later than the end of the month following the reported month and shall be submitted on a form acceptable to the department. Unless otherwise provided by [~~statutes~~] Hawaii Revised Statutes, failure to submit the report of gross receipts as required for a period in excess of sixty calendar days shall [~~be cause~~] constitute grounds for [~~automatic revocation~~] termination of the commercial [~~activity~~] use permit.

- (5) For permittees who have been issued a valid commercial [~~activity~~] use permit for the use of more than one small boat harbor, the permittee shall designate the state small boat harbor of principal use, and the percentage of monthly gross receipts described in this section shall be paid to that account. The fees for commercial [~~activity~~] use permits issued for the other state small boat harbors shall be the minimum amount specified in paragraph (2) or paragraph (1) of this subsection for those permittees with state small boat harbor mooring permits.
- (6) For permittees issued a temporary mooring permit and a commercial [~~activity~~] use permit, the fee per month shall be the greater of the temporary mooring fees required by section 13-234-5 or three per cent of the monthly gross receipts [~~as of the first day of the first full month occurring after the effective date of the 2006 amendments to this section~~].
- ~~[(7) For the purpose of this section, until the first day of the first full month occurring after the effective date of the 2006 amendments to this section, the fees existing prior to the effective date shall remain in full force and effect.]~~

(b) When the commercial [~~activity~~] use permit is issued, the department shall also provide a set of commercial trailer decals for commercial trailered vessels [~~, at no charge, which~~] that shall be displayed on each side of the forward end of the trailer tongue. The fee for each commercial trailer decal shall be as prescribed in section 13-234-34.

(c) Vessels that moor at a state boating facility and which are used by a commercial [~~activity~~] use permittee for shuttle operations [~~transporting~~] to transport passengers to and from the commercial [~~activity~~] use permittee's primary operating vessel [~~and vessels~~] or which are under contracts to perform shuttle operations for passenger cruises [~~, which moor at a state boating facility,~~] shall be required to have a designated state boating facility of principal use, and the fee charged under this section shall be paid to the principal use account.

(d) The department may conduct a financial audit of the records of any commercial [~~activity~~] use permit account to determine the accuracy of reported gross receipts, or to inspect any other financial information, [~~to and~~] including Gross Excise Tax records directly related to the enforcement of these rules after providing notice, as described in section 13-230-6, not less than thirty calendar days prior to the audit.

(e) The department may, by lease, permit, or mooring permit, in accordance with [~~state statutes~~] Hawaii Revised Statutes, grant the use or possession of state boating facilities. The leases and permits shall provide for payments of rental, fees and charges, and other conditions in accordance with [~~law,~~] applicable statutes and administrative rules, in lieu of and notwithstanding the provisions for fees specified in [~~these rules.~~] this chapter. [Eff

2/24/94; am 12/16/06; am and comp ]  
(Auth: HRS §§200-2, 200-3, 200-4, 200-10, 200-22, 200-24, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-10, 200-22, 200-24, 200-39)

§13-234-26 Passenger fees; anchorage, dockage, and station keeping fees. (a) Any passenger or cruise vessel which is used for private gain and does not have a valid mooring permit or commercial permit and which uses state small boat harbors, property, or facilities shall pay the following passenger fees in addition to any ~~[other]~~ anchorage, dockage, or station keeping fees required by this ~~[chapter:]~~ section:

- (1) Per passenger (includes in transit) ~~[--]~~ embarking ~~[to or]~~ from shore to ship.....~~[\$2]~~ \$2.00
- (2) ~~[Passengers in transit on]~~ Per passenger embarking and disembarking a vessel on a continuous trip whose point of origin and termination is a state small boat harbor ~~[, a total of disembarking and embarking at each port per passenger]~~.....\$1.50
- (3) ~~[Passengers]~~ Per passenger embarking and disembarking on occasional and infrequent use on special charter when approved in advance of voyage ~~[as provided in]~~ pursuant to section 13-231-57(c) (3).....\$1.50

(b) ~~[Any]~~ For one year after the effective date of the amendments to this chapter, any passenger or cruise vessel using a dock, pier, or wharf in a state small boat harbor for ~~[disembarking and embarking passengers]~~ private gain by means of any boat or ~~[lighter]~~ tender while moored offshore, and when not for a continuous trip whose point of origin and termination is a state small boat harbor, shall pay a fee per passenger ~~[for disembarking and embarking at each small boat harbor]~~ as follows:

- (1) ~~[Passenger vessels engaging only in interisland commerce:]~~ For Lahaina small boat harbor.....\$ .30 per day
- (2) ~~[Passenger vessels engaging in international or inter-state commerce:]~~ For all other small boat harbors or facilities.....\$1.00 per day

~~[Vessels operated by a federal or state agency are exempt from the provisions of this subsection.]~~

(c) Beginning on the first anniversary of the effective date of the amendments to this chapter:

(1) Any passenger or cruise vessel which uses a dock, pier, or wharf in a state small boat harbor for private gain by means of any boat or tender while moored offshore, and when not for a continuous trip whose point of origin and termination is a state small boat harbor, shall pay a fee per passenger as follows:

(i) For Lahaina small boat harbor.....\$3.00 per day

(ii) For all other small boat harbors or facilities.....\$2.00 per day

(2) The anchorage, dockage, or station keeping fee for any passenger or cruise vessel being used for private gain, without a valid mooring permit or commercial permit and which uses state small boat harbors, properties, or facilities, shall be, per pre-arranged schedule, by vessel length overall, the same as prescribed in section 13-234-5.

Unless otherwise provided, anchorage, dockage, and station keeping fees shall be in addition to any other fees required by this section.

(d) Within thirty calendar days after a passenger or cruise vessel departs a state small boat harbor or state boating facility, [A] a report shall be filed with the department on a form acceptable to the department, [~~within thirty days after the date of embarking or disembarking of passengers over state facilities~~] and [~~the~~] any charges due shall be remitted along with the report. Passenger counts shall be determined by a vessel's passenger list.

(e) For the purposes of this section:

"Anchorage fee" means the fee charged for a passenger or cruise vessel maintaining its position offshore by means of an anchor when the vessel is using a dock, pier, or wharf in a state small boat

harbor for private gain by means of any boat or tender.

"Dockage fee" means the fee charged for a passenger or cruise vessel mooring at a dock, pier, or wharf in a state small boat harbor for private gain.

"Station keeping fee" means the fee charged for a passenger or cruise vessel maintaining its position offshore by means other than anchoring or mooring, including, but not limited to, use of a vessel's propellers, thrusters, or both, when the vessel is using a dock, pier, or wharf in a state small boat harbor for private gain by means of any boat or tender.

(f) Vessels operated by a federal or state agency in an official capacity shall be exempt from the provisions of this section. [Eff 2/24/94; am and comp ] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

~~§13-234-27 Fees for copies of rules. The fee per copy of these rules shall be \$5. A copy of these rules shall be furnished to any person applying for the same upon payment of the prescribed fee, except no fee shall be charged for copies furnished to federal, state, or local governmental agencies or organizations, or for revisions to these rules. The fee may be waived in other instances at the discretion of the chairperson when a waiver is in the public interest.] [Eff 2/24/94; R ] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)~~

§13-234-28 Negotiable instruments; service charge. (a) The service charge for any dishonored check, draft, certificate of deposit, or other negotiable instrument is [~~\$12~~] twenty-five dollars.

(b) Payment to and acceptance by the department of the service charge for a check, draft, certificate of deposit, or other negotiable instrument[~~r~~] shall

not be construed as a waiver of any violation of the Hawaii Penal Code, chapters 701 to ~~[713]~~ 712A, Hawaii Revised Statutes, or of these rules. [Eff 2/24/94; am and comp ] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-29 Vessel inspection fee. ~~[The fee for]~~ For a vessel inspection performed by the department prior to the issuance or reissuance of a regular mooring permit ~~[shall be \$15. The fee is not refundable.]~~ , there shall be a non-refundable fee of forty dollars for each vessel to be inspected. The inspection shall be valid for two years. A vessel owner shall make an appointment with ~~[the]~~ a harbor agent of the department not less than five working days prior to ~~[having the vessel]~~ the date that the vessel is to be inspected. A fee of ~~[\$10]~~ twenty dollars shall be charged if notice of cancellation by the vessel owner is not given to the harbor agent ~~[not less than two working days]~~ prior to the scheduled inspection. The inspection fee for vessels ~~[exempted]~~ exempt from numbering ~~[in]~~ pursuant to section ~~[13-231-2, Hawaii Administrative Rules,]~~ 13-241-2 and for open skiffs and dinghies less than thirteen feet in length shall be ~~[\$5.]~~ ten dollars. [Eff 2/24/94; am and comp ] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-30 Application fee for approved marine surveyor. Prior to filing or renewing an application for recognition as an approved marine surveyor by the department as provided in section 13-231-45, the applicant shall pay to the department ~~[an]~~ a non-refundable application fee of ~~[\$15]~~ fifty dollars. ~~[The fee is not refundable.]~~ [Eff 2/24/94; am and comp ] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-31 Fee for commercial use of boat launching ramps and other boating facilities. The fee for ~~[the]~~ commercial use of state launching ramps, wharves, or other state boating facilities, except state small boat harbors, shall be ~~[\$75 per month or two per cent of gross receipts, whichever is greater.]~~ the same as prescribed in section 13-234-25(a) (2). The single fee assessed for the use of a state launching ramp shall entitle the permittee to use any other state launching ramp on the same island without additional charge, except for those launching ramps listed in section 13-231-67. [Eff 2/24/94; am and comp ] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-32 Small boat harbor facility key deposits. (a) Each ~~[person]~~ permittee with a valid regular mooring permit or temporary mooring permit authorized to secure a shower facility key shall deposit ~~[the following amount]~~ fifty dollars with the ~~[State]~~ department as security for prompt return of the key upon termination ~~[of]~~ or expiration of ~~[the]~~ their use permit.

- ~~[(1) \$30 if the use permit is valid for a period of more than thirty days; or  
(2) \$50 if the use permit is valid for a period of thirty days or less;]~~

(b) Each person authorized to secure a key for other harbor facilities, such as security gates or restrooms, shall deposit the following ~~[amounts]~~ amount with the department prior to receiving the key:

- ~~(1) [\$10 if the use permit is valid for more than thirty days]~~ Twenty-five dollars for a permittee with a valid regular mooring permit; or  
~~(2) [\$25 if the use permit is valid for thirty days or less]~~ One hundred dollars for a

permittee with a valid temporary mooring permit.

(c) Payment for fees assessed under this section shall be made only in the form of cash or credit card.

(d) [The key deposit] Payments of key deposits under this section shall be forfeited in the event the permittee does not return the key to the department on or before the termination of [the] permittee's use permit[7] or when the permittee is required to replace a key which has been lost or stolen. [Eff 2/24/94; am and comp ] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-33 Business transfer fee. (a) Whenever a stockholder or owner of an interest in a corporation or other business which has been issued a commercial use permit sells or transfers ten per cent or more of the stock or interest in the firm, either as a single transaction or an aggregate of several transactions, to any person who is not a stockholder or owner of record, except for transfers between spouses or first generation lineal descendants, on the effective date of these rules, the seller or person transferring such stock or interest shall pay to the department a business transfer fee based on the passenger-carrying capacity of the vessel, and shall be as follows:

- (1) Vessels used for bare boat (demise) and sailing charters carrying six or less passengers.....~~[\$ 2,500]~~ \$2,500
- (2) Vessels registered by the State or documented by the ~~[U.S.]~~ U.S. Coast Guard to carry six passengers or less, used for charter fishing or other commercial purpose.....~~[\$ 5,000]~~ \$5,000
- (3) Vessels certified by the ~~[U.S.]~~ U.S. Coast Guard to carry seven to twenty-~~[five]~~ four passengers.....\$10,000
- (4) Vessels certified by the ~~[U.S.]~~ U.S. Coast Guard to carry twenty-five to forty-nine passengers.....\$15,000

- (5) Vessels certified by the [~~U.S.~~] U.S. Coast Guard to carry fifty to seventy-four passengers.....\$25,000
- (6) Vessels certified by the [~~U.S.~~] U.S. Coast Guard to carry seventy-five to ninety-nine passengers.....\$40,000
- (7) Vessels certified by the [~~U.S.~~] U.S. Coast Guard to carry one hundred to one hundred forty nine passengers.....\$75,000

(b) When less than one hundred per cent of the interest in the corporation is transferred, the business transfer fee shall be based upon a like percentage of the business transfer fee provided in subsection (a). [Eff 2/24/94; am and comp ] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-34 [User] Fee for [recreational] use of state boat launching ramps. (a) An annual boat ramp decal user fee of [~~\$40~~] seventy-five dollars shall be paid by owners of trailered vessels using [~~state boating~~] facilities under the jurisdiction of the division of boating and ocean recreation for recreational and fishing purposes to gain access to the waters of the State. This fee is charged for the purpose of defraying costs of maintenance of [the] state boating facilities [and use of fresh water. ~~The \$40 boat ramp decal fee shall become effective on the first day of the first full month occurring after the effective date of the 2006 amendments to this section and shall increase to \$45 effective on the first day of the twelfth calendar month following the effective date of the \$40 fee, and shall again increase to \$50 effective on the first day of the twelfth calendar month following the effective date of the \$45 fee. Until the effective date of the \$40 fee, the fee provided in this section prior to the effective date of the 2006 amendments to this section shall remain in full force and effect].~~

(b) In addition to the vessel registration fee, the annual boat ramp decal fee described in subsection

(a) shall be paid in full at the time of registration or registration renewal.

(c) The department shall provide an [recreational] owner [shall be furnished] with a set of decals for the trailer [by the department] upon payment of [this] the fee required by this section. Current boat ramp decals shall be affixed to each side of the forward end of the trailer tongue whenever the vessel trailer is operated or stored at a state boating facility.

(d) Notwithstanding subsection (c), a boat dealer or manufacturer shall be allowed to place [the] a ramp decal on the dashboard of the vehicle used to transport [the] a demonstration vessel. [Eff 2/24/94; am 12/16/06; am and comp ] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

§13-234-35 Fees for signs and ticket booths.

(a) The fee for commercial signs posted in state small boat harbors shall be [\$1 per square foot per month with a minimum fee of \$5 per month] assessed monthly as follows:

- (1) Five dollars for each sign five square feet in size or smaller; and
- (2) One dollar per square foot for signs larger than five square feet, rounded to the nearest whole number.

(b) The fee for ticket booths in small boat harbors shall be [\$250] two hundred fifty dollars per month." [Eff 2/24/94; am and comp ] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

2. Chapter 13-253, Hawaii Administrative Rules, is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 11

OCEAN RECREATION AND COASTAL AREAS

PART III

OCEAN WATERS, NAVIGABLE STREAMS AND BEACHES

CHAPTER 253

CATAMARAN REGISTRATION CERTIFICATE, OTHER REGISTRATION, AND COMMERCIAL USE PERMIT FEES

- §13-253-1 Registration fees for canoes, surfboards, and water sports equipment
- §13-253-1.1 Commercial use permit and catamaran registration certificate fees
- §13-253-1.2 No additional fees
- §13-253-1.3 Gross receipts
- §13-253-2 [~~Permit and registration certificate Fees~~] Repealed
- §13-253-3 [~~Duplicate permit or certificate fee~~] Repealed
- §13-253-4 [~~When fees returnable~~] Repealed
- §13-253-5 Repealed

Historical note. [~~This chapter is based on registration and permit fees of the Hawaii Shore Waters Rules, dated November 6, 1981, and as amended thereafter, under the jurisdiction of the Department of Transportation, Harbors Division.~~] The

administrative jurisdiction for recreational boating and related vessel activities was transferred from the Department of Transportation, Harbors Division, to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, effective July 1, 1992, in accordance with Act 272, SLH 1991. [Eff 2/24/94; comp 9/25/14; am and comp ]

§13-253-1 Registration fees for canoes, surfboards, and water sports equipment. The following registration fees shall be paid to the department for the registration of canoes, surfboards, and watersports equipment that are used in a commercial operation:

	<u>Original</u>	<u>Renewals</u>
<del>[Canoes,]</del> <u>All vessels,</u> each vessel	\$5.00	\$3.50
Surfboards, each board	\$1.00	\$1.00
Watersports equipment	\$1.00	\$1.00

The minimum fee for surfboards shall be ~~[\$1.]~~ one dollar. [Eff 2/24/94; am and comp 9/25/14; am and comp ] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-253-1.1 Commercial use permit and catamaran registration certificate fees. ~~[A]~~ The monthly fee for a commercial use permit or a catamaran registration certificate shall be the ~~[greater of \$200.00 or 3% of the gross receipts per month.]~~ same as prescribed in section 13-234-25(a)(2). The monthly fee shall be payable to the department each month in advance. This fee shall be applicable to all commercial use permits and all catamaran registration certificates for ~~[state ocean waters]~~ waters of the State or navigable streams. [Eff and comp 9/25/14; am and comp ] (Auth: HRS §§ 200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

§13-253-1.2 No additional fees. (a) Fees required to be paid to the department for commercial activities in [~~state ocean waters,~~] waters of the State including but not limited to ocean recreation management areas, shall be reported and paid in the following manner:

- (1) The report of gross receipts shall be submitted to and received by the department not later than the end of the month following the month covered by the report and shall be submitted on a form acceptable to the department.
- (2) A permittee possessing a harbor commercial use permit and a commercial use permit for state ocean waters or a navigable stream or a catamaran registration certificate, who is paying [~~3~~] three per cent of gross receipts per month under the harbor commercial use permit, shall not be required to pay an additional [~~3~~] three per cent of gross receipts per month under the commercial use permit for state ocean waters or a navigable stream or a catamaran registration certificate, provided that the payment made to the department is based on the total of gross receipts acquired under the harbor commercial use permit and the commercial use permit for state ocean waters or a navigable stream or a catamaran registration certificate.
- (3) A permittee possessing a commercial use permit for state ocean waters or a navigable stream or a catamaran registration certificate who is operating from a private or County facility or land and said operation does not involve the use of state fast land or land within a shoreline area, shall be required to pay \$200 per month by the first day of each month under the commercial use permit or registration certificate, but shall be exempt from paying

[3] three per cent of gross receipts per month under the commercial use permit or registration certificate.

(b) Delinquency in the payment of any fees owed to the department may result in revocation of the commercial use permit or catamaran registration certificate. [Eff and comp 9/25/14; am and comp ] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

§13-253-1.3 Gross receipts. [~~(a) "Gross receipts" as used in this chapter means all moneys paid or payable to the account of the commercial use permittee or catamaran registration certificate holder, for services rendered, or resulting from trade, business, commerce, or sales by the vessel or water sports equipment owner when the services, trade, business, commerce, or sales has a direct relationship to the vessel.~~

~~(b)]~~ Each commercial permittee or catamaran registration certificate holder shall be responsible for submitting to the department a monthly statement of its gross receipts. [Eff and comp 9/25/14; am and comp ] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

§13-253-2 Permit and registration certificate fees. A \$10.00 fee shall be paid to the department for the issuance or re-issuance of any commercial use permit or catamaran registration certificate pursuant to these rules. [Eff 2/24/94; am and comp 9/25/14; comp ] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

~~[§13-253-3 Duplicate permit or certificate fee. A \$10.00 fee shall be paid to the department for a~~

~~duplicate permit or registration certificate if such is lost or destroyed, provided that the duplicating fee for evidence of registration of surfboards will be \$1 for each board with a minimum of \$1 and \$1 for evidence of registration of canoes.] [Eff 2/24/94; am and comp 9/25/14; R ] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)~~

~~§13-253-4 When fees returnable. Whenever the department, through error, collects any fee not required to be paid by these rules, the fee shall be refunded to the person paying the fee upon application made within a month after the date of the payment.] [Eff 2/24/94; am and comp 9/25/14; R ] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)~~

§13-253-5 REPEALED." [Eff 2/24/94; R 9/25/14]

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

4. The amendments to and compilation of chapters 13-234 and 13-253 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 \_\_\_\_\_ by the Board of Land and Natural Resources, and filed with the Office of the Lieutenant Governor.

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SUZANNE D. CASE,  
Chairperson  
Board of Land and Natural Resources

APPROVED FOR PUBLIC HEARING:

/s/ Cindy Y. Young  
Deputy Attorney General

## **IV. New Business**

C. Discussion and Action on Proposed Amendments to HAR Title 18, Chapter 235 **Income Tax Law**, as follows, promulgated by DoTax:

1. Section 235-98, **Returns; form, verification and authentication, time of filing**
2. Section 235-1.14 (d), **“Substantial gainful business or occupation”, defined.**



**PRE-PUBLIC HEARING**  
**SMALL BUSINESS IMPACT STATEMENT**  
**TO THE**  
**SMALL BUSINESS REGULATORY REVIEW BOARD**  
(Hawaii Revised Statutes §201M-2)

**Department or Agency:** Department of Taxation (Department)

**Administrative Rule Title and Chapter:** 18-235

**Chapter Name:** Income Tax Law

**Contact Person/Title:** Jacob Herlitz, Administrative Rules Specialist

**Phone Number:** (808) 587-5334

**E-mail Address:** [Jacob.L.Herlitz@hawaii.gov](mailto:Jacob.L.Herlitz@hawaii.gov)

**Date:** September 27, 2018

**Webpage address for draft rules:** [tax.hawaii.gov/legal/taxlawandrules](http://tax.hawaii.gov/legal/taxlawandrules)

**General Description of Proposed Rules:**

The proposed rules amend chapter 18-235, Hawaii Administrative Rules (HAR), by amending section 18-235-98, which deals with automatic extension of time to file an income tax return. Under existing rules, individual taxpayers receive an automatic six-month extension of the deadline to file an income tax return, provided the individual meets certain conditions. Corporations, LLCs, partnerships, and other non-individual taxpayers are required to file an application to be granted a similar six-month extension.

Under the proposed rules, corporations, LLCs, partnerships and other non-individual taxpayers would be granted the same automatic six-month extension as individuals without being required to file an application first.

Additionally, the proposed rules clarify how to calculate the properly estimated tax liability, which must be paid on the due date prescribed for the filing of the return.

**Rule Description:**     New     Repeal     Amendment     Compilation

**Information Required Under Section 201M-2, HRS**

- 1. Description of the small businesses that will be required to comply with the proposed rules, and how they may be adversely affected.**

All businesses, small and large, will be required to comply with the proposed rules. The proposed rules should not adversely affect any small business, but rather, should benefit all taxpayers, including small business corporations, LLCs, partnerships, etc., by providing an automatic six-month extension to file an income tax return without having to file an application for the extension.

- 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:**

The proposed rules do not increase any costs, fees or fines.

- 3. The probable monetary costs and benefits to the implementing agency and 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:**

The proposed rules will not result in any monetary cost or benefit to the Department or any other agency. There are no additional fees or changes to the ways 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 any other mitigating techniques:**

The proposed rules do not offer any differing methods specific to small business.

- 5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.**

The proposed rules decrease the restrictiveness of the law on small business corporations, LLCs, partnerships, etc., by allowing the six-month extension to file an income tax return automatically rather than requiring the business to file an application as is required under current 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.**

The proposed rules should directly benefit all business entities.

- 7. How the agency involved small business in the development of the proposed rules:**

The Department did not directly involve small businesses.

- 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:**

The proposed rules do not include any provisions that are more stringent than those mandated by another federal, state or county standard.



DEPARTMENT OF TAXATION  
Amendments to Chapter 18-235,  
Hawaii Administrative Rules

\_\_\_\_\_, 2018

SUMMARY

1. §18-235-98 is amended.

**§18-235-98 Returns; form, verification and authentication, time of filing.** (a) The director of taxation may grant a reasonable extension of time for filing any return, declaration, statement, or other document required under chapter 235, HRS; provided that no extension shall be for more than six months, except as otherwise provided by statute for cases in which exceptional circumstances require additional time, including cases of persons who are outside the United States.

(b) Any taxpayer required to file an income tax return, declaration, statement, or other document under chapter 235, HRS, is granted an automatic six-month extension to file the tax return after the date prescribed for filing. The taxpayer need not file an application form to request an extension. However, if the taxpayer makes a payment of tax, the payment shall be submitted with the form prescribed by the department. Automatic extensions shall be granted subject to the following conditions:

- (1) On or before the due date prescribed by the statute for the filing of a return, there shall have been paid, through refundable credits, nonrefundable credits, withholding of taxes, estimated tax payments, or a payment submitted with a form prescribed by the department, an amount equal to the properly estimated tax liability for the taxable year;
- (2) The tax return shall be filed within the time granted by the automatic extension and shall be accompanied by payment of tax shown as due on the return to the extent not already paid; and
- (3) A court has not ordered the taxpayer to file the tax return, declaration, statement, or other document to be extended on or before the prescribed due date.

The failure to file a tax return penalty under section 231-39(b)(1), HRS, shall not be imposed on any return filed on or before the extended due date if these conditions are met. However, if the stated conditions are not met, the automatic extension shall be deemed invalid and penalties and interest shall be assessed on the amount of tax owed as if no automatic extension had been granted (i.e., the computation of

penalties under section 231-39(b)(1), HRS, and interest under section 231-39(b)(4), HRS, shall relate back to the due date prescribed by the statute).

(c) The director of taxation may terminate the automatic extension at any time by mailing a notice of termination to the taxpayer. The notice shall be mailed at least ten days prior to the termination date designated in the notice.

(d) For purposes of this section, "properly estimated tax liability" means the amount that the taxpayer estimates the tax liability will be for the taxable year, based on a bona fide and reasonable attempt as of the due date prescribed for the filing of the return to locate and account for all of the information necessary to make the estimate. Payment of properly estimated tax liability will be presumed if the tax still owing after the due date prescribed for the filing of the return, determined without regard to any extension, is ten per cent or less of the tax liability stated on the return. For purposes of this subsection, "tax liability stated on the return" means the amount of tax due before taking into account credits and payments.

(e) Any extension to file an income tax return under section 235-98, HRS, shall not extend the time for payment of any tax due on the return, but shall only extend the time to file the return. Interest under section 231-39(b)(4), HRS, shall be assessed on any amount of tax that is not paid on or before the prescribed due date." [Eff 2/16/82; am 6/28/93; 1/1/94; 10/13/94; 1/5/98; am 6/4/05; am 10/06/07; am ] (Auth: HRS §§231-3(9), 231-39, 235-98, 235-118) (Imp: HRS §§231-39 and 235-98)



DEPARTMENT OF TAXATION

Amendments to Chapter 18-235,  
Hawaii Administrative Rules

\_\_\_\_\_, 2018

1. Section 18-235-98, Hawaii Administrative Rules, is amended to read as follows:

**"§18-235-98 Returns; form, verification and authentication, time of filing.** (a) [~~Extensions of time for filing income tax returns; in general.~~] The director of taxation may grant a reasonable extension of time for filing any return, declaration, statement, or other document required under chapter 235, HRS [7] ; provided that no extension shall be for more than six months, except as otherwise provided by statute for cases in which exceptional circumstances require additional time, including cases of persons who are outside the United States.

~~[(b) An extension only applies to the requesting taxpayer. Unless otherwise stated in the statutes, these rules, or the extension itself, an extension to file a return only applies to the taxpayer who submitted the application. For example, an extension of time for filing a partnership, estate, trust, or real estate mortgage investment conduit return or other document does not operate to extend the time for filing a return or other document for, as the case may be, any partner, or member of an entity classified as a partnership, any beneficiary of the estate or trust, or a residual or regular interest holder of a real estate mortgage investment conduit.]~~

~~(c) Automatic extension of time for filing individual income tax return. Any individual]~~ (b) Any taxpayer required to file an income tax return, declaration, statement, or other document under chapter 235, HRS, is granted an automatic six-month extension to file the tax return after the date prescribed for filing. The taxpayer need not file an

application form to request an extension. However, if the taxpayer makes a payment of tax, the payment shall be submitted with the form prescribed by the department. ~~[No signature is required on the application.]~~ Automatic extensions ~~[for individual taxpayers]~~ shall be granted subject to the following conditions:

- (1) On or before the due date prescribed by the statute for the filing of a return, there shall have been paid, through refundable credits, nonrefundable credits, withholding of taxes, estimated tax payments, or a payment ~~[accompanying an application for the extension,]~~ submitted with a form prescribed by the department, an amount equal to the properly estimated tax liability for the taxable year;
- (2) The tax return shall be filed within the time granted by the automatic extension and shall be accompanied by payment of tax shown as due on the return to the extent not already paid; and
- (3) ~~[The taxpayer is not bound by a court order]~~ A court has not ordered the taxpayer to file the tax return, declaration, statement, or other document to be extended on or before the prescribed due date.

The failure to file a tax return penalty under section 231-39(b)(1), HRS, shall not be imposed on any return filed on or before the extended due date if these conditions are met. However, if the stated conditions are not met, the automatic extension shall be deemed invalid and penalties and interest shall be assessed on the amount of tax owed as if no automatic extension had been granted (i.e., the computation of penalties under section 231-39(b)(1), HRS, and interest under section 231-39(b)(4), HRS, shall relate back to the due date prescribed by the statute).

~~[(d) Automatic extensions for partnerships, estates, trusts, or real estate mortgage investment conduits. A partnership or entity classified as a partnership, estate, trust, or real estate mortgage~~

~~investment conduit may obtain an automatic six month extension. An application for an automatic extension on the form prescribed by the department must be filed on or before the date prescribed for the filing of the return. No signature is required on the application. Automatic extensions for partnerships, estates, trusts, or real estate mortgage investment conduits shall be granted subject to the following conditions:~~

- ~~(1) On or before the due date prescribed by the statute for the filing of a return, there shall have been paid, through estimated tax payments or a payment accompanying the application for the extension, an amount equal to the properly estimated tax liability for the taxable year. If a payment accompanies the application for the extension, the amount of the payment shall be shown on the application;~~
- ~~(2) The tax return shall be filed within the time specified by the automatic extension and shall be accompanied by payment of the tax shown as due on the return to the extent not already paid; and~~
- ~~(3) The taxpayer is not bound by a court order to file a tax return, declaration, statement, or other document to be extended on or before the prescribed due date.~~

~~The failure to file a tax return penalty under section 231-39(b)(1), HRS, shall not be imposed on any return filed on or before the extended due date if these conditions are met. However, if the stated conditions are not met, the automatic extension shall be deemed invalid and penalties and interest shall be assessed on the amount of tax owed as if no extension had been granted (i.e., the computation of penalties under section 231-39(b)(1), HRS, and interest under section 231-39(b)(4), HRS, shall relate back to the due date prescribed by the statute).~~

~~(e) Automatic extension of time for filing corporate income tax returns or corporate income tax returns for entities classified as a corporation.~~

~~(1) In general. A corporation or entity classified as a corporation shall be allowed an automatic six month extension of time to file its income tax return, declaration, statement, or other document. An application for an automatic extension on the form prescribed by the department must be filed on or before the date prescribed for the filing of the return. No signature is required on the application. Automatic extensions for corporations shall be granted subject to the following conditions:~~

~~(A) On or before the due date of the return prescribed by the statute, there shall have been paid, through estimated tax payments or a payment accompanying the application for the extension, an amount equal to the properly estimated tax liability for the taxable year. If a payment accompanies the application for the extension, the amount of the payment shall be shown on the application;~~

~~(B) The income tax return shall be filed within the time specified by the automatic extension and shall be accompanied by payment of the tax shown as due on the return to the extent not already paid; and~~

~~(C) The taxpayer is not bound by a court order to file a tax return, declaration, statement, or other document to be extended on or before the prescribed due date.~~

~~The failure to file a tax return penalty under section 231-39(b)(1), HRS, shall not be imposed on any return filed on or before the extended due date if these conditions are met. However, if the stated conditions are not met, the automatic extension shall be deemed invalid and penalties and interest shall be assessed on~~

~~the amount of tax owed as if no extension had been granted (i.e., the computation of penalties under section 231-39(b)(1), HRS, and interest under section 231-39(b)(4), HRS, shall relate back to the due date prescribed by the statute).~~

~~(2) Consolidated returns. If a consolidated return is to be filed under section 235-92(2), HRS, a parent corporation or parent entity classified as a corporation may request an automatic extension for its subsidiaries. In this case, the name, address, and employer identification number of each member of the affiliated group, for which the extension is desired, must be listed. The filing of an application for extension of time by a parent corporation or parent entity classified as a corporation is not considered an exercise of the privilege of filing a consolidated return. If the privilege of filing a consolidated return is not exercised, the parent corporation or parent entity classified as a corporation and members of the affiliated group shall attach a copy of the application for extension to their completed separate income tax returns.]~~

~~[(f) Termination.]~~ (c) The director of taxation may terminate the automatic extension at any time by mailing a notice of termination to the taxpayer. ~~[In the case of a corporation or entity classified as a corporation, notice of termination shall be mailed to the corporation or entity classified as a corporation, or to the person who requested the extension for the corporation.]~~ The notice shall be mailed at least ten days prior to the termination date designated in the notice.

~~[(g) Properly estimated tax liability; safe harbor.]~~ (d) For purposes of this section, "properly estimated tax liability" means the ~~[taxpayer made]~~ amount that the taxpayer estimates the tax liability will be for the taxable year, based on a bona fide and

reasonable attempt [~~at the time the extension was submitted~~] as of the due date prescribed for the filing of the return to locate and [~~gather~~] account for all of the [~~necessary~~] information necessary to make [~~a proper estimate of tax liability for the taxable year.~~] the estimate. Payment of properly estimated tax liability will be presumed if the tax still owing after the due date prescribed [~~by the statute~~] for the filing of [~~a~~] the return, [~~(+)determined without regard to any extension(+)~~], is [~~10 percent~~] ten per cent or less of the [~~total~~] tax liability [~~shown as due~~] stated on the return. For purposes of this subsection, "tax liability stated on the return" means the amount of tax due before taking into account credits and payments.

~~[(h) Time for payment of tax not extended by extensions.]~~ (e) Any extension to file an income tax return under section 235-98, HRS, shall not extend the time for payment of any tax due on the return, but shall only extend the time to file the return. Interest under section 231-39(b)(4), HRS, shall be assessed on any amount of tax that is not paid on or before the prescribed due date." [Eff 2/16/82; am 6/28/93; 1/1/94; 10/13/94; 1/5/98; am 6/4/05; am 10/06/07; am ] (Auth: HRS §§231-3(9), 231-39, 235-98, 235-118) (Imp: HRS §§231-39 and 235-98)

2. Material to be repealed is bracketed and stricken. New material is underscored.

3. These amendments to chapter 18-231, Hawaii Administrative Rules, are provided in Ramseyer format for reference only.



**PRE-PUBLIC HEARING**  
**SMALL BUSINESS IMPACT STATEMENT**  
**TO THE**  
**SMALL BUSINESS REGULATORY REVIEW BOARD**  
(Hawaii Revised Statutes §201M-2)

**Department or Agency:** Department of Taxation (Department)

**Administrative Rule Title and Chapter:** 18-235

**Chapter Name:** Income Tax Law

**Contact Person/Title:** Jacob Herlitz, Administrative Rules Specialist

**Phone Number:** (808) 587-5334

**E-mail Address:** [Jacob.L.Herlitz@hawaii.gov](mailto:Jacob.L.Herlitz@hawaii.gov)

**Date:** September 27, 2018

**Webpage address for draft rules:** [tax.hawaii.gov/legal/taxlawandrules](http://tax.hawaii.gov/legal/taxlawandrules)

**General Description of Proposed Rules:**

The proposed rules amend chapter 18-235, Hawaii Administrative Rules (HAR), by amending section 18-235-1.14, which defines the term "substantial gainful business or occupation."

Hawaii Tax Law confers certain benefits upon blind, deaf, and totally disabled persons such as a higher personal exemption under Income Tax Law and exemptions and decreased tax rates for businesses wholly owned by blind, deaf, or totally disabled persons under General Excise Tax Law. The terms "blind" and "deaf" are defined with specific measurements that can be certified by physicians. The term "person totally disabled," by contrast, is defined as "a person who is totally and permanently disabled ... which results in the person's inability to engage in any substantial gainful business or occupation."

Under current rules, the term "substantial gainful business or occupation" is defined under section 18-235-1.14, HAR, with a presumption that any individual whose earned income is greater than \$30,000 in a taxable year is engaged in a substantial gainful business or occupation, and thus is not totally and permanently disabled. Earned income is defined to include net earnings from self-employment.

Under the proposed rules, the definition of earned income is amended to include *gross* earnings from self-employment rather than net, if those gross earnings are \$60,000 or greater. The rules also specify that all entities shall be disregarded for purposes of calculating such gross or net earnings.

The purpose of the proposed rules is to prevent taxpayers with substantially large gross business income from taking large business deductions to reduce net income below \$30,000 and receive Income and General Excise Tax benefits designed for persons and businesses incapable of generating substantial income for themselves due to disability.

**Rule Description:**     New     Repeal     Amendment     Compilation

**Information Required Under Section 201M-2, HRS**

**1. Description of the small businesses that will be required to comply with the proposed rules, and how they may be adversely affected.**

Any small business wholly owned by a disabled person (or persons) with gross earnings of \$60,000 or greater, but net earnings below \$30,000, may be affected by the proposed rules because the individual owner(s) of such a business would not qualify as totally or permanently disabled and the business would not be eligible for the General Excise Tax exemptions and reduced rates for businesses wholly owned by blind, deaf, or totally disabled persons. The individual would also be ineligible for Income Tax benefits on his or her individual income tax return.

**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:**

The proposed rules do not increase any costs, fees or fines.

**3. The probable monetary costs and benefits to the implementing agency and 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:**

The proposed rules will not result in any monetary cost or benefit to the Department or any other agency. There are no additional fees or changes to the ways 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 any other mitigating techniques:**

The Department did not consider other methods, but does not believe the proposed rules will be more difficult for taxpayers to comply with than the existing rules.

- 5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.**

The proposed rules amend a definition and do not restrict the behavior of any business.

- 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.**

The proposed rules should not be any more burdensome to comply with than the existing rules. They merely change a definition and do not change the way a taxpayer is required to act.

The businesses that will be directly affected by the proposed rules are businesses wholly owned by blind, deaf, or disabled persons where the disabled person has gross income of \$60,000 or greater, but net income of \$30,000 or less. Under current rules, such a business is one wholly owned by person blind, deaf or totally disabled and gains a General Excise Tax exemption and reduced tax rate. Under the proposed rules, such a disabled person is engaged in a substantial business or occupation, and is therefore not "totally disabled" for purposes of section 235-1, Hawaii Revised Statutes, and the business would no longer qualify for the General Excise Tax benefits.

- 7. How the agency involved small business in the development of the proposed rules:**

The Department did not directly involve small businesses.

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:**

The proposed rules do not include any provisions that are more stringent than those mandated by another federal, state or county standard.



DEPARTMENT OF TAXATION

Amendments to Chapter 18-235,  
Hawaii Administrative Rules

\_\_\_\_\_, 2018

SUMMARY

1. §18-235-1.14(d) is amended.

**§18-235-1.14 "Substantial gainful business or occupation", defined.**

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(d) For purposes of this section, earned income includes wages, salaries, tips, business interest income, other employment compensation, and gross earnings from self-employment for the taxable year unless gross earnings for the taxable year are less than \$60,000, in which case all net earnings from self-employment are included in earned income in lieu of gross earnings from self-employment. For purposes of this subsection, all entities shall be disregarded. Earned income does not include interest, dividends, capital gains, pensions, or deferred compensation.

**Example 1:**

Taxpayer retires on disability that is total and permanent and receives an insurance settlement. Taxpayer does not engage in any other employment. The insurance settlement is invested and Taxpayer receives \$35,000 in interest, dividends, and capital gains during the taxable year. Taxpayer is not engaged in a substantial gainful business or occupation because earned income does not include interest, dividends, and capital gains.

**Example 2:**

Taxpayer works for wages and receives \$20,000 in wages for the taxable year. Taxpayer also has net earnings from self-employment of \$8,000 and gross earnings from self-employment of \$75,000 for the taxable year. Taxpayer has earned income of \$95,000 for the taxable year and is engaged in a substantial gainful business or occupation because earned income includes the \$20,000 in wages and \$75,000 of gross earnings from self-employment.

**Example 3:**

Taxpayer has gross earnings from self-employment of \$60,000 for the taxable year. Taxpayer is engaged in a substantial gainful

business or occupation because earned income includes the \$60,000 of gross earnings from self-employment.

**Example 4:**

Taxpayer has gross earnings from self-employment of \$59,999 and net earnings from self-employment of \$30,000 for the taxable year. Taxpayer has earned income of \$30,000 for the taxable year and is not engaged in a substantial gainful business or occupation. Taxpayer's earned income includes net earnings from self-employment because gross earnings from self-employment are less than \$60,000 for the taxable year.

**Example 5:**

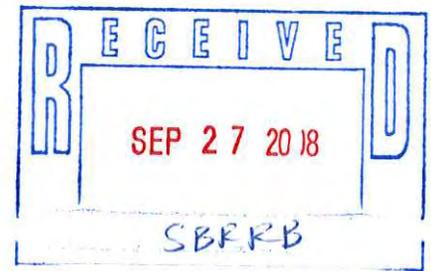
Taxpayer works for wages and receives \$10,000 in wages for the taxable year. Taxpayer also has gross earnings from self-employment of \$59,999 and net earnings from self-employment of \$25,000 for the taxable year. Taxpayer has earned income of \$35,000 for the taxable year and is engaged in a substantial gainful business or occupation because earned income includes the \$10,000 of wages and the \$25,000 of net earnings from self-employment.

**Example 6:**

Taxpayer has structured her business as a C corporation for which she is sole shareholder. The corporation has gross earnings of \$75,000 for the taxable year. Taxpayer earns no wages, but the corporation pays taxpayer a dividend of \$25,000 for the taxable year. Taxpayer has earned income of \$75,000 for the taxable year and is engaged in a substantial gainful business or occupation because earned income includes the \$75,000 of gross income earned by her corporation. Entities such as corporations are disregarded for purposes of determining Taxpayer's earned income.

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[Eff 2/16/82; am 9/3/94; am and ren §18-235-1.14  
8/28/98; am ] (Auth: HRS §231-3(9))  
(Imp: HRS §235-1)



DEPARTMENT OF TAXATION

Amendments to Chapter 18-235,  
Hawaii Administrative Rules

1. Section 18-235-1.14, Hawaii Administrative Rules, is amended by amending subsection (d) to read as follows:

"(d) For purposes of this section, earned income includes wages, salaries, tips, business interest income, other employment compensation, and ~~[net earnings from self-employment for the taxable year.]~~ gross earnings from self-employment for the taxable year unless gross earnings for the taxable year are less than \$60,000, in which case all net earnings from self-employment are included in earned income in lieu of gross earnings from self-employment. For purposes of this subsection, all entities shall be disregarded. Earned income does not include interest, dividends, capital gains, pensions, or deferred compensation.

**Example 1:**

Taxpayer retires on disability that is total and permanent and receives an insurance settlement. Taxpayer does not engage in any other employment. The insurance settlement is invested and Taxpayer receives \$35,000 in interest, dividends, and capital gains during the taxable year. Taxpayer is not engaged in a substantial gainful business or occupation because earned income does not include interest, dividends, and capital gains.

**Example 2:**

Taxpayer works for wages and receives \$20,000 in wages for the taxable year. Taxpayer also has net earnings from self-employment of \$8,000 and gross earnings from self-employment of

\$75,000 for the taxable year. Taxpayer has earned income of \$95,000 for the taxable year and is engaged in a substantial gainful business or occupation because earned income includes the \$20,000 in wages and \$75,000 of gross earnings from self-employment.

**Example 3:**

Taxpayer has gross earnings from self-employment of \$60,000 for the taxable year. Taxpayer is engaged in a substantial gainful business or occupation because earned income includes the \$60,000 of gross earnings from self-employment.

**Example 4:**

Taxpayer has gross earnings from self-employment of \$59,999 and net earnings from self-employment of \$30,000 for the taxable year. Taxpayer has earned income of \$30,000 for the taxable year and is not engaged in a substantial gainful business or occupation. Taxpayer's earned income includes net earnings from self-employment because gross earnings from self-employment are less than \$60,000 for the taxable year.

**Example 5:**

Taxpayer works for wages and receives \$10,000 in wages for the taxable year. Taxpayer also has gross earnings from self-employment of \$59,999 and net earnings from self-employment of \$25,000 for the taxable year. Taxpayer has earned income of \$35,000 for the taxable year and is engaged in a substantial gainful business or occupation because earned income includes the \$10,000 of wages and the \$25,000 of net earnings from self-employment.

**Example 6:**

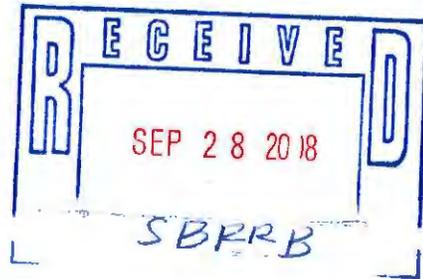
Taxpayer has structured her business as a C corporation for which she is sole shareholder. The corporation has gross earnings of \$75,000 for the taxable year. Taxpayer earns no wages, but the corporation pays taxpayer a dividend of \$25,000 for the taxable year. Taxpayer has earned income of \$75,000 for the taxable year and is engaged in a substantial gainful business or occupation because earned income includes the \$75,000 of gross income earned by her corporation. Entities such as corporations are disregarded for purposes of determining Taxpayer's earned income." [Eff 2/16/82; am 9/3/94; am and ren §18-235-1.14 8/28/98; am ] (Auth: HRS §231-3(9) (Imp: HRS §235-1)

2. Material to be repealed is bracketed and stricken. New material is underscored.

3. The foregoing copy of the rules, drafted in the Ramseyer format, is provided for reference only.

## **IV. New Business**

D. Discussion and Action on Proposed Amendments to  
HAR Title 4 Chapter 66, **Pesticides**, promulgated  
by DoAg



PRE-PUBLIC HEARING  
SMALL BUSINESS IMPACT STATEMENT  
TO THE  
SMALL BUSINESS REGULATORY REVIEW BOARD  
(Hawaii Revised Statutes §201M-2)

Department or Agency: State of Hawaii Dept. of Agriculture, Pesticides Branch

Administrative Rule Title and Chapter: Title 4, Subtitle 6, Chapter 66

Chapter Name: Pesticides

Contact Person/Title: John McHugh, Pesticides Branch Manager

Phone Number: (808) 973-9404

E-mail Address: john.mchugh@hawaii.gov Date: \_\_\_\_\_

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.

Are the draft rules available on the Lieutenant Governor's Website pursuant to HRS §91-2.6? Yes  No

If Yes, provide webpage address: http://hdoa.hawaii.gov/meetings-reports/proposedadministrativerules/

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

"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 enterprise consisting of fewer than one hundred full-time or part-time employees." (HRS §201M-1)  
(If No, you do not need to submit this form.)

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

IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a)) Yes  No  (If Yes, you do not need to submit this form.)

**Pre-Public Hearing Small business Impact Statement**  
**Page 2**

\* \* \*

**If the proposed rule(s) affect 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 directly affected by, bear the costs of, or directly benefit from the proposed rules, that are required to comply with the proposed rules, and how they may be adversely affected.

Not applicable.

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.

Not applicable.

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.

Not applicable.

- b. Amount of the proposed fee or fine and the percentage increase.

Not applicable.

- c. Reason for the new or increased fee or fine.

Not applicable.

- d. Criteria used to determine the amount of the fee or fine.

Not applicable.

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.

Not applicable.

**Pre-Public Hearing Small business Impact Statement**  
**Page 3**

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.

Not applicable.

5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.

Not applicable.

6. Consideration of creative, innovative, or flexible methods of compliance for small businesses.

Not applicable.

7. How the agency involved small business in the development of the proposed rules.

Not applicable.

- 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.

Not applicable.

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.

Not applicable.

**Pre-Public Hearing Small business Impact Statement**  
**Page 4**

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.

Not applicable.

- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.

Not applicable.

- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.

Not applicable.

- 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.

Not applicable.

- 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.

Not applicable.

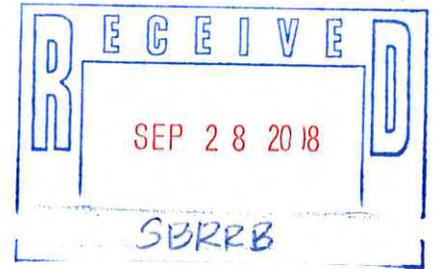
\* \* \*

Small Business Regulatory Review Board / DBEDT  
Phone: (808) 586-2594  
Email: [sbrrb@dbedt.hawaii.gov](mailto:sbrrb@dbedt.hawaii.gov)  
Website: <http://dbedt.hawaii.gov/sbrrb>

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



EXECUTIVE CHAMBERS  
HONOLULU



DAVID Y. IGE  
GOVERNOR

June 13, 2018

**GOV. MSG. NO. 1145**

The Honorable Ronald D. Kouchi,  
President  
and Members of the Senate  
Twenty-Ninth State Legislature  
State Capitol, Room 409  
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,  
Speaker and Members of the  
House of Representatives  
Twenty-Ninth State Legislature  
State Capitol, Room 431  
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on June 13, 2018, the following bill was signed into law:

SB3095 SD1 HD1 CD1

RELATING TO ENVIRONMENTAL PROTECTION  
**ACT 045 (18)**

Sincerely,

DAVID Y. IGE  
Governor, State of Hawai'i

# A BILL FOR AN ACT

RELATING TO ENVIRONMENTAL PROTECTION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Chapter 149A, Hawaii Revised Statutes, is  
2 amended by adding a new part to be appropriately designated and  
3 to read as follows:

4           "PART       .   PESTICIDE REPORTING AND REGULATION PROGRAM

5           §149A-A Definitions. As used in this part:

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

9           "School" means any public or private preschool,  
10 kindergarten, elementary, intermediate, middle, secondary, or  
11 high school.

12           §149A-B Post-application reporting of pesticide use. (a)  
13 Beginning January 1, 2019, every user of restricted use  
14 pesticides shall be subject to the requirement to submit to the  
15 department, for departmental use, an annual report of all use of  
16 restricted use pesticides as provided in this section.

17           (b) No later than thirty days following the end of each  
18 calendar year, every entity that uses restricted use pesticides



1 shall provide to the department a report of all restricted use  
2 pesticides used during the preceding calendar year.

3 (c) The department shall adopt rules pursuant to chapter  
4 91 requiring that the annual reports include the following  
5 information:

6 (1) A listing, by federal and state registrations or  
7 permit numbers, commercial product names, and active  
8 ingredients, of all restricted use pesticides used;

9 (2) The total quantities used for each restricted use  
10 pesticide;

11 (3) A general description of the geographic location,  
12 including, at a minimum, the tax map key number, at  
13 which the restricted use pesticides were used; and

14 (4) The date on which the restricted use pesticide  
15 application occurred.

16 **§149A-C Public reports; contents.** The department shall  
17 produce a summary, for public disclosure, by county, that  
18 includes:

19 (1) The total quantities used, by federal and state  
20 registrations or permit numbers, commercial product



1 names, and active ingredients, for each restricted use  
2 pesticide used; and

3 (2) The amount of area in the county in which the  
4 restricted use application occurred.

5 §149A-D Buffer zones. Beginning January 1, 2019, no  
6 person shall apply a restricted use pesticide on or within one  
7 hundred feet of a school property during normal school hours;  
8 provided that this section shall not apply to whole structure  
9 fumigation; provided further that if this section is determined  
10 to conflict with any pesticide application information listed on  
11 the pesticide label, the more restrictive provision shall apply.

12 §149A-E Rules. The department shall adopt rules pursuant  
13 to chapter 91 to implement this part."

14 SECTION 2. Section 149A-13.5, Hawaii Revised Statutes, is  
15 amended as follows:

16 1. By amending subsections (a) and (b) to read:

17 "(a) There is established within the treasury of the  
18 State, a pesticide use revolving fund. The fund shall be  
19 administered by the department for the purposes of this section.  
20 The fund shall consist of:



- 1 (1) Licensing and registration fees and charges collected  
2 by the department under section 149A-13(b);
- 3 (2) All fees collected by the department through the  
4 collection of training fees in accordance with  
5 subsection (c); ~~and~~
- 6 (3) Funds appropriated for the pesticide subsidy program  
7 established under Act 105, Session Laws of Hawaii  
8 2014 ~~[7]~~; and
- 9 (4) All penalties and fines collected by the department  
10 under section 149A-41.
- 11 (b) Moneys in the pesticide use revolving fund shall be  
12 expended by the department ~~[to]~~:
- 13 (1) To support the pesticide program's registration and  
14 licensing, certification and education, and compliance  
15 monitoring activities ~~[. The department shall also~~  
16 ~~expend revolving fund moneys on the establishment of]~~ ;
- 17 (2) To establish pesticide training workshops ~~[7]~~ and  
18 educational programs ~~[7 development of]~~ ;
- 19 (3) To develop integrated pest management strategies, the  
20 pesticide subsidy program created under Act 105,  
21 Session Laws of Hawaii 2014, and other services for



1 pesticide users such as the agricultural pest control  
2 industry, the structural pest control industry, and  
3 consumer users of pesticides, which provide pesticide  
4 instruction in areas including but not limited to the  
5 collection, disposal, and recycling of pesticide  
6 containers; and

7 (4) For all other pesticide services deemed necessary by  
8 the department.

9 Moneys from the revolving fund may be used for personnel,  
10 services, materials, and equipment for the purposes of this  
11 section[~~, provided that the use of moneys from the revolving~~  
12 ~~fund for personnel costs shall be limited to those employees~~  
13 ~~under the registration and education section of the department's~~  
14 ~~pesticides branch].~~

15 Moneys expended by the department from the pesticide use  
16 revolving fund for training workshops, educational programs, and  
17 other services for the agricultural pest control industry, the  
18 structural pest control industry, and consumer groups shall be  
19 expended in a manner that appropriately addresses the needs of  
20 each category of pesticide user."

21 2. By amending subsection (e) to read:



1           "(e) All unobligated, unencumbered, or unexpended funds  
2 remaining in the fund in excess of [~~\$250,000~~] \$1,000,000 at the  
3 close of each fiscal year shall lapse to the state general  
4 fund."

5           SECTION 3. Section 149A-31, Hawaii Revised Statutes, is  
6 amended to read as follows:

7           "**§149A-31 Prohibited acts.** No person shall:

8           (1) Use any pesticide in a manner inconsistent with its  
9 label, except that it shall not be unlawful to:

10           (A) Apply a pesticide at any dosage, concentration,  
11 or frequency less than that specified on the  
12 label or labeling; provided that the efficacy of  
13 the pesticide is maintained [~~and further~~];  
14 provided further that[~~7~~] when a pesticide is  
15 applied by a commercial applicator, the deviation  
16 from the label recommendations [~~must~~] shall be  
17 with the consent of the purchaser of the  
18 pesticide application services;

19           (B) Apply a pesticide against any target pest not  
20 specified in the labeling if the application is  
21 to a crop, animal, or site specified on the label



1 or labeling; provided that the label or labeling  
2 does not specifically prohibit the use on pests  
3 other than those listed on the label or labeling;  
4 (C) Employ any method of application not prohibited  
5 by the labeling;  
6 (D) Mix a pesticide or pesticides with a fertilizer  
7 when [~~such~~] the mixture is not prohibited by the  
8 label or labeling; or  
9 (E) Use in a manner determined by rule not to be an  
10 unlawful act;  
11 (2) Use, store, transport, or discard any pesticide or  
12 pesticide container in any manner [~~which~~] that would  
13 have unreasonable adverse effects on the environment;  
14 (3) Use or apply restricted use pesticides unless the  
15 person is a certified pesticide applicator or under  
16 the direct supervision of a certified pesticide  
17 applicator with a valid certificate issued pursuant to  
18 rules adopted under section 149A-33(1); provided that  
19 it shall be prohibited to use or apply a restricted  
20 use pesticide for structural pest control uses for a  
21 fee or trading of services, unless the user or



- 1 applicator is a pest control operator or is employed  
2 by a pest control operator licensed under chapter  
3 460J;
- 4 (4) Use or apply pesticides in any manner that has been  
5 suspended, canceled, or restricted pursuant to section  
6 149A-32.5;
- 7 (5) Falsify any record or report required to be made or  
8 maintained by rules adopted pursuant to this chapter;  
9 ~~[ex]~~
- 10 (6) Fill with water, through a hose, pipe, or other  
11 similar transmission system, any tank, implement,  
12 apparatus, or equipment used to disperse pesticides,  
13 unless the tank, implement, apparatus, equipment,  
14 hose, pipe, or other similar transmission system is  
15 equipped with an air gap or a reduced-pressure  
16 principle backflow device meeting the requirements  
17 under section 340E-2 and the rules adopted  
18 thereunder ~~[-]~~; or
- 19 (7) Beginning January 1, 2019, use or apply any pesticide  
20 containing chlorpyrifos as an active ingredient;  
21 provided that:



- 1           (A) The department shall grant to any person, upon
- 2                   request, a temporary permit authorizing the
- 3                   person, until December 31, 2022, to use or apply
- 4                   a pesticide containing chlorpyrifos as an active
- 5                   ingredient; and
- 6           (B) Any person who violates this paragraph shall be
- 7                   subject to a penalty pursuant to section
- 8                   149A-41."

9           SECTION 4. No later than July 1, 2019, the department of  
10 agriculture shall develop a pesticide drift monitoring study to  
11 evaluate pesticide drift at three schools within the State. The  
12 department of agriculture shall submit a report of its findings  
13 and recommendations to the legislature no later than twenty days  
14 prior to the convening of the regular session of 2020.

15           SECTION 5. There is appropriated out of the general  
16 revenues of the State of Hawaii the sum of \$300,000 or so much  
17 thereof as may be necessary for fiscal year 2018-2019 for the  
18 pesticide drift monitoring study to be developed pursuant to  
19 section 4 of this Act.

20           The sum appropriated shall be expended by the department of  
21 agriculture for the purposes of this Act.



1 SECTION 6. There is appropriated out of the general  
2 revenues of the State of Hawaii the sum of \$105,648 or so much  
3 thereof as may be necessary for fiscal year 2018-2019 to be  
4 expended for the purposes of this Act, including for the  
5 establishment of two full-time equivalent (2.0 FTE) positions in  
6 the department of agriculture.

7 The sum appropriated shall be expended by the department of  
8 agriculture for the purposes of this Act.

9 SECTION 7. There is appropriated out of the general  
10 revenues of the State of Hawaii the sum of \$300,000 or so much  
11 thereof as may be necessary for fiscal year 2018-2019 for  
12 outreach and education to effectuate this Act.

13 The sum appropriated shall be expended by the department of  
14 agriculture for the purposes of this Act.

15 SECTION 8. This Act does not affect rights and duties that  
16 matured, penalties that were incurred, and proceedings that were  
17 begun before its effective date.

18 SECTION 9. If any provision of this Act, or the  
19 application thereof to any person or circumstance, is held  
20 invalid, the invalidity does not affect other provisions or  
21 applications of the Act that can be given effect without the



1 invalid provision or application, and to this end the provisions  
2 of this Act are severable.

3 SECTION 10. In codifying the new sections added by section  
4 1 of this Act, the revisor of statutes shall substitute  
5 appropriate section numbers for the letters used in designating  
6 the new sections in this Act.

7 SECTION 11. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9 SECTION 12. This Act shall take effect on July 1, 2018.

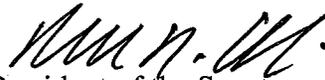
APPROVED this 13 day of JUN, 2018

  
GOVERNOR OF THE STATE OF HAWAII

**THE SENATE OF THE STATE OF HAWAI'I**

Date: May 1, 2018  
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Twenty-ninth Legislature of the State of Hawai'i, Regular Session of 2018.

  
President of the Senate

  
Clerk of the Senate

SB No. 3095, SD 1, HD 1, CD 1

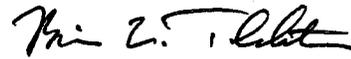
THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 1, 2018  
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Twenty-Ninth Legislature of the State of Hawaii, Regular Session of 2018.



Scott K. Saiki  
Speaker  
House of Representatives



Brian L. Takeshita  
Chief Clerk  
House of Representatives



NOTICE OF PUBLIC HEARING  
HAWAII DEPARTMENT OF AGRICULTURE  
PROPOSED AMENDMENTS TO ADMINISTRATIVE RULES RELATING TO PESTICIDES

NOTICE IS HEREBY GIVEN that the Department of Agriculture pursuant to Chapter 91 *Hawaii Revised Statutes* (HRS) will hold public hearings as follows:

Thursday, November 1, 2018, 2 p.m. to 4 p.m.  
Department of Agriculture Conference Room  
635 Mua Street, Kahului, HI 96732

Friday, November 2, 2018, 5 p.m. to 7 p.m.  
Plant Quarantine Conference Room  
1849 Auiki Street, Honolulu, HI 96819

Monday, November 5, 2018, 2 p.m. to 4 p.m.  
Department of Agriculture Conference Room  
4398A Pua Loke Street, Lihue, HI 96766

Wednesday, November 7, 2018, 9 to 11 a.m.  
Department of Agriculture Conference Room  
16 E. Lanikaula Street, Hilo, HI 96720

Wednesday, November 7, 2018 3 p.m. to 5 p.m.  
Hale Iako Building - Natural Energy Lab. of HI Auth.  
73-790 Makako Bay Drive, Kailua-Kona, HI 96740

Thursday, November 8, 2018, 10 a.m. to 12 p.m.  
Kulana OIwi - DHHL/OHA Conference Room  
600 Maunaloa Highway, Kaunakakai, HI 96748

The purpose of the public hearings is to receive testimony regarding proposed amendments to Hawaii Administrative Rules Section 4-66 to conform to changes in Federal law by adopting the labeling requirements established in part 156 of Title 40, *Code of Federal Regulations* (CFR) (2017), the Worker Protection Standards in 40 CFR part 170 (2017), and the pesticide applicator education, training, and certification standards in 40 CFR part 171 (2018). The definitions section was amended to aid in rule interpretation; the list of State restricted use pesticides was removed from the rules to allow for the efficient addition or removal of high risk pesticides from the list; procedures were established for maintaining the State restricted use pesticide list external to the rules; a new section was added to address aerial pesticide applications; increased oversight of experimental use permittees was added; requirements for restricted use pesticide reporting and use within buffer zones to comply with Act 045, *Session Laws of Hawaii* 2018 were adopted; the penalties section reiterates the sanctions available in HRS chapter 149A; fees were increased to a level commensurate with other states; and, nonsubstantive changes were made to comply with the *Administrative Rules Drafting Manual* (2016).

The proposed rules are available for review in person at the following Department of Agriculture offices during regular business hours of 7:45 a.m. to 4:30 p.m., Monday to Friday, from September 28, 2018 to November 19, 2018.

Honolulu	1428 S. King St., Honolulu, HI 96814	Phone - 973-9560
Hilo	16 E. Lanikaula St., Hilo, HI 96720	Phone - 974-4142
Maui	635 Mua St., Kahului, HI 96732	Phone - 873-3556
Kauai	4398A Pua Loke St., Lihue, HI 96766	Phone - 241-7134

Copies of the proposed rules may also be obtained at the above offices by paying a fee for photocopying or sent by mail upon payment of a fee for photocopying and postage. Copies may also be reviewed or downloaded at the Department of Agriculture website at <http://hdoa.hawaii.gov/meetings-reports/proposedadministrativerules/> or at the website of the lieutenant governor.

All interested persons may attend the public hearings and submit comments orally or in writing. Written testimony may be submitted prior to the hearing via postal mail to the Pesticides Branch, Department of Agriculture, 1428 S. King St., Honolulu, HI 96814, or via fax at (808) 973-9418, or email [HDOA.PB@hawaii.gov](mailto:HDOA.PB@hawaii.gov) until close of business, November 8, 2018. Please include the word "testimony" in the subject line. If possible, submit 5 written copies of the testimony prior to the hearing.

Persons requiring special accommodations at the hearing may call Department of Agriculture at (808) 973-9579. Accommodation requests must be received at least 5 working days prior to the hearing.

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](mailto: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>

DAVID Y. IGE  
Governor

DOUGLAS S. CHIN  
Lt. Governor



SCOTT E. ENRIGHT  
Chairperson, Board of Agriculture

PHYLLIS SHIMABUKURO-GEISER  
Deputy to the Chairperson

State of Hawaii  
**DEPARTMENT OF AGRICULTURE**  
1428 South King Street  
Honolulu, Hawaii 96814-2512  
Phone: (808) 973-9600 FAX: (808) 973-9613

April 18, 2018

Small Business Regulatory Review Board  
State of Hawaii  
Department of Business, Economic Development & Tourism

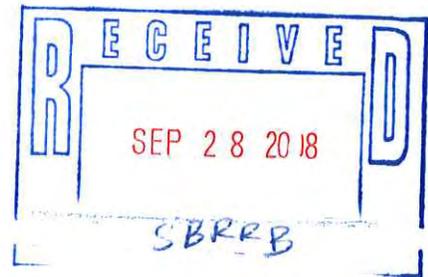
### **Statement of Topic**

The Hawaii Department of Agriculture, Pesticides Branch, starting in January 2015, began the process of revising the Hawaii Administrative Rules, Chapter 4-66, governing the registration, licensing, and use of pesticides in the State of Hawaii. The last time that the Pesticide Rules were revised and implemented was in 2006. Between 2006 and the present time there were Federal Rule changes as presented in the Code of Federal Regulations, Title 40, Chapter 1, Subchapter E – Pesticide Programs.

The revision of Hawaii's Pesticide Rules were undertaken, in part, to align State Rules with Federal Rules on the use of pesticides. As a result of the process there were a number of revisions that were made that addressed pesticide use and the environment, pesticide exposure and human health, pesticide enforcement, pesticide licensing and dealer fees, certification fees, and wholesale adoption of Federal pesticide rules that were incorporated into the fabric of Chapter 4-66 Pesticide Rules.

Included as part of the proposed Pesticide Rules revisions is a document that explains the revisions and what passages were replaced or what wording and phrasing within an existing passage was modified to reflect changes in Title 40 or in the enabling federal statute known as the Federal Insecticide Fungicide and Rodenticide Act (FIFRA), which is the overall governing law for pesticide use in the U.S. After being vetted by the Governor's Advisory Committee on Pesticides, and several presentations at meetings of the Board of Agriculture, the proposed Pesticides Rules revisions were approved by the Board of Agriculture on February 27, 2018 and are being presented to the Small Business Regulatory Review Board for review and consideration as a pre-public hearing requirement.





Amendment and Compilation of Chapter 4-66  
Hawaii Administrative Rules

\_\_\_\_\_, 2018

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

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

**§4-66-1 Objectives.** The objectives of these rules are to implement the requirements of chapter 149A, Hawaii Revised Statutes (HRS), which provides for the registration, licensing, certification, recordkeeping, usage, and other activities related to the safe and efficacious use of pesticides. [Eff 7/13/81; comp 12/16/06; am and comp ] (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. sections 136 et[-] 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.

"LC<sub>50</sub>" 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.

"LD<sub>50</sub>" 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, building roof tops, 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 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 sections 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), dated \_\_\_\_\_, 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)

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

~~of the percentages of total and water-soluble arsenic calculated as elemental arsenic.~~

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

~~(c) Unless the ingredient statement is a complete analysis of the pesticide, the term "analysis" shall not be used as a heading for the ingredient statement.]~~

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)

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

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

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

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 LD<sub>50</sub>..... Up to and including 50 mg/kg~~  
~~Inhalation LC<sub>50</sub>..... Up to and including 0.2 mg/liter~~  
~~Dermal LD<sub>50</sub>..... Up to and including 200 mg/kg~~  
~~Eye effects..... Corrosive; corneal opacity not reversible within 7 days~~  
~~Skin effects..... Corrosive~~

~~**Toxicity category II**~~

~~Oral LD<sub>50</sub>..... From 50 through 500 mg/kg~~  
~~Inhalation LC<sub>50</sub>..... From 0.2 through 2 mg/liter~~  
~~Dermal LD<sub>50</sub>..... 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 LD<sub>50</sub>..... From 500 through 5,000 mg/kg~~  
~~Inhalation LC<sub>50</sub>..... From 2 through 20 mg/liter~~  
~~Dermal LD<sub>50</sub>..... 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 LD<sub>50</sub>..... Greater than 5,000 mg/kg~~  
~~Inhalation LC<sub>50</sub>..... Greater than 20 mg/liter~~  
~~Dermal LD<sub>50</sub>..... 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.~~

~~(c) 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 LD<sub>50</sub> 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 LC<sub>50</sub> 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 LD<sub>50</sub> of 100 mg/kg or less, or a subacute dietary LC<sub>50</sub> 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 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)

**S4-66-27 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)

**~~§4-66-28 Label; language to be used.~~** ~~[All required label or labeling text shall appear in the English language. However, the head may require or the applicant may propose additional text in other languages considered necessary to protect the public. When additional text in another language is necessary, all labeling requirements shall be applied equally to both the English and other language versions of the labeling.]~~  
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

**§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)

**S4-66-31 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 [~~nontarget~~] 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
<del>Including its use as an irritant or warning agent when used with any pesticide</del>	
Cyanazine	All
Hexazinone	All

<del>Metolachlor and its isomers</del>	<del>All</del>
<del>Paraquat</del>	<del>All above 0.2% eation</del>
<del>Picloram</del>	<del>All</del>
<del>Simazine</del>	<del>All]</del>

(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 [~~nontarget~~] 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: HRS §149A-33)

**§4-66-33 Pesticide licensing; exceptions.**

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

concurrency 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~~[-]~~; ~~[consisting of]~~ the complete proposed labeling for a new product, or the proposed supplemental labeling for registration of an additional use of a federally registered product, and the complete formula of the product~~[-]~~ if the application is for a new product; and any other information specified by the head which is required to be reviewed prior to registration under this section.

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

(c) The head shall determine ~~[that the product warrants the claims made for it in the registration application.]~~ 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 [~~or~~] 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, section 346a (a)-(q), United States Code (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~~] sections 180.910, 180.920, or 180.2020, title 40, Code of Federal Regulations (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)

**§4-66-43 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[~~r~~]; (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, other than the research, 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, section 346a of title 21, United States Code (2017); or a regulation established under section 409 of the Federal Food, Drug, and Cosmetic Act, section 348 of title 21, United States Code (2017); 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, section 346a of title 21, United States Code (2017), or a regulation established under section 409 of the Federal Food, Drug, and Cosmetic Act, section 348 of title 21, United States Code (2017), which would be hazardous to [~~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.~~

~~(c)]~~ (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 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 [15] 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[~~7~~]. 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 persons using or supervising the use of restricted use pesticides [applied by aircraft] by aerial application;
  - (5) Category 5, aquatic pest control[~~7~~]. 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 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 7c] 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, chapter 104, sections 7701-7786, United States Code (2017);
- (10) Category 10, demonstration, research and

instructional pest control[~~7, 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[~~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;

(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, section 171.201, Code of Federal Regulations (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 reasonable 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, phytotoxicity, and [potential for environmental contamination and non-target injury.] restricted entry intervals and entry restricted periods and areas. The applicator shall also demonstrate a practical understanding of 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, 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(c)]~~ 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, 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 <del>[A]</del> (A)	<del>[Plant]</del> <u>Crop</u> Pest Control . . . . .	25
1 <del>[B]</del> (B)	Animal Pest Control. . . . .	20
1 (C)	<u>Soil and Non-soil Fumigant</u> Pest Control .30	.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 <del>[A]</del> (A)	Fumigation Pest Control . . . . .	25*
7 <del>[B]</del> (B)	Termite Pest Control. . . . .	20
7 <del>[C]</del> (C)	General Pest Control. . . . .	30
7 <del>[D]</del> (D)	Institutional Pest Control. . . . .	30
7 <del>[E]</del> (E)	Vault Fumigation <u>Pest Control</u> . . . . .	25*
7 <del>[F]</del> (F)	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(e) 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 [classes 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) A general description of the geographic location including, at a minimum, the tax map key number, at which the restricted use pesticides were used, and
  - ~~(14)~~ (15) Any other information ~~[that]~~ the head deems ~~[to be]~~ necessary.

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

~~[(e)]~~ (e) 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.

(f) Commercial applicators shall retain a copy of the written record furnished to the agricultural employer in compliance with subsection (e). 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.

(g) 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).

(h) 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.

(i) The Department shall produce a summary from information submitted in accordance with subsections (c) and (d), which includes:

- (1) The total quantities used, by federal and state registrations or permit numbers, commercial product names, and active ingredients, for each restricted use pesticide used; and
- (2) The amount of area in the county in which the restricted use application occurred. [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, 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 ; 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 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[7]. 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: \_\_\_\_\_, 2018

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 ; 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: \_\_\_\_\_, 2018

#### **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**

<b>Hazard Indicators</b>	<b>I</b>	<b>II</b>	<b>III</b>	<b>IV</b>
Oral LD <sub>50</sub>	Up to and including 50 mg/kg	>50 thru 500 mg/kg	>500 thru 5,000 mg/kg	>5,000 mg/kg
Dermal LD <sub>50</sub>	Up to and including 200 mg/kg	>200 thru 2000 mg/kg	>2000 thru 20,000 mg/kg	>20,000 mg/kg
Inhalation LC <sub>50</sub>	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**

<b>Toxicity Category</b>	<b>Systemic effects (oral, dermal, inhalation toxicity)</b>	<b>Irritation effects (skin and eye)</b>	<b>Sensitizer (There are no categories of sensitization.)</b>
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**

<b>Flash point/flame extension of product</b>	<b>Required labeling statement</b>
—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**

<b>Flash point</b>	<b>Required labeling statement</b>
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

*Combustible*. Do not use or store near heat or open flame.

(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 LD<sub>50</sub> 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 LC<sub>50</sub> 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 LD<sub>50</sub> of 100 mg/kg or less, or a subacute dietary LC<sub>50</sub> 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](http://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/m<sup>3</sup> 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 <sup>1</sup>	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 <sup>2</sup>	Chemical-resistant gloves <sup>2</sup>	Chemical-resistant gloves <sup>2</sup>	No minimum <sup>4</sup>
Inhalation Toxicity	Respiratory protection device <sup>3</sup>	Respiratory protection device <sup>3</sup>	No minimum <sup>4</sup>	No minimum <sup>4</sup>
Eye Irritation Potential	Protective eyewear	Protective eyewear	No minimum <sup>4</sup>	No minimum <sup>4</sup>

<sup>1</sup> If dermal toxicity and skin irritation potential are in different toxicity categories, protection shall be based on the more toxic (lower numbered) category.

<sup>2</sup> For labeling language for chemical-resistant gloves, see paragraph (f) of this section.

<sup>3</sup> For labeling language for respiratory protection device, see paragraphs (g) and (h) of this section.

<sup>4</sup> 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]

**§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 applicant'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:

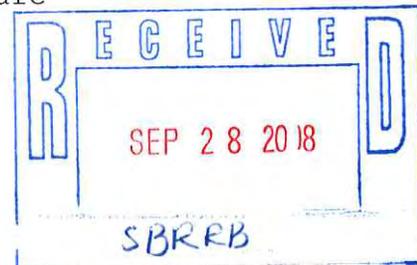
- (1) Brand or common name of pesticide product applied;
- (2) EPA registration number;
- (3) Type of formulation;
- (4) Per cent active ingredient;
- (5) Scientific or common name of target pest;
- (6) Dilution rate;
- (7) Total amount of pesticide used;
- (8) Total area covered;
- (9) Time and date 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) A general description of the geographic location including, at a minimum, the tax map key number, at which the restricted use pesticides were used, and

~~[-(14)]~~ (15) Any other information ~~[that]~~ the head deems ~~[to be]~~ necessary.

~~-(e)]~~ (d) Every user of restricted use pesticides shall submit to the Department, for departmental use, no later than January 30th of the following year, all restricted use application records for the preceding calendar year on forms provided by the Head.

~~[-(e)]~~ (e) 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.

(f) Commercial applicators shall retain a copy of the written record furnished to the agricultural employer in compliance with subsection (e). 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.

(g) 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).

(h) 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.

(i) The Department shall produce a summary from information submitted in accordance with subsections (c) and (d), which includes:

(1) The total quantities used, by federal and state registrations or permit numbers, commercial product names, and active ingredients, for each restricted use pesticide used; and

(2) The amount of area in the county in which the restricted use application occurred. [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, 7 CFR §110, 40 CFR §171.201)

**§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

]; comp  
] (Auth: HRS §149A- ) (Imp: HRS §149A )

## **IV. New Business**

E. Discussion and Action on Proposed Amendments to  
HAR Title 11 Chapter 178, **Clean and Sober  
Homes Registry**, promulgated by DOH



PRE-PUBLIC HEARING  
SMALL BUSINESS IMPACT STATEMENT  
TO THE  
SMALL BUSINESS REGULATORY REVIEW BOARD  
(Hawaii Revised Statutes §201M-2)

Department or Agency: Hawaii Dept. of Health, Alcohol and Drug Abuse Division

Administrative Rule Title and Chapter: 11-178, Chapter 11

Chapter Name: Clean and Sober Homes Registry

Contact Person/Title: Edward "Eddie" Mersereau, Chief

Phone Number: 808-692-7507

E-mail Address: edward.mersereau@doh.hawaii.gov Date: October 2, 2018

- 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<sup>©</sup>)

(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.

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.

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.

No increase over the standard building and planning permitting.

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.

There is no current fee nor will there be once the Rule is enacted.

- b. Amount of the proposed fee or fine and the percentage increase.

There is no percentage increase.

- c. Reason for the new or increased fee or fine.

This question is not applicable.

- d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).

This question is not applicable

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.

There are no probable monetary costs and benefits to the agency or other agencies directly affected.

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.

ADAD will provide organizational and administration, fiscal management, operations, recovery and good neighbor standards training; a publicly assessable clean and sober specific website and a national networking podcast opportunity with the National Association of Recovery Residents.

5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.

The Registry is voluntary and therefore a formal management structure is not necessary.

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.

ADAD has considered two methods: 1. Replicate, and refer potential operators to those states who have joined the National Alliance for Recovery Residents (NARR) standards and; 2. Utilize and leverage the existing, contracted, providers of treatment centers to educate and market to prospective operators.

7. How the agency involved small business in the development of the proposed rules.

Stakeholder involvement was integral to preparing the rules. Input was requested from current providers within both the treatment and transitional living provider community. ADAD also established a stakeholder task force and will conduct state-wide implementation strategy and engage in public hearings.

- 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.

Recommendation from current providers and task force were integrated into the rule. i.e. Possess written fiscal plan; provide written code of ethics; carry general liability policy

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.

There are no rules, federal, state or county laws to compare to other than the standard city, county, and state building and planning regulations.

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.

Provides a drug-free, home-like, recovery conducive, environment facilitating residents an easier and faster entry as a productive member of the community. Transitioning people into the community to work and community engagement reduces the overall cost of crime, incarceration and health care.

- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.

Fair Housing Act (1988); Americans with Disabilities Act (1990); Code of Federal Regulations §100.201

- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.

There are no rules, federal, state or county laws to compare to other than the standard city, county, and state building and planning regulations.

- 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.

No data is available for direct comparison. The only benefits originate from possible additional building and planning fees.

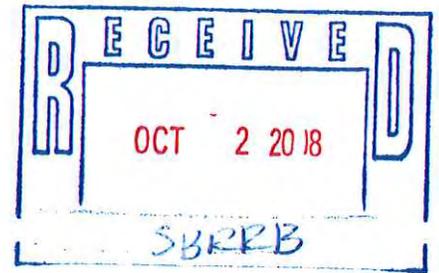
- e. A comparison of the adverse effects on small business imposed by the proposed rule with the adverse effects of the related federal, state, or county law.

Primary and secondary research indicates no adverse effects; National Association of Resident Recovery has conducted extensive research on clean and sober homes impact and has found no adverse effects of this type of residential dwelling.

\* \* \*

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



DEPARTMENT OF HEALTH

Adoption of Chapter 11-178  
Hawaii Administrative Rules

1. Chapter 11-178, Hawaii Administrative Rules, entitled "Clean and Sober Homes Registry", is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 178

**CLEAN AND SOBER HOMES REGISTRY**

Subchapter 1 General Provisions

- §11-178-1 Purpose and scope
- §11-178-2 Definitions
- §§11-178-3 to 11-178-5 (Reserved)

Subchapter 2 Terms of Application

- §11-178-6 Application
- §11-178-7 Registry standards
- §§11-178-8 to 11-178-10 (Reserved)

Subchapter 3 Terms of Certificate of  
Registration

- §11-178-11 Terms of certificate of registration

§§11-178-12 to 11-178-14 (Reserved)

Subchapter 4 Issuance, Certificate of  
Registration in Good Standing or Not in Good Standing,  
and Renewal

§11-178-15 Issuance of certificate of registration  
of a clean and sober home in good  
standing

§11-178-16 Certificate of registration for a clean  
and sober home in good standing or not  
in good standing

§11-178-17 Renewal of a certificate of  
registration

§§11-178-18 to §11-178-20 (Reserved)

Subchapter 5 Inspection

§11-178-21 Inspection

§§11-178-22 to §11-178-24 (Reserved)

Subchapter 6 Complaints

§11-178-25 Complaints

§§11-178-26 to §11-178-28 (Reserved)

## SUBCHAPTER 1

### GENERAL PROVISIONS

**§11-178-1 Purpose and scope.** The purpose of these rules is to 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 their recovery. The registry establishes standards and procedures by which homes will be listed on the registry as described in §11-178-7. [Eff ] (Auth: HRS §321-196) (Imp: HRS §321-193.7)

**§11-178-2 Definitions.** As used in this chapter, unless a different meaning clearly appears within the context of the rules:

"Applicant" means any person, organization or entity who has applied for registration of one or more clean and sober homes.

"Certificate holder" means the holder of a certificate of registration.

"Certificate not in good standing" means a clean and sober home has not met all the requirements of a certificate of registration and application.

"Certificate of good standing" means a clean and sober home has met all the requirements of a certificate of registration and application.

"Certificate of registration" means a document issued by the department to an applicant that fulfills requirements for application and registration of a home to be listed on the department's clean and sober homes registry.

"Clean and sober home" means a dwelling unit that is intended to provide a stable, independent environment of alcohol-and drug-free living conditions to sustain recovery and that is shared by unrelated adult persons who are recovering from substance abuse.

"Department" means the department of health, State of Hawaii.

"Home operator" means a person or entity who makes available and manages a clean and sober home.

"Inspection" means scheduled off-site or on-site evaluation of a clean and sober home that ensures minimum registry standards are being met.

"Landlord" means the owner, lessor, or any agent of the landlord assigned to the operation of the clean and sober home.

"Owner" means one or more persons, jointly or severally, in whom is vested legal title to property.

"Registry" means list of registered clean and sober homes.

"Resident" means any person who occupies a clean and sober home on the registry under a rental agreement. [Eff \_\_\_\_\_ ] (Auth: HRS §321-196) (Imp: HRS §321-193.7)

§§11-178-3 to 11-178-5 (Reserved)

SUBCHAPTER 2

TERMS OF APPLICATION

**§11-178-6 Application.** (a) The applicant shall comply with federal, state, and county building, housing, fire, and other codes, ordinances, and laws.

(b) The applicant shall meet the registry standards for clean and sober homes pursuant to §11-178-7. [Eff \_\_\_\_\_] (Auth: HRS §321-196)  
(Imp: HRS §§46-4, 321-193.7)

**§11-178-7 Registry standards.** (a) The minimum requirements for application and registration include specific standards that address organization and administration, fiscal management, operations, recovery support, property, and good neighbor requirements.

(b) Organization and administrative standards shall include the following:

- (1) Written mission statement;
- (2) Written code of ethics;
- (3) Written policies and procedures governing resident rights, grievances, fees, charges, payments and deposits;
- (4) Written screening criteria for new residents; and
- (5) Written house rules.

(c) Fiscal management standards require that clean and sober homes have an accounting system documenting all resident financial transactions, such as fees, payments and deposits.

(d) Operation standards shall require

documentation that owner or home operator have general liability insurance.

(e) Recovery support standards shall include the following:

- (1) Written policies on maintaining an alcohol and drug-free environment;
- (2) Written policies ensuring that residents receive an orientation on financial matters, group living, rental agreements, house rules, safety, grievance and health policies and procedures prior to signing rental agreement; and
- (3) Post written resident rights, requirements, and house rules.

(f) Property standards are as follows:

- (1) Signed and dated safety self-assessment checklist that includes functioning smoke detectors and fire extinguishers in plain sight in clearly marked locations; and
- (2) Written and posted emergency plan with phone numbers, procedures and evacuation maps in clearly marked locations including emergency resident contact information.

(g) Good neighbor standards require policies addressing neighbors' reasonable complaints regarding: smoking, loitering, parking, noise, offensive language and cleanliness. [Eff \_\_\_\_\_ ] (Auth: HRS §321-196) (Imp: HRS §321-193.7)

**§§11-178-8 to 11-178-10 (Reserved)**

### SUBCHAPTER 3

#### TERMS OF CERTIFICATE OF REGISTRATION

**§11-178-11 Terms of certificate of registration.**

(a) Upon the owner, home operator or landlord meeting the requirements of the clean and sober home application, the department shall issue a certificate of registration.

(b) All registered clean and sober homes shall be subject to the following:

- (1) A clean and sober home receives a certificate of registration upon meeting all requirements as defined in §11-178-7;
- (2) The certificate of registration issued shall specify:
  - (A) The name of the holder of the registration;
  - (B) The address to which the registration applies; and
  - (C) The maximum number of persons to reside in the clean and sober home;
- (3) The certificate of registration shall be valid for two years from the approval date;
- (4) An owner, home operator, or landlord shall not hold the property out to be or advertised to be a registered clean and sober home unless the home is registered and in good standing with the clean and sober homes registry;
- (5) The certificate of registration shall be publicly displayed at the clean and sober home; and
- (6) The certificate of registration shall not be transferred to a new owner or home operator, or to an address other than as specified on the certificate of registration. [Eff  
] (Auth: HRS §321-196)  
(Imp: HRS §§46-4, 321 193.7)

**§11-178-12 to 11-178-14 (Reserved)**

SUBCHAPTER 4

ISSUANCE, CERTIFICATE OF REGISTRATION IN GOOD STANDING  
OR NOT IN GOOD STANDING, AND RENEWAL

**§11-178-15 Issuance of a certificate of registration of a clean and sober home in good standing.** Issuance of a certificate of registration shall occur once the applicant meets the registry standards in §11-178-7 as determined by the department. [Eff \_\_\_\_\_ ] (Auth: HRS §321-196) (Imp: HRS §321-193.7)

**§11-178-16 Certificate of registration for a clean and sober home in good standing or not good standing.** (a) A clean and sober home maintains a certificate of registration in good standing and is listed on the registry when it meets and maintains the registry standards pursuant to §11-178-7.

(b) The department shall change the status of a clean and sober home to not in good standing if a home fails to meet any of the registry standards in §11-178-7.

(c) The department shall list a change of status for a clean and sober home on the registry website.

(d) Clean and sober homes determined not to be in good standing shall receive notification by the department. [Eff \_\_\_\_\_ ] (Auth: HRS §321-196) (Imp: HRS §321-193.7)

**§11-178-17 Renewal of a certificate of registration.** (a) For a renewal of a certificate of registration, the application shall be submitted ninety days prior to expiration of the current certificate of registration.

(b) Upon inspection and determination by the department that the clean and sober home has met the

registry standards pursuant to §11-178-7, a certificate of registration shall be re-issued for a period of two years. [Eff \_\_\_\_\_] (Auth: HRS §321-196) (Imp: HRS §321-193.7)

§§11-178-18 to 11-178-20 (Reserved)

## SUBCHAPTER 5

### INSPECTION

**§11-178-21 Inspection.** (a) Off-site or on-site evaluations of a registered clean and sober home shall be conducted by the department.

(b) On-site inspection activities may include the following:

- (1) Follow-up visits;
- (2) Confirmation of correction of deficiencies;  
and
- (3) Complaint investigations.

(c) Off-site inspection activities involve review of written documentation, conference calls or informal meetings. [Eff \_\_\_\_\_] (Auth: HRS §321-196) (Imp: HRS §321-193.7)

§§11-178-22 to 11-178-24 (Reserved)

## SUBCHAPTER 6

### COMPLAINTS

§11-178-25

**§11-178-25 Complaints.** (a) The department shall establish a toll-free telephone number to receive complaints regarding clean and sober homes.

(b) Complaints may be submitted through the department's clean and sober homes' website." [Eff  
] (Auth: HRS §321-196) (Imp: HRS  
§321-193.7)

**§§11-178-26 to 11-178-28 (Reserved)**

2. The adoption of chapter 11-178, 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 S. Anderson, Ph.D.  
Director  
Department of Health

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General



DEPARTMENT OF HEALTH

Adoption of Chapter 11-178  
Hawaii Administrative Rules

1. Chapter 11-178, Hawaii Administrative Rules, entitled "Clean and Sober Homes Registry", is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 178

CLEAN AND SOBER HOMES REGISTRY

Subchapter 1 General Provisions

- \$11-178-1 Purpose and scope
- \$11-178-2 Definitions
- \$\$11-178-3 to 11-178-5 (Reserved)

Subchapter 2 Terms of Application

- \$11-178-6 Application
- \$11-178-7 Registry standards
- \$\$11-178-8 to 11-178-10 (Reserved)

Subchapter 3 Terms of Certificate of  
Registration

- \$11-178-11 Terms of certificate of registration

§§11-178-12 to 11-178-14 (Reserved)

Subchapter 4 Issuance, Certificate of  
Registration in Good Standing or Not in Good Standing,  
and Renewal

§11-178-15 Issuance of certificate of registration  
of a clean and sober home in good  
standing

§11-178-16 Certificate of registration for a clean  
and sober home in good standing or not  
in good standing

§11-178-17 Renewal of a certificate of  
registration

§§11-178-18 to §11-178-20 (Reserved)

Subchapter 5 Inspection

§11-178-21 Inspection

§§11-178-22 to §11-178-24 (Reserved)

Subchapter 6 Complaints

§11-178-25 Complaints

§§11-178-26 to §11-178-28 (Reserved)

## SUBCHAPTER 1

### GENERAL PROVISIONS

**§11-178-1 Purpose and scope.** The purpose of these rules is to 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 their recovery. The registry establishes standards and procedures by which homes will be listed on the registry as described in §11-178-7. [Eff ] (Auth: HRS §321-196) (Imp: HRS §321-193.7)

**§11-178-2 Definitions.** As used in this chapter, unless a different meaning clearly appears within the context of the rules:

"Applicant" means any person, organization or entity who has applied for registration of one or more clean and sober homes.

"Certificate holder" means the holder of a certificate of registration.

"Certificate not in good standing" means a clean and sober home has not met all the requirements of a certificate of registration and application.

"Certificate of good standing" means a clean and sober home has met all the requirements of a certificate of registration and application.

"Certificate of registration" means a document issued by the department to an applicant that fulfills requirements for application and registration of a home to be listed on the department's clean and sober homes registry.

"Clean and sober home" means a dwelling unit that is intended to provide a stable, independent environment of alcohol-and drug-free living conditions to sustain recovery and that is shared by unrelated adult persons who are recovering from substance abuse.

"Department" means the department of health, State of Hawaii.

"Home operator" means a person or entity who makes available and manages a clean and sober home.

"Inspection" means scheduled off-site or on-site evaluation of a clean and sober home that ensures minimum registry standards are being met.

"Landlord" means the owner, lessor, or any agent of the landlord assigned to the operation of the clean and sober home.

"Owner" means one or more persons, jointly or severally, in whom is vested legal title to property.

"Registry" means list of registered clean and sober homes.

"Resident" means any person who occupies a clean and sober home on the registry under a rental agreement. [Eff \_\_\_\_\_ ] (Auth: HRS §321-196) (Imp: HRS §321-193.7)

§§11-178-3 to 11-178-5 (Reserved)

SUBCHAPTER 2

TERMS OF APPLICATION

**§11-178-6 Application.** (a) The applicant shall comply with federal, state, and county building, housing, fire, and other codes, ordinances, and laws.

(b) The applicant shall meet the registry standards for clean and sober homes pursuant to §11-178-7. [Eff \_\_\_\_\_ ] (Auth: HRS §321-196)  
(Imp: HRS §§46-4, 321-193.7)

**§11-178-7 Registry standards.** (a) The minimum requirements for application and registration include specific standards that address organization and administration, fiscal management, operations, recovery support, property, and good neighbor requirements.

(b) Organization and administrative standards shall include the following:

- (1) Written mission statement;
- (2) Written code of ethics;
- (3) Written policies and procedures governing resident rights, grievances, fees, charges, payments and deposits;
- (4) Written screening criteria for new residents; and
- (5) Written house rules.

(c) Fiscal management standards require that clean and sober homes have an accounting system documenting all resident financial transactions, such as fees, payments and deposits.

(d) Operation standards shall require

documentation that owner or home operator have general liability insurance.

(e) Recovery support standards shall include the following:

- (1) Written policies on maintaining an alcohol and drug-free environment;
- (2) Written policies ensuring that residents receive an orientation on financial matters, group living, rental agreements, house rules, safety, grievance and health policies and procedures prior to signing rental agreement; and
- (3) Post written resident rights, requirements, and house rules.

(f) Property standards are as follows:

- (1) Signed and dated safety self-assessment checklist that includes functioning smoke detectors and fire extinguishers in plain sight in clearly marked locations; and
- (2) Written and posted emergency plan with phone numbers, procedures and evacuation maps in clearly marked locations including emergency resident contact information.

(g) Good neighbor standards require policies addressing neighbors' reasonable complaints regarding: smoking, loitering, parking, noise, offensive language and cleanliness. [Eff \_\_\_\_\_ ] (Auth: HRS §321-196) (Imp: HRS §321-193.7)

**§§11-178-8 to 11-178-10 (Reserved)**

### SUBCHAPTER 3

#### TERMS OF CERTIFICATE OF REGISTRATION

**§11-178-11 Terms of certificate of registration.**

(a) Upon the owner, home operator or landlord meeting the requirements of the clean and sober home application, the department shall issue a certificate of registration.

(b) All registered clean and sober homes shall be subject to the following:

- (1) A clean and sober home receives a certificate of registration upon meeting all requirements as defined in §11-178-7;
- (2) The certificate of registration issued shall specify:
  - (A) The name of the holder of the registration;
  - (B) The address to which the registration applies; and
  - (C) The maximum number of persons to reside in the clean and sober home;
- (3) The certificate of registration shall be valid for two years from the approval date;
- (4) An owner, home operator, or landlord shall not hold the property out to be or advertised to be a registered clean and sober home unless the home is registered and in good standing with the clean and sober homes registry;
- (5) The certificate of registration shall be publicly displayed at the clean and sober home; and
- (6) The certificate of registration shall not be transferred to a new owner or home operator, or to an address other than as specified on the certificate of registration. [Eff  
] (Auth: HRS §321-196)  
(Imp: HRS §§46-4, 321 193.7)

**§11-178-12 to 11-178-14 (Reserved)**

SUBCHAPTER 4

ISSUANCE, CERTIFICATE OF REGISTRATION IN GOOD STANDING  
OR NOT IN GOOD STANDING, AND RENEWAL

**§11-178-15 Issuance of a certificate of registration of a clean and sober home in good standing.** Issuance of a certificate of registration shall occur once the applicant meets the registry standards in §11-178-7 as determined by the department. [Eff \_\_\_\_\_] (Auth: HRS §321-196) (Imp: HRS §321-193.7)

**§11-178-16 Certificate of registration for a clean and sober home in good standing or not good standing.** (a) A clean and sober home maintains a certificate of registration in good standing and is listed on the registry when it meets and maintains the registry standards pursuant to §11-178-7.

(b) The department shall change the status of a clean and sober home to not in good standing if a home fails to meet any of the registry standards in §11-178-7.

(c) The department shall list a change of status for a clean and sober home on the registry website.

(d) Clean and sober homes determined not to be in good standing shall receive notification by the department. [Eff \_\_\_\_\_] (Auth: HRS §321-196) (Imp: HRS §321-193.7)

**§11-178-17 Renewal of a certificate of registration.** (a) For a renewal of a certificate of registration, the application shall be submitted ninety days prior to expiration of the current certificate of registration.

(b) Upon inspection and determination by the department that the clean and sober home has met the

registry standards pursuant to §11-178-7, a certificate of registration shall be re-issued for a period of two years. [Eff \_\_\_\_\_ ] (Auth: HRS §321-196) (Imp: HRS §321-193.7)

§§11-178-18 to 11-178-20 (Reserved)

## SUBCHAPTER 5

### INSPECTION

**§11-178-21 Inspection.** (a) Off-site or on-site evaluations of a registered clean and sober home shall be conducted by the department.

(b) On-site inspection activities may include the following:

- (1) Follow-up visits;
- (2) Confirmation of correction of deficiencies;  
and
- (3) Complaint investigations.

(c) Off-site inspection activities involve review of written documentation, conference calls or informal meetings. [Eff \_\_\_\_\_ ] (Auth: HRS §321-196) (Imp: HRS §321-193.7)

§§11-178-22 to 11-178-24 (Reserved)

## SUBCHAPTER 6

### COMPLAINTS

§11-178-25

**§11-178-25 Complaints.** (a) The department shall establish a toll-free telephone number to receive complaints regarding clean and sober homes.

(b) Complaints may be submitted through the department's clean and sober homes' website." [Eff  
] (Auth: HRS §321-196) (Imp: HRS  
§321-193.7)

**§§11-178-26 to 11-178-28 (Reserved)**

2. The adoption of chapter 11-178, 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 S. Anderson, Ph.D.  
Director  
Department of Health

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General

### **III. New Business**

- F. Discussion and Action on Proposed New HAR Title 4 Chapter 70, **Plant and Non-Domestic Animal Quarantine, Plant Import Rules**, Subchapter 15, **“Introduction of Myrtaceae” (Myrtle Family Plants and Plant Parts)**, promulgated by DoAg



**PRE-PUBLIC HEARING  
SMALL BUSINESS IMPACT STATEMENT  
TO THE  
SMALL BUSINESS REGULATORY REVIEW BOARD**  
(Hawaii Revised Statutes §201M-2) /

**Department or Agency:** Department of Agriculture, Plant Quarantine Branch  
**Administrative Rule Title and Chapter:** Title 4, Chapter 70  
**Chapter Name:** Plant and Non-Domestic Animal Quarantine, Plant Import Rules  
**Contact Person/Title:** Lance Sakaino, Plant Specialist  
**Phone Number:** (808) 823-0566  
**E-mail Address:** Lance.S.Sakaino@hawaii.gov      **Date:** 10/10 /2018

- 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.

The proposed rule will restrict import of Myrtaceae (myrtle family plants and plant parts) in order to prevent introduction of new strains of Ohia Rust, *Puccinia psidii*, (a destructive rust fungus) and other disease pathogens and insects not now established in Hawaii that are a serious danger to ohia and ohia forests in Hawaii and to horticultural and agricultural industries. Myrtaceae includes a broad range of plants, including ohia, guava, eucalyptus, and plants used in the garden and floral industry. "See Attachment A, a Summary of Proposed New Subchapter 15, Entitled "Introduction of Myrtaceae" (Myrtle Family Plants and Plant Parts)."

- A. 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)

<http://hdoa.hawaii.gov/meetings-reports/proposeddar/>

- 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 enterprise consisting of fewer than one hundred full-time or part-time employees." 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 X (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 X (If Yes, no need to submit this form.)**

The proposed rule is being adopted to replace an expired emergency rule, Plant Quarantine Interim Rule 07-2 (“interim rule), that restricted the importation into Hawaii of plants or plant parts of the family Myrtaceae that host *Puccinia psidii*, commonly known as Ohia Rust. The proposed rules are needed to prevent the introduction of additional and possibly more virulent strains of Ohia Rust into Hawaii, which can be spread by wind to ohia, plants that are essential to sustaining the state’s groundwater reservoir and native flora and fauna populations and that are also important to the state’s horticultural and agricultural industries.

\* \* \*

**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.**

To provide a basis for estimating the economic impact of the proposed rule, HDOA contracted economists from the University of Hawaii Economic Research Organization (UHERO) to conduct an economic impact study.<sup>1</sup> According to the study, any policy that bans or otherwise restricts the importation of Myrtaceae plant material will have an impact on primarily three sectors of Hawaii’s economy: the floral industry (including florists, retail/landscaping/fruit tree nurseries), forest nurseries, and industrial plantations. UHERO surveyed and interviewed as many businesses in those industries as were willing to work with them, some by telephone and some, in person. Summaries of the study’s discussions on each sector’s self-assessed expected impact of a policy change regarding imported Myrtaceae (the myrtle family, which includes a broad range of plants, including

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<sup>1</sup> See Attachment B: Burnett, K., D’Evelyn, S., Loope, L., Wada, C. 2012. Economic Analysis of the Proposed Rule to Prohibit Arrival of New Genetic Strains of the Rust Fungus, *Puccinia Psidii*, in Hawaii. University of Hawaii Economic Research Organization at University of Hawaii, Working Paper No. 2012-1.), hereafter “UHERO Study” or “Study.”)

ohia, guava, eucalyptus, and plants used in the garden and floral industry) are provided below.

## 1. Floral Industry

Foliage or flowers from several Myrtaceae genera—including *Eucalyptus*, *Chamelaucium* (waxflower), and *Myrtus* (myrtle) are commonly used as “fillers” in floral arrangements. While some of these fillers are grown locally, in-state growers do not currently produce enough to meet local Myrtaceae demand. Thus, the impact to the local floral industry will result mainly from any change in policy regarding imports of cut Myrtaceae. At the time of the Study, the number of florists in Hawaii had declined to about 250, down from about 400 in the mid- to late-1990s, in part, it is believed, the result of the increased presence of “big box” department stores.<sup>2</sup> Excluding the big box stores, businesses in the floral industry are classified into two groups: (1) florists; and (2) retail and commercial nurseries.

### A. Florists

Florists were surveyed to determine consumer demand for Myrtaceae fillers in this industry. Florists will likely experience no significant lasting economic impact from the proposed rule, although florists may have to transition from importing Myrtaceae fillers to other alternatives. First, of the florists surveyed by phone, the consumer demand for Myrtaceae fillers is low because Myrtaceae fillers comprise less than one percent of total sales. Second, some florists already have experience switching to local suppliers for Myrtaceae fillers or using alternative fillers from when HDOA implemented the 2007 interim rule.

### B. Retail and Commercial Nurseries

UHERO conducted phone surveys of all retail and commercial nurseries in the state to determine consumer demand for eucalyptus, wax flower, and myrtle plants. With the exception of Oahu, less than twelve percent of nurseries on each island sell these plants. Retail and commercial nurseries would have to find local suppliers for these plants, and transitioning to local

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<sup>2</sup> Although superstores are not “small businesses” under section 201M-1, HRS, they are mentioned here because of their role in the floral industry. During the 2007 interim rule, Costco and Safeway modified the ingredients in their bouquets and, at the time of the survey, did not use Myrtaceae fillers. Sam’s Club and Wal-Mart found other substitutes for Myrtaceae fillers. Therefore, no economic impact from the proposed rule is expected to superstores in Hawaii.

suppliers could take some time. Growers may experience some additional costs having to grow Myrtaceae from seed, in view of the year long seed quarantine, but the proposed rule would mitigate damage from imported *P. psidii* to growers' current and future stocks of Myrtaceae plants.

## 2. Forest Nurseries

Forest nurseries that use Myrtaceae imports differ from retail and commercial nurseries in that they produce forest tree seedlings in quantities sufficient for reforestation and restoration. There are about a dozen forest nurseries in the State, most of which are small part-time operations. While a few sell seedlings to individual homeowners, most forest nurseries grow quantities of seedlings to order for specific projects. Some also have lines of plants produced for sale to retailers for eventual use by homeowners. Out of the ten forest nurseries UHERO economists contacted, only one forest nursery reported the importation of Myrtaceae plant material from outside Hawaii. Thus, the economic impact of the proposed rule on local forest nurseries is expected to be low.

## 3. Plantations

The plantation industry in Hawaii consists of four privately owned industrial forestry plantations and state-managed timber management areas. Plantations grow and harvest eucalyptus trees to be used for liquid biofuel and biomass energy. Plantations have alternatives to importing eucalyptus plants because the proposed rule exempts from import restrictions both eucalyptus surface-sterilized seeds and eucalyptus seedlings grown in tissue culture, subject to HDOA permit conditions.

- 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.**

Using available information about Myrtaceae plant imports, sales data for Hawaii's floral industry, expected damages to plantations from *P. psidii*, the approximate value of current eucalyptus stands based on biofuel end-use, and estimated transition costs to current importers, the UHERO study analyzed and compared the benefits and costs of the proposed rule change for which monetary values could be estimated.

## 1. Expected Costs

The primary cost to importers of adapting to the policy is the time spent finding suitable Myrtaceae substitutes.

Florists will also experience some lost sales during the transition period. In 2007, sales in Hawaii's retail floral industry totaled \$44 million. Products containing Myrtaceae plant material comprise a very small percentage of total sales in the sector. For one of the biggest florists on Oahu, for example, Myrtaceae products were estimated to make up less than 1% of total sales. However, based on the UHERO study's assumptions, the total cost of the proposed rule to florists was estimated to be \$268,000.<sup>3</sup>

While nurseries and plantations will also face costs in adjusting to the proposed rule, those costs may be small relative to the benefits to all local growers who currently maintain stocks of Myrtaceae and ohia. Very few of the nurseries contacted have Myrtaceae readily available for sale (at most 25% for any given island and most of the businesses contacted do not import saplings or seedlings. The main costs, therefore, would involve adjustments in planning to account for the proposed one-year quarantine of imported seeds and/or searching for local seed suppliers.

Similarly in the forest plantation industry, few import non-seed Myrtaceae plant material (1 of 10), while nearly all (9 of 10) grow rust-susceptible eucalyptus and/or ohia. Given the relatively small proportion of growers potentially affected by the policy proposed by the rule change and the fact that most growers import seeds in favor of plant material, which presumably means local propagation is feasible using seeds from existing plants or other local sources, excluding policy-induced costs to growers should not affect the overall conclusions drawn from the net present value calculations. Although the total transition cost to florists and nurseries is at least \$268,000, the \$200,000 budget for HDOA's Import Replacement Program at that time would be used largely to reduce that burden.<sup>4</sup>

## 2. Expected Benefits

The expected benefit calculations reflect primarily the avoided losses to the eucalyptus industry alone. According to the UHERO Study, if data were more

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<sup>3</sup> See Attachment B at page 21.

<sup>4</sup> See Attachment B at page 22.

readily available, the same techniques could be applied to measure potential benefits for retail, commercial, and forest nurseries. At the same time, however, the future of biofuels in Hawaii is largely uncertain. Expected benefits were calculated for a certain stream of profits generated by eucalyptus and incorporate uncertainty only with regard to the unknown time of rust invasion.

While the exact time of a successful future rust invasion is unknown, the UHERO Study calculated the expected net benefit with and without the policy by parameterizing the hazard function of a successful rust invasion vs. no invasion. According to those calculations, a policy restricting the import of Myrtaceae would reduce the hazard rate, or the probability of successful rust invasion in any given period.<sup>5</sup>

Although the exact status quo probability of invasion was not known, through discussions with local *P. psidii* experts, the UHERO Study constructed estimates for the change in the annual conditional probability of invasion induced by the policy proposed by the rule change. Given that Myrtaceae trade is the primary pathway of *P. psidii* invasion and that a ban on importing plant material and a one year seed quarantine are fairly stringent requirements, the Study assumed that the policy proposed by the rule change effectively eliminates the threat of invasion once implemented.<sup>6</sup>

In order to estimate the avoided damages, the Study determined estimated profit per gallon of biofuel, the gallons of biofuel producible annually from existing eucalyptus stands, and the expected yield losses of eucalyptus in plantations if a successful rust invasion were to occur. For a processing facility, the presence of *P. psidii* would not change existing capital expenditures. It would, however, change the revenue generated annually. The Study analyzed the policy-induced decrease in potential losses for a given year determined by the reduction in probability of rust invasion.<sup>7</sup>

### 3. Net Present Value of the Policy of the Proposed Rule Change

The net present value (NPV) of the proposed rule change policy was estimated to be \$14.3 million. Benefits absent from the NPV calculation include avoided damages to nursery growers of Myrtaceae and avoided damages to ohia, while non-monetized costs borne by florists and nurseries included those related to finding local seed suppliers, switching to local propagation of Myrtaceae and/or building the one-year seed quarantine into production plans.

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<sup>5</sup> See Attachment B at page 24.

<sup>6</sup> See Attachment B at page 24.

<sup>7</sup> See Attachment B at page 24.

The NPV was also calculated for alternative parameter values. In the biofuel sector, the eucalyptus yield loss resulting from a virulent rust strain is higher than opportunities for larger avoided losses. Even in the most conservative scenario, the NPV is almost \$2 million. If a particularly virulent strain is likely to arrive, conditions in Hawaii are more favorable for *P. psidii* to thrive than in Brazil, and if the policy of the proposed rule change is effective, the NPV could be upwards of \$30 million.

In all the scenarios analyzed, the NPV is positive, and the estimates would be even higher if the UHERO study could have quantified the avoided damage to ohia, as well as mitigation and adaptation costs (e.g. fungicidal treatment and/or selecting for rust-resistant species) faced by eucalyptus plantation owners. In addition, although the study focused on privately owned plantations, eucalyptus and ohia are present on state-owned land, so including the value of those additional eucalyptus stands would further increase the benefits of the proposed import policy.<sup>8</sup>

#### 4. Value of Ohia

The UHERO Study did not measure the value of ohia directly in this exercise, but the avoided damages to the native forest are expected to be substantial and likely higher than avoided damages to the affected industries. For example, a study by Kaiser and others in 2000 estimated total PV {present value} of ecosystem services generated by the Koolau Watershed on Oahu — of which ohia is a principal component — to be in the range of \$7-14 billion. More specifically, the healthy forest structure increases fresh groundwater recharge and provides habitat provision for many iconic, endemic and endangered species. Although the ecosystem services provided by the watershed cannot be attributed entirely to the presence of ohia, the total benefits are underestimated, inasmuch as cultural value is not included in the calculation. Moreover, the estimated PV is for a single watershed, whereas the proposed rule would prevent reductions in ecosystem services envisioned for multiple watersheds on all islands throughout the state. If the import restriction prevented the loss of even 1% of the lower estimated value of \$7 billion in the UHERO study baseline scenario, then the NPV of \$14.3 million should be adjusted upward by \$70 million. If the value of ohia is higher and/or the policy-induced avoided losses larger, then the net present value would be even greater.<sup>9</sup>

#### **If the proposed rule imposes a new or increased fee or fine:**

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<sup>8</sup> See Attachment B at pages 29-30.

<sup>9</sup> See Attachment B at page 30.

**a. Amount of the current fee or fine and the last time it was increased.**

No fees were charged under the interim (emergency) rule that this proposed rule will replace.

**b. Amount of the proposed fee or fine and the percentage increase.**

For inspections conducted pursuant to the proposed rule's quarantine restrictions, a \$50.00 an hour fee will be required for inspections away from the port or HDOA office during regular working hours, plus a mileage reimbursement fee of .545 cents per mile. For such off-site inspections requiring overtime services of HDOA personnel, an additional fee will be required for inspector overtime wages, mileage and meals if applicable. These fees will apply to inspections conducted under the proposed rule's quarantine restrictions, whether at florists, retail, nurseries, or plantations.

**c. Reason for the new or increased fee or fine.**

Fees for certain kinds of HDOA inspections and related services became required pursuant to Act 173, section 13, SLH 2010.

**d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).**

The proposed fee amounts are the same amounts authorized by the Legislature for HDOA's import-related inspections that are conducted away from port or HDOA office that require personnel services beyond regular working hours. (Act 173, section 13, SLH 2010.)

**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.**

The inspection fees are used to pay for operation and maintenance costs of implementing HDOA's agricultural inspection and biosecurity programs under chapter 150A, HRS, and the central services and departmental administrative expense assessments of sections 36-27 and 36-30, HRS. This is required by Act 173, section 13, SLH 2010.

- 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 impact of the proposed rule on small business is reduced by not imposing a total ban on import of Myrtaceae plants and plant parts, which some experts would have preferred. Instead, the proposed rule allows import only under restrictive conditions to minimize the risk of introducing additional and more virulent strains of *P. psidii*, Ohia rust, to Hawaii.

- 5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.**

There are no less restrictive alternatives that would prevent the introduction of *P. psidii*, Ohia Rust, to Hawaii than the alternatives provided in the proposed rules. The proposed rule allows importers to apply for an import permit for Myrtaceae plants or propagative plant parts, subject to quarantine under HDOA supervision. Alternatively, importers may import, without a permit: (a) dried, non-living Myrtaceae plant materials; (b) Myrtaceae seeds that have been surface-sterilized using a method approved by HDOA; or (c) tissue cultured Myrtaceae plants grown in sterile media and in a completely enclosed sterile glass flask or other similar container.

- 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.**

Plant nurseries, landscapers, and florists in Hawaii, and those on neighbor islands who use the host commodities will be directly affected by this proposed rule. However, these same kinds of businesses on each island that are free of *Puccinia psidii*, Ohia Rust, will benefit because preventing *P. psidii* introduction means that it will not be present on those islands and, so, these businesses will not be subject to the proposed rule's quarantine restrictions.

- 7. How the agency involved small business in the development of the proposed rules.**

HDOA contracted the University of Hawaii Economic Research Organization (UHERO) to evaluate the likely economic impact of the proposed rule intended to

prevent the introduction of new strains of *P. psidii* into Hawaii. In their report to HDOA, UHERO analyzed estimated benefits and costs to florists, nurseries, and plantations in Hawaii. (See Attachment B.) In addressing the issue of expected economic impact of the proposed rule change, at pages 3-8, above, HDOA summarized relevant portions of UHERO's Study, as noted.

HDOA hosted a meeting with organizations for Hawaii's agriculture and floriculture industries on August 10, 2011 in order to discuss proposed restrictions on Myrtaceae family imports. Discussion highlights from this meeting include outreach to florists and nurseries in Hawaii, questions about existing quantity and variety of ornamental eucalyptus sold by nurseries and Myrtaceae imported by florists, and potential for expanding local production of Myrtaceae family plants.

- 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.**

No, there were no recommendations from small business. The rule's proposed quarantine restrictions are ultimately science-based and directed at reducing the risk of disease introduction and spread into the State of Hawaii.

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.**

No, there are no federal, state, or county standards that address the subject of this proposed rule: quarantine restrictions on Myrtaceae plants and plant parts in order to prevent the introduction of new strains of Ohia rust or *Puccinia psidii* into Hawaii.

The proposed rule needs to be stringent. In the absence of the proposed rule, HDOA's rules allows import movement of certain of the host commodities, Myrtaceae, (Myrtle family), subject only to inspection, which would not suffice to detect the presence of any new strains of *P. psidii*. So, there would be no way to restrict the movement of host materials that may be infested with new potentially virulent strains of *P. psidii* into Hawaii. Apart from a total ban on importing Myrtaceae (Myrtle family) plants or plant parts into Hawaii, there is no other means of preventing the spread of Ohia Rust, including any new strains of *Puccinia psidii* to the Hawaiian Islands than to impose quarantine restrictions on import movement of the host commodities. The proposed rule does this in a way that attempts to lessen the impact on small business to the extent possible, given

the nature of the threat of any new strains of *Puccinia psidii* to Hawaii's native forests, groundwater reservoirs, native flora and fauna, and cultural resources.

There is abundant evidence that virulent strains of Ohia Rust exist, that these strains could easily be introduced to Hawaii, and that this would have devastating effects on our native forests, watersheds, and many commercial ventures. Without the proposed rule, the host commodities which spread this disease could otherwise move into our islands with little or no restriction.

**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:**

Not applicable. No comparable related federal or county law exists.

- 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

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This Statement may be found on the  
SBRRB Website at:

<http://dbedt.hawaii.gov/sbrrb/small-business-impact-statements-pre-and-post-public-hearing>

State of Hawaii  
Department of Agriculture  
Plant Industry Division  
Plant Quarantine Branch  
Honolulu, Hawaii



Summary of Proposed New Subchapter 15,  
Entitled "Introduction of Myrtaceae" (Myrtle Family Plants and Plant Parts),  
Proposed for Addition to Chapter 4-70, Hawaii Administrative Rules, Plant and Non-  
Domestic Animal Quarantine, Plant Import Rules"

The proposed new Subchapter 15 contains three rule sections as summarized below.

1. Section 4-70-55, Notice of quarantine, gives notice that the Board of Agriculture has determined that the introduction of new strains of Ohia rust, *Puccinia psidii*, (a fungus), and other disease pathogens and insects not now established in Hawaii are a serious danger to Ohia and Ohia forests in Hawaii and to horticultural and agricultural industries. In conjunction with existing rule section 4-70-1, HAR, proposed rule section 4-70-55 gives notice that quarantine measures will be implemented to prohibit or restrict import of specific plants to minimize the risk of introduction of Ohia rust, *puccinia psidii*.

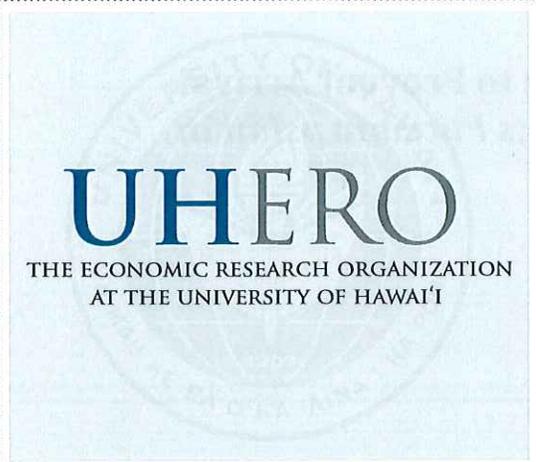
2. Section 4-70-56, Prohibited introduction, prohibits the introduction of Myrtaceae (Myrtle family plants) except: (1) dried non-living plant materials; (2) seeds, with no other plant fragments, that have been surface-sterilized using treatments approved by the Department of Agriculture, Plant Quarantine Branch (PQB) chief; (3) tissue-cultured plants grown in sterile media and in a completely enclosed sterile glass flask or other similar container; or (4) by approved permit as provided in rule section 4-70-57.

3. Section 4-70-57, Permits, authorizes the PQB chief, upon written request, to issue a permit allowing import of a limited quantity of plants in the Myrtaceae family (Myrtle family of plants) for propagation under the PQB's supervision in a strictly enforced quarantine appropriate to contain *Puccinia psidii*, and other pests, pursuant to existing chapter 4-70, HAR, rule sections regarding plants requiring quarantine.

Myrtaceae (the Myrtle family of plants) includes a broad range of plants, including guava, eucalyptus, ohia, and plants used in the garden and floral industry.



Attachment B



**UHERO**

THE ECONOMIC RESEARCH ORGANIZATION  
AT THE UNIVERSITY OF HAWAII

**ECONOMIC ANALYSIS OF THE  
PROPOSED RULE TO PREVENT ARRIVAL  
OF NEW GENETIC STRAINS OF THE RUST  
FUNGUS *PUCCINIA PSIDII* IN HAWAII**

BY

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LLOYD LOOPE, CHRISTOPHER WADA**

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WORKING PAPERS ARE PRELIMINARY MATERIALS CIRCULATED TO STIMULATE  
DISCUSSION AND CRITICAL COMMENT. THE VIEWS EXPRESSED ARE THOSE OF  
THE INDIVIDUAL AUTHORS.

# **Economic Analysis of the Proposed Rule to Prevent Arrival of New Genetic Strains of the Rust Fungus *Puccinia psidii* in Hawai'i**

January 2012

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## **Abstract**

Since its first documented introduction to Hawai‘i in 2005, the rust fungus *P. psidii* has already severely damaged *Syzygium jambos* (Indian rose apple) trees and the federally-endangered *Eugenia koolauensis* (nioi). Fortunately, the particular strain has yet to cause serious damage to ‘ōhi‘a, which comprises roughly 80% of the state’s native forests and covers 400,000 ha. Although the rust has affected less than 5% of Hawaii’s ‘ōhi‘a trees thus far, the introduction of more virulent strains and the genetic evolution of the current strain are still possible. Since the primary pathway of introduction is Myrtaceae plant material imported from outside the state, potential damage to ‘ōhi‘a can be minimized by regulating those high-risk imports. We discuss the economic impact on the state’s florist, nursery, landscaping, and forest plantation industries of a proposed rule that would ban the import of non-seed Myrtaceae plant material and require a one-year quarantine of seeds. Our analysis suggests that the benefits to the forest plantation industry of a complete ban on non-seed material would likely outweigh the costs to other affected sectors, even without considering the reduction in risk to ‘ōhi‘a. Incorporating the value of ‘ōhi‘a protection would further increase the benefit-cost ratio in favor of an import ban.

## 1 Introduction

Movement of plants material between geographical areas by human activities has reached unprecedented levels worldwide (Brasier 2008). Fungi and insects that may have little impact in the plant communities where they have evolved in certain instances bring about negative effects when transported to new regions of the world where the native plants have little resistance (e.g., Brasier 2008). Dominant tree species are declining in many areas of the world and the introduction of pests and pathogens to new environments is a major contributing factor, resulting in disruption of fundamental ecosystem processes and changes in environments on which a variety of other species depend (Ellison and others 2005). This analysis is aimed at quantifying the economic benefits and costs of a policy designed to reduce the risk of introducing new strains of a potentially damaging rust fungus, *Puccinia psidii*, to Hawai‘i.

Most rust fungi are highly host specific, but *Puccinia psidii* has an extremely broad host range within the myrtle family (Myrtaceae, with about 5,000 species worldwide) and gained notoriety with a host jump in its native Brazil from common guava (*Psidium guajava*) to commercial *Eucalyptus* (originally from Australia) plantations (Coutinho and others 1998). When detected in Hawai‘i in April 2005 (Killgore and Heu 2005, Uchida and others 2006)—the first invasion outside the Neotropics/subtropics—there was immediate concern for ‘ōhi‘a (*Metrosideros polymorpha*). ‘Ōhi‘a comprises 80% of native forest statewide, providing stable watersheds and habitat for most Hawaiian forest birds and plants. Within months, rust

spores spread statewide on wind currents, but ‘ōhi‘a was found to be only a minor host, showing very light damage. The primary host was non-native rose apple (*Syzygium jambos*), which was severely affected at a landscape scale. The massive production of rust spores subsided as rose apple was largely defoliated or killed within several years (Uchida and Loope 2009, Starr and Starr 2005-2011).

Although ‘ōhi‘a was spared from significant rust damage following the 2005 outbreak, concerns remained about both a possible host jump and future introductions of more virulent *P. psidii* strains. To address those concerns, Hawaii’s Coordinating Group on Alien Pest Species, (CGAPS, [www.hawaiiinvasivespecies.org/cgaps](http://www.hawaiiinvasivespecies.org/cgaps)) began to explore regulatory possibilities. However, national and international quarantine standards involving strains or other taxonomic categories below the species level require strong scientific justification, which was lacking at the time. Since then, results from several studies have built a strong case for *P. psidii* regulation. Kadooka (2010) reported the lack of genetic variation in standard genetic markers across analyzed rust samples from Hawai‘i (indicating that they were all of a single strain). A 2011 study undertaken in conjunction with the USDA Forest Service confirmed the lack of detectable genetic variation in the Hawai‘i populations and found that genetic variation of *P. psidii* in its home range is in fact substantial, and host species strongly influences rust population structure.<sup>1</sup> In other words, the likelihood that ‘ōhi‘a will be susceptible to an introduced or mutated rust strain in the future is non-trivial.

In order to prevent introduction of new *P. psidii* strains, Hawai‘i Department of

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<sup>1</sup> Appendix I provides additional background information, including detailed findings from the 2011 genetic study. See also Loope (2010) and Loope and La Rosa (2008) for a preliminary assessment of the risks associated with introducing new *P. psidii* strains to Hawai‘i.

Agriculture is proposing to move ahead with establishing stringent measures that restrict entry of Myrtaceae into Hawai‘i. The purpose of this report is to assess the economic implications of such a restriction. Specifically, the analysis estimates the expected policy-induced benefits and costs that would accrue to several sectors in Hawaii’s economy: florists, nurseries, and plantations.

## **2 Need for Economic Analysis of the Proposed Rule**

The University of Hawai‘i Economic Research Organization (UHERO) received the task of evaluating the likely economic impact of Hawai‘i Department of Agriculture’s Proposed Rule intended to prevent establishment of new genetic strains of *Puccinia psidii* that would threaten Hawaii’s ‘ōhi‘a and other Myrtaceae.

In general, though standards for international and national phytosanitary regulation are geared toward protecting free trade to the extent feasible (Heather and Hallman 2008), they do not require economic analysis of options; the standards dictate that political entities are justified in providing the phytosanitary protection they deem necessary based on criteria of technical justification (sound science allowing accurate assessment of pest risk within the framework of the International Plant Protection Convention), involving environmental concerns as well as concerns for economic considerations (Hedley 2004, IPPC Secretariat 2008). However, Hawai‘i State Law requires that any new departmental regulation be evaluated for its impact on small business and subjected to public review and comment.<sup>2</sup>

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<sup>2</sup> Regulation based on a particular strain rather than a species sets a new precedent for quarantine rules.

As mentioned above, from August 2007 to August 2008, an interim rule prohibited the importation of any Myrtaceae plants or parts from specified infected areas – designated as South America, California and Florida – except for treated seeds and tissue cultures certified to be *P. psidii*-free. Additionally, Myrtaceae imported from any other non-infected area required a certificate of origin. The interim rule was imposed to prevent the “introduction of additional and possibly more virulent strains” of *P. psidii* (State of Hawai‘i, Department of Agriculture, 8/28/07). However, with authorization for an interim rule limited to 12 months by Hawai‘i State Law the rule expired in August 2008. Currently, Myrtaceae can be imported to Hawai‘i from any region, but shipments are subject to inspection by HDOA agricultural inspectors and are released to the receiving party only if there is no visible evidence of *P. psidii*. (This policy is consistent with existing legislation and rules, but deemed ineffective since inspection capacity and latent (asymptomatic) infections limit the ability to detect the rust.)

Hawai‘i Department of Agriculture now judges that there is fully adequate scientific justification to support the urgency of a policy change and to support a sufficiently rigorous rule that has a good chance of preventing arrival and establishment of new strains of *Puccinia psidii*.

The following proposed (draft version, August 2011) Myrtaceae import rule is targeted for implementation in 2012:<sup>3</sup>

## **SUBCHAPTER 18**

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<sup>3</sup> Given that a major conference in Brazil in November 2011 aimed to assess best practices for assuring maximum safety in moving germplasm of Eucalyptus between locations, there may be some refinements in the eventual rule, which in any event will undergo Hawai‘i Board of Agriculture’s public review process.

**RESTRICTION OF INTRODUCTION OF MYRTACEAE (FOR PROTECTION OF OHIA)**

§4-70-6 Duration of quarantine. Unless otherwise specified for specific plants in subsequent subchapters, the duration of quarantine shall be one year provided that the board may exempt or shorten the period of quarantine under certain conditions of importation or propagation procedure.

(Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-5)

§4-70-64 Notice of quarantine. The board has determined that there exists serious danger to all *Metrosideros* spp. and the forests of Hawai‘i from the introduction of new strains of the ‘ōhi‘a rust, *Puccinia psidii*, and other disease pathogens and insects not now established in Hawai‘i.

(Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-5)

§4-70-65 Prohibited introduction. The introduction of any plant, plant part, or seed from any species of the family Myrtaceae into Hawai‘i is prohibited except:

- 1) Dried non-living plant materials;
- 2) Tissue cultured plants grown in sterile media and is in a completely enclosed sterile glass flask or other similar container; and
- 3) By approved permit pursuant to section 4-70-66.

(Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-5)

§4-70-66 Permits. Upon written request, a permit may be issued by the chief authorizing the importation of a limited quantity of plants in the family Myrtaceae for propagation under the branch’s supervision in a strictly enforced

quarantine pursuant to section 4-70-3, 4-70-3.1, 4-70-4, 4-70-5, 4-70-6, and 4-70-6.1.

(Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-5)

Any plants in the Myrtaceae family will be immediately confiscated and destroyed, regardless of the visual presence of rust. Seeds will be quarantined in one of the HDOA's existing facilities. If the seeds show no sign of infection after the one year period, they will be distributed to the importers. Otherwise, they will be destroyed. Importers will be allowed to apply to the Hawai'i Board of Agriculture for shorter quarantine periods with provision for scientifically sound safeguards establishing that the mitigative efforts (e.g. sterilization, genetic testing, tissue culture) are as effective as the one-year quarantine. Once a permit is granted for a specific treatment, that type of treatment need not be approved again. The HDOA is planning to work with leaders in the forestry industry to explore potential protocols for expedited seed entry. Although information is currently sparse on what treatments may be effective, it is foreseen that increased international research on this topic will likely be forthcoming in the near future.

The choice of one year for the quarantine period is based on the collective knowledge of the state's experts on *P. psidii* and anecdotal evidence from other countries. The rust fungus' thick walls that resist desiccation and pigments that reduce UV damage allow spores to remain viable for at least 90 days in favorable conditions (references summarized by Glen and others 2007). The rust has proven robust to harsher conditions as well; it was reported that spores on timber, plastic wrapping, and the outside of a shipping container survived a sea journey from Brazil to Australia (Grgurinovic and others 2006).

To ease the transition for current importers, the HDOA is planning to develop an *Import Replacement Program*. The program would assist by locating local sources of Myrtaceae and providing outreach during the transitional period, including presentations throughout the state to educate florists and nurseries about possible alternatives to Myrtaceae products. In addition, the HDOA is pushing for a bill to establish inspection stations at all ports of entry. This would discourage strategic avoidance measures by buyers, i.e. deliberately shipping to understaffed ports to decrease the likelihood of the shipment being searched thoroughly.

### ***2.1 Direct Cost of the Proposed Rule***

Since seeds require a relatively small quarantine area, no new capital expenditures will be required for the quarantine program. Moreover, all ongoing costs of maintenance will be paid for by HDOA, primarily out of the Import Replacement Program's \$200,000 budget.

## **3 Survey of Local Industries: Florists, Nurseries, and Plantations**

Any policy that bans or otherwise restricts the importation of Myrtaceae plant material will have an impact on primarily three sectors of Hawaii's economy: the floral industry (including florists, retail/landscaping/fruit tree nurseries), forest nurseries, and industrial plantations. To provide a basis for estimating the economic impact of the proposed rule, we surveyed and interviewed as many businesses in those industries as were willing to work with us. Presented below are summaries of each sector's self-assessed expected impact of a policy change regarding imported Myrtaceae.

### **3.1 The Floral Industry**

Foliage or flowers from several Myrtaceae genera—including *Eucalyptus*, *Chamelaucium* (waxflower), and *Myrtus* (myrtle)—are commonly used as “fillers” in floral arrangements because they possess several desirable properties: the high-quality greens/flowers are consistently available from mainland and international growers, are durable and long-lasting to withstand the transit time from non-local grower to market in Hawai‘i, are substantial in volume to give arrangements a “full” appearance, and are reasonably priced. While some of these fillers are grown locally, in-state growers do not currently produce enough to meet local Myrtaceae demand. Thus, the impact to the local floral industry will result mainly from any change in policy regarding imports of *cut* Myrtaceae. There are currently about 250 florists in Hawai‘i, down from about 400 in the mid- to late-1990s. This decline is believed to be the result of three trends: the increased presence of “big box” department stores—typically, mainland-based supercenters—that have floral departments; the increased popularity of convenient internet-based floral delivery companies; and the lack of interest of younger generations to take over family-owned floral shops (M. Pereira, Watanabe Floral, personal communication). In the discussion that follows, businesses in the floral industry are classified into one of three groups: 1) superstores; 2) florists; 3) retail and commercial nurseries.

#### **3.1.1 Superstores**

Superstores buy large volumes of products from their distributors to sell at their many locations to the mass market and are thus able to offer products at lower prices than regular retail stores. This practice is also true of their floral departments, which, in Hawai‘i, sell large quantities of potted plants, lei, bundled flowers and mixed bouquets.

The superstores' floral suppliers often fill mixed bouquets with eucalyptus, myrtle and waxflower because these plants create a quality bouquet and satisfy the desired price point. Due to the large volume, most floral packing for the mass market is done at the farm or wholesaler (see Loope 2010, p. 16) level on an assembly line for faster delivery to store and to provide a uniform product nationwide.

In the past, the floral department at Sam's Club Hawai'i was supplied by the company's mainland floral distributor. However, about five years ago, the company switched to a local vendor for all its floral products. A regional buyer suggested that the switch was made mainly to provide the freshest and highest quality floral products possible (M. Kalina, Wal-Mart, personal communication). Since the move, the floral department has grown, and is now moving a larger volume and an increased variety of products. The composition of mixed bouquets is at the sole discretion of the local vendor. Sam's Club sets a price point and requests a certain "perceived value" of the arrangement, while the vendor selects the flowers and fillers and assembles the bouquet based on product availability, quality and price. Thus, while Sam's Club Hawai'i has sold mixed bouquets containing Myrtaceae in the past, they do not order arrangements specifying its use as filler.

When asked about the expected impact of a policy affecting Myrtaceae imports, M. Kalina noted that the floral department represents a very small share of total revenue for any given store, and that because the local vendor selects the contents of the bouquets sold by Sam's Club, the burden of finding a filler substitute would fall on the vendor. Furthermore, since mixed bouquets currently sold at Sam's Club do not contain Myrtaceae, M. Kalina is certain that substitutes are already available at their desired price

point and does not anticipate that the proposed rule would have any impact on her company's sales or revenues.

Wal-Mart, the sister company of Sam's Club, contracts with the same local vendor for its floral products (M. Kalina, personal communication). However, Wal-Mart carries a much smaller volume of floral products and often does not offer mixed arrangements. Therefore, Wal-Mart is in the same position as Sam's Club and would be essentially unaffected by a change in policy.

Costco Hawai'i does not currently use eucalyptus, myrtle or waxflower as fillers in mixed bouquets (D. Evans, Costco Hawai'i Regional Manager, personal communication). Corporate suppliers of Costco are of the understanding that Myrtaceae is still banned in accordance with the 2007 interim rule, and they have thus substituted away from Myrtaceae fillers for mixed bouquets. Consequently, there will be no impact on Costco's floral sales as a result of any change in Myrtaceae policy.

Safeway stores nationwide receive bulk floral shipments from Safeway Corporate, and each floral department within a store follows a uniform "recipe" for pre-made arrangements and mixed bouquets using these shipments. In the past, Hawai'i stores received the same shipments and recipes as all other mainland stores. However, about five years ago, prior to the interim rule, the Hawai'i Department of Agriculture (HDOA) began to confiscate boxes containing Myrtaceae, which were commonly used in the uniform recipes. Consequently, Safeway Corporate developed new Hawai'i-specific recipes and modified their shipments of floral products to Hawai'i stores accordingly (L. Areola, Safeway Kapahulu Floral Manager, personal communication). While Hawai'i Safeway stores imported large quantities of Myrtaceae in the past to use as filler, they

have since stopped and now import alternative mixed greens to avoid potential loss of product altogether. Thus, any ban on imported Myrtaceae would have no impact on Safeway Hawai'i floral sales. Moreover, there would be no transition period for the company because they already made the switch to Myrtaceae substitutes years ago and have since fully adjusted. When asked about using locally-grown Myrtaceae, L. Areola indicated that local growers would need to obtain a vendor contract with Safeway Corporate and have the ability to consistently supply all Safeway stores in the state to ensure uniform availability.

Based on the information gathered from our interviews, we believe that any change in policy regarding imported Myrtaceae—whether an outright ban, a ban based on origin or a ban of uncertified products—would not impact the superstores currently present in Hawai'i.

### 3.1.2 Florists

A phone survey was conducted between August and December 2010 of all florists in the state whose contact information was available. Respondents were asked if they sell eucalyptus, myrtle or waxflower. The results from this survey are summarized in the table below.

**Table 1. Hawai'i florist survey of Myrtaceae**

	Total Responses	Eucalyptus		Myrtle		Waxflower		At Least One
		Available	Sell	Available	Sell	Available	Sell	Available
O'ahu	119	23.5%	47.1%	13.4%	36.1%	21.0%	44.5%	31.1%
Big Island	35	20.0%	48.6%	5.9%	20.6%	5.7%	31.4%	25.7%
Maui	35	22.9%	37.1%	8.6%	34.3%	25.7%	42.9%	34.3%
Kaua'i	16	6.3%	31.3%	0.0%	31.3%	0.0%	31.3%	6.3%

Of all the florists who responded, less than 35% on each island regularly stock at least one of the three types of plants (“available” in Table 1). Counting those who did not

indicate immediate availability but offered the option of placing a special order with their supplier (“sell” above), the number of florists who sell any one of the three plants does not exceed 50% of the total on any island. While the florists themselves may opt to use these plants in special orders or pre-made arrangements, many florists who could provide these plants said it was very rare for customers to order arrangements made with these specific fillers. And although the number of florists who carry Myrtaceae is not insignificant, some florists acknowledged that these fillers comprise a very small percentage of total sales (less than 1% in some instances).

We interviewed willing florists in person to obtain more detailed information about the revenue share of these three plants, their anticipated impact of a policy change and their potential adjustment strategy to find alternate fillers in the event of a ban on imported Myrtaceae. Florists that were in existence during the interim rule of 2007, were further questioned about any changes they made and effects they experienced during that period. Based on these discussions, florists were divided into three categories.

The first category consists of florists that substituted away from Myrtaceae altogether during the interim rule, regardless of origin. From their perspective, the rule was implemented very quickly and without warning. They therefore lacked sufficient time to make appropriate adjustments without disruption to Myrtaceae-related sales. The buyers for these businesses sought other filler plants that have as many of the desired characteristics as possible and that would be immediately available for use to minimize loss of sales. In some cases, florists were forced to locate new suppliers for these alternate options. Whether or not these businesses reverted back to imported Myrtaceae from infected areas once the interim rule expired, they are in an ideal position among all

florists in the event of a current policy change; they have already identified the best filler alternatives and have the experience of implementing this change. Thus, if given ample notification prior to any change in policy regarding imported Myrtaceae, the impact to florists in this group will likely be minimal.

The second category is comprised of florists that switched to imported Myrtaceae from uninfected areas—anywhere except the designated areas of South America, California and Florida. These florists may have done some initial research on alternative fillers, but found it most convenient and least disruptive to sales to simply switch Myrtaceae sources. Consequently, while these businesses would likely be unaffected by a ban on Myrtaceae from infected areas only, they may be affected for a temporary transition period following an outright ban on all imported Myrtaceae. The duration and magnitude of the impact resulting from a total ban will likely be smaller the larger the time gap between passage and implementation of the policy.

The final group is comprised of florists that did not exist during the interim rule. These businesses will need to identify the best substitutes for Myrtaceae and implement any adjustments to minimize impact on sales. However, with sufficiently early notification prior to imposition of a ban combined with outreach efforts by the HDOA's Import Replacement Program, even these businesses could realize negligible impact during their transition period.

We thus conclude, based on numerous conversations with both large importers who have already substituted away from Myrtaceae following the interim rule and smaller merchants who currently sell Myrtaceae and would need to substitute, that beyond a potential transition period during which alternative fillers are sought and/or

buying practices are modified, there will likely be no significant lasting economic impact on individual florists as a result of a ban on Myrtaceae imports.

### 3.1.3 Retail and Commercial Nurseries

During the same time period, between August and December 2010, a phone survey of all retail and commercial nurseries in the state was also conducted.

Respondents were asked if they sell eucalyptus, myrtle and waxflower. Results from this survey are summarized in Table 2 below. With the exception of myrtle on O‘ahu, less than 12 percent of nurseries on each island sell these plants.

Whether or not the proposed rule would increase demand for locally grown Myrtaceae remains to be seen, but discussions with buyers who were affected by the 2007 interim rule revealed that local nurseries were perceived unable to offer the product consistently, and therefore florists as a whole opted instead for mainland-supplied alternative fillers. Although local Myrtaceae production could expand if a longer-term policy were implemented, we expect that the response is more likely to follow behavior observed during the interim rule. And while the year-long seed quarantine may impose some costs to growers, the import ban would prevent both damages to the current stock of local Myrtaceae and mitigative costs that nurseries would face if a successful *P. psidii* invasion were to occur.

**Table 2. Hawai‘i retail and commercial nursery survey of Myrtaceae**

	Total Responses	Eucalyptus		Myrtle		Waxflower	
		Available	Sell	Available	Sell	Available	Sell
O‘ahu	44	4.7%	9.3%	20.0%	20.0%	0.0%	0.0%
Big Island	59	3.4%	5.1%	8.6%	8.6%	1.7%	1.7%
Maui	36	11.1%	11.1%	5.6%	5.6%	2.8%	2.8%
Kaua‘i	19	5.3%	5.3%	15.8%	15.8%	0.0%	0.0%

Note: At a late date, it has been suggested to us by colleagues that we should have asked retail, commercial, landscaping and fruit tree nurseries "what plants in the myrtle family do you sell and do you import any plants or propagative material of those?" If a lot of Myrtaceae nursery stock material (e.g., jaboticaba, various *Eugenia* spp., allspice) is brought from the U.S. mainland or foreign countries, there could be some additional significant economic disruption. Our general impression had been that this was not an important practice, but we could have been wrong about that. Last minute inquiries to a number of representative nurseries have suggested that it may not be an important practice (and those contacted generally felt that there are adequate local seed and parent material sources to supply industry in Hawai‘i and they support the restriction to protect Myrtaceae), but this may not be the last word. Additional information may come out in the public review process.

### 3.2 Forest Nurseries

Forest nurseries differ from retail and commercial nurseries in that they produce forest tree seedlings in quantities sufficient for reforestation and restoration. There are about a dozen forest nurseries in the state, most of which are small part-time operations (Friday, 2010). While a few sell seedlings to individual homeowners, most forest nurseries grow quantities of seedlings to order for specific projects. Some also have lines of plants produced for sale to retailers for eventual use by homeowners.

**Table 3. Hawai‘i forest nursery survey of Myrtaceae**

	Total Responses	Imports Myrtaceae Non-Seed Material	Imports Eucalyptus Seed Only
O‘ahu	1	0	0
Big Island	5	0	2
Maui	2	0	0

Kaua'i	2	1	1
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Of the ten forest nurseries we were able to successfully contact, only one reported importation of non-seed Myrtaceae plant material, while three reported importation of eucalyptus seeds. Three out of those four importers expect that a policy affecting Myrtaceae trade would have a non-negligible impact on their business. Inasmuch as the cost of obtaining phytosanitary certification and shipping from out-of-state is already high, importers suggest that any additional costs (e.g. genetic testing of seeds) could be prohibitive, especially for smaller businesses. Although buying seeds locally may be a lower cost alternative, the variety of species is limited. The proposed rule, however, does not require costly genetic testing. Rather, it offers testing as a possible alternative to the standard one-year quarantine for firms interested in expedited seed entry.

An import ban on Myrtaceae non-seed plant material combined with a requirement of testing or quarantining imported seeds could potentially reduce sales for 4 of 10 local forest nurseries (Table 3). The benefits resulting from the reduction in the risk of contaminating existing stock with *P. psidii*, however, would be enjoyed by the 9 of 10 forest nurseries that grow eucalyptus, 'ōhi'a, or both. While the extent of the damages would depend on how virulent the particular rust strain is, the types of host plants (susceptibility varies), and the mitigative strategies adopted by the particular nursery, anecdotal evidence suggests that an outbreak could be very costly. In 2007, Native Nursery, LLC on Maui (E. Romanchak, personal communication) experienced an 8-10% mortality rate for over 17,000 'ōhi'a seedlings and young saplings, even with a monthly treatment of Puccinia-specific fungicide costing approximately \$200 per application.

### **3.3 Plantations**

There are currently four privately owned industrial forestry plantations in Hawai‘i. While the state manages scores of plantations, these are grouped into seven large management units called “timber management areas,” for example the Waiākea Timber Management Area on windward Hawai‘i Island. While eucalyptus is the primary type of tree planted for many of the state plantations, the government has issued timber licenses for only one (Waiākea). The discussion that follows focuses primarily on the potential costs and benefits to private industrial plantations of the Myrtaceae import policy. Much of the information in this section was gathered from personal interviews with two property managers, whose primary duties include land management, market research, and day-to-day plantation operations.

In Hawai‘i, eucalyptus was harvested, chipped and shipped overseas in the 1970s to produce pulp for paper production. More recently, however, eucalyptus has only been harvested in relatively small quantities for “boutique” uses such as flooring, mushroom cultivation, and furniture construction. Despite over a decade of attempts to build a large-scale veneer mill, there is no local industry to process the logs into veneer. Potential markets for eucalyptus in the foreseeable future include liquid for biofuel and biomass for energy, the latter of which yields a significantly lower value per ton.<sup>4</sup> In the economic analysis that follows, we assume that eucalyptus will be used in the future as feedstock for biofuel production.

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<sup>4</sup> Two reviewers questioned the likelihood of whether Eucalyptus will be used as a biofuel in Hawai‘i. We agree that the future of the biofuel industry is uncertain and have noted some of our own qualms about the assumption in Appendix II, most notably the worldwide lag in technology for lignocellulosic conversion of plant tissue to biofuels and problems of scale in Hawai‘i for local refinery capacity. However, we feel that biofuel production in Hawai‘i will likely become a reality (some time in the future) given the Hawai‘i Clean Energy Initiative goals for 2030 (explained in footnote 14).

The current seed importation process takes roughly half a year from start to finish. The importer must obtain a permit from USDA-APHIS, request a phytosanitary certificate from the shipper, send the import permit to the shipper, have the seeds shipped (80% of seeds are currently obtained from South Africa), then wait for approval upon the seeds' arrival in Honolulu. The proposed Myrtaceae import policy would require an additional year of quarantine, but the perceived cost is fairly low, provided that permits can be eventually granted for expedited seed entry. Many existing plantations are likely to regenerate harvested stands via coppicing (i.e. growing sprouts from stumps) for up to two harvest cycles, which should provide ample time for the Hawai'i Board of Agriculture to consider alternatives to the one-year seed quarantine, such as sterilization or genetic testing.

The expected benefit of the import policy to plantation owners is determined primarily by the value of damages and costs avoided. If a successful *P. psidii* invasion were to occur, a portion of existing stands would be lost (given the conditions in Hawai'i, especially in rainforest climates, with leaf wetness as discussed below) and regeneration of stands would be significantly hampered. While the actual percentage cannot be perfectly predicted, previous experience in Brazil, where extensive Eucalyptus plantations have been established, beginning in the 1940-1960s and accelerating in the 1970s, indicates that the infection rate could be potentially high. For example, plantations in Brazil reported infection rates of 20-30% of the canopies of young trees (Tommerup and others 2003). An Australian contingency planning document reported that "seedling and young plants are the most severely impacted although yield losses from the disease in plantations in Brazil have reached as much as 40% (Commonwealth of Australia, 2006).

Zauza and others (2010) have developed an explanation for why in a typical eucalyptus plantation situation in Brazil, eucalyptus plants taller than 3–4 m are not infected by the pathogen even when new, developing leaves are present. They found that microclimatic conditions above a height of 3 m favor neither pathogen establishment nor disease development. Rust incidence decreases as height increases. Rust incidence was negatively correlated with the height gradient and positively correlated with both hours with leaf wetness and the concentration of airborne urediniospores, greater near the ground.

Would a future situation in *P. psidii*-susceptible *Eucalyptus* stands in Hawai‘i likely be similar to Brazil’s? Anecdotally at least, the impact of the Hawai‘i’s *P. psidii* strain on rose apple (*Syzygium jambos*) has been greater than that observed elsewhere in the world, perhaps because of more consistent leaf wetness and more persistent trade winds, so that it might not be unrealistic to expect potentially greater impact on *Eucalyptus* in Hawai‘i, especially in the Hāmākua area on the windward side of Hawai‘i island that has a very wet climate and is where most of the plantations are located.

To combat a successful outbreak, plantation owners would need to select and breed for *P. psidii* resistance, which is a difficult and expensive process. Several types of resistant eucalyptus would need to be planted simultaneously, and even then, resistance to a particular strain of the rust does not guarantee resistance to newly introduced or mutated strains. Alternatively, non-susceptible, non-Myrtaceae feedstocks could be substituted for eucalyptus. However, if the target end-market is biofuels, substitution could be costly because alternative forestry feedstocks likely have a lower growth

potential than eucalyptus, may be invasive in nature, and may require more water and/or land to grow.

Appendix II is provided to attempt to give a slightly broader view of the potential future importance of *Eucalyptus* forestry to Hawai‘i (beyond biomass and ethanol).

#### **4 Economic Analysis: Costs and Benefits of the Import Policy**

Using available information about Myrtaceae plant imports, sales data for Hawaii’s floral industry, expected damages to plantations from *P. psidii*, the approximate value of current eucalyptus stands based on biofuel end-use, and estimated transition costs to current importers, we compare the benefits and costs for which monetary values are apparent. Section 4.1 discusses the costs of the proposed rule, and Section 4.2 details the potential benefits, including, in particular, avoided damages. In Section 4.3, we calculate the present value of the policy for a range of parameter values.

*Present value* (PV) is a concept used to compare dollar amounts from different time periods. The PV of a dollar amount in the future is the amount that would be needed today, given available interest rates, to produce that future amount (Mankiw, 2003).

Thus, the PV of  $X$  dollars received at some point  $T$  years into the future is  $X/(1+r)^T$  if interest is compounded annually at rate  $r$ , and  $Xe^{-rT}$  if interest is compounded continuously. Policies and projects tend to generate a stream of benefits and costs over time rather than a single amount, however, which must be discounted appropriately before being added or compared. If a project generates  $X$  dollars every year from now until year  $T$ , then the PV of the project is simply the sum of the present values for each  $X$ ,

i.e.  $\int_{t=0}^T Xe^{-rt} dt$ , where time zero denotes the current period. The *net present value* (NPV)

is the PV of benefits net of project costs. While the discount rate ( $r$ ) sometimes refers to the risk-free interest rate, there are often risks involved in any project, so  $r$  may incorporate a risk premium. In the calculations that follow, we assume a discount rate of 2%.<sup>5</sup>

#### **4.1 Costs**

The primary cost to importers of adapting to the policy is the time spent finding suitable Myrtaceae substitutes. We assume that the length of time ( $h$ ) required per florist business to research and locate sellers of the desired substitute is 80 hours and that the hourly wage ( $w$ ) of a representative florist is \$30 per hour.<sup>6</sup> Given that the total number of florists ( $N$ ) in the state currently selling Myrtaceae is estimated at 59, the total cost of searching for Myrtaceae substitutes ( $C_u$ ), defined as the product  $h * w * N$ , is equal to \$141,600.

Florists will also experience some lost sales during the transition period. In 2007, sales ( $S$ ) in Hawaii's retail floral industry totaled \$44 million (U.S. Census Bureau, 2010). Products containing Myrtaceae plant material comprise a very small percentage of total sales in the sector. One of the biggest florists on O'ahu, for example, estimated that Myrtaceae products make up less than 1% of their total sales (L. Watanabe, personal communication). We assume that the percentage of sales ( $\theta$ ) from Myrtaceae products is

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<sup>5</sup> Although economists are not in consensus on all of the issues surrounding intergenerational discounting, the consumption rate of interest can be used as a starting point for benefit-cost analysis (US EPA, 2010). Based on returns to government-backed securities, current estimates of the discount rate are in the 2-3% range. We also calculate the NPV for the White House Office of Management and Budget's recommended 7% rate for the opportunity cost of private capital, as well as the discount rate for which the policy breaks even, i.e. for which NPV=0.

<sup>6</sup> As discussed in Section 3.1, Myrtaceae is used as a filler in products that comprise a very small fraction of total sales (detailed further in the current section). In addition, the proposed Import Replacement Program (IRP) would assist florists with finding suitable substitutes. Given that florists were able to transition relatively quickly in response to the 2007 interim rule, even without advanced notice or an IRP, we feel that 80 hours of search time is a reasonable assumption.

roughly the same for all florists and equal to 1%. Since this follows the observation from a large florist, the 1% can be viewed as an upper bound on  $\theta$ . Given that the proportion ( $m$ ) of florists in the state who sell any type of Myrtaceae is 29%, and assuming that the period of losses continues for no more than one year following the implementation of the policy, the cost to florists in terms of lost sales ( $C_s$ ),<sup>7</sup> defined as the product  $S * m * \theta$  is equal to \$126,332. The total cost of the policy, is therefore,  $TC \equiv C_u + C_s \approx \$268,000$ .

While nurseries and plantations will also face costs in adjusting to the proposed rule, those costs may be small relative to the benefits to all local growers who currently maintain stocks of Myrtaceae and ‘ōhi‘a. As can be seen in Table 2, very few of the nurseries we contacted have Myrtaceae readily available for sale (at most 25% for any given island). And based on discussions with people in the industry, most do not import saplings or seedlings. The main costs, therefore, would involve adjustments in planning to account for the one-year quarantine of imported seeds and/or searching for local seed suppliers. Similarly in the forest plantation industry, few import non-seed Myrtaceae plant material (1 of 10), while nearly all (9 of 10) grow rust-susceptible eucalyptus and/or ‘ōhi‘a (Table 3). Given the relatively small proportion of growers potentially affected by the policy and the fact that most growers import seeds in favor of plant material which presumably means local propagation is feasible using seeds from existing plants or other local sources, excluding policy-induced costs to growers should not affect the overall conclusions drawn from the net present value calculations. Although the total transition cost to florists and nurseries is at least \$268,000, the \$200,000 budget for HDOA’s Import Replacement Program would be used largely to reduce that burden.

## **4.2 Expected Benefits (Avoided Costs)**

The expected benefit calculations that follow are fairly conservative in that we consider primarily the avoided losses to the eucalyptus industry alone. If data were more readily available, the same techniques could be applied to measure potential benefits for

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<sup>7</sup> The measure likely overestimates losses to florists since it ignores the fact that profits are only a fraction of revenues and that florists would substitute other products for Myrtaceae.

retail, commercial, and forest nurseries. At the same time, however, the future of biofuels in Hawai‘i is largely uncertain (see Appendix II). We calculate the expected benefits for a certain stream of profits generated by eucalyptus and incorporate uncertainty only with regard to the unknown time of rust invasion. If we had more confidence in the distribution of possible future outcomes for the eucalyptus industry, that aspect of uncertainty could be directly integrated into the model.

While the exact time of a successful future rust invasion ( $T$ ) is unknown, the expected net benefit with and without the policy could be calculated if we could parameterize a hazard function for each scenario. The hazard function is a measure of the tendency to fail (in this case, failure constitutes a successful invasion); the greater its value, the greater the probability of impending failure. Therefore, a policy restricting the import of Myrtaceae would reduce the hazard rate, or the probability of successful rust invasion in any given period. If  $\beta$  represents the status quo annual rate of invasion conditional on invasion not having yet occurred, then the policy-free time-dependent rate of invasion is

$$\phi(T) = \beta e^{-\beta T},$$

where the conditional probability  $\beta$  is discounted by the likelihood that invasion has already occurred by time  $T$ . Supposing that the policy reduces the annual conditional probability of invasion by  $\tilde{\beta} < \beta$ , the time-dependent invasion rate under the policy is

$$\phi'(T) = (\beta - \tilde{\beta}) e^{-(\beta - \tilde{\beta})T}.$$

The change in invasion risk can then be calculated as the difference

$$P(T) = \phi(T) - \phi'(T) = \beta e^{-\beta T} - (\beta - \tilde{\beta}) e^{-(\beta - \tilde{\beta})T}.$$

Although we do not know the exact status quo probability of invasion, through discussions with local *P. psidii* experts, we have constructed estimates for the change in the annual conditional probability of invasion induced by the policy ( $\tilde{\beta}$ ). Given that Myrtaceae trade is the primary pathway of *P. psidii* invasion and that a ban on importing plant material and a one year seed quarantine are fairly stringent requirements, we assume that  $\tilde{\beta} \approx \beta$ , i.e. the policy effectively eliminates the threat of invasion once implemented.<sup>8</sup> It follows that  $\phi'(T) \approx 0$  and the change in risk invasion is approximate by the function  $P(T) = \phi(T) = \beta e^{-\beta T}$ . The parameter  $\beta$  can be interpreted as both the status quo conditional probability of invasion and the policy-induced reduction in the conditional probability of invasion.. In our baseline scenario, we assume that  $\beta$  is equal to 0.1.<sup>9</sup>

In order to estimate the avoided damages, one also needs to determine the profit per gallon of biofuel, the gallons of biofuel producible annually from existing eucalyptus stands, and the expected yield losses of eucalyptus in plantations if a successful rust invasion were to occur. Although capital expenditures are likely to be substantial for a processing facility, they would be sunk costs, meaning that the presence of *P. psidii* would not change existing capital expenditures. It would, however, change the revenue generated annually, which is the focus of the subsequent calculations. In a biofuel feasibility study for the southern United States, Gonzalez and others (2011)<sup>10</sup> estimate

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<sup>8</sup> In reality the threat of invasion is not completely eliminated, which means that results based on the assumption of complete elimination biases the NPV calculations upward.

<sup>9</sup> Discussions with resource managers, scientists, and other local *P. psidii* experts (including early reviewers of the report) have provided guidance in determining that 0.05-0.2 is a reasonable range of values for  $\beta$ .

<sup>10</sup> The corresponding numbers in Hawai'i could be different, although the lack of a current market for ethanol makes a quantitative assessment quite difficult. Generally if input prices are higher and output

that a refinery that processes 453,592 metric tons per year (Mg/yr) would yield profits of roughly \$21.7 million/yr.<sup>11</sup> And given current refining technology, every Mg of eucalyptus biomass can be converted to 369.3 liters (97.6 gallons) of biofuel. At the price of \$0.66/L (\$2.50/gal), each Mg of eucalyptus generates revenues of \$243.74. The study estimates that feedstock costs of \$66.1/Mg account for roughly 33% of the total costs (not including capital expenditures). Thus, total production cost is \$198.30/Mg, and net profit is  $\$243.74 - \$198.30 = \$45.44/\text{Mg}$ .<sup>12</sup> The profit margin, therefore, is  $\$45.44/\$243.74 = 18.6\%$ , and the per gallon profit ( $\pi$ ) based on the current ethanol price of \$2.64/gallon (USDA, 2011) is \$0.49.

Eucalyptus yield estimates are taken from a Hawai'i study by Tran and others (2011). The authors report that eucalyptus yields 7.8 tons of biomass/acre/year, based on a 10-year harvesting cycle. Multiplying that figure by the approximately 24,700 acres of planted eucalyptus (J.B. Friday, personal communication), gives a total of 192,660 tons (174,778 Mg) of biomass producible per year, and consequently the total volume of ethanol producible from eucalyptus per year ( $G$ ) is approximately 17 million gallons.

The policy-induced decrease in potential losses for a given year are determined by the reduction in probability of invasion ( $P$ ), the yield loss rate ( $L$ ) of eucalyptus in plantations (assumed to be 30% in the baseline case); the profit per gallon of biofuel (\$0.49/gallon), and the total gallons of biofuel producible annually by existing eucalyptus

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prices are lower in Hawai'i, then the NPV calculations will be biased upward, i.e. potential benefits and hence avoided losses will be overestimated.

<sup>11</sup> They calculate a negative net present value (NPV) for ethanol production, assuming a discount rate of 12%. However, the study finds that as long as investors have a discount rate less than 11.4%, they will be willing to foot the large start up costs. This may already be the case in Hawai'i, given current plans for Hu Honua's 24 MW bioenergy facility (<http://www.huhonua.com>).

<sup>12</sup> The total cost includes a freight charge of \$9.8/Mg to cover a distance of 48.3 km. The distance between eucalyptus stands on the Hamakua coast on the Big Island and Hu Honua's planned 24 MW bioenergy facility in Pepeekeo is also roughly 50 km, so we do not adjust the freight estimate.

stands (17 million gallons). Inasmuch as profits will be accruing in the future, however, the present value (PV) of benefits should be calculated to reflect the time value of money. The PV of benefits from the proposed import policy over a fifty year time horizon is:<sup>13</sup>

$$B = \int_{T=10}^{50} \left[ P(T) \int_{t=T}^{50} (L \times \pi \times G) e^{-rt} dt \right] dT.$$

Losses can potentially accrue starting from year 10 when it is assumed that the biofuel sector would begin producing benefits.<sup>14</sup> The reduction in probability of a successful invasion at year  $T$  is accounted for by the function  $P(T)$ . The total expected benefit is calculated by integrating over all values of  $T$  for which benefits potentially accrue, i.e. from year 10 to 50, and discounting to the present at rate  $r=2\%$ .

### 4.3 Net Present Value of the Import Policy

The net present value of the import policy is calculated according to the following equation:

$$NPV = \int_{T=10}^{50} \left[ P(T) \int_{t=T}^{50} (L \times \pi \times G) e^{-rt} dt \right] dT - h \times w \times N - S \times m \times \theta$$

**Table 4. Summary of parameters and values**

Symbol	Description	Baseline Value
$T$	Time at which a virulent rust strain is introduced	N/A
$P(T)$	Policy induced change in invasion risk	N/A
$\beta$	Annual conditional probability of invasion with the policy in place	0.10
$t$	Index of time (years)	N/A
$L$	Expected yield loss for eucalyptus in plantations	30%

<sup>13</sup> Although a 50 year time horizon is assumed for practical planning purposes, the benefits of the policy would technically accrue in perpetuity, i.e. the time horizon should be infinite. The implications of relaxing the finite horizon assumption are discussed in Section 4.3.

<sup>14</sup> Given the Hawai'i Clean Energy Initiative's goal of achieving 70% clean energy by 2030 with 30% coming from efficiency measures and 40% coming from locally generated renewable sources ([www.hawaii-clean-energy-initiative.org](http://www.hawaii-clean-energy-initiative.org)), we feel that biofuel production could start producing benefits within the decade.

$\pi$	Profit per gallon of biofuel	\$0.49/gal
$r$	Discount rate	2%
$G$	Total gallons of biofuel from eucalyptus per year	17 M gal/yr
$h$	Hours of labor required to adjust to policy per firm	80 hrs
$N$	Number of florists that sell Myrtaceae	59
$w$	Hourly wage of florists	\$30/hr
$\tau$	Length of transition period	1 yr
$S$	Total florist sales in Hawai'i per year	\$44 M/yr
$m$	Percentage of florists that sell Myrtaceae	29%
$\theta$	Percentage of sales from Myrtaceae products	1%

Given the baseline parameter values summarized in Table 4, the net present value of the proposed rule is \$14.3 million. Table 5 includes a list of both monetized and non-monetized benefits and costs expected to be generated from the policy. Benefits absent from the NPV calculation include avoided damages to nursery growers of Myrtaceae and avoided damages to 'ōhi'a, while non-monetized costs borne by florists and nurseries included those related to finding local seed suppliers, switching to local propagation of Myrtaceae and/or building the one-year seed quarantine into production plans.

**Table 5. Benefits and costs of the proposed policy (baseline scenario)**

<b>Benefits</b>		
<i>Nurseries</i>		
Avoided damages to Myrtaceae products <sup>a</sup>	B <sub>1</sub>	
<i>Plantations</i>		
Avoided damages to Eucalyptus <sup>b</sup>		\$14.3 million
<i>All residents of the state</i>		
Avoided damages to 'ōhi'a <sup>c</sup>	B <sub>2</sub>	
<b>Costs</b>		
<i>Florists</i>		
Finding Myrtaceae substitutes (C <sub>u</sub> )		\$141,600
Lost profits during transitional period (C <sub>s</sub> ) <sup>d</sup>		\$126,332
<i>Nurseries</i>		
Finding local seed suppliers, switching to local propagation, and/or building one-year quarantine into production plan <sup>e</sup>	C <sub>1</sub>	
<i>Plantations</i>		
Finding local seed suppliers, switching to local propagation, and/or building one-year quarantine into production plan	C <sub>2</sub>	
<b>Net benefits</b>		\$14 million + B <sub>1</sub> + B <sub>2</sub> - C <sub>1</sub> - C <sub>2</sub>

<sup>a</sup>90% of forest nurseries grow Eucalyptus and or ‘ōhi‘a so this value could be substantial.

<sup>b</sup>Assumes biofuel end-use. Value will be lower if Eucalyptus is used for flooring, furniture, etc.

<sup>c</sup>Other valuation studies suggest that this value is significant (see Section 4.4).

<sup>d</sup>Calculated using sales instead of profit data so should be viewed as an upper bound.

<sup>e</sup>Only a small proportion of growers import Myrtaceae so this value is not expected to be large.

The NPV is also calculated for alternative parameter values. The NPV is lower when  $\beta$  is higher because delayed production in the biofuel sector creates opportunities for larger avoided losses if the risk reduction  $P(T)$  start low but decline more slowly over time (see Figure 1 for a comparison of  $P(T)$  curves under different assumptions about  $\beta$ ). On the other hand, NPV is higher when  $L$  is higher, i.e. the eucalyptus yield loss resulting from a virulent rust strain is higher. Even in the most conservative scenario, the NPV is almost \$2 million. If a particularly virulent strain is likely to arrive, conditions in Hawai‘i are more favorable for *P. psidii* to thrive than in Brazil, and the proposed policy is effective, the NPV could be upwards of \$30 million. The results are summarized in Table 6.

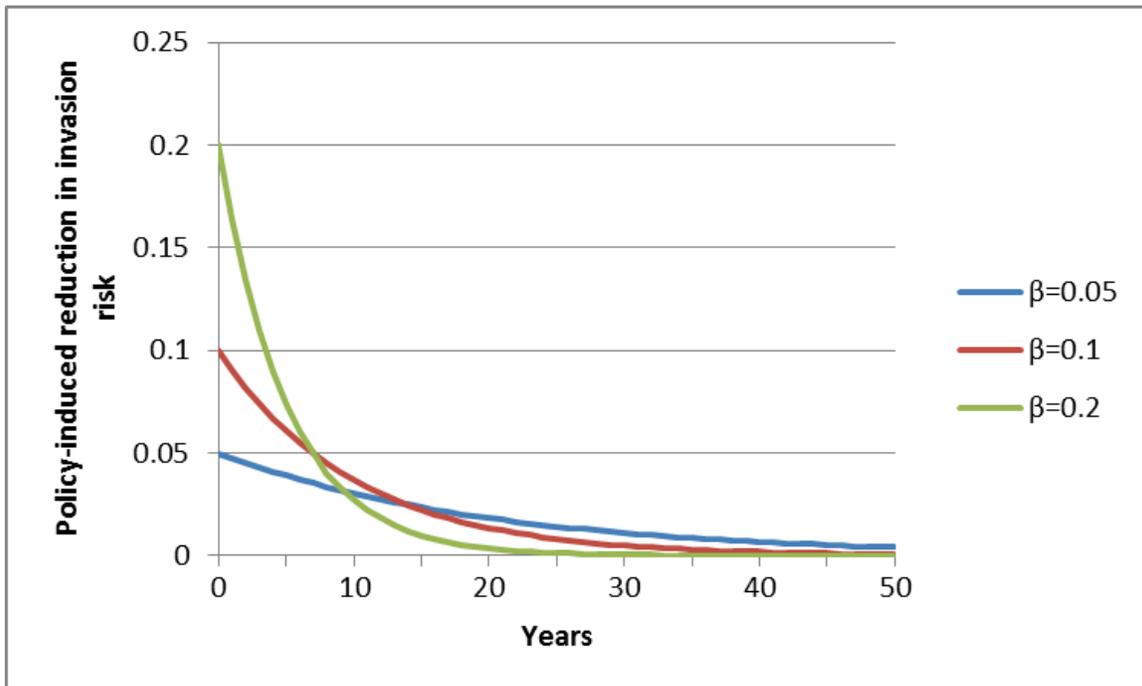


Figure 1.  $P(T)$  curves for different values of  $\beta$

**Table 6. Sensitivity analysis – conditional probability and yield loss**

	$L = 10\%$ (Low)	$L = 30\%$ (Baseline)	$L = 50\%$ (High)
$\beta = 0.05$ (Low)	\$5.6 million	\$17.3 million	\$29.0 million
$\beta = 0.10$ (Baseline)	\$4.6 million	\$14.3 million	\$24.0 million
$\beta = 0.20$ (High)	\$1.9 million	\$6.1 million	\$10.4 million
$\beta$ : annual conditional probability of invasion with the policy in place			
$L$ : yield loss to eucalyptus plantations if a virulent strain of rust is successfully introduced			

The NPV calculations will also largely depend on the selected discount rate and time horizon (Table 7). Increasing the discount rate to 7% reduces the NPV of the policy by over \$10 million from \$14.3 to \$3.2 million in the baseline case because a higher discount rate places a lower value on future benefits. Increasing the time horizon from 50 years to infinity has a large impact when the discount rate is low (NPV rises from \$14.3 to \$31.2 million for  $r = 0.02$ ) because benefits accruing far into the future are valued highly in the present. The effect is much smaller for higher discount rates, however. In fact, when the discount rate is sufficiently high, the time horizon has no discernible effect on the NPV; for  $r = 18.5\%$ , the NPV is zero for both a 50 year and an infinite time horizon. As the interest rate increases, the time at which NPV approaches zero increases. If the present value of future benefits is lower, the horizon must be longer to allow enough of the expected benefits to accumulate to offset the costs.

**Table 7. Sensitivity analysis – discount rate and time horizon**

	Horizon = 50 years (Baseline)	Horizon = infinite	Break-even time
$r = 0.02$ (Baseline)	\$14.3 million	\$31.2 million	12.8 years
$r = 0.07$ (High)	\$3.2 million	\$3.6 million	14 years
Break-even rate	0.185	0.185	-
Note: all calculations are based on baseline parameter values described in Table 6.			

In all scenarios, the NPV is positive, and the estimates would be even higher if we could quantify the avoided damage to ‘ōhi‘a, as well as mitigation and adaptation costs (e.g. fungicidal treatment and/or selecting for rust-resistant species) faced by eucalyptus plantation owners. In addition, although we have focused on privately owned plantations, eucalyptus and ‘ōhi‘a are present on state-owned land, so including the value of those additional stands would further increase the benefits of the proposed import policy.

#### ***4.4 Value of ‘ōhi‘a***

We do not measure the value of ‘ōhi‘a directly in this exercise, but the avoided damages to the native forest are expected to be substantial and likely higher than avoided damages to the affected industries. For example, Kaiser and others (2000) estimated the total PV of ecosystem services generated by the Ko‘olau Watershed on O‘ahu — of which ‘ōhi‘a is a principal component — to be in the range of \$7-14 billion. More specifically, the healthy forest structure increases fresh groundwater recharge and provides habitat provision for many iconic, endemic and endangered species. Although the ecosystem services provided by the watershed cannot be attributed entirely to the presence of ‘ōhi‘a, the total benefits are underestimated, inasmuch as cultural value is not included in the calculation. Moreover, the estimated PV is for a single watershed, whereas the proposed rule would prevent reductions in ecosystem service provision for multiple watersheds on all islands throughout the state. If the import restriction prevented the loss of even 1% of the lower estimated value of \$7 billion in our baseline scenario, then the NPV of \$14.3 million should be adjusted upward by \$70 million. If the value of ‘ōhi‘a is higher and/or the policy-induced avoided losses larger, then the net present value would be even greater.

## 5 Conclusion

The objective of this report was to calculate the net present value of a potential policy that would ban imports of Myrtaceae (non-seed) plant material to Hawai‘i and require a one-year quarantine for imported seeds. Benefits to plantation owners in the form of avoided *P. psidii* damage were calculated under the assumption that eucalyptus would be used primarily as feedstock for biofuel in the future. Other benefits not monetized in the analysis include avoided damages to growers of Myrtaceae and ‘ōhi‘a, as well as avoided damages to ‘ōhi‘a forests, which provide many important ecosystem goods and services to local residents. The primary costs quantified would accrue to florists and include both the lost profits during the transition period and the resources required to find suitable Myrtaceae substitutes. The costs to nurseries and plantations of finding local seed suppliers, switching to local propagation, and/or building the one-year quarantine into production plans were not quantified, although the relative size of those costs is expected to be small in comparison to the total NPV.

A hazard function was parameterized based on discussions with *P. psidii* experts to incorporate uncertainty about the arrival of new *P. psidii* strains, given the proposed policy. In the baseline scenario—assuming a discount rate of 2%, a 50 year time horizon, a policy-induced reduction in the likelihood of a successful rust invasion starting at 10% and declining over time, and yield losses to eucalyptus plantations of 30%—the NPV was estimated at \$14.3 million, which suggests that benefits of the proposed import policy largely outweigh the costs, even when potential damages to native ‘ōhi‘a forests are not directly accounted for. In the most conservative scenario (flatter invasion risk curve, lower yield losses), the NPV was still positive and equal to \$1.9 million. If the time

horizon is at least 50 years, any discount rate less than 18.5% yields a positive NPV. This follows from the fact that costs are accrued immediately, while large expected benefits are only generated following year 10. The break even time horizon (i.e. when NPV=0) occurs at 12.8 and 14 years for discount rates of 2% and 7% respectively. In other words, the policy must be enforced for at least 12.8 years to ensure a positive NPV if the benefits to 'ōhi'a forests are not accounted for.

In reality, however, the benefits of protection are enjoyed by 'ōhi'a from the moment the policy is implemented, and those benefits could be substantial. Previous studies have estimated that the ecosystem benefits provided by the state's watersheds, which are comprised largely of 'ōhi'a forests, are upwards of \$7 billion. Thus, if a successful *P. psidii* invasion were to reduce that present value by as little as 1%, avoided damages would be at least \$70 million. Therefore, even if avoided losses are overestimated for the eucalyptus industry given the uncertainty about the feasibility of commercial biofuel production in the future, the ecosystem benefits provided by 'ōhi'a are of at least a similar magnitude.

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## **Appendix I. Background on the earlier interim rule and recent genetic findings**

In response to a preliminary evaluation of the risk posed by additional strains of this pathogen species (Loope and La Rosa 2008), Hawaii's Board of Agriculture approved a 12-month interim rule to stringently regulate incoming plants and plant parts in the family Myrtaceae from "infested areas". However, this rule expired in August 2008 after the 12-month period authorized by Hawai'i State Law for interim rules for plant quarantine. Leadership of Hawai'i Department of Agriculture felt at that time that they lacked an adequate basis in sound science for a long-term rule, given that there was little available knowledge of the genetics of *P. psidii* in relation to its utilization of diverse hosts.

This situation involving a perceived deficit of sound science has quickly changed, however, based on results of research underway by a team comprised of collaborating individuals, primarily with University of Viçosa in Brazil and the USDA Forest Service (Cannon and others 2009, Western Wildland Environmental Threat Assessment Center 2011).

The important results from the recent genetic studies were summarized in a letter from N.B. Klopfenstein of the USDA Forest Service to C. Okada of HDOA (7/15/2011):

It has come to my attention that your agency and others require information about the known genetic diversity of *Puccinia psidii* in comparison to that which presently exists in Hawaii. The most definitive study to date was performed by Dr. Rodrigo Neves Graça as a part of his Ph.D. research with Prof. Acelino

Couto Alfenas at the Universidade Federal de Viçosa in Brazil. I served on Rodrigo's Ph.D. committee, I am a collaborator on some of these studies, and much of this research was performed in our USDA Forest Service laboratory. For this reason I can vouch for the quality of this research and the validity of the results. This information is published in Rodrigo's dissertation, and is in preparation for journal publication.

The aforementioned genetic studies used microsatellite markers to genotype diverse sources of *P. psidii*, derived from diverse locations and hosts. These studies determined the following: 1) Only one *P. psidii* genotype has been found on the Hawaiian Islands, and this genotype is capable of infecting multiple hosts. This unique genotype was also found in California, but it was not found in sampled populations from Brazil, Uruguay, or Paraguay; 2) Another distinct 25 *P. psidii* genotypes were characterized in South America, and these genotypes were host-specific on seven different myrtaceous species, including *Eucalyptus* spp., *Syzygium jambos*, *S. cumini*, *Psidium araca*, *P. guajava*, *Myrciaria cauliflora*, and *Eugenia uniflora*.

In short, multiple genotypes of *P. psidii* are known to exist, and these genotypes have different host specificity. **Because only one *P. psidii* genotype is known to exist in Hawaii, the introduction of additional *P. psidii* genotypes represents an additional risk or threat to myrtaceous species in Hawaii.**

Additional studies relating to the pathogenicity of some of the more common Brazilian genetic strains of *P. psidii* to Hawaii's 'ōhi'a were described by P. Cannon of the USDA Forest Service in a presentation at the Hawai'i Conservation Conference on

August 3, 2011. The research presented by Cannon was designed to address the question of whether the Brazilian strains were likely to be pathogenic to ‘ōhi‘a:

[They] wanted to ask the question, are any of these other strains of *Puccinia psidii* likely to be highly pathogenic on ‘ōhi‘a? To get an answer to this question a fairly elaborate and comprehensive experiment was set up. It took over three years to complete this experiment.

First of all, Rob Hauff [State of Hawai‘i DLNR DOFAW] organized a collection of seed from many different families of ‘ōhi‘a from all over the Hawaiian Islands. This seed was shipped to Viçosa, Brazil where seedlings were produced from each family lot.

Then, in a well replicated (six blocks) split plot experiment, each of five of the different *Puccinia psidii* strains was inoculated, using equal aliquots of inoculums and under very carefully controlled conditions, onto each of 11 different families of ‘ōhi‘a. Most of this inoculation work was done by Pedro Andrade but all under the supervision and with plenty of guidance from both Acelino Alfenas and Rodrigo Graça.

The results of this large experiment clearly show that three of the five strains of *Puccinia psidii* (the Eucalypt, Rose Apple and Jaboticaba strains) are each very highly pathogenic on ‘ōhi‘a, while two of them (the Guava and the Araca strains) have virtually no impact at all.

The early but definitive results capsulized above are partly “in press” (e.g., Graça and others 2011 in press) with more definitive articles based on chapters in Graça’s Ph.D. dissertation (successfully defended in January 2011) proceeding toward publication.

Pedro Andrade (also a graduate student of Prof. Acelino Alfenas at U. of Viçosa) will also complete a thesis including more comprehensive analysis of impacts of various strains of the rust on ‘ōhi‘a. The research underway on the genetics of *P. psidii* promises to develop into major international collaboration now that this pathogen is spreading to other countries (e.g., Australia, where a variant of *P. psidii* arrived in April 2010, Carnegie and others 2010).

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## **Appendix II. Background on Hawaii's forest industry and *Eucalyptus***

Substantial public-private investment has gone into development of the basis for a *Eucalyptus*-based industry in Hawai'i, primarily motivated by the recognition of potential for bioenergy (e.g., Whitesell and others 1992, Phillips and others 1995, 1997). A 10-year research and development program was conducted in the 1980s by the BioEnergy Development Corporation, USDA Forest Service, and U.S. Department of Energy on the island of Hawai'i, where nearly 230,000 acres were considered suitable for growing biomass in short-rotation *Eucalyptus* plantations (Whitesell and others 1992). Planting 20,000 acres of *Eucalyptus* on former sugar lands at establishment costs of ca. \$1000/acre pumped \$20 million into the local economy at a vulnerable time following collapse of the sugar industry. However, relatively inexpensive oil allowed Hawai'i to cope economically with use of petroleum for production of electrical energy. That situation is drastically changing for Hawai'i, and the world energy paradigm is changing from one based on petroleum to one based on a mixture of energy platforms (e.g., Johnson and others 2007). However, technology for lignocellulosic conversion of plant tissue to biofuels has lagged – progress is being made but we may still be 5-10 years away from an economically viable process for ethanol production from cellulose (Gnansounou and Dauriat 2010).

Furthermore, Johnson and others (2007) bring to the forefront the issues that cellulosic ethanol production will raise -- concerns over “competing uses for crop or crop products, co-products, competition for land base, and management strategies to protect

soil, water, and climate resources. As the energy paradigm shifts, the balance among competing needs will be critical to achieve sustainable food, fiber, and energy while protecting the soil resource and the environment.” And Hawai‘i has special vulnerability of its endemic biota and native ecosystems to biological invasions, dramatized by the fact that the state has well over 300 federally listed endangered species (Loope 2011). Can the seemingly substantial promise for using *Eucalyptus* be achieved in an economically viable way to assist Hawai‘i in meeting its energy needs while protecting its environment? Though not without challenges, we believe that goal may be achievable if wisely approached through a public-private partnership of the type advocated by Sheppard and others (2011) to facilitate a condition with beneficial biofuel supply with acceptable environmental impacts. *Eucalyptus* forestry provides potential for energy, economic and possibly environmental gains for Hawai‘i. We will attempt here to articulate an abbreviated vision of what might be entailed.

### **Addressing the serious threat of insect pests and pathogens**

Early proponents of *Eucalyptus* understandably failed to grasp the severe threat of insect pests and fungal pathogens. Two decades ago, Whitesell and others (1992) reported that *Eucalyptus* plantations both in Hawai‘i and worldwide exhibited “relative freedom from pest damage.” That had been the case worldwide initially since *Eucalyptus* was introduced to far-flung locations over nearly a century as relatively small numbers of seeds (Wingfield and others 2001, Paine and others 2011). But that privileged status had already begun to change, especially in Brazil where (Australian) *Eucalyptus* plantations were affected severely by the native (to Brazil) rust fungus *Puccinia psidii*, but though pest problems were arising as *Eucalyptus* forestry expanded worldwide (Wingfield and

others 2001), Hawai‘i was still largely problem-free. Liberalization of phytosanitary practices to encourage free trade started in the 1980s and went into full swing in the 1990s, adding horticulture as a major pathway for pests of *Eucalyptus* and Myrtaceae as well as virtually all other taxa (Campbell 2001, U.S. Department of Agriculture 2005, Brasier 2008).

Problems and potential problems with *Eucalyptus* epitomize the generic situation with huge risk and need for proceeding carefully for all biofuels policy (Sheppard and others 2011). The pest situation is potentially dire for the eucalypt industry worldwide, in the view of forest pathologist Michael Wingfield, Director of the Forest and Agricultural Biotechnology Institute at University of Pretoria, South Africa (Wingfield and others 2008):

When eucalypts have been planted in areas where these trees or their close relatives are native, the impact of pests and pathogens emerged as a limiting factor very rapidly. Planting eucalypts as non-natives has provided outstanding opportunities to capitalise on the absence of pests and pathogens. This is a situation that is clearly changing and the costs relating to pest and pathogen management will certainly increase. It is likely that profits will coincidentally also drop and competition to produce fibre profitably will emerge as a driving force in plantation forestry.

All available evidence suggests that *Eucalyptus* plantation forestry based on non-native species is likely to be increasingly threatened by pest and disease problems. New introductions are occurring increasingly more frequently and there is no reason to believe that this trend is likely to change. While we would

not wish to be negative, our view is that successful forestry companies will be those that clearly recognise the reality of the situation and that plan accordingly.

Resolution of pest and disease problems in *Eucalyptus* forestry already lies firmly in the implementation of modern technologies. As new problems emerge, new technologies will also follow. These should make it possible to deal with even the most complex pest and disease problems. However, the driving issue here is whether companies will have the vision to invest in these technological opportunities sufficiently rapidly to avoid levels of damage beyond the so-called 'point of no return'. Our belief is that companies failing to invest vigorously in disease and pest avoidance strategies, and to do so early, will be doomed to failure. This might appear as a strongly pessimistic view but there are sufficient examples of failure in forestry and agriculture due to pests and pathogens that the future appears relatively clear.

Fortunately, there is evidence that the Hawai'i Forest Industry Association and its members recognize the risks and are supportive of the public-private partnership concept in protecting native 'ōhi'a forest and *Eucalyptus* from *Puccinia psidii* and other pests of Myrtaceae (e.g. Lake 2011).

### **Issues of biodiversity conservation vs. *Eucalyptus* plantations in Hawai'i**

The biodiversity conservation community in Hawai'i in general harbors resentment (B.H. Gagné, State of Hawai'i DLNR DOFAW, personal communication) toward past plantings of *Eucalyptus* in cases when native forest was bulldozed to clear sites in Forest Reserves for planting of *Eucalyptus* and other non-native forestry trees in the

1960s and 70s, most of which were never harvested.

Foster and Robinson (2007) described the history of part of their 54 ha (130 acre) study area in Makawao Forest Reserve, Maui, over four decades later:

“Native forest was cleared in half of the study area in 1960. Roughly 5% of the native ohia (*Metrosideros polymorpha*) and koa (*Acacia koa* Gray) trees were left standing, based on aerial photos from 1965... The exotic canopy trees [tropical ash canopy (*Fraxinus uhdei*), with assorted *Eucalyptus* spp.] were planted from 1962 to 1964, 2–4 years after bulldozing of the native forest.”

The following material from Loope and La Rosa (2010), mostly synopsised from Little and Skolmen (1989), gives a quick summary of Hawai‘i’s *Eucalyptus*:

Very significant plantings of non-native *Eucalyptus* species were made in Hawai‘i, primarily on degraded lands of the five main Hawaiian islands, with most planting activity in the 1930s and 1960s. Frequently, they are single-species plantings of *Eucalyptus robusta*, a tree with thick reddish brown bark; more than 2.3 million trees were planted by the Hawai‘i Division of Forestry before 1960 and similar numbers were planted by private landowners (Little and Skolmen 1989). *E. saligna*, a tree with smooth bluish gray bark, is the only species that rivals *E. robusta* in quantity; 437,000 trees were planted prior to 1960 and one million trees after 1960 (Little and Skolmen 1989). Along highways at low elevation the most common other species seen are *E. citriodora* (now included in *Corymbia*), with gray dimpled bark, and *E. deglupta*, with pink and green scaly

bark. At higher elevations, the common species are *E. sideroxylon*, with black bark, and *E. camaldulensis*, with bark mottled gray and brown. Hawai‘i has more than 90 species of *Eucalyptus* as well as many closely related Australian Myrtaceae, and they are often found in mixed plantings. Additional common *Eucalyptus* spp. include: *E. botryoides*, *E. globulus*, *E. grandis*, *E. microcorys*, *E. paniculata*, *E. pilularis*, and *E. resinifera* (Little and Skolmen 1989).

During the 1980s, a research project was conducted in the Hāmākua and Ka‘u districts of the Big Island that developed guidelines for establishing and managing short-rotation (5 to 8 years) *Eucalyptus* plantations in Hawai‘i and explored whether woody biomass is a suitable source of bioenergy (Whitesell and others 1992). *Eucalyptus grandis* and *E. saligna* were found to be the best performers. Provenances, specific areas where seed should be obtained, were identified in Australia for those two species (Skolmen 1986).

In the decade after 1996, more than 20,000 acres of industrial eucalyptus plantations were established in Hāmākua, Ka‘u, and Waimea. Most of these were pure stands of *E. grandis*. An additional 2,000 acres of mixed *E. deglupta* and *Falcataria moluccana* stands have been established on Kaua‘i. These plantations are intended for commercial harvest, either for solid wood products or bioenergy (J.B. Friday, pers. comm.).

Although about one-third of the 90-plus eucalypt species present in Hawai‘i have been recorded as naturalized (Clyde Imada, Bishop Museum, pers. comm.), relatively few are significantly invasive. Though *Eucalyptus* is one of the most widely planted genera outside its native range in the world, “they have been orders of magnitude less successful

as invaders than pines and several other widely planted trees... Where eucalypts have invaded, they have very seldom spread considerable distances from planting sites...”

(Rejmanek and Richardson 2011).

Realistically, a situation has likely been reached where a majority of conservationists would agree that the greatest threat to native forest in Hawai‘i may be the rust *Puccinia psidii*, though invasive plants such as miconia (*Miconia calvescens*), strawberry guava (*Psidium cattleianum*) and albizzia (*Falcataria moluccana*) compete for that dubious honor. Stands with *Eucalyptus* are generally very impoverished in native species (Ostertag and others 2008) and unlikely to be restored to native ecosystems. Conversely, it is unlikely that we will ever again see bulldozing of native ecosystems to plant *Eucalyptus* or other biofuels in Hawai‘i.

Biodiversity conservationists and foresters clearly have a powerful common cause for preventing arrival of new strains of *Puccinia psidii*. Though trying to forecast the future has its hazards, there may eventually be opportunities for those groups and others to pull together for strategies to address some of Hawai‘i’s environmental needs, including energy self-sufficiency. There are undoubtedly more energy-rich biofuels than ethanol that may lend themselves to production from *Eucalyptus* in Hawai‘i. For example, bio-oil, potentially produced from *Eucalyptus* by a pyrolysis process (Laird and others 2009) and refinable as an energy-rich liquid fuel for transportation, appears to be a strong candidate for a “next generation of biofuels” (e.g., Savage 2011, Fairly 2011); production of biochar as an important by-product might be feasible if its environmental benefits (carbon sequestration and soil improvement) and absence of significant negative impacts can be verified (Barrow 2012). Whether the critical mass of feedstock will exist

in Hawai‘i for pyrolysis and bio-oil refinery capacity also remains to be seen, as does whether *Eucalyptus* is an ideal feedstock with acceptable environmental side-effects.

Nevertheless, it seems wise for Hawai‘i to keep such options open for the future.

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Amendment and Compilation of Chapter 4-70  
Hawaii Administrative Rules

[ ]

1. Chapter 4-70, Hawaii Administrative Rules entitled "Plant and Non-Domestic Animal Quarantine Plant Import Rules, Chapter 70, Hawaii Revised Statutes", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 4

DEPARTMENT OF AGRICULTURE

SUBTITLE 6

DIVISION OF PLANT INDUSTRY

CHAPTER 70

PLANT AND NON-DOMESTIC ANIMAL QUARANTINE

PLANT IMPORT RULES

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Historical note: Chapter 70 is based substantially upon Regulation 1.1 Entitled "Concerning the Introduction of Sugar Cane, Bamboo, and Other Grasses or Parts Thereof into Hawaii from Any Other Part of the United States," of the Division of Entomology, Board of Commissioners of Agriculture and Forestry [Eff. 12/12/41; am and ren Reg 1.1 8/30/47; R 7/13/81]; Regulation 1.2 Entitled "Concerning the Introductions of Pineapple and Other Bromeliaceous Plants or Fruits or Parts Thereof into Hawaii from Any other Part of the United States," of the Division of Entomology, Board of Commissioners of Agriculture and Forestry [Eff. 12/12/41; am and ren Reg 1.2 8/30/47; R 7/13/81]; Regulation 1.3 Entitled "Concerning the Introduction of Coffee Plants or Parts Thereof, Unroasted Seeds and Coffee Bags into Hawaii from Any Part of the United States," of the Division of Entomology and Marketing, Board of Commissioners of Agriculture and Forestry [Eff. 12/12/41; am and ren Reg 1.3 8/30/47; am 8/23/51; am 4/17/54; R 7/13/81]; Regulation 1.4 Entitled "Concerning the Requirements With Respect to Shipments of Certain Vegetables Made From the Continental United States to Hawaii," of the Division of Entomology, Board of Commissioners of Agriculture and Forestry [Eff.12/12/41; am and ren Reg 1.4 8/30/47; R 7/13/81]; Regulation 1.5 Entitled "Concerning the Introduction of Orchidaceous Plants into Hawaii from or Through the Mainland United States," of the Division of Plant Industry, Department of Agriculture [Eff. 8/30/47; am 1/8/62; R 7/13/81];

Regulation 1.6 Entitled "Concerning the Introduction of Banana Plants or Parts Thereof, Except the Fruit, into Hawaii from Any Other Part of the United States," of the Division of Entomology, Board of Commissioners of Agriculture and Forestry [Eff. 12/12/41; R 8/30/47; ren Reg 1.6 5/23/51; R 7/13/81]; Regulation 1.7 Entitled "Concerning the Introduction of Passion Fruit Plants or Parts Thereof, into Hawaii From Any Part of the United States," of the Division of Entomology and Marketing, Board of Commissioners of Agriculture and Forestry [Eff. 9/1/54; R 7/13/81]; Regulation 1.8 Entitled "Concerning the Introduction of Pinus spp. into Hawaii for the Mainland United States," of the Division of Plant Industry, Department of Agriculture [Eff. 1/8/62; R 7/13/81]; and Regulation 1.9 Entitled "Concerning the Introduction of Coconut Plants or Parts Thereof into Hawaii," of the Division of Plant Industry, Department of Agriculture [Eff. 5/26/64; R 7/13/81].

#### SUBCHAPTER 1

#### GENERAL PROVISIONS

§4-70-1 Objective. The objective of this chapter is to implement the requirements of chapter 150A, Hawaii Revised Statutes, by restricting or prohibiting the importation of specific plants to minimize the risk of introduction and establishment of insects, diseases, and other pests that would be highly destructive to Hawaii's agricultural industries and forest resources. [Eff. 7/13/81; comp ] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-5)

§4-70-2 Definitions. As used in this chapter:  
 "Branch" means the plant quarantine branch;  
 "Certificate of origin" means an official certificate signed by a plant quarantine official or an agricultural official of the state or foreign

country indicating the origin of the respective plant;

"Certificate of treatment" means an official certificate signed by a plant quarantine official or an agricultural official of the state or country of origin; or a commercial certificate issued by a government certified treatment facility, signed by a person authorized or certified to conduct disinfestation treatment in an approved manner with the certificate describing the applicable treatment methods, procedures and dosages;

"Chief" means chief of the plant quarantine branch; and

"Phytosanitary certificate" means an official certificate signed by a plant quarantine official of the state or foreign country of origin indicating pest free conditions of the plants and disinfestation treatments the plants were subjected to. [Eff. 7/13/81; comp ] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-5)

§4-70-3 Introduction of plants requiring quarantine. (a) Plants requiring quarantine with appropriate permits issued pursuant to applicable sections of this chapter shall be delivered to the inspector at the port of entry when the plants are being introduced by cargo, passenger baggage, or hand carried package.

(b) Packages of subject plants being introduced by United States Postal Services, United Parcel Service (UPS), or other commercial service, shall be addressed to the State plant quarantine office of the respective island on which the plants shall be held in quarantine.

(c) Plants shall be held in quarantine in a State quarantine facility or a private, approved quarantine facility. [Eff. 7/13/81; comp ] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-5)

§4-70-4 Approved quarantine facility. (a) An approved facility for the quarantine of plants is one which a certificate of approval has been obtained from the chief attesting proper and adequate construction to prevent the escape of an insect, a disease, or other pest.

(b) An approved certification shall remain valid as long as the facility is maintained in good serviceable condition. Certification may be revoked if the house falls into disrepair and is no longer serviceable. [Eff. 7/13/81; comp ]  
(Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-5)

§4-70-5 Operation of a quarantine facility.

(a) The operation of all quarantine facilities shall be under the direct supervision of the chief and shall be locked at all times except for entry by the owner or other duly authorized persons.

(b) During the period of quarantine, the plants shall be inspected as often as necessary by the branch for the detection of any insect, disease, or other pest.

(c) The department may order the chemical treatment or complete destruction of the plant material if at any time during the period of quarantine, a destructive insect, disease, or other pest has manifested itself.

(d) All expenses in connection with the introduction and quarantine of plants shall be borne by the owner of the plants. [Eff. 7/13/81; comp ] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-5)

§4-70-6 Duration of quarantine. Unless otherwise specified for specific plants in subsequent subchapters, the duration of quarantine shall be one year provided that the board may exempt or shorten the period of quarantine under certain conditions of importation or propagation procedure. [Eff. 7/13/81;

§4-70-7

comp ] (Auth: HRS §§141-2, 150A-9)  
(Imp: HRS §150A-5)

§4-70-7 Disinfestation treatments. (a) Disinfestation treatments shall consist of treating or exposing the subject material to fumigation, heat (dry or steam), freezing, pesticides, or other chemicals under procedures approved by the chief.

(b) Currently approved treatment procedures shall be printed and made available to interested persons at branch offices.

(c) Fumigation, when required for commercial importations introduced in violation of §§ 4-70-19, 4-70-20, 4-70-23, 4-70-36, 4-70-42, and 4-70-50, shall be conducted separately from scheduled export fumigation.

(d) Fumigation for commercial importations shall be conducted on an un-scheduled basis and subject to availability of facility and personnel.

(e) Fumigation, when required for commodities introduced by private individuals in small lots such as by air baggage, may be conducted concurrently with scheduled export fumigation subject to availability of the facility. [Eff. 7/13/81; comp ]  
(Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-5)

§4-70-8 Import service fees. (a) A fee for scheduled fumigation shall be for each lot two dollars for vault use fee plus an additional charge of twenty cents for each cubic foot with no proration of fees.

(b) A fee for unscheduled fumigation shall be twenty cents per cubic foot for sixty percent volume capacity of the vault or tank in use, with no proration of fees.

(c) For unscheduled fumigation requiring the services of personnel beyond official hours, an additional fee shall be assessed which shall include applicable charges for overtime wages, fixed charges for personnel services, and meals.

(d) A fee for the use of a quarantine house operated by the branch shall be five dollars per room per month.

(e) A storage fee of twenty-five cents per cubic foot per day may be charged for commodities stored at any branch office, forty-eight hours after written notification. [Eff. 7/31/81; comp ]  
(Auth: HRS §§141-2, 150A-9) (Imp: HRS §150-5)

## SUBCHAPTER 2

### INTRODUCTION OF SUGARCANE AND GRASSES

§4-70-9 Notice of quarantine. The board has determined that there exists serious danger to the sugarcane industry and the agriculture of Hawaii from the introduction of sugarcane moth borers (Diatraea saccharalis fab. and Castnia licoides Boisd.), smut (Ustilago scitaminea Syd.), viruses (mosaic), and other insects and diseases of sugarcane and members of the grass family (gramineae), that are not now established in Hawaii. [Eff. 7/13/81; comp ] (Auth: HRS §§141-2, 150A-9)  
(Imp: HRS §150A-5)

§4-70-10 Prohibited introductions. (a) The introduction of any sugarcane plant (any species of the genus saccharum) or part thereof into Hawaii in any manner is prohibited except by approved permit issued in accordance with § 4-70-11.

(b) The introduction of plants of all other genus in the grass family and plant parts thereof is prohibited except:

- (1) Corn, sorghum, sudan grass, and broom corn which are regulated in subchapter 11;
- (2) Dried non-living plant materials;
- (3) Seeds; and
- (4) By approved permit issued in accordance with § 4-70-11. [Eff. 7/13/81; comp ] (Auth: HRS §§141-2,

§4-70-11

150A-9) (Imp: HRS §150A-5)

§4-70-11 Permit. Upon written request, a permit may be issued by the chief authorizing the introduction of a limited quantity of a special variety or varieties of sugarcane or other grass plants for propagation under the plant quarantine branch's supervision in a strictly enforced quarantine pursuant to §§ 4-70-3, 4-70-4, 4-70-5, and 4-70-6. [Eff. 7/13/81; comp ] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-5)

### SUBCHAPTER 3

#### INTRODUCTION OF PINEAPPLE AND OTHER BROMELIADS

§4-70-12 Notice of quarantine. The board has determined that there exists serious danger to the pineapple industry of Hawaii from the introduction of thrips (Frankliniella moultoni Hood), pineapple borers (Metamasius spp. and Strymon basilides (Geyer)), mealybugs (Dysmicoccus spp.), and other insects, and diseases of pineapple and bromeliaceous plants, that are not now established in Hawaii. [Eff. 7/13/81; am 11/13/01; comp ] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-6.1)

4-70-13 Prohibited introductions. (a) The introduction into Hawaii of any pineapple plant (any species in the genus *Ananas*), seed, or other plant part thereof, is prohibited except by approved permit in accordance with section 4-70-14.

(b) The introduction of plant and plant parts of all other genera than *Ananas* in the family Bromeliaceae is prohibited except:

- (1) Seeds;
- (2) Tissue cultured plants in a completely enclosed sterile container;
- (3) Dried non-living materials; and

- (4) By approved permit in accordance with section 4-70-14. [Eff. 7/13/81; am 11/13/01; comp ] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-6.1)

§4-70-14 Permits. (a) Upon written request, a permit may be issued by the chief authorizing the introduction of pineapple plants or other plants in the family Bromeliaceae for propagation under the branch's supervision in a strictly enforced quarantine pursuant to sections 4-70-3, 4-70-4, 4-70-5, and 4-70-15, unless otherwise provided in section 4-70-15.

(b) Upon written request, a permit may be issued by the chief authorizing the introduction of plant and plant parts of pineapple for processing, manufacturing, or other non-propagative purposes when the conditions for the importation satisfy the chief that the introduction can be made with a reasonable degree of safety relative to the risk of insect, pest, or disease introduction.

(c) Upon written request, a permit may be issued by the chief authorizing the introduction of plants and plant parts in the Bromeliaceae family other than the genus Ananas for processing, manufacturing, or other non-propagative purposes provided the importation is accompanied by a certificate of treatment indicating an approved treatment procedure. [Eff. 7/13/81; am 11/13/01; comp ] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-6.1)

§4-70-15 Duration of quarantine. (a) The quarantine period for pineapple plants and plant species in the genus Ananas imported pursuant to section 4-70-14 shall be one year provided that the board may exempt from quarantine or shorten the quarantine period for plants imported for manufacturing, processing, or propagative purposes under certain conditions of importation or propagation procedure that the board determines are appropriate to

§4-70-15

prevent the introduction of insects, pests, and diseases.

(b) The quarantine period for plants in all other genera than *Ananas* in the family Bromeliaceae imported pursuant to section 4-70-14 shall be as follows:

- (1) One year for plants from Mexico, South and Central America, and nearby island countries;
- (2) One year for any shipment of plant or plants without an official certificate of origin;
- (3) Quarantine requirements may be waived by the chief for any bromeliad plant other than the genus *Ananas* that is entering under permit and that has been inspected and found free of any signs of pest infestation or symptoms of disease provided that the shipment meets one of the following conditions:
  - (A) The plants are accompanied by an official certificate of origin certifying that the plants were grown in the continental United States or;
  - (B) The plants are accompanied by an official certificate of origin certifying that the plants were grown in a foreign country other than Mexico, South and Central America or nearby island countries. [Eff. 7/13/81; am 11/13/01; comp ] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-6.1)

SUBCHAPTER 4

INTRODUCTION OF COFFEE

§4-70-16 Notice of quarantine. The board has determined that there exists serious danger to the coffee industry of Hawaii from the introduction of the coffee berry borer (*Stephanoderes hampei* Ferr.),

coffee rust, (Hemileia vastatrix B. & Br.), and other insects, pests, and diseases of coffee, that are not now established in Hawaii. [Eff. 7/13/81; comp ] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-5)

§4-70-17 Prohibited introductions. The introduction of any coffee plant (any species of the genus Coffea), plant part, unroasted seeds, and used coffee bags into Hawaii is prohibited except by permit issued in accordance with §§ 4-70-18, 4-70-19, and 4-70-20. [Eff. 7/13/81; comp ] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-5)

§4-70-18 Permit for plant and seed for propogation. Upon written request, a permit may be issued by the chief authorizing the introduction of a limited quantity of plants, plant parts, or seeds of a variety or varieties of coffee for propagation under the following conditions:

- (1) The plants and seed shall be under the plant quarantine branch's supervision in a strictly enforced quarantine pursuant to §§ 4-70-3, 4-70-4, 4-70-5, and 4-70-6; and
- (2) The bags or containers of the imported items shall be destroyed by burning or subjected to treatment approved by the chief. [Eff. 7/13/81; comp ] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-5)

§4-70-19 Permit for seeds for roasting. Upon written request a permit may be issued by the chief, authorizing the introduction of unroasted coffee seeds (beans) for roasting purposes on condition that:

- (1) The seed is, prior to shipment, subjected to approved treatment as stipulated on the permit;

§4-70-19

- (2) Each shipment be accompanied by a phytosanitary certificate or a certificate of treatment indicating the treatment procedure; and
- (3) All bags or containers be disposed of by burning or subjected to treatment approved by the chief. [Eff. 7/13/81; comp ] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-5)

§4-70-20 Permit for used coffee bags. (a) Upon written request, a permit may be issued by the chief, authorizing the introduction of used coffee bags after being subjected to approved treatment as stipulated on the permit.

(b) Each shipment shall be accompanied by a phytosanitary certificate or a certificate of treatment indicating the treatment procedure. [Eff. 7/13/81; comp ] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-5)

SUBCHAPTER 5

INTRODUCTION OF CERTAIN CRUCIFEROUS VEGETABLES

§4-70-21 Notice of quarantine. The board has determined that there exists serious danger to agriculture in Hawaii from the introduction of the cabbage maggot (Chortophila brassicae (Bouche)) in the edible roots of certain cruciferous vegetables. [Eff. 7/13/81; comp ] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-5)

§4-70-22 Prohibited introductions. The introduction into Hawaii of the edible roots of turnip (Brassica rapa Linn.), rutabaga (Brassica napobrassica (Linn) DC.), radish including daikon (Raphanus sativus Linn.), and horseradish (Radicula armoracia (Linn.) Robbins.) is prohibited, except:

- (1) From the country of Japan and other foreign countries determined by the chief to be free of cabbage maggot; and
- (2) Under conditions specified in § 4-70-23.  
[Eff. 7/13/81; comp \_\_\_\_\_] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-5)

§4-70-23 Permitted introductions with conditions. Edible roots of the enumerated cruciferous vegetables from the United States, its territories, and foreign countries not determined to be free of cabbage maggot, may be introduced into Hawaii, provided each shipment is accompanied by a phytosanitary certificate or certificate of treatment certifying that the vegetables contained in the shipment were subjected to treatment approved by the chief. [Eff. 7/13/81; comp \_\_\_\_\_] (Auth: HRS §§141-2, 150A-9) (Imp: §150A-5)

#### SUBCHAPTER 6

#### INTRODUCTION OF ORCHIDS

§4-70-24 Notice of quarantine. The board has determined that there exists serious danger to the orchid industry of Hawaii from the introduction of the south american stem borer (Diorymerellus laevimargo Champion), the south american orchid bug (Tenthecoris bicolor Scott), a midge (Parallelodiplois cattleyae Molliard)), and other insects, and diseases of orchids, that are not now established in Hawaii. [Eff. 7/13/81; comp \_\_\_\_\_] (Auth: HRS §§141-2, 150A-9) (Imp: §150A-5)

§4-70-25 Prohibited introductions. The introduction of plant or propagative plant parts of the family orchidaceae is prohibited except:

§4-70-25

- (1) By permit issued in accordance with § 4-70-26 and under conditions specified in §§ 4-70-27, 4-70-28;
- (2) Plants grown in sterile flasks or small seedlings transferred out of sterile flasks just prior to shipping; and
- (3) Seeds. [Eff. 7/13/81; comp ]  
(Auth: HRS §§141-2, 150A-9) (Imp: §150A-5)

§4-70-26 Permits. (a) A low pest-risk permit may be issued by the chief authorizing the introduction of orchid plants from:

- (1) Domestic origin grown entirely in the United States;
- (2) Foreign origin that have been grown in the United States for more than one year; and
- (3) Foreign countries north of 30° north latitude.

(b) A high pest-risk permit may be issued by the chief authorizing the introduction of orchid plants from:

- (1) Foreign countries and United States territories and possessions that are south of 30° north latitude; and
- (2) Areas south of 30° north latitude that have been grown in the continental United States or grown in an area north of 30° north latitude for less than one year. [Eff. 7/13/81; comp ] (Auth: HRS §§141-2, 150A-9) (Imp: §150A-5)

§4-70-27 Quarantine waiver. Quarantine requirements shall be waived for any lot of plants entering under a low pest-risk permit and accompanied by a certificate of origin certifying that all the orchid plants in the lot:

- (1) Are known to be of domestic origin and grown entirely in the continental United States;

- (2) Were grown in foreign countries that are north of 30° north latitude; and
- (3) Are of foreign origin but were grown in the continental United States for more than one year. [Eff. 7/13/81; comp ]  
(Auth: HRS §§141-2, 150A-9) (Imp: §150A-5)

§4-70-28 Duration of quarantine. (a) Any lot of plants entering under high pest-risk permit shall be placed under the plant quarantine branch's supervision in a strictly enforced quarantine pursuant to §§ 4-70-3, 4-70-4, and 4-70-5, and held therein for a period of two months, or longer, if in the judgment of the chief, extension of the quarantine period is necessary or desirable.

(b) In any case, when more than one lot is entered into a room in the quarantine house, the period of quarantine for all plants in the room shall be that of the last lot entered therein.

(c) All plants kept in the quarantine house shall be properly labelled and kept in such a manner that they can be readily examined. [Eff. 7/13/81; comp ] (Auth: HRS §§141-2, 150A-9) (Imp: §150A-5)

## SUBCHAPTER 7

### INTRODUCTION OF BANANA PLANTS

§4-70-29 Notice of quarantine. The board has determined that there exists serious danger to the banana industry of Hawaii from the introduction of the banana root borer (Cosmopolites sordidus (Germar)), the West Indian cane weevil (Metamasius hemipterus L.) and other insects and diseases of banana, that are not now established in Hawaii. [Eff. 7/13/81; comp ] (Auth: HRS §§141-2, 150A-9) (Imp: §150A-5)

§4-70-30

§4-70-30 Prohibited introductions. The introduction of any banana plant (any species of the genus *Musa*) or plant parts thereof is prohibited except:

- (1) Fruits; and
- (2) By approved permit pursuant to § 4-70-31.  
[Eff. 7/13/81; comp \_\_\_\_\_] (Auth:  
HRS §§141-2, 150A-9) (Imp: §150A-5)

§4-70-31 Permits. Upon written request, a permit may be issued by the chief authorizing the introduction of a limited quantity of a special variety or varieties of banana for propagation under the branch's supervision in a strictly enforced quarantine pursuant to §§ 4-70-3, 4-70-4, 4-70-5, and 4-70-6. [Eff. 7/13/81; comp \_\_\_\_\_] (Auth:  
HRS §§141-2, 150A-9) (Imp: §150A-5)

SUBCHAPTER 8

INTRODUCTION OF PASSION FRUIT PLANTS

§4-70-32 Notice of quarantine. The board has determined that there exists serious danger to the passion fruit industry of Hawaii from the introduction of the passion vine hopper, *Scolypopa australis* Walker, the "woodiness disease" of passion fruit, and other insects and diseases that are not now established in Hawaii. [Eff. 7/13/81; comp \_\_\_\_\_] (Auth: HRS §§141-2, 150A-9) (Imp:  
HRS §150A-5)

§4-70-33 Prohibited introductions. The introduction of any passion fruit plant (any species of the genus *Passiflora*), seed, or plant part thereof into Hawaii in any manner is prohibited except by permit issued in accordance with § 4-70-34. [Eff. 7/13/81; comp \_\_\_\_\_] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-5)

§4-70-34 Permits. Upon written request, a permit may be issued by the chief authorizing the introduction of a limited quantity of the passiflora plant and seed for propagation under the branch's supervision in a strictly enforced quarantine pursuant to §§ 4-70-3, 4-70-4, 4-70-5, and 4-70-6. [Eff. 7/13/81; comp ] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-5)

SUBCHAPTER 9

INTRODUCTION OF PINUS SPP.

§4-70-35 Notice of quarantine. The board has determined that there exists serious danger to all Pinus spp. and the forests of Hawaii from the introduction of european pine shoot moth (Rhyacionia buoliana) (Schiff). [Eff. 7/13/81; comp ] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-5)

§4-70-36 Prohibited introductions. The introduction of any pine plant (any species in the genus Pinus) and pine branches and twigs bearing terminal buds, needles, or shoots are prohibited except:

- (1) Plants from foreign areas where pine shoot moth is not known to occur provided each lot of plant is accompanied by a certificate of origin;
- (2) Plants from domestic areas not designated as infested areas in § 4-70-37 provided each lot of plant is accompanied by a certificate of origin;
- (3) Plants from domestic areas designated as infested areas in § 4-70-37 provided each lot of plant is subjected to approved treatment and is accompanied by a certificate of treatment;

- (4) Cut pine trees, branches, or twigs for ornamental purposes from domestic areas during the period October 20 to December 31;
- (5) Non-commercial shipments of bonsai or pine plants not exceeding two feet in height introduced in lots not exceeding twelve plants provided that the plants are subjected to one hundred percent inspection and found free of european pine shoot moth; and
- (6) By permit limited to issuance to official state or federal forestry agencies authorizing the entry of seedling trees for reforestation or scientific research from domestic areas designated as infested areas provided the trees have been greenhouse grown under official supervision or otherwise produced and subsequently handled under conditions satisfactory to the chief to preclude infestation or exposure to infestation by the european pine shoot moth. [Eff. 7/13/81; comp ] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-5)

§4-70-37 Domestic infested areas. States designated as european pine shoot moth infested areas are Connecticut, Delaware, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Michigan, Missouri, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Washington, West Virginia, and Wisconsin. [Eff. 7/13/81; comp ] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-5)

## SUBCHAPTER 10

### INTRODUCTION OF COCONUT

§4-70-38 Notice of quarantine. The board has determined that there exists serious danger to the agriculture and horticulture of Hawaii from the

introduction of various dangerous insects, virus diseases, fungus, bacteria, and other infectious agents of coconut (Cocos nucifera). [Eff. 7/13/81; comp ] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-5)

§4-70-39 Prohibited introductions. The introduction of any coconut plant, nut, leaf, and all other plant part thereof, is prohibited except:

- (1) A completely husked nut, incapable of germinating when introduced for manufacturing, food, or other non-propagative purposes provided a permit has been obtained from the department;
- (2) The flesh of the nut including fresh and processed products, coconut "milk", and nut shell;
- (3) The palm "heart" free from leaf tissue; and
- (4) A dried plant part such as leaf, husk, and tree trunk, and products made from these parts provided the products are subjected to treatment approved by the chief. [Eff. 7/13/81; comp ] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-5)

#### SUBCHAPTER 11

#### INTRODUCTION OF HOSTS OF EUROPEAN CORN BORER

§4-70-40 Notice of quarantine. The board has determined that there exists serious danger to the agricultural and horticultural industries of Hawaii from the introduction of european corn borer (Ostrina nubilulis Hubner), and insects which infest corn, sorghum, broomcorn, sudan grass and other important food and floral crops. [Eff. 7/13/81; comp ] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-5)

§4-70-41 Infested areas. (a) All european countries and domestic states of Alabama, Arkansas, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, Wyoming, and the District of Columbia are designated as infested areas for the european corn borer.

(b) Areas designated as non-infested areas for the european corn borer are non-european countries and the domestic states of Alaska, Arizona, California, Florida, Idaho, New Mexico, Nevada, Oregon, Utah, and Washington. [Eff. 7/13/81; comp ]  
(Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-5)

§4-70-42 Prohibited introductions. The importation of plant and plant parts of corn, broomcorn, sorghum, sudan grass, aster, chrysanthemum, hollyhock, dahlia, and gladiolus are prohibited except:

- (1) Seed with no other plant fragments;
- (2) Frozen corn on the cob with husk and silk removed;
- (3) Seedling plant or propagative cuttings of aster, chrysanthemum, and hollyhock;
- (4) Cut flowers of aster, chrysanthemum, hollyhock, dahlia, and gladiolus;
- (5) Tubers of dahlia and gladiolus corms without stems;
- (6) Shipments from infested areas when subjected to approved treatment prior to shipment and accompanied by a certificate of treatment;
- (7) Commercial shipments from non-infested areas that are accompanied by a certificate of origin; and
- (8) Non-commercial shipments from other than infested areas brought in by hand carried or

passenger baggage and accompanied by a certificate of origin, sales invoice, or other document indicating that the product was grown in, or purchased from, a non-infested area. [Eff. 7/13/81; comp ] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-5)

SUBCHAPTER 12

INTRODUCTION OF PALMS

§4-70-43 Notice of quarantine. The board has determined that there exists serious danger to the agricultural and horticultural industries of Hawaii from the introduction of the lethal yellowing disease, cadang-cadang, guam disease, and other similar diseases of palm. [Eff. 7/13/81; comp ] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-5)

§4-70-44 Infested areas. (a) Areas known to be infested with or in proximity of areas infested with the lethal yellowing disease, cadang-cadang, guam disease, and similar diseases are designated as infested areas.

(b) Domestic infested areas are the states of Florida and Texas, the Commonwealth of Puerto Rico, and the Territory of Guam.

(c) Foreign infested areas are Cuba, Jamaica, Haiti, Dominican Republic, all other Caribbean Islands, Panama, Venezuela, Philippines, and west african countries of Ghana, Togo, Dahomey, and Nigeria. [Eff. 7/13/81; comp ] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-5)

§4-70-45 Prohibited introductions. (a) The prohibitions in this section shall not apply to plant and plant parts of coconut (*Cocos nucifera*) which are regulated by subchapter 10.

(b) The introduction of palm plants, seeds, and propagative plant parts thereof from all domestic and foreign infested areas in § 4-70-44 are prohibited.

(c) The introduction of palm plants and propagative plant parts except seeds are prohibited from domestic areas other than infested areas.

(d) The introduction of palm plants and propagative plant parts except seeds from central and south american countries other than those designated as infested areas in § 4-70-44 are prohibited.

(e) The introduction of the following palm plant and propagative plant parts except seeds are prohibited from all other foreign countries;

Adonidia spp.

Diplothemium arenaria (Gomez) Carv.

Areca spp.

Arenga spp. (sugar palm)

Arikuryroba spp. (arikury palm)

Borassus spp. (palmyra palm)

Caryota spp. (fishtail palm)

Chrysalidocarpus spp. (butterfly palm, cabada palm)

Cocos spp.

Corypha spp. (buri palm)

Dictyosperma spp. (princess palm)

Elaeis spp. (oil palm)

Gaussia spp. (puerto rican gaussia, llume palm)

Howeia belmoreana (Moore and Muell.) Becc.  
(sentry palm)

Lantania spp. (latan palm)

Livistonia spp. (fan palm)

Mascarena spp. (spindle palm)

Phoenix spp. (date palm)

Pritchardia spp. (kona palm, fiji island fan palm)

Trachycarpus spp. (windmill palm)

Veitchia spp. (christmas palm)

Nannorrhops spp. (mazari palm).

[Eff. 7/13/81; comp ] (Auth: HRS  
§§141-2, 150A-9) (Imp: HRS §150A-5)

§4-70-46 Permitted introductions. The introduction of a palm plant, propagative plant part, and seed, not specifically prohibited in § 4-70-45 may be imported provided the importation is accompanied by a certificate of origin indicating that the palm plant was grown or the seed or propagative plant part was obtained from a plant that was grown entirely in the respective foreign country or domestic state of origin. [Eff. 7/13/81; comp ] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-5)

### SUBCHAPTER 13

#### INTRODUCTION OF HOSTS OF CARIBBEAN FRUIT FLY

§4-70-47 Notice of quarantine. The board has determined that there exists serious danger to the agricultural and horticultural industries of Hawaii from the introduction of the caribbean fruit fly, (Anastrepha suspensa), an insect which infests fruit crops. [Eff. 7/13/81; comp ] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-5)

§4-70-48 Infested areas. The commonwealth of Puerto Rico and areas in the state of Florida south of and including the counties of Sumter, Lake, Hernando and Volusia are declared infested areas. [Eff. 7/13/81; comp ] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-5)

§4-70-49 Hosts of the caribbean fruit fly. The fruit or berries of the following plants are known hosts of the caribbean fruit fly:

- Malpighia glabra L. (barbados cherry)
- Severinia buxifolia (Poir.) Tenore (box orange)
- Psidium cattleianum Sabine (cattley guava)
- Citrus mitis Blanco (calamondin)
- Psidium guajava L. (common guava)
- Fortunella margarita Swingle (Kumquat, oval)

Psidium freidrichsthalianum (Berg) (costa rican  
guava)  
Citrus paradisi Macf. (grapefruit)  
Fortunella crassifolia Swingle (kumquat)  
Citrus aurantiifolia (Christmann) Swingle (sour  
lime)  
Triphasia trifolia D.C. (lime berry)  
Citrus aurantiifolia x Fortunella japonica  
(limequat)  
Eriobotrya japonica (Thunb.) Lindl. (loquat)  
Mangifera india L. (mango)  
Murraya paniculata Jack (orange jasmine)  
Citrus nobilis 'unshiu' x Fortunella sp.  
(orangequat)  
Carica papaya L. (papaya)  
Prunus persica (L.) Batsch (peach)  
Citrus limonia Osbeck (Rangpur lime)  
Syzygium jambos (L.) Alst. (rose apple)  
Citrus aurantium L. (sour orange)  
Citrus limetta Risso (sweet lemon)  
Citrus sinensis Osbeck (sweet orange)  
Citrus paradisi x Citrus reticulata (tangelo)  
Citrus reticulata Blanco (tangerine)  
Citrus sinensis x Citrus reticulata (temple  
orange)  
Terminalia catappa L. (tropical almond)  
Clausena lansium (Lour.) Skee's (wampi). [Eff.  
7/13/81; comp ] (Auth: HRS  
§§141-2, 150A-9) (Imp: HRS §150A-5)

§4-70-50 Prohibited introduction. (a) Fruits or berries of host plants listed in § 4-70-49 except green sour lime which shows no yellow coloring and sour lemon regardless of color from infested areas are prohibited except those subjected to approved treatments accompanied by a certificate of treatment.

(b) Fruits or berries of host plants listed in §4-70-49 from non-infested areas in Florida are prohibited except those that are accompanied by a certificate of origin. [Eff. 7/13/81; comp  
] (Auth: HRS §§141-2, 150A-9)

(Imp: HRS §150A-5)

SUBCHAPTER 14

INTRODUCTION OF TARO AND DASHEEN

§4-70-51 Notice of quarantine. The board has determined that there exists serious danger to the taro industry of Hawaii from the introduction of the virus disease of alomae and babone. [Eff. 7/13/81; comp ] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-5)

§4-70-52 Infested areas. The virus disease of alomae and babone is only known to occur in the British Solomon Islands. [Eff. 7/13/81; comp ] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-5)

§4-70-53 Prohibited introduction. All taro and dasheen plant and plant parts capable of propagation are prohibited from infested areas except by permit issued in accordance with § 4-70-54 and imported pursuant to §§ 4-70-3, 4-70-4, 4-70-5, and 4-70-6. [Eff. 7/13/81; comp ] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-5)

§4-70-54 Permit. Upon written request, a permit may be issued for the importation of a limited quantity of taro or dasheen plants for research purposes under strictly enforced quarantine procedures. [Eff. 7/13/81; comp ] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-5)

SUBCHAPTER 15

INTRODUCTION OF MYRTACEAE

**§4-70-55 Notice of quarantine.** The board has determined that there exists serious danger to all ohia (Metrosideros spp.), the ohia forests of Hawaii, and horticultural and agricultural industries from the introduction of new strains of the ohia rust, Puccinia psidii, and other disease pathogens and insects not now established in Hawaii. [Eff and comp ] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-5)

**§4-70-56 Prohibited introduction.** The introduction of any Myrtaceae (Myrtle family) plant, plant part, or seed into Hawaii is prohibited except:

- (1) Dried non-living plant materials;
- (2) Seeds, with no other plant fragments, that have been surface-sterilized using treatments approved by the chief;
- (3) Tissue cultured plants grown in sterile media and in a completely enclosed sterile glass flask or other similar container; or
- (4) By approved permit pursuant to section 4-70-57. [Eff and comp ] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-5)

**§4-70-57 Permits.** Upon written request, a permit may be issued by the chief authorizing the importation of a limited quantity of plants in the family Myrtaceae for propagation under the branch's supervision in a strictly enforced quarantine appropriate to contain Puccinia psidii, and other pests pursuant to sections 4-70-3, 4-70-4, 4-70-5, and 4-70-6." [Eff and comp ] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-5)

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

3. Additions to update source notes to reflect

these amendments are not underscored.

4. These amendments to and compilation of chapter 4-70, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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

---

SCOTT E. ENRIGHT  
Chairperson  
Board of Agriculture

APPROVED AS TO FORM:

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Deputy Attorney General

## **V. Administrative Matters**

A. Discussion and Action on the Board's 2018  
Draft *201M-7 Periodic Review; Evaluation  
Report*, pursuant to Section 201M-7, HRS



**HAWAII  
SMALL BUSINESS  
REGULATORY REVIEW  
BOARD - DRAFT**

**Periodic Review; Evaluation Report**

**In Compliance with  
Regulatory Flexibility Act  
Section 201M –7,  
Hawaii Revised Statutes**

**2018**

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## MESSAGE FROM DIRECTOR



On behalf of the Department of Business, Economic Development and Tourism, I extend my appreciation to the members of the Small Business Regulatory Review Board for their continued hard work, and commitment to Hawaii's small business community.

Luis P. Salaveria  
Director



## SMALL BUSINESS REGULATORY REVIEW

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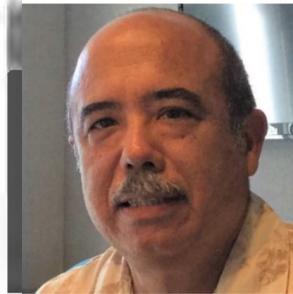
Harris Nakamoto  
*Oahu*

Mary Albitz  
*Maui*

William Lydgate  
*Kauai*

Director, DBEDT  
Voting Ex Officio

### MESSAGE FROM CHAIR



This 210M-7 report consists of existing administrative rules that the State and County departments have determined impact small business and the reasons for the rules' continued implementation or amendment. This is in accordance with our effort to reduce negative small business impact and to improve our rule-making procedures.

The SBRRB members have donated numerous hours of their valuable time, business acumen, and remain committed to the cause of improving the economic climate for small businesses in Hawaii. I congratulate each member for their tireless effort, teamwork and for keeping the Board's mission front and center.

On behalf of this Board, I extend a special Mahalo to our Governor, our State Legislators, our State Departments, and to our Counties for their steadfast support of the Board's work.

*Anthony Borge, Chair, SBRRB, 2018*

## OVERVIEW

### Section 201M-7 Periodic review; evaluation, Hawaii Revised Statutes (HRS)

*(a) Each agency having rules that affect small business in effect on July 1, 1998 shall submit to the board by June 30 of each odd-numbered year, a list of those rules and a report describing the specific public purpose or interest for adopting the respective rules that affect small business and any other reasons to justify continued implementation of the rules; provided that, by June 30 of each year, each agency shall submit to the board a list of any rules to be amended or repealed, based upon any new, amended, or repealed statute that impacts small business.*

Pursuant to Section 201M-7 (a), HRS, the SBRRB requested from the State and County agencies the following:

- 1) No later than June 30<sup>th</sup> of each year, a list of any rules to be amended or repealed, based upon any new, amended, or repealed statute; and
- 2) No later than June 30<sup>th</sup> of each odd-numbered year, a list of rules adopted during the prior year that affect small business, and a report describing the specific public purpose or interest for adopting the respective rules that affect small business and any other reasons to justify their continued implementation.

Response: The information in this Report is a compilation of the responses and justifications received.

*(b) The board shall provide to the head of each agency a list of any rules adopted by the agency that affect small business and have generated complaints or concerns, including any rules that the board determines may duplicate, overlap, or conflict with other rules, or exceed statutory authority. Within forty-five days after being notified by the board of the list, the agency shall submit a written report to the board in response to the complaints or concerns. The agency shall also state whether the agency has*

*considered the continued need for the rules and the degree to which technology, economic conditions, and other relevant factors may have diminished or eliminated the need for maintaining the rules.*

Response: In accordance with Section 201M-7(b), the SBRRB provided communication to the Director of Hawaii Department of Transportation (DOT) regarding concern over alleged unfairness and inequitable treatment of small business drivers allowed to operate at the Honolulu International Airport. In response, DOT submitted amendments, under HAR Chapter 20.1, "Commercial Services at Public Airports," which the SBRRB subsequently recommended for public hearing and adoption; HAR Chapter 20.1 become effective in August 2018.

*(c) The board may solicit testimony from the public regarding any report submitted by the Agency under this section at a public meeting held pursuant to chapter 92. Upon consideration of any report submitted by an agency under this section and any public testimony, the board shall submit an evaluation report to the legislature each even-numbered year. The evaluation report shall include an assessment as to whether the public interest significantly outweighs a rule's effect on small business and any legislative proposal to eliminate or reduce the effect on small business. The legislature may take any action in response to the report as it finds appropriate.*

Response: The SBRRB did not specifically solicit testimony from the public regarding any report submitted by the Agency under this section at a public meeting held pursuant to Chapter 92, HRS. However, the SBRRB does receive and review testimonies on administrative rules that are proposed or amended during the monthly board meetings; each testimony is handled accordingly.

## ADMINISTRATIVE RULE REVIEW MATRIX

State and Counties Departments	Existing Rules, Rules that were Amended or to be Amended, and Rules to be Repealed (July 2015 to June 2017)
<b>STATE DEPARTMENTS</b>	
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES	8
DEPARTMENT OF AGRICULTURE	NA
DEPARTMENT OF THE ATTORNEY GENERAL	0
DEPARTMENT OF BUDGET AND FINANCE – FINANCIAL ADMINISTRATION DIVISION	NA
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM	3
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS PUBLIC UTILITIES COMMISSION	30 NA
DEPARTMENT OF DEFENSE	0
DEPARTMENT OF HAWAIIAN HOME LANDS	0
DEPARTMENT OF HEALTH MEDICAL DIVISION ENVIRONMENTAL DIVISION	5 9
DEPARTMENT OF HUMAN SERVICES	5
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS	5
DEPARTMENT OF LAND AND NATURAL RESOURCES	9
DEPARTMENT OF TAXATION	2
DEPARTMENT OF TRANSPORTATION	5
UNIVERSITY OF HAWAII	2
<b>COUNTY DEPARTMENTS</b>	
HAWAII COUNTY	37
MAUI COUNTY	NA
KAUAI COUNTY	NA
CITY AND COUNTY OF HONOLULU	21

# STATE DEPARTMENTS – JUSTIFICATION OF RULES AND RULES EXPECTED TO BE AMENDED OR REPEALED BASED ON ANY NEW, AMENDED OR REPEALED STATUTE

## *Department of Accounting and General Services*

The following is a list of rules that affect small business that were approved during the period of July 1, 2015 through June 30, 2017, with reasons for justifying the rules' continued implementation:

### **State Procurement Office (SPO)**

- 1. HAR Title 3 Chapter 120-4 – Procurements exempt from chapter 103D, HRS**  
Justification – The purpose of amending exemption #6 is to avoid ambiguity from the previous inclusion of “etc.” The application of “etc.” is unclear. The use of “etc.” may be interpreted in a number of ways, and has opened the door for expanding the scope of this exemption, creating confusion and uncertainty and procurement officers. Removing “etc.” will limit the exception to situations that “are advantageous and available on short notice through an auction, bankruptcy, or foreclosure.”

Continued implementation is necessary to allow to avoid confusion and ambiguity. SPO does not view this amendment to affect small business.

- 2. HAR Title 3 Chapter 122-14 – Exempted Items**

Justification – Section 3-122-14 was amended to read as follows:

Section 3-122-14 Exempted Items – Purchasing agencies are granted the authority to prepare specifications for goods, services and construction procured under sections 103D-102 and 103D-304, HRS. However, all public employees are responsible for adhering to remaining ethical considerations in public procurement, as guided by relevant provisions in section 103D-101, HRS and section 3-131-1.02.

SPO does not view this amendment to affect small business. The amendment is to provide clarity in the HAR that regardless of being exempt from HRS 103D, there are always ethical and contractual requirements, and that State employees still have to do their due diligence and be responsible. Continued implementation is necessary because it provides clarification guidance on ethics throughout the acquisition life cycle.

- 3. HAR Title 3 Chapter 122-66 – Waiver to requirement for procurement of professional services**

Justification – Waiver to requirement for procurement of professional services, has been invalidated by the Hawaii Supreme Court in Asato v. Procurement Policy Board Hawaii, 2014. The purpose of this repeal is to align HAR with current law, clarifying that HAR Section 3-122-66 is no longer able to be utilized when procuring professional services. This amendment repealed HAR Section 3-122-66 that allows for an option in procurement of professional services pursuant to HRS Section 103D-304(g), for situations where a review committee receives less than three qualified persons' submittals to provide professional services under specific selection criteria.

This waiver has been in effect since December 15, 1995, with the establishment of Title 3, Subtitle 11, Hawaii Administrative Rules for Chapter 103D, HRS. It is not known how the repeal of this waiver will adversely affect or benefit small business.

**4. HAR Chapter 3-130 – Inventory Management**

Justification – The purpose of amending this rule is to align inventory accountability designations with statute and make other inventory management clarifications. These amendments clarify that inventory accountability is the responsibility of “the head of the department or head of the board or commission, agency, bureau, or office of the State.” The SPO also recommended changes, such as the repeal of rules that still mention inventory, and the streamlining of the management process.

These changes have no direct or indirect effect on small business. Implementation is necessary as it provides guidance on inventory accountability for State and County agencies.

**Stadium Authority**

**5. HAR Chapter 3-70-11 – Rental charges, payment**

Justification – This section clarifies and reprices the rental charge language, eliminates and restructures rental rate categories, updates rental rates for facility use as well as rates for events held in parking areas, adds a new subsection for charitable, religious, and other events or activities, and adds subsections and rates for commercial media and non-commercial media events.

The restructuring and repricing of rental categories and its respective rates is necessary to accurately reflect the market, the type of events that utilize the Aloha Stadium facility, and to align categories that would provide for best user fit. It is also necessary to ensure that the rate fee structure is adequate to help support the operations and solvency of the special funded Aloha Stadium facility.

Continued implementation is necessary to allow the special funded Stadium Authority to generate revenues to address both its fixed and variable operating costs and in doing so, provide the Authority with the ability to continue to maintain and operate the Aloha Stadium facility in a safe, clean, and financially solvent manner. It should be noted that while expenses have continued to increase over the years, user fees have not increased. As a result, it has put a significant financial strain on the special funded Authority’s ability to keep up with recurring rising expenses. This adjustment to rental rates/fees provides the Authority with an ability to address recurring rising expenses and provide it with a means to remain financially solvent.

**6. HAR Chapter 3-70-20 – Parking rates, parking stalls**

Justification – The purpose is to implement an increase in vehicular users’ parking rates/fees for all events and shows.

The restructuring and repricing of parking fees by category is necessary to accurately reflect the market, the types of events that utilize the Aloha Stadium facility, and to provide “unit pricing” that will help to support the continued operation of the special funded Aloha Stadium facility.

Continued implementation is necessary to allow the special funded Stadium Authority to generate revenues to address both its fixed and variable operating costs and in doing so, provide the Authority with the ability to continue to maintain and operate the Aloha Stadium facility in a safe, clean, and financially solvent manner. It should be noted that while expenses have continued to increase over the years, user fees have not increased. As a result, it has put a significant financial strain on the special funded Authority's ability to keep up with recurring rising expenses. This adjustment to rental rates/fees provides the Authority with an ability to address recurring rising expenses and provide it with a means to remain financially solvent.

### **State Building Code Council**

#### **7. HAR Chapter 3-181 – State Energy Conservation Code**

Justification – The purpose of repealing Chapter 3-181, HAR, and replacing it with a new rule, Chapter 3-181.1, is to base the new rules on a model national building code (2015 International Energy Conservation Code) amended by the State Building Code Council to address situations specific to Hawaii and required by Section 107-25, HRS.

Continued implementation is necessary to allow building owners, designers, contractors, and code enforcers within the State to be able to apply consistent standards.

#### **8. HAR Chapter 3-182 – State Electrical Code**

Justification – The purpose of repealing Chapter 3-182, HAR, and replacing it with a new rule, Chapter 3-182.1, is to base the new rules on a model national building code (2014 National Electrical Code) with amendments to ensure recognition of new methods and installation practices for safely distributing electrical power, safe interaction with electrical systems, address safety concerns, and put new requirements in place that facilitates the safe implementation of new technology. Additionally, this is required by Section 107-25, HAR.

Continued implementation is necessary to allow building owners, designers, contractors, and code enforcers within the State to apply consistent standards.

### ***Department of Agriculture***

As of the date of this report, the Department of Agriculture has not responded to the Board's request.

### ***Department of the Attorney General***

The Department of the Attorney General has indicated it has no plans to amend or repeal any rule based upon any new, amended, or repealed statute, and has not adopted any rules during the prior year that affect small businesses. Therefore, there is no report describing the specific public purpose or interest for the adoption of the rules.

### ***Department of Budget and Finance***

As of the date of this report, the Department of Budget and Finance has not responded to the Board's request.

## ***Department of Business, Economic Development, and Tourism***

The following outlines a list of rules to be amended or repealed, based upon any new, amended or repealed statute:

### Business Development & Support Division

**1. HAR Title 15 Chapter 126 – Relating to the Hawaii Community-based Economic Development Technical and Financial Assistance Program**

Justification – Amends the definition of “community-based organization.” Amends the qualifications for community-based economic development grants to include technical assistance to community-based organizations. Reduces the number of Community-Based Economic Development Advisory Council members from twelve to ten.

### Hawaii Housing Finance & Development Corporation

**2. HAR Title 15 Chapter 169 – Down payment Loan Program”**

Justification – Because of Act 123, SLH 2017, Relating to Homebuyer Assistance, this chapter requires amendments.

**3. HAR Title 15 Chapter 307 – State Assisted Land and Housing Development Program**

Justification – Because of the enactment of Act 159, SLH 2017, Relating to Affordable Housing, this chapter requires amendment.

## ***Department of Commerce and Consumer Affairs***

The following outlines specific public purpose for adopting the rules and other reasons to justify continued implementation - only rules adopted between 7/1/16 to 6/30/17 are included:

### Professional and Vocational Licensing Division (PVL)

**1. HAR Title 16 Chapter 53 – Fees Relating to Boards and Commissions**

Justification – The purpose of this chapter is to establish and update fees for the 49 regulatory areas under the purview the PVL Division and the Regulated Industries Complaints Office. The rule amendments apply to the fee structures for the 49 licensing areas. A Small Business Impact Statement dated November 30, 2015 was sent to the SBRRB; on February 4, 2016, no official action was taken on this matter, as three SBRRB members were required to recuse themselves due to a direct financial impact under the Hawaii State Ethics Code.

**2. HAR Title 16 Chapter 85 – Medical Examiners**

Justification – The purpose of this chapter is to implement licensing and regulation of this profession. The rules are needed because they facilitate licensing and enforcement of the licensing law. The purpose of the amendments is to better serve the community and to reflect national trends by licensing three classes of emergency medical service personnel: Emergency Medical Technician, Advanced Emergency Medical Technician, and Paramedic. A Small Business Impact Statement dated February 23, 2016 was sent to the SBRRB; the SBRRB raised no objections to the proposed rule amendments.

**3. HAR Title 16 Chapter 99 – Relating to Real Estate Brokers and Salespersons**

Justification – The purpose of this chapter is to implement licensing and regulation of the professions. The rules are needed because they facilitate licensing and enforcement of

the licensing law. The purpose of the amendments is to create a new definition for solicitation materials. A Small Business Impact Statement dated February 19, 2015 was sent to the SBRRB; on March 18, 2015, the SBRRB raised no objections to the proposed rule amendments.

**4. HAR Title 16 Chapter 114 – Relating to Real Estate Appraisers**

Justification – The purpose of this chapter is to implement licensing and regulation of the profession. The rules are needed because they facilitate licensing and enforcement of the licensing law. The purpose of the amendments is to incorporate appraiser trainee regulations to comply with federal requirements. A Small Business Impact Statement dated April 1, 2016 was sent to the SBRRB, and on April 28, 2016, a response from the SBRRB stated that these rules did not fall under its purview.

**5. HAR Title 16 Chapter 255 – Relating to Post-Secondary Education Authorization Program**

Justification – The purpose of this chapter is to facilitate authorization and regulation of accredited, degree-granting post-secondary educational institutions under the authorizing law. A Small Business Impact Statement dated April 25, 2016 was sent to the SBRRB; on May 13, 2016, the SBRRB determined that the proposed rules would not be heard at an SBRRB meeting as they do not negatively impact small businesses and are in-line with, and are not more restrictive than, the Federal rules.

The following is a list of rules to be amended or repealed, based upon any new, amended or repealed statute for 2017:

Division of Financial Institutions (DFI)

**6. HAR Title 16 Chapter 24 – Money Transmitters**

DFI plans to work on a draft to update provisions concerning bond and security device requirements, and the hourly exam fee for consistency with Chapter 489D, the Money Transmitters Act.

**7. HAR Title 16 Chapter 25 – Application Procedures Relating to Hawaii Financial Institutions**

DFI plans to work on a draft to delete references to fees that are subsumed by Hawaii financial institutions yearly assessment in Section 412:2-105.2, HRS.

**8. HAR Title 16 Chapter 28 – Escrow Depositories**

DFI plans to work on a draft to update net capital bond, fidelity bond, and E & O sections for consistency with Chapter 449, the Escrow Depositories law.

**9. HAR Title 16 Chapter 35 – Secure and Fair Enforcement for Mortgage Licensing Act (proposed new chapter)**

On 3/23/2015, the SBRRB issued a memo supporting a public hearing for the proposed rules relating to Chapter 454F, HRS, the Secure and Fair Enforcement for Mortgage Licensing Act. Thereafter, Act 122 (2016) was enacted and section 18 partially obviated the need for the proposed rules. DFI plans to move forward with a public hearing pending consultation with the departmental advisory committee on small business.

Professional and Vocational Licensing Division

**10. HAR Title 16 Chapter 72 – Acupuncture**

The Board is currently working on a draft.

- 11. HAR Title 16 Chapter 73 – Barbers**  
The Board plans to work on a draft.
- 12. HAR Title 16 Chapter 76 – Chiropractors**  
The Board plans to work on a draft.
- 13. HAR Title 16 Chapter 77 – Contractors**  
A memo requesting to hold a public hearing was sent to the Governor’s Office on March 28, 2017. The Board is also currently working on two sets of draft rules.
- 14. HAR Title 16 Chapter 78 – Cosmetology**  
The Board is currently working on a draft.
- 15. HAR Title 16 Chapter 79 - Dentists and Dental Hygienists**  
The Board is currently working on a draft.
- 16. HAR Title 16 Chapter 81 – Elevator Mechanics**  
The Board is currently working on a draft.
- 17. HAR Title 16 Chapter 84 – Massage Therapy**  
The Board is currently working on a draft.
- 18. HAR Title 16 Chapter 85 – Medical Examiners**  
The Board plans to work on a draft relating to physician assistants.
- 19. HAR Title 16 Chapter 88 – Naturopaths**  
The Board is currently working on a draft.
- 20. HAR Title 16 Chapter 89 – Nurses**  
The Board is currently working on a draft.
- 21. HAR Title 16 Chapter 92 – Optometrists**  
The Board is currently discussing proposed rule amendments.
- 22. HAR Title 16 Chapter 94 – Pest Control Operators**  
The Board is currently working on a draft.
- 23. HAR Title 16 Chapter 97 – Private Detectives and Guards**  
The Board is currently discussing proposed rule amendments.
- 24. HAR Title 16 Chapter 99 – Real Estate Brokers and Salespersons**  
The Board is currently working on a draft.
- 25. HAR Title 16 Chapter 100 – Speech Pathologists and Audiologists**  
The Board is currently discussing whether or not to proceed with rule amendments.
- 26. HAR Title 16 Chapter 101 – Veterinarians**  
The Board is currently working on a draft.
- 27. HAR Title 16 Chapter 106 – Timesharing**

The Program is currently working on a draft.

**28. HAR Title 16 Chapter 110 – Physical Therapy**

The Physical Therapy Board plans to work on a draft.

**29. HAR Title 16 Chapter 115 – Professional Engineers, Architects, Surveyors, and Landscape Architects**

The appropriate Board is currently working on a draft.

Cable Television Division

**30. HAR Title 16 Chapter 131 – Designation and Selection of Access Organizations**

Amend rule to conform to HRS Section 440G-8.3, pursuant to Act 93, SLH 2014, which allows the DCCA Director to designate public, educational, and governmental (PEG) access organizations exempt from HRS Chapter 103D. Currently, HAR Section 131-70 requires PEG designations in compliance with HRS Chapter 103D. Division is working on draft language.

The following is a list of rules to be amended or repealed, based upon any new, amended or repealed statute for 2018:

**1. HAR Title 16 Chapter 39 – Securities**

Currently working on a draft to address crowdfunding, use of senior designations, and changes to the federal securities laws.

**2. HAR Title 16 Chapter 131 – Hawaii Cable Communication Systems**

Division is working on draft language to update chapter and amend HAR § 16-131-70 to conform with HRS § 440G-8.3, which allows the Director to designate public, educational, and governmental access organizations exempt from the requirements of HRS Chapter 103D.

**3. HAR Title 16 Chapter 24 – Money Transmitters**

Rules are being reviewed for updates needed to conform to HRS Chapter 489D and DFI's current processes. Anticipated areas of amendment include bond and security device requirements, hourly exam fee, and application processes.

**4. HAR Title 16 Chapter 25 – Application Procedures Relating to Hawaii Financial Institutions**

Rules are being reviewed for updates needed to conform to HRS Chapter 412 and DFI's current processes. Anticipated areas of amendment include deleting outdated references to certain fees, and application processes.

**5. HAR Title 16 Chapter 28 – Escrow Depositories**

Rule are being reviewed for updates needed to conform to HRS Chapter 449 and DFI's current processes. Anticipated areas of amendment include fidelity bond and E&O provisions, and application processes.

**6. HAR Title 16 Chapter 35 – Secure and Fair Enforcement for Mortgage Licensing Act (proposed new chapter)**

DFI plans to move forward with a public hearing on proposed rules for Chapter 454F, HRS. The rules primarily concern the Mortgage Loan Recovery Fund, and have been reviewed by the SBRRB.

- 7. HAR Title 16 Chapter 71 – Accountancy**  
The appropriate Board is currently working on a draft.
- 8. HAR Title 16 Chapter 72 – Acupuncture Practitioners**  
The appropriate Board is currently working on a draft.
- 9. HAR Title 16 Chapter 73 – Barbers**  
The appropriate Board plans to work on a draft.
- 10. HAR Title 16 Chapter 74 – Boxing**  
The Commission is currently working on a draft.
- 11. HAR Title 16 Chapter 76 – Chiropractors**  
The appropriate Board plans to work on a draft.
- 12. HAR Title 16 Chapter 77 – Contractors**  
A public hearing was held in November 2017 (Work Incidental and Supplemental). The Board is also currently working on two sets of draft rules.
- 13. HAR Title 16 Chapter 78 – Cosmetology**  
The appropriate Board is currently working on a draft.
- 14. HAR Title 16 Chapter 79 – Dentists and Dental Hygienists**  
The appropriate Board is currently working on a draft.
- 15. HAR Title 16 Chapter 81 – Elevator Mechanics**  
The appropriate Board is planning to work on a draft.
- 16. HAR Title 16 Chapter 84 – Massage Therapy**  
The appropriate Board is currently working on a draft.
- 17. HAR Title 16 Chapter 85 – Medical Examiners**  
The appropriate Board is currently working on a draft relating to physician assistants.
- 18. HAR Title 16 Chapter 8 – Motor Vehicle Industry**  
The appropriate Board is planning to work on a draft.
- 19. HAR Title 16 Chapter 88 – Naturopaths**  
The appropriate Board is currently working on a draft.
- 20. HAR Title 16 Chapter 89 – Nurses**  
The appropriate Board, on May 25, 2018, sent a request to the Governor to hold a public hearing.
- 21. HAR Title 16 Chapter 92 – Optometrists**  
The appropriate Board is currently working on a draft.
- 22. HAR Title 16 Chapter 94 – Pest Control Operators**  
The appropriate Board received SBRRB approval and is being prepped to send to the Governor for approval to hold a public hearing.

**23. HAR Title 16 Chapter 95 – Pharmacy and Pharmacists**

The Board is currently discussing whether or not to proceed with rule amendments.

**24. HAR Title 16 Chapter 97 – Private Detectives and Guards**

The Board is currently working on a draft.

**25. HAR Title 16 Chapter 99 – Real Estate Brokers and Salespersons**

The Commission is currently working on a draft.

**26. HAR Title 16 Chapter 100 – Speech Pathologists and Audiologists**

The Board is currently discussing whether or not to proceed with rule amendments.

**27. HAR Title 16 Chapter 106 – Timesharing**

The Program is currently working on a draft.

**28. HAR Title 16 Chapter 110 – Physical Therapy**

The Board is currently working on a draft.

**29. HAR Title 16 Chapter 114 – Real Estate Appraisers**

The Program is currently working on a draft.

**30. HAR Title 16 Chapter 115 – Professional Engineers, Architects, Surveyors, and Landscape Architects**

The Board is currently working on a draft.

**31. HAR Title 16 Chapter 116 – Travel Agencies**

The Program is currently working on a draft.

**32. HAR Title 16 Chapter 119 – Condominium (514B)**

The Commission is currently working on a new chapter of rules.

### ***Public Utility Commission***

As of the date of this report, Public Utility Commission has not responded to the SBRRB's request.

### ***Department of Defense***

Department of Defense performed an extensive review of existing rules and statutes that resulted in the conclusion that there were no amendments or repeals made during 2016. In addition, a comprehensive survey of bills was introduced in 2017, sent to the Governor, and all Acts signed into law revealed none that would affect small business.

### ***Department of Hawaiian Home Lands***

Department of Hawaiian Home Lands (DHHL) currently does not have any administrative rules to be amended or repealed, based upon any new, amended, or repealed statute; and DHHL did not adopt any rules during 2016.

## **Department of Health**

The following outlines a list of rules adopted during the prior year that affect small business, and a report describing the specific public purpose or interest for adopting the respective rules that affect small business and any other reasons to justify their continued implementation.

### Medical Division

- 1. HAR Title 11 Chapter 50 – Food Safety Code**  
Justification – Impact to small business; SBRRB reviewed and approved; currently waiting for approval by the Governor on final rules.
  
- 2. HAR Title 11 Chapter 103 – Licensure and Certification Fees for Health Care Facilities and Agencies**  
Justification – Impact to small business; SBRRB reviewed and approved; Governor approved for hearing, hearing to be scheduled.
  
- 3. HAR Title 11 Chapter 143 – Licensure and Certification Fees for Health Care Facilities and Agencies**  
Justification – No small business impact; amendment increases the fee for the newborn screening kit from \$55.00 to \$99.00 and adds Severe Combined Immunodeficiency Disease to Hawaii’s panel of test.
  
- 4. HAR Title 11-216 – Disability and Communication Access Board Rules of Practice and Procedures**  
Justification – No small business impact; final rules have been approved. Amendment clarifies that the Disability and Communication Access Board shall review public accommodations and commercial facilities on public land and projects that are intended to be transferred to the State or a County.

### Environmental Division

- 5. HAR Title 11 Chapter 25 – Certification of Public Water System Operators**  
Justification – Impact to small business; SBRRB reviewed and approved. Awaiting approval by the Governor on final rules (new and amendments to rules).

A list of rules to be amended or repealed, based upon any new, amended or repealed statute:

### Medical Division

- 6. HAR Title 11 Chapter 106 – Background Check**  
Justification – Consolidation of all background check rules is proposed. Office of Health Care Assurance is working on background check rules along with Office of Human Services. Rules are drafted but DOH would like to consolidate background check rules for continuity. This may help to save time and costs for background check services for the department and providers of services.

### Environmental Division

- 7. HAR Title 11 Chapters 72 and 72.1 – State Comprehensive Emergency Medical Services System**  
Justification – Update existing rules, repeal of HAR 72, adopt HAR 72.1 Comprehensive Emergency Medical Services System; finalizing draft rules.

8. **HAR Title 11 Chapter 110.1 – Certification of Adult Foster Homes**  
Justification – Updating rules due to Federal Statutory changes; finalizing draft rules.
9. **HAR Title 11 Chapters 117 and 117.1 – Vital Statistics**  
Justification – Updating existing rules, repeal of HAR 117, adopt 117.1. Financial draft rules.
10. **HAR Title 11 Chapters 177 and 177.1 - Certification Standards for Substance Abuse**  
Justification – Drafting new rules pursuant to repeal of HAR 177, adoption of new rules HAR 177.1; finalizing draft rules.
11. **HAR Title 11 Chapter 157 – Examination and Immunization**  
Justification – To be heard before the SBRRB, July 19, 2017 due to impact on small business.
12. **HAR Title 11 Chapter 164.2 – Tuberculosis**  
Justification – Obtaining public hearing approval by Governor.
13. **HAR Title 11 Chapter 200 - Title**  
Justification – Rules are being amended to reflect changes in procedures. Rules will be drafted within a couple of months and target final rules approval by the end of 2017. These rules will impact small business.
14. **HAR Title 11 Chapter 201 - Title**  
Justification – Rules are being amended to reflect changes in procedures. Rules will be drafted within a couple of months and target final rules approval by the end of 2017. These rules will impact small business.

### ***Department of Human Services***

The following outlines a list of rules adopted during the prior year that affect small business, and a report describing the specific public purpose or interest for adopting the respective rules that affect small business and any other reasons to justify their continued implementation.

1. **HAR Title 17 Chapter 795 – Supporting Employment Empowerment (SEE) Program**  
Justification – The SEE Program is a business-friendly program that transforms lives by helping Temporary Assistance for Needy Families (TANF) cash assistance recipients break multi-generational cycles of poverty, find rewarding jobs in the private sector, and stay engaged in gainful employment. SEE Program provides on-the-job training and employment opportunities with private sector employers for First-To-Work (FTW) Program participants who may have little or no work experience or basic work skills. DHS subsidizes a portion of the participant’s wages and direct/indirect costs that the employer may incur such as fringe benefits, training, transportation, etc. Participating employers set and pay SEE employees’ (FTW participants) wages and benefits.

Chapter 17-795 standardizes and outlines the requirements that businesses must meet in order to become a SEE employer; the payment process for participating employers to claim reimbursements for the wages that were paid to the participants; and the review process to resolve an employer’s payment dispute.

Small businesses that wish to participate in the SEE Program as an employer are required to comply with Chapter 17-795. The rules do not adversely affect any small businesses as the requirements are aligned with the federal, state and/or county regulations that businesses are mandated to comply with in order to operate in Hawaii.

Rules to be amended or repealed, based upon any new, amended or repealed statute:

2. **HAR Title 17 Chapter 891.1 – Registration of Family Child Care Homes**
3. **HAR Title 17 Chapter 892.1 – Licensing of Group Child Care Centers and Group Child Care Homes**
4. **HAR Title 17 Chapter 895 – Licensing of Infant and Toddler Child Care Centers**
5. **HAR Title 17 Chapter 896 – Licensing of Before and After School Child Care Facilities**

There are reported to be no rules adopted during 7/1/2016 to 6/30/2017 that affect small businesses.

### ***Department of Labor and Industrial Relations***

A list of rules adopted during the prior year that affect small business, and a report describing the specific public purpose or interest for adopting the respective rules that affect small business and any other reasons to justify their continued implementation:

1. **HAR Title 12 Chapter 229 – General, Administrative and Legal Provisions**  
Justification – Chapter 12-229 and 123-230.1 administered by the Hawaii Occupational Safety and Health Branch (HIOSH) – updates to the elevator rules with a mixed effect on small businesses, see detailed explanation in attached memorandum.
2. **HAR Title 12 Chapter 52.1 – Recording and Reporting Occupational Injuries and Illnesses**  
Justification – HIOSH also amended this chapter to maintain conformity to federal law and to ensure continue federal funding.

The following outlines rules to be amended or repealed, based upon any new, amended or repealed statute:

3. **HAR Title 12 Chapter 15 – Medical Fee Schedule Rules**  
Justification – Physicians and Providers of service other than physicians – Act 153 amends the definition of physician to include advanced practice registered nurses.

Providers of service other than physicians also require an amendment due to Act 1010 (SLH, 2016) which added a new section 386-21.1, HRS, to Workers' Compensation law that will allow physicians and providers of service to other than physicians for workers' compensation claims to transmit treatment plans by mail or facsimile to an address provided by the employer.

Section 386-21(d) requires periodic updates to allowable workers' compensation medical charges which is in the process of being amended and intended to take effect on January 1, 2018.

## ***Department of Land and Natural Resources***

The following outlines a list of rules that affect small business to be amended, based on any new, amended, or repealed statute (period of July 1, 2015 through June 30, 2017).

- 1. Chapter 13 Title 74 Section 20 - Commercial Marine License Fee Increases**
- 2. Chapter 13- title 74 Section 46 - Marine Dealer Reporting Deadline**

The following outlines a list of rules that affect small business to be repealed based upon any new, amended, or repealed statute (period of July 1, 2015 through June 30, 2017).

- 3. Title 13 Chapter 256 Section 16 - Thrill Craft Operations; General Provisions and Section 17 - Recreational Thrill Craft Operations**

The following outlines a list of rules adopted (period of July 1, 2015 through June 30, 2017) that affect small business, and a report describing the specific public purpose or interest for adopting the respective rules that affect small business and any other reasons to justify their continued implementation.

- 4. HAR Title 13 Chapter 16 – Relating to Conveyances**

Justification – The reason for the rule changes was to encourage broader use of electronic recording and to update the fee schedule to simplify the fees charged and more accurately reflect the staff time involved.

The rules predominately affect individuals involved in any particular transaction (e.g. the person seeking a mortgage ends up paying the filing fee, a creditor often passes on the filing fee to the debtor, etc.) The proposed rule changes were sent to interested parties, such as the Hawaii Land Title Association and Hawaii Escrow Association throughout the amendment process. A public hearing was held and no members of the public attended and no testimony was provided.

The amendments are anticipated to result in increased e-recording for documents, which should over the long-term, save both time and expense for those needing to record documents with the Bureau of Conveyances (Bureau). The amendments updating the fee schedule are anticipated to clarify the filing fees associated with a particular transaction to facilitate compliance with the Federal Truth in Lending Act, and support the Bureau's ability to maintain an efficient and effective state recording office.

- 5. HAR Title 13 Chapter 60.4 – Ka'upulehu Marine Reserve**

Justification – This was a community-based proposal to establish a Marine Reserve at Ka'upulehu, West Hawaii. The purpose was to provide a 10-year “no take” rest period to allow for the recovery of reef fish stocks prior to the implementation of a subsistence fishery management plan for the area. The 10-year duration of the Reserve is important to give the Department enough time to monitor the recovery of fish stocks to assess the effectiveness of the rule.

- 6. HAR Title 13 Chapter 86.1 Sea Cucumbers**

Justification – The new rules went into effect on January 10, 2016 and addressed the recent spike in the commercial consumptive harvest of sea cucumbers and generally managed the various other uses of these species. Specifically, the rules generally

prohibited the take of sea cucumbers for sale for human consumption or for any other commercial purpose. There is a narrow exception carved out to allow for limited commercial harvest for aquarium purposes. This exception, which allows licensed commercial aquarium collectors to harvest two species of sea cucumber from Oahu waters only up to 20 per person per day and up to 3,600 per year for the entire fisher, is intended to keep the small commercial aquarium fishery open at the current level of take. The rules would also allow a small level of take for personal, non-commercial use.

The new rules had the desired effect in that the large scale commercial harvest of sea cucumbers for consumption was closed but still allowed some existing commercial aquarium take to continue at a sustainable level. It is expected that the rule would need to continue in existence to prevent any new commercial food business from starting a sea cucumber fishery. It will take at least five years to determine what a reasonable take might be for this fishery, depending on resources to make an assessment, and the threat of a new business would be concerning.

**7. HAR Title 13 Chapter 256-73.13 Ahu O Laka (Oahu) Safety Zone**

**Justification** – Alcohol and illegal drugs have a much more powerful effect on people when combined with dehydration and the effects of the sun and ocean. Numerous incidents had resulted in serious injuries when large crowds of people gathered at the “sand bar” in Kaneohe Bay where, because of loopholes in local laws, people could drink alcoholic beverages in public without being cited. The Ahu O Laka Safety Zone was conceived as an area where alcohol and illegal drugs would be banned to reduce fighting and disorderly conduct on three three-day weekends in a year (Memorial Day, Independence Day and Labor Day), the weekends when most problems occurred.

This prohibition on possession and consumption of alcohol, narcotics and illegal drugs in the specified safety zone in Kaneohe Bay evolved from an emergency rule, to a rule with a sunset date, and finally into a permanent rule.

**8. HAR Title 13 Chapter 256-162 – Kahalu’u Bay (Oahu) Ocean Waters**

**Justification** – The Division of Boating and Ocean Recreation (DOBOR) initiated this rule amendment in response to community feedback about safety issues caused by a proliferation of commercial activity in the bay (predominantly surf schools), overcrowding in the water, and illegal vehicular parking issues.

The rule, as approved by the Board of Land and Natural Resources, modified the swim and surf zone designations and allowed for a total of four commercial surf instruction permits for this waterway. It also contained surf instruction to the surf zone and prohibited vessels in the swim zones. In the context of DOBOR rules, the definition of “vessel” includes surfboards.

The consensus of the public was that the controls placed on commercial activity in Kahalu’u Bay through this rule amendment would provide more opportunity for residents to enjoy the Bay. The rule, drafted in cooperation with several community groups, was intended to “maintain the integrity of the bay as a popular recreational site.”

## ***Department of Taxation***

**1. HAR Title 18 Chapter 231- Administration of Taxes**

Justification – The adopted rules add an additional method for the Department and taxpayers to reach mutual agreement before or during a tax appeal. Decreasing the number of outstanding tax controversies also decreases the administrative burden on the Tax Board or Review and the Tax Appeal Court.

DoTax adopted administrative rules relating to audit reconsideration, effective March 26, 2016. The adopted rules added two new sections which created an administrative mechanism for taxpayers to request the Department reconsider an assessment based on documentation or evidence that was not provided during the audit examination which led to the assessment or denial for refund.

**2. HAR Title 18 Chapter 251, Rental Motor Vehicle, Tour Vehicle, and Car-Sharing Vehicle Surcharge Tax**

Justification – The adopted rules are necessary to clarify how car-sharing organizations can report and pay the Car-Sharing Vehicle Surcharge Tax.

The Department adopted administrative rules relating to the Car-Sharing Vehicle Surcharge Tax, effective April 8, 2016. The adopted rules specify how to determine whether an entity is a “car-sharing organization” under section 251-1, HRS, specify how to determine when a rental period has begun and ended, and specify how to calculate the length of a rental period.

## ***Department of Transportation***

The following outlines rules to be amended or repealed, based upon any new, amended or repealed statute:

### Highways Division

**1. HAR Title 19 Chapter 133.2 – Periodic Inspection of Vehicles**

Justification - Relates to motor vehicle inspections.

**2. HAR Title 19 Chapter 135 – Periodic Inspection of Mopeds**

Justification - Relates to the inspection of mopeds.

**3. HAR Title 19 Chapter 141 – Motor Carrier Safety Regulations**

Justification - HAR is a means whereby the State adopts the Federal Motor Carrier Regulations. This is a way of ensuring that the State complies with the regulations.

**4. HAR Title 19 Chapter 142 – Periodic Safety Inspection of Motor Carrier Vehicles**

Justification - Relates to the inspection of heavy vehicles which are motor carrier vehicles.

**5. HAR Title 19 Chapter 145 – Hazardous Materials Regulations**

Justification - HAR is a means whereby the State adopts the Federal Motor Carrier Safety Regulations that relate to the transportation of hazardous materials in quantities large enough to require the transporting vehicle to be placarded. Adopting the regulations ensures that the State complies with the regulations.

## *University of Hawaii*

The following outlines rules to be amended or repealed, based upon any new, amended or repealed statute:

**1. HAR Title 20 Chapter 42 – Hawaii State Postsecondary Review Program**

Justification – The University intends to repeal Chapter 20-42, which sets forth the rules and procedures governing the Hawaii Postsecondary Review Program established by Part II of HRS Chapter 305H. HRS Chapter 305H was repealed in 2006 and the postsecondary review responsibilities of the former program were moved to the Hawaii Department of Commerce and Consumer Affairs (DCCA) in 2013 when HRS Chapter 305AJ was enacted. In light of the review responsibilities to the DCCA, Chapter 20-42 serves no purpose and has been approved by Board of Regents for repeal.

The University believes that the repeal of Chapter 20-42 does not affect small business. On December 8, 2016, the University was informed that the Chair of the Small Business Regulatory Review Board (SBRRB) determined that the repeal of Chapter 20-42 does not pose an impact to small business, and therefore, did not require that a small business impact statement be submitted for review. With the approval of the Governor, public notice to repeal Chapter 20-42 was published, and there were no petitions filed during the public notice period which ended on May 31, 2017. Process to effectuate the repeal of this chapter is underway.

**2. HAR Title 20 Chapter 25 – Hawaii Educator Loan Program**

Justification – The University intends to amend Chapter 20-25, which provides guidelines and procedures for the administration of the Hawaii Educator Loan Program in conformance with the guidelines established in HRS Section 304A-701. The University seeks to amend Chapter 20-25 in response to statutory changes that were approved by the Hawaii State Legislature in 2007. In 2007, the Hawaii State Legislature changed the loan repayment period and the teaching service requirement from six years to seven years. Although the University has already implemented the changes, HAR Chapter 20-25 needs to be updated to provide consistency with the HRS.

The University believes that the amendments of Chapter 20-25 do not affect small business. On December 8, 2016, the University was informed that the chair of SBRRB had reviewed the proposed amendments to Chapter 20-25 and determined that said amendments do not pose an impact to small business. SBRRB, therefore, does not require that a small business impact statement be submitted for review. Given HRS Section 304A-701 specifically exempts the adoption of rules pertaining to the Hawaii Educator Loan Program from public notice and public hearing requirements of HRS Chapter 91, the proposed amendments to Chapter 20-25 are pending Governor's final approval.

The University did not adopt any rules during the period of July 1, 2016 through June 30, 2017.

## Follow-up on Prior SBRRB Administrative Rule Reviews

The following twenty-seven (27) Hawaii Administrative Rules were previously reviewed by the SBRRB; current updates/final commentary are noted below:

### **Department of Agriculture**

#### Division of Measurement Standards

##### **1. Chapter 4-93 – Packaging and Labeling**

###### **Agency's Justification**

This rule ensures that consumer commodities offered for sale in the State are correctly labeled as to their content identification and unit amount. The rule also defines specific identification regarding the Department of Agriculture's logo, "Island Fresh." The rules were established in 1981 and amended in 1995.

###### **2006 Recommendation**

Many products that are represented as Hawaiian-made and Hawaiian-grown are not. Rules need re-analysis and updating.

###### **Response from Agency**

A conversation with Mr. William Pierpont, Branch Chief of the Measurement Standards Branch on February 8, 2008 noted that the Review Board's comments that products represented as Hawaiian-made and Hawaiian-grown does not apply. Packaging and labeling requirements are implemented through the National Institute of Standards and Technology Handbook 130, 1993 edition, which are current. Further, the logo "Island Fresh" is completely different than "Hawaiian-made" and "Hawaiian-grown" therefore; no future plans to amend the rules are expected.

The SBRRB was not in agreement with the Agencies' response and justification. Therefore, a full analysis of this rule with a draft to be provided to the SBRRB by December 2009 is requested. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

###### **Final Commentary**

Department of Agriculture is in the process of reviewing these rules and will update accordingly.

#### Division of Plant Industry

##### **2. Chapter 4-73 – Plant and Non-Domestic Animal Quarantine Plant Export Rules**

###### **Agency's Recommendations**

This rule provides for export plant and plant products inspectional and dis-infestation treatment services that meet the requirements of the state or country of destination. Agriculture is an important economic industry to the State of Hawaii. From the inception of large-scale mono-crop production such as pineapple and sugarcane to the

diversification of specialized crops, which include gourmet baby vegetables, exotic cut flowers and tropical fruits, as well as ornamental plants, now include the culture of various aquatic ornamental and food species. This is a far cry from the traditional plant crops grown historically in soil.

Because of this expansion, there has been an increased need to ship plants or plant products out of the State. Presently, this administrative rule provides for export plant and plant products' inspectional and disinfestations treatment services, which is provided by the Plant Quarantine Branch, which meets the requirements of the State or Country of destination; each State or Country has their own requirements that must be met before plants can enter their state or country. To implement the requirements, the Branch has the authority to impose nursery inspection fees as well as burrowing nematode testing fees, which may seem to impact small business. The necessary fee helps to defray the operational and travel costs borne to the Branch, which may be hampered by general budgetary constraints.

Without this administrative rule in place, the services provided by the Branch to certify plants going out of the state to other states or countries would not be possible. Programs such as the nursery certification program and the origin inspection program for cut flowers are administered through this rule. Although the rule imposes many restrictions on nurseries and the flower businesses, these requirements must be met or the destination state or country will not accept the plants or flowers being shipped or taken to the respective state or country. The rule was established in 1981.

#### **2006 Recommendation**

Rule amendments were submitted to the SBRRB in 2006; however the Branch has subsequently pulled the rules for further analysis. The Branch is in the process of updating this rule; the SBRRB is in agreement the rule should be reviewed and revised.

#### **Response from Agency**

This rule provides an amendment to modify the nursery certification program and establish a compliance agreement program for exporting nurseries. The amendments will update rules based on new science and changing industry needs as well as stricter requirements for certifying nurseries. The Branch's targeted date for transmitting the draft rules to the Board of Agriculture for review is February 2009 with a public hearing has a projected date of June 2009. The SBRRB was in concurrence and will follow-up with the Agency.

#### **Final Commentary**

A discussion with DOA in 2018 revealed that the rules are current "frozen" in terms of modification however because the statute governing these rules reflect charge of fees, proposed amendments regarding the fees may be brought forth in front of this Board within the next few years.

## Division of Animal Industry

### **3. Chapter 4-16 – Cattle, Sheep, and Goats**

#### **Agency's Justification**

The rules refer to the regulation of cattle, sheep and goats. Proposed rule amendments will enhance livestock disease management through testing and tracing back to flocks or origin and other housekeeping amendments. The amendments will also update the existing rules to allow Hawaii to remain consistent with the National Scrapie Eradication Program, require additional testing for incoming cattle, and additional permit requirements for incoming livestock as well as qualifications.

A quarantine order put in place for the intrastate movement of sheep and goats has reduced the urgency to amend the rules as the Agency's targeted date for transmitting the draft rules to the Board of Agriculture for review was January 2008.

On February 14, 2008, Dr. James Foppoli, Administrator of Animal Industry Division, indicated that these rules are still in the process of being amended. The SBRRB will continue to monitor the status.

#### **2006 Recommendation**

The rules are 25 years old; the Agency has indicated that the rules are in process of being updated.

#### **Final Commentary**

To date, Chapter 4-16 Cattle, Sheep and Goats has not been updated.

### **4. Chapter 4-17 – Swine**

#### **Agency's Justification**

This rule authorizes the department to undertake disease control measures intended to control and eradicate certain disease of local and national economic significance or that may affect public health adversely. Preventing the introduction of diseases reduces the potential for animal losses due to death or poor growth and maintains the general health and welfare of domestic pigs.

The rule is justified due to the importance of disease surveillance, diagnosis and eradication on the economic viability of the swine industry and in protecting public health from infectious disease transmitted from animals to man. General health and welfare of livestock is enhanced through disease control and eradication activities, resulting in a more wholesome product for the Hawaii market and enhanced consumer confidence in Hawaii products. The rules were established in 1981.

On February 14, 2008, Dr. James Foppoli, Administrator of Animal Industry Division, indicated that these rules are still in the process of being amended. The Review Board will continue to monitor the status.

### **2006 Recommendation**

The rules are 25 years old; the agency has indicated that the rules are in the process of being updated.

On February 14, 2008, Dr. James Foppoli, Administrator of Animal Industry Division, indicated that these rules are still in the process of being amended. The Review Board will continue to monitor the status.

### **Final Commentary**

To date, Chapter 4-17 Swine has not been updated.

## **5. Chapter 4-23 – Horses**

### **Agency's Justification**

This rule controls the importation of diseases and pests that affect horses. Preventing the introduction of certain horse diseases and pests into Hawaii is essential to maintain a healthy horse population. In addition, freedom from certain diseases reduces the economic burden for horse owners resulting from illness and death. Since the majority of horses in Hawaii are pets, there is little impact on small business by these import requirements. The rules were established in 1949 and last amended in 1981.

On February 14, 2008, Dr. James Foppoli, Administrator of Animal Industry Division, indicated that these rules are still in the process of being amended. The Review Board will continue to monitor the status.

### **2006 Recommendation**

The rules are 25 years old; the Agency has indicated that the rules are in process of being updated.

### **Final Commentary**

To date, Chapter 4-23 Horses has not been updated.

## **Department of Commerce and Consumer Affairs**

## **6. Chapter 16-73 – Barbers**

### **Agency's Justification**

The purpose of the rules is to implement licensing and regulation of barbers and rules under the department's regulatory authority. The rules are needed as they facilitate licensing and enforcement. The rules were established in 1994.

### **2006 Recommendation**

The Agency indicated that the rules are in the process of being amended and are expected to be finalized within two years. The SBRRB is in concurrence with the Agency that the rules should be amended.

**Response from Agency**

The Agency plans to amend the rules to address public health and safety issues such as the exclusion or controlled use of implements, equipment, and activities that have been shown to adversely affect consumers if used or if used improperly. Additionally, descriptions of allowable exceptions to the place of practice will be expanded, and descriptions of exemptions from licensure will be included. The Agency's targeted date for transmitting the draft rules to the Department of the Attorney General for review was December 2007. The Agency has since updated this date by the latest, December 2009, and indicated that there has been activity on the amendments. The SBRRB is in concurrence and will follow-up with the Agency.

**Final Commentary**

To date, Chapter 16-73 Barbers has not been updated.

**7. Chapter 16-74 - Boxing****Agency's Justification**

The purpose of the rules is to implement licensing and regulation of the boxing industry under the department's regulatory authority. The rules are needed as they facilitate licensing and enforcement. They were established in 1981 and amended in 1991.

**2006 Recommendation**

The rules are arduous and long; the Agency has indicated that the rules are in the process of being amended and are expected to be finalized within a year. The Review Board is in concurrence with the Agency that the rules should be amended.

**Response from Agency**

The SBRRB expressed concerns that the rules are arduous and long. The Agency intends to amend the rules to: (1) remove outdated requirements that are no longer relevant; (2) update and conform the rules to the Federal Boxing Safety Act of 1996; and (3) implement statutory changes made by Act 135, Session Laws of Hawaii (SLH) 2004. The Agency's targeted date for transmitting the draft rules to the Department of the Attorney General for review is December 2007. The SBRRB is in concurrence with the Agency.

**Final Commentary**

To date, Chapter 16-74 Boxing has not been updated.

**8. Chapter 16-75 - Cemeteries and Funeral Trusts****Agency's Justification**

The purpose of the rules is to implement licensing and regulation of the cemetery and funeral trust industry under the department's regulatory authority. The rules are still needed as they facilitate licensing and enforcement. The rules were established in 1969 and amended in 1991.

### **2006 Recommendation**

This industry has had its share of publicity. Full analysis and update should be performed.

### **Response from Agency**

The SBRRB indicated that the industry has had its share of publicity and recommended that a full analysis and update be performed. The Agency plans to amend the rules to: (1) make them consistent with Act 188, SLH 2007; (2) incorporate current practices; and (3) update references to corporations to include limited liability companies. The Agency's targeted date for transmitting the draft rules to the Department of the Attorney General for review is August 2008.

The SBRRB is in concurrence with the Agency.

### **Final Commentary**

To date, Chapter 16-75 Cemeteries and Funeral Trusts has not been updated.

## **9. Chapter 16-83 – Hearing Aid Dealers and Fitters**

### **Agency's Justification**

The purpose of the rules is to implement licensing and regulation of hearing aid dealers and fitters under the department's regulatory authority. The rules are necessary as they facilitate licensing and enforcement. The rules were established in 1982 and amended in 1994.

### **2006 Recommendation**

Since the rules were last amended 12 years ago, there have been huge changes in the industry. Full analysis and update should be performed.

### **Response from Agency**

The SBRRB expressed concerns that the rules were last amended 12 years ago. Consequently, the SBRRB recommended that a full analysis and update be performed. The Agency intends to amend the rules to: (1) conform to the changes made by Act 88, SLH 1997 relating to establishing experience requirements for licensure and clarifying provisions for direct supervision of unlicensed individuals; (2) identify and clarify the examination and passing score required for licensure; (3) repeal references relating to re-examination; and (4) clarify the license renewal and license restoration requirements. The Agency's targeted date for transmitting the draft rules to the Department of the Attorney General for review was November 2008. An update by the Agency has revealed that the rule revisions are complete and are expected to be provided to the Review Board by June 2009. The SBRRB is in concurrence and will follow-up with the Agency.

### **Final Commentary**

To date, Chapter 16-83 Hearing Aid Dealers and Fitters has not been updated.

## **10. Chapter 16-86 – Motor Vehicle Dealers and Salesmen**

### **Agency's Justification**

The purpose of the rules is to implement licensing and regulation of motor vehicle dealers and salesmen under the department's regulatory authority; they are necessary as they facilitate licensing and enforcement. The rules were established in 1981 and amended in 1993.

### **2006 Recommendation**

The rules were last amended 13 years old. Full analysis and update should be performed.

### **Response from Agency**

Because the rules were last amended 13 years ago, the SBRRB recommended that a full analysis and update be performed. The Agency does not envision submitting proposed rules sooner than December 2008 due to pending issues for the Motor Vehicle Industry Licensing Board requiring further research and analysis.

However, matters that are likely to be included in the proposed rules are intended to clarify areas relating to "dealer" (issues such as wholesale, retail, more than two vehicle sales per year, etc.), "premise" (issues such as approved zoning), "salesperson" (the effects of disclosure relating to criminal conviction), "consumer consultant," and "bond".

An update from the Agency revealed that the rule revisions are actively being worked on every other month when the board meets; a draft is expected to be provided to the Review Board by December 2009. The SBRRB is in concurrence and will follow-up with the Agency.

### **Final Commentary**

To date, Chapter 16-86 Motor Vehicle Dealers and Salesmen has not been updated.

## **11. Chapter 16-87 – Motor Vehicle Repair Dealers and Mechanics**

### **Agency's Justification**

The purpose of the rules is to implement licensing and regulation of motor vehicle repair dealers and mechanics under the department's regulatory authority. The rules are necessary as they facilitate licensing and enforcement. The rules were established in 1976 and amended in 1989.

### **2006 Recommendation**

The rules were last amended 15 years ago. Full analysis and update should be performed.

### **Response from Agency**

Because the rules were last amended 15 years ago, the SBRRB recommended that a full analysis and update be performed. The Agency does not anticipate submitting proposed rules sooner than November 2008 due to pending issues for the Motor Vehicle Repair Industry Board requiring further research and analysis. However, matters that

are likely to be included in the proposed rules are intended to clarify areas relating to “mechanic” (license types, motorcycle examination and experience requirements, etc.), “repair dealer” (requirements for place of business), “written estimate required and waiver of estimate,” and “supervisory mechanic or head mechanic.”

An update from the Agency revealed that the rule revisions are expected to be provided to the SBRRB by December 2009.

The SBRRB is in concurrence and will follow-up with the Agency.

### **Final Commentary**

To date, Chapter 16-87, Motor Vehicle Repair Dealers and Mechanics has not been updated.

## **12. Chapter 16-101 – Veterinarians**

### **Agency’s Justification**

The purpose of the rules is to implement licensing and regulation of veterinarians under the department’s regulatory authority. The rules are necessary as they facilitate licensing and enforcement. The rules were established in 1967 and amended in 1986.

### **2006 Recommendation**

The rules were last amended 20 years ago. Full analysis and update should be performed.

### **Response from Agency**

Because the rules were last amended 20 years ago, the SBRRB recommended that a full analysis and update be performed. The Agency intends to align the rules with changes that have been made to licensing qualifications on the national level relating to the: (1) content and format of the national licensing examination; (2) nationally-recognized foreign graduate program; and (3) qualifications of graduates of veterinary medical programs at schools outside of the U.S. and those that are not approved by the American Veterinary Medical Association. The Agency’s targeted date for transmitting the draft rules to the Department of the Attorney General for review was December 2007.

An update from the Agency revealed that the rule revisions are expected to be provided to the SBRRB by December 2009. The SBRRB is in concurrence and will follow-up with the Agency

### **Final Commentary**

To date, Chapter 16-101 Veterinarians has not been updated.

## **13. Chapter 16-106 – Timesharing**

### **Agency’s Justification**

The purpose of the rules is to implement licensing and regulation of timesharing under the department’s regulatory authority. The rules are necessary as they facilitate licensing and enforcement. The rules were established in 1980 and amended in 1990.

### **2006 Recommendation**

The rules are necessary to protect the general; the rules were last amended 16 years ago. Full Analysis and update should be performed.

### **Response from Agency**

Because the rules were last amended 16 years ago, the SBRRB recommended that a full analysis and update be performed. The Agency plans to propose amendments that will: (1) simplify requirements (e.g. repeal certain renewal requirements such as submitting a title report for developers); (2) repeal unnecessary requirements (e.g. no longer require the filing of advertising and promotional materials); and (3) delete requirement that were repealed in the statute. The Agency's targeted date for transmitting the draft rules to the Department of the Attorney General for review was August 2008.

An update from the Agency revealed that the rules are actively being worked on with the industry and that rule revisions are expected to be provided to the SBRRB by June 2009. The SBRRB is in concurrence and will follow-up with the Agency

### **Final Commentary**

To date, Chapter 16-106 Timesharing has not been updated.

## **14. Chapter 16-117 – Activity Providers and Activity Desks**

### **Agency's Justification**

The rules implement licensing and regulate the activity providers and activity desks under the department's regulatory authority. They are necessary as they facilitate licensing and enforcement; the rules were established in 1995.

### **2006 Recommendation**

There is substantial small business impact largely due to fraud in the industry. Full analysis and update should be performed.

### **Response from Agency**

The SBRRB expressed concerns that there is substantial small business impact largely due to fraud in the industry. Consequently, the SBRRB recommended that a full analysis and update be performed. The Agency has reviewed the rules and determined that no substantive amendments are necessary at this time. The Agency has received an average of 18 complaints a year (there are approximately 325 registered activity desks) over the past four years. (Note: in 2007, of the current 54 complaints, six are against licensed activity desks and 48 are for unlicensed activity, mostly against one company).

The SBRRB is in concurrence with the Agency at this point in time. Although the Agency determined there to be no substantive changes in 2008, due to the noted substantial fraud in the industry, the Agency will, again, be approached by the SBRRB.

## **Final Commentary**

To date, Chapter 16-117 Activity Providers and Activity Desks has not been updated.

# **Public Utilities Commission**

## **15. Chapter 6-62 – Motor Carrier Rules and Classification of Property and Passenger Carriers**

### **Agency's Justification**

Pursuant to HRS Chapter 271, the rules are necessary to administer, execute, and enforce the intent of the motor carrier laws, particularly the policies set forth under HRs Section 271-1. The rules were established in 1992.

### **2006 Recommendation**

Since the rules have been established, there have been many changes to the industry. Full analysis and update should be performed.

### **Response from Agency**

In response to the SBRRB's request, the Commission solicited proposals for amendments to HAR Chapter 6-62, "Motor Carrier Rules and Classification of Property and Passenger Carriers," and HAR Chapter 6-63, "Motor Carrier Tariffs and Schedules" from motor carrier industry professional organizations. Hawaii Tourism Authority (HTA) proposed a change to 6-62-20, Motor Vehicle Marking.

Under HTA's recommendation, motor carriers that are subject to State and Federal motor carrier safety regulations would mark their motor vehicles pursuant to the federal rules on marking of commercial motor vehicles. Those that are not subject to the motor carrier safety regulations would have the option to follow the Commission's existing rules on motor vehicle marking. No other comments or recommendations were submitted for the Commission's consideration.

Upon review and analysis of HAR chapters 6-62 and 6-63 and the response from HTA, the Commission has decided that: (a) Suggested revisions to HAR Chapter 6-62 are not required at this time but will be considered in any subsequent rulemaking proceedings; and (b) HAR Chapter 6-63 does not currently require any revisions. Except for HTA, the organizations appear to be satisfied with the existing rules.

With respect to HTA's proposed modification, the recommendation is not substantively critical for effective motor carrier regulation at this time. The recommendation, as described above, does not call for a substantial change to the existing section except to apply the federal rules on marking of commercial motor vehicles to certain motor carriers.

The SBRRB is not in agreement with the Agencies' response and justification. Therefore, a full analysis of this rule with a draft to be provided to the SBRRB by December 2009 is requested. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

### **Final Commentary**

To date, Chapter 6-62 Motor Carrier Rules and Classification of Property and Passenger Carriers has not been updated.

## **16. Chapter 6-63 – Motor Carrier Tariffs and Schedules**

### **Agency's Justification**

As required by HRS Chapter 271, the rules are necessary to govern the form and content of tariffs and schedules of common and contract carriers by motor vehicles; specifically those tariffs and schedules described under HRS §§ 271-20, 271-21, and 271-22. The rules were established in 1994.

### **2006 Recommendation**

Rules are twelve years old. Full analysis and update should be performed.

### **Response from Agency**

In response to the SBRRB's request, the Commission solicited proposals for amendments to HAR Chapter 6-62, "Motor Carrier Rules and Classification of Property and Passenger Carriers" and HAR Chapter 6-63, "Motor Carrier Tariffs and Schedules," from motor carrier industry professional organizations. Hawaii Tourism Authority (HTA) proposed a change to 6-62-20, Motor Vehicle Marketing.

Under HTA's recommendation, motor carriers that are subject to State and Federal motor carrier safety regulations would mark their motor vehicles pursuant to the federal rules on marking of commercial motor vehicles. Those that are not subject to the motor carrier safety regulations would have the option to follow the Commission's existing rules on motor vehicle marking. No other comments or recommendations were submitted for the Commission's consideration.

Upon review and analysis of HAR chapters 6-62 and 6-63 and the response from HTA, the Commission has decided that: (a) Suggested revisions to HAR Chapter 6-62 are not required at this time but will be considered in any subsequent rulemaking proceedings; and (b) HAR Chapter 6-63 does not currently require any revisions. Except for HTA, the organizations appear to be satisfied with the existing rules.

With respect to HTA's proposed modification, the recommendation is not substantively critical for effective motor carrier regulation at this time. The recommendation, as described above, does not call for a substantial change to the existing section except to apply the federal rules on marking of commercial motor vehicles to certain motor carriers.

The SBRRB is not in agreement with the Agencies' response and justification. Therefore, a full analysis of this rule with a draft to be provided to the SBRRB by December 2009 is requested. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

### **Final Commentary**

To date, Chapter 6-63 Motor Carrier Tariffs and Schedules has not been updated.

## **17. Chapter 6-65 – Water Carriers**

### **Agency's Justification**

As required by HRS Chapter 271G, the rules are necessary to govern the following: (1) Form and content of tariffs of water carriers of property and passengers, and the information and data to be submitted for the establishment of new or revised rates, fares, or charge; and (2) Filing of financial and statistical information by water carriers of property and passengers. It appears the rules have not been amended since first promulgated in 1976.

### **2006 Recommendation**

Rules are over 30 years old; full analysis and update should be performed.

### **Response from Agency to Review Board's Recommendation**

The Commission has determined that HAR Chapter 6-65, "Water Carriers" do not require revisions at this time, as they were last revised in 1999. Thus, the assumption noted as a concern that the "rules are over 30 years old" is an incorrect assumption. The SBRRB is not in agreement with the Agencies' response and justification. Therefore, a full analysis of this rule with a draft to be provided to the SBRRB by December 2009 is requested. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

### **Final Commentary**

To date, Chapter 6-65 Water Carriers has not been updated.

## **Department of Health**

### Medical

## **18. Chapter 11-89 – Services for Developmental Disabilities Domiciliary Homes**

### **Agency's Justification**

The rules establish minimum requirements for the certification and licensure of developmental disabilities domiciliary homes for adult individuals with developmental disabilities. §333 F-2(c) (4), HRS, requires that developmental disabilities domiciliary establish a continuum of residential alternatives in the community which includes the provision of domiciliary homes for adult individuals with developmental disabilities. These rules set standards and provides for the regulation of such homes through certification and licensure. This is needed to ensure the health and safety of this vulnerable population. The rules were established in 1992.

### **2006 Recommendation**

Standards have changed and enforcement of the rules is different since the rules were established in 1992. Therefore, some provisions should be deleted. Re-analysis and

update of rules should be performed. *Note:* Agency's website indicates rules are pending amendment and compilation.

#### **Response from Agency**

On March 20, 2008, correspondence from Health Director Fukino, M.D., indicated that Office of Health Care Assurance will continue to keep in mind the SBRRB's recommendations as efforts continue regarding administrative rule analysis and revision.

As the population regarding developmental disabilities domiciliary homes is growing and identified in the community, it is recommended that the Agency address the needs of the population and bring these rules and regulations regarding services to this population current. The SBRRB strongly recommends that these rules are amended with a first draft delivered to this Board by December 2009. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

#### **Final Commentary**

To date, Chapter 11-89 Services for Developmental Disabilities Domiciliary Homes has not been updated.

### **19. Chapter 11-95 – Freestanding Surgical Outpatient Facility**

#### **Agency's Justification**

The rules establish minimum requirements for the protection of the health, welfare and safety of patients, personnel, and the public in freestanding surgical outpatient facilities; in all instances where other agencies of government have similar regulations, the stricter rules shall apply.

These rules contain state licensure requirements. Such licensure ensures that the federal and medical standards for health facilities are being met. Thus, licensure is a pre-requisite for federal reimbursement. Without licensure, the health and safety of patients, employees and the public will be compromised and federal reimbursement will not be realized. The rules were established in 1986.

#### **2006 Recommendation**

Better defined guidelines and standards are needed, especially with safety standards. The rules are too vague and are 20 years old. Re-analysis and update of rules should be performed. *Note:* Agency's website indicates rules are pending amendment and compilation.

#### **Response from Agency**

On March 20, 2008, correspondence from Health Director Fukino, M.D., indicated that Office of Health Care Assurance will continue to keep in mind the Small Business Regulatory Review Board's recommendations as efforts continue regarding administrative rule analysis and revision.

The SBRRB will monitor these rules for updates from the Agency.

### **Updated/Current Commentary**

To date, Chapter 11-95 Freestanding Surgical Outpatient Facility has not been updated.

## **20. Chapter 11-96 – Freestanding Adult Day Health Centers**

### **Agency's Justification**

The rules establish minimum requirements for the protection of health, welfare, and safety of clients and the public in adult day care centers. These rules contain state licensure requirements. Licensures of these settings are critical to ensure provision of care is within current federal and medical standards to ensure the health and safety of patients, employees and the public. The rules were established in 1991.

### **2006 Recommendation**

The Agency has indicated that the rules are in need of revisions; rules are 15 years old. The SBRRB is in agreement with the Agency that these rules should be reviewed and revised.

### **Response from Agency**

On March 20, 2008, correspondence from Health Director Fukino, M.D., indicated that Office of Health Care Assurance will continue to keep in mind the Small Business Regulatory Review Board's recommendations as efforts continue regarding administrative rule analysis and revision.

These are essential rules and must be clear and separate as well as distinguished from other adult programs because the centers are freestanding. The SBRRB concurs.

### **Final Commentary**

To date, Chapter 11-96 Freestanding Adult Day Health Centers has not been updated.

## **21. Chapter 11-97 – Home Health Agencies**

### **Agency's Justification**

These rules outline licensing requirements for Home Health Agencies (HHA) and defines penalty for those who violate this chapter. HHA has the option of being Medicare/Medicaid certified in order to receive reimbursement, and there is an increasing interest for HHA's that receive private funding, to be licensed, in order to be reimbursed by private insurance and/or long term care insurance. Such licensing not only insures the health and safety of patients, employees and the public, but also looks toward reducing the abuse and exploitation of the elderly. The rules were established in 1982.

### **2006 Recommendation**

Agency indicated the rules are in need of revisions; rules are 25 years old and exhibit inconsistent standards – standards and accreditation need to be in place. The SBRRB is in agreement with the Agency that these rules should be reviewed and revised.

**Response from Agency**

On March 20, 2008, correspondence from Health Director Fukino, M.D., indicated that Office of Health Care Assurance will continue to keep in mind the Small Business Regulatory Review Board's recommendations as efforts continue regarding administrative rule analysis and revision.

Currently, procedures are being enforced that are not reflected in the rules. If enforcement is sought, those procedures should be incorporated in the rules. The SBRRB strongly recommends that these rules be amended with a first draft delivered to the SBRRB by December 2009. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

**Final Commentary**

To date, Chapter 11-97 Home Health Agencies has not been updated.

**22. Chapter 11-99 – Intermediate Care Facilities for the Mentally Retarded****Agency's Justification**

The rules establish minimum requirements for the protection of the health, welfare, and safety of patients, personnel, and the public in small intermediate care facilities for the mentally retarded. In all instances where other agencies of government have similar regulations, the stricter rules shall apply.

The Intermediate Care Facility/Mentally Retarded population is the most vulnerable of the disabled population. These regulations provide for assurance of their safety and welfare. The state licensure regulations are mandatory to provide at least minimal assurance for safety and oversight of such individuals who otherwise are not able to care for themselves. The rules were established in 1985.

**2006 Recommendation**

Agency has indicated that the rules are in need of revisions; rules are over 20 years old. The SBRRB is in agreement with Agency that these rules should be reviewed and revised.

**Response from Agency**

On March 20, 2008, correspondence from Health Director Fukino, M.D., indicated that Office of Health Care Assurance will continue to keep in mind the SBRRB's recommendations as efforts continue regarding administrative rule analysis and revision.

It is very important that these rules be updated because there is a greater population within the community so the resources are limited to them. The SBRRB strongly recommends that these rules be reviewed and amended with a first draft delivered to the SBRRB by December 2009. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

## **Final Commentary**

To date, Chapter 11-99 Intermediate Care Facilities for the Mentally Retarded Agency's Justification has not been updated.

## Environmental

### Noise, Radiation and Indoor Air Quality Branch

#### **23. Chapter 11-39 – Air Conditioning & Ventilation System**

##### **Agency's Justification**

The rules are required for core public health. The rules implement §321-11 (13), HRS for the public health and safety respecting any place or building where noisome, noxious trades and manufacturing are carried on, or intended to be carried on by seeking to assure adequate and healthful design, construction, installation and operation of comfort air conditioning and ventilating systems; and provide minimum ventilating requirements.

Public health and safety are adversely impacted in the absence of regulating mechanical ventilation systems providing outside air, supply air, return air, and exhaust air. Inappropriate and inadequate ventilation can lead to carbon monoxide poisoning in parking garages, indoor air problems, and other detrimental health effects. The rules were established in 1983.

##### **2006 Recommendation**

The rules are in need of updating. Re-analysis and update of rules should be performed. *Note:* Agency's website indicates rules are pending repeal and replacement by chapter 48.

##### **Response from Agency**

HAR Chapter 11-48, the replacement for HAR Chapter 11-39, has been completed and reviewed by the program's assigned deputy attorney general. An informational meeting on the proposed rule was held on February 8, 2008. Over fifty individuals representing mechanical engineering, architecture, state and county government, property managers, were in attendance. The agency is in the process of implementing a small business review committee for the new rule and expected to complete the small business impact statement by the end of October 2008.

##### **Final Commentary**

As of the printing of this report, DOH's website states that under Chapter 11-48, Noise, Radiation and Indoor Air Quality Branch, "new rules in process/pending repeal of chapter 39."

#### **24. Chapter 11-44 – Radiologic Technology Board and Radiologic Technology Rules**

##### **Agency's Justification**

The purpose of the rules is required for public health and safety. The rules establish minimum state standards of education, training and experience for persons who apply x-rays to human beings for diagnostic purposes or ionizing radiation to human beings for

therapeutic purposes, or radiopharmaceuticals to human beings for diagnostic and therapeutic purposes.

Unlicensed and untrained personnel can cause unnecessary exposure of ionizing radiation to medical providers, patients, and the general public. Ionizing radiation is a known carcinogen. This rule is necessary to ensure only properly trained and qualified individuals practice radiologic technology. The rules were established in 1989.

#### **2006 Recommendation**

These rules are in need of updating. Re-analysis and update of rules should be performed.

#### **Response from Agency**

A small business committee was created to review proposed revisions for this rule. The SBRRB reviewed these amended rules in June 2008 and recommended that they proceed to public hearing.

#### **Final Commentary**

To date, Chapter 11-44 Radiologic Technology Board and Radiologic Technology Rules has not been updated.

### **25. Chapter 11-45 – “Radiation Control”**

#### **Agency’s Justification**

The rules are required for core public health. The rules set minimum standards for all persons and facilities that receive, possess, use, transfer, own or acquire any source of radiation, all persons who install and service sources of radiation, and all persons who provide radiation services.

Controlling the use of ionizing radiation from x-ray systems and non-NRC radioactive materials is essential in minimizing unnecessary exposure to medical providers, patients, and the general public. Ionizing radiation is a known carcinogen. Following the stochastic theory, any amount of ionizing radiation exposure may cause long term effects. The rules were established in 1999.

#### **2006 Recommendation**

The rules are in need of updating. Re-analysis and update of rules should be performed.

#### **Response from Agency**

This rule is currently being revised to reflect current national standards and the Suggested State Regulations for the Control of Radiation developed by the Conference of Radiation Control Program Directors, Inc. Due to the volume of technical changes, a draft revision is not expected before January 2009.

The SBRRB is in concurrence of the proposed modifications to the rules and will follow-up with the agency.

### **Final Commentary**

To date, Chapter 11-45 Radiation Control has not been updated.

## **Department of Transportation**

### Harbors Division

#### **26. Chapter 19-43 - Motor Vehicles**

##### **Agency's Justification**

These rules govern the applicability of statutes, traffic codes and ordinances; jurisdiction of harbormaster over vehicles; licensing, safety inspection and insurance; operation of vehicles; traffic controls; parking fees and charges; removal of vehicles; ground transportation; admittance into cargo storage areas; speed limits; emergency type vehicles; vehicles classified as cargo; parking stalls; reserved parking stalls; tow zone or tow-away zone; authority to remove illegally parked cars; parking prohibitions; curb markings; traffic lane markings; parking zones; restricted or special parking; parking meter zone; designation of parking meter stalls; placement of parking meters; method of parking; meter operating hours; operation of parking meters; reserved parking zone; parking time limits; and parking by permit; violations. The rules were established in 1974.

The rules authorize the collection of parking fees and charges, towing and impounding of vehicles, and permits for operating vehicles, which could result in significant economic impacts to small businesses operating in commercial harbors.

##### **2006 Recommendation**

The rules are 32 years old. Rules should be reviewed and updated.

##### **Response from Agency**

This rule authorizes the collection of parking fees and charges, towing and impounding of vehicles, and permits for operating vehicles, which could result in significant economic impacts to small businesses operating in commercial harbors.

These rules also governing applicability of statutes, traffic codes and ordinances; jurisdiction of harbormaster over vehicles; licensing, safety inspection and inspection; operation of vehicles; traffic controls; parking fees and charges; removal of vehicles; ground transportation; admittance into cargo storage areas; speed limits; emergency type vehicles; vehicles classified as cargo; parking stalls; reserved parking stalls; tow zone or tow-away zone; authority to remove illegally parked cars; parking prohibitions; curb markings; traffic lane markings; parking zones; restricted or special parking; parking meter zone; designation of parking meter stalls; placement of parking meters; method of

parking; meter operating hours; operation of parking meters; reserved parking zone; parking time limits; parking by permit; and violations.

A meeting held on November 30, 2007 with Director Barry Fukunaga, revealed that these rules will be updated regarding implications due to security in 1 – 2 years. The SBRRB is in concurrence, and will follow-up with the Agency for the status of the amendments.

#### **Final Commentary**

To date, Chapter 19-43 Motor Vehicles has not been updated.

#### Highways Division

#### **27. Chapter 19-105 - Accommodation and Installation of Utilities on State Highways and Federal Aid County Highways**

##### **Agency's Justification**

The purpose of the rules is to necessitate compliance with state and federal requirements by issuing a permit which is a costly item. The rules were established in 1981. The rules impact small business and are federally mandated by 23 CFR Chapter 1, Part 645.

##### **2006 Recommendation**

The rules are 25 years old. Rules should be reviewed and updated.

##### **Response from Agency**

This rule will have an impact on small business. It is necessary to be in compliance with state and federal regulations; permit is issued to do work which is a costly item. This rule is to be amended; no target date has been set. The SBRRB is in concurrence, and will follow-up with the Agency for the status of the amendments.

##### **Final Commentary**

To date, Chapter 19-105 Accommodation and Installation of Utilities on State Highways and Federal Aid County Highways has not been updated.

# COUNTY DEPARTMENTS – JUSTIFICATION OF RULES AND RULES EXPECTED TO BE AMENDED OR REPEALED BASED ON ANY NEW, AMENDED OR REPEALED STATUTE

## Hawaii County

The following is a list of rules that affect small business that were approved during the period of July 1, 2015 through June 30, 2017, and include reasons justifying the rules' continued implementation:

### Office of the Prosecuting Attorney

**1. Hawaii County Charter Article IX, Chapter 28 - HRS 28-1**

Justification – The Office of the Prosecuting Attorney is the legal agency responsible for prosecuting all violations of State and County laws, ordinances, rules and/or regulations on behalf of the Big Island Community.

The purpose of this chapter is to seek accountability for those who violate the law in our county, provide assistance to those impacted by criminal conduct, and work with the community to solve crime related problems.

### Department of Liquor Control

**2. Hawaii County Charter Chapter 13-7 / HRS 281 Intoxicating Liquor**

Justification – Rules and regulations of the Liquor Commission of the Department of Liquor Control of the County of Hawaii, State of Hawaii. Rules and Regulations of the Liquor Control Adjudication Board of the Department of Liquor Control of the County of Hawaii.

Post prohibition government regulation for the responsible and safe manufacture, distribution and sale of intoxicating liquor.

### Parks & Recreation

**3. Rule 16 – Rules Relating to Mauna Kea Recreation Area – Section 5**

Justification – Regulation of stargazing activity.

### Police Department

**4. Article 34, Section 2-171 through Section 2-175.1**

Justification – Fees and charges for special duty services of the Hawaii County Police Department.

### Environmental Management

**5. Hawaii County Code Relating to Refuse, Chapter 20**

Justification – A majority of the Code section is applicable due to public health and safety.

**6. Hawaii County Code Relating to Sewers, Chapter 21**

Justification – A majority of the Code section is applicable due to public health and safety.

## Research & Development

### 7. Hawaii County Code, Article 8, Section 2.37

Justification – Research & Development does not currently have a Sustainability Committee.

## Department of Water Supply (DWS)

### 8. Charter 8-2, HRS Chapter 54-51, 54-63

Justification – Permits Boards to establish rates and manage operation of waterworks. Centralizes control of limited resource for public health and safety.

### 9. Charter 8-2, HRS Chapter 54

Justification – Rule 3-1(2) pertaining to establishment of capital assessment fees. Obligation to make public waterworks self-supporting.

### 10. Charter 8-2, HRS Chapter 54

Justification – Rule 3-2(2) pertaining to conservation measures. DWS can shut water off if wasteful use occurs. Protection of limited resource for public health and safety.

### 11. Charter 8-2, HRS Chapter 54

Justification – Rule 3-3; 3-21. Elevation agreement and backflow prevention. Ensures distribution of water to all requisite consumers, health and safety compliance.

### 12. Charter 8-2, HRS Chapter 54

Justification – Rule 3-4. \$150 deposit requirement for credit purposes. Obligation to make public waterworks self-supporting.

Justification – Rule 3-5. Charge for service lateral at cost determined by board, connection to shut off valve to be borne by applicant. Obligation to make public waterworks self-supporting.

Justification – Rule 3-5. DWS to shut off in emergency at expense of customer. Prevent loss of resources, i.e., can't get in touch with consumer who has leak.

Justification – Rule 3-6. Facilities charge, when applicable. Defray costs of capital expenditures for public water system and debt service payments on bonds.

Justification – Rule 3-8. Payment of Bills – Now 21 days to pay bill, if not within 30 days and possible discontinuance. Late penalty at 1% per month. Obligation to make public waterworks self-supporting and discourage late payments.

Justification – Rule 3-11. Water service may be discontinued for nonpayment, noncompliance with rules, and wasteful use, among other things. Preservation and conservation of limited public resource.

Justification – Rule 3-12. Restoration of water service. Customer responsible for reinstallation charges, labor, etc. Obligation to make public waterworks self-supporting and sufficient for maintenance and operation.

Justification – Rule 3-14. Customer responsible for damage to DWS' property, meters. Dissuade public from damaging DWS property.

Justification – Rule 3-23. Fees for harbor facilities providing water service. Obligation to make public waterworks self-supporting and sufficient for maintenance and operation.

Justification – Rule 3-29. Agricultural use rates, establishment of an application fee. Support farming practices, standards for lower ag rates.

Justification – Rule 4-1. Capital assessment fee for required improvements in proposed development. Obligation to make public waterworks self-supporting and sufficient for maintenance and operation.

Justification – Rule 4-2 and 4-3. Developer to bear cost of onsite and offsite water system requirements. Obligation to make public waterworks self-supporting and sufficient for maintenance and operation.

Justification – Rule 4-5. Private water system inspection costs – DWS to review, developer to pay for. Public health and safety compliance, obligation to make system self-supporting.

Justification – Rule 4-6. Facilities charge and capital assessment fees for developers. Public health and safety compliance, obligation to make system self-supporting.

Justification – Rule 4-7. Developers to pay for connection to storage tanks and installation. Public health and safety compliance, obligation to make system self-supporting.

Justification – Rule 4-12. Requirement to have developer bond water system improvements. Public health and safety compliance, obligation to make system self-supporting.

Justification – Rule 4-13. Establishes water commitment fee at \$150 per lot. Public health and safety compliance, obligation to make system self-supporting.

## **Finance Department**

### **13. HRS 103D - Rule 4 – Purpose of Materials, Supplies, Equipment and Services**

Justification – Required for compliance with HRS 103D. Promote fair procurement practices.

### **14. HRS 103D - Rule 5 – Value Engineering Incentive**

Justification – Required for compliance with HRS 103D. Provide savings to the County.

### **15. HRS 286, Part VI – Rule 11 – Motor Vehicle Driver Licensing**

Justification – Required for compliance with HRS 286. Provide licensing procedures.

### **16. HRS 287, Rule 12 – Motor Vehicle Responsibility Act**

Justification – Required for compliance with HRS 287. Insure drivers have financial responsibility.

### **17. HRS 286-51, Rule 13 – Motor Vehicle Registrations**

Justification – Required for compliance with HRS 286-51. Provide vehicle registration schedule.

18. **HRS 286 and 249 - Rule 14 – License Plates**  
Justification – Required for compliance with HRS 286-53 and 249. Provide issuance procedures.
19. **HRS 249-9.1 and 249-9.2 – Rule 15 & 16 – Special License Plates**  
Justification – Required for compliance with HRS 249. Provide issuance procedures.
20. **Hawaii County Code, Chapter 18 – Rule 17 - Taxicabs**  
Justification – Required for compliance with Hawaii County Code 18. Public safety.
21. **HRS 286-53.5, 53.6 – Rule 18 – Registration of Fleet Vehicles**  
Justification – Required for compliance with HRS 286-53.5, 53.6. Provide issuance procedures.
22. **HRS 289-7 - Rule 19 – Licenses for Businesses Engaged in Purchasing or Selling Used Vehicle Parts, Vehicle Salvage, etc.**  
Justification – Provide requirements and procedures.
23. **Hawaii County Code 19-60 - Rule 30 – Real Property Tax Dedicated Agricultural Use**  
Justification – Required for compliance with HCC 19-60. Provide requirements and procedures.
24. **Hawaii County Code 19-57 – Rule 34 – Real Property Tax Non-Dedicated Agricultural Use**  
Justification – Required for compliance with HCC19-57. Provide requirements and procedures.
25. **Hawaii County Code, Chapter 19 – Rule 35 – Real Property Tax Exemption for Certain Improvements**  
Justification – Required for compliance with HCC Chapter 19. Provide requirements and procedures.
26. **Hawaii County Code, Chapter 19 – Rule 38 – Real Property Tax Designation as Wasteland Development Property**  
Justification – Required for compliance with HCC Chapter 19. Provide requirements and procedures.

### **Hawaii Fire Department**

27. **Hawaii County Code – Chapter 26 – Article 1, Hawaii County Fire Code**  
Justification – Government regulation of the sale, distribution, standby, maintenance, permitting, access, notification requirements of structures, private and commercial.
28. **Hawaii County Code – Chapter 26 – Article 2, Fireworks Code**  
Justification – Government regulation of the sale, distribution, storage, licensure, and prohibitions attributed to fireworks.
29. **Hawaii County Code – Chapter 132 – Fire Protection**  
Justification – Government regulation regarding powers of the Fire Chief, investigation rights, entry, duties of owners, penalties, submission of building plans.

### **30. Hawaii County Code – 132D – Fireworks**

Justification – Government regulation regarding the permission and prohibitions of fireworks use, sale, distribution, permitting, storage, display fireworks, pyrotechnics, and liabilities.

The following outlines rules to be amended or repealed, based upon any new, amended or repealed statute:

#### **Environmental Management**

##### **31. Hawaii County Code Relating to Refuse, Chapter 20**

Justification – Section 20-46, Disposal Fees – Article 6, Polystyrene.

##### **32. Hawaii County Code Relating to Sewers, Chapter 21**

Justification – Chapter 21, Article 4 – Anticipate amending Article 4, Section 21-36.1.

#### **Research & Development**

##### **33. Hawaii County Code, Article 8 Section 2.37**

Justification – None.

#### **Department of Water Supply**

##### **34. Chapter 8-2, Rule 3-8, HRS 54-51**

Justification – Reduces bill payable time from 30 to 21 days. Supports obligation to establish rates and fees for furnishing of water service necessary to make water system self-supporting.

##### **35. Chapter 8-2, Rule 3-10, HRS 54-51**

Justification – Caps leak adjustment to half the average above prior three bills (previously 6) and limits leak adjustment to one every 3 years. Sets adjustment to less than 50% of bill if due to 3P criminal act. Supports obligation to establish rates and fees for furnishing of water service necessary to make water system self-supporting.

##### **36. Chapter 8-2, Rule 3-11(2)(e)**

Justification – DWS can shut off water if service detrimental to others or exceeds usage allotted to consumer. Previously required both. Policy to continue to protect valuable resource for public health and safety reasons.

##### **37. Chapter 8-2, Rule 3-21(6)**

Justification – For temporary meter installations, shifts burden from DWS to consumer to install reduced pressure principle backflow preventer. Public health and safety reasons, supports obligation to make water system self-supporting.

## **City and County of Honolulu**

The following is a list of rules that affect small business that were approved during the period of July 1, 2015 through June 30, 2017, and include reasons justifying the rules' continued implementation:

#### **Board of Water Supply (BWS)**

- 1. BWS Rules and Regulations Chapter I – V; City Charter (2017) Article VII Section 7-101-119; Chapter 54, HRS**

Justification – Permits the Board to manage, control, and operate the waterworks and all property thereof, for supplying water to the public; and shall collect, receive, expend, and account for all sums of money derived from the operation thereof and all other moneys provided for the use or benefit of the waterworks and all property used for or held in connection therewith.

Centralizes control of the BWS water resource for public health and safety, reliability, affordability and sustainability. Provides the BWS full and complete authority to manage, control and operate the water systems/properties used or useful about such systems.

**2. BWS Rules and Regulations Charter 7-105-109; HRS CH. 54**

Justification – Under the general requirements of this section of the rules, extensions from and connections to the public water system shall be approved by the BWS where pressure conditions permit; provided that the water meters are within the service limit except as provided for in Sec. 2-217, Elevation Agreement of the rules. The developer will be required to pay for and install, in accordance with these rules and regulations and the standards of the BWS, adequate water system facilities for the development.

Funds growth-related capacity expansions; Equitably reimburses existing rate payers for their investment in oversizing of infrastructure to accommodate future customers.

**3. BWS Rules; Charter 7-105-109; HRS CH. 54**

Justification – A WSFC shall be levied against all new developments requiring water supplies from the BWS system or additional water supplies from the existing services. The WSFC will not be levied in developments where the developer has installed as hit cost a complete water system.

Obligation to make public waterworks self-supporting.

**4. Rules; Charter 7; HRS CH. 54**

Justification – When the developer is required to install a larger size main to provide for the existing or future services beyond the boundaries of a development. The eligible portion of cost reimbursement shall be left to the discretion of the BWS.

Funds growth-related capacity expansions; Equitably reimburses existing rate payers for their investment in oversizing of infrastructure to accommodate future customers.

**5. BWS Rules; Charter 7-109; HRS CH. 54**

Justification – Permits the Board to fix and adjust reasonable rates and charges for the furnishing of water and for water services so that revenues derived therefrom shall be sufficient to make the BWS self-supporting. Rules Chapter 11-§2-201. Application for Water Service. The BWS may require a deposit from any consumer or prospective consumer to guarantee payment of bills for service or other obligations to the BWS. There may be applicable waivers to be determined by the BWS.

Obligation to make public waterworks self-supporting. Such revenues shall be sufficient to meet all necessary expenditures, including expenditures for a) operating and maintenance; b) repairs, replacements, additions and extensions; c) accident reserve, pension charges and compensation insurance; d) payment of principal and interest on all bonds, including reserves therefor, issued for the acquisition or construction of

waterworks and extensions thereto, and e) reserve funds under Section 7-112 of the charter.

**6. Rules; Charter 7; HRS CH. 54**

Justification – Installation charge(s) (lateral and meter) to the applicant shall be based on the cost of Installation as established by the BWS. In addition, a water system facilities charge shall be levied against all new water service connections to the system or connections requiring additional water supplies from existing water services.

Defray costs of operating and maintenance, capital costs for public water system and debt service payments on bonds.

**7. Rules; Charter 7; HRS CH. 54**

Justification – All water supplied by the BWS will be measured by means of suitable meters registering in gallons. If a meter cannot be read, an estimated bill will be rendered, said bill to be calculated whenever possible on prior consumption.

Obligation to make public waterworks self-supporting.

**8. Rules; Charter 7; HRS CH. 54**

Justification – All bills shall be payable within 30 days after the date of the bill; after 30 days the bill shall be deemed delinquent. Water service may be discontinued five business days after written notice is given to customer. A late payment charge at one percent (1%) for each month or fraction thereof against the delinquent balance payable to the BWS.

Obligation to make public waterworks self-supporting and discourage late payments.

**9. Rules; Charter 7; HRS CH. 54**

Justification – Water service may be discontinued for nonpayment, noncompliance with rules and regulations, unauthorized use of water, wasteful use of water, among other things. Prior to the proposed shut-off, the BWS shall give the consumer at least five (5) business days' notice.

Obligation to make public waterworks self-supporting.

**10. Rules; Charter 7; HRS CH. 54**

Justification – Before water is restored, all outstanding accounts must be paid by the consumer. A reinstatement charge based on the cost of turning on the water service must be paid by the consumer; said charge shall be as established by the BWS.

Obligation to make public waterworks self-supporting.

**11. Rules; Charter 7; HRS CH. 54**

Justification – If a meter fails to register due to any cause except nonuse of water, an average bill may be rendered and subject to equitable adjustment, considering all factors before, during, and after the period of said bill.

Obligation to make public waterworks self-supporting.

**12. Rules; Charter 7; HRS CH. 54**

Justification – Any consumer who questions the accuracy of the meter serving his premises, may request a test of the meter. If the meter is found to register more than 2% fast under conditions of normal operation, the BWS will refund to the consumer the overcharge based on past consumption under the conditions stated in the rules. Underground leak adjustments may be granted.

Caps leak adjustment to one-half (1/2) of the excess consumption over a normal bill and will be granted only when repairs are made within two weeks after the consumer has been notified of the underground leak. For good cause shown to the BWS, an extension of time to make repairs may be granted.

**13. Rules Chapter II - III; Charter 7-105; HRS CH. 54**

Justification – BWS can shut water off if wasteful use of water exists on any premises. The BWS may restrict the use of water by any means or method of control whenever special conservation measures are, in the opinion of the BWS, advisable.

Protection of limited resource for public health and safety. To achieve water conservation and water resource sustainability.

**14. BWS Rules Chapter II - III; Charter 7-105, 109; HRS CH. 54**

Justification – When the pressure of the BWS' supply is higher than that for which individual fixtures are designed, the consumer shall protect such fixtures by installing and maintaining pressure reducing and relief valves. The BWS shall not be liable for damage due to pressure conditions caused by or arising out of the failure or defective condition of such pressure regulators and relief valves or for damage that may occur through the installation, maintenance, or use of such equipment.

Protection of limited resource for public health and safety. To achieve water conservation and water resource sustainability.

**15. Rules; Charter 7; HRS CH. 54**

Justification – The consumer shall be liable for any damage to a meter or other equipment or property owned by the BWS caused by the consumer or his tenants, agents, employees, contractors, licensees or permittees, and the BWS shall be promptly reimbursed by the consumer for any such damage upon presentation of a bill therefor.

Discourage or disusage consumer or public from damaging BWS property.

**16. Rules; Charter 7-105; HRS CH. 54**

Justification – To comply with federal and state rules and regulations, the BWS prohibits certain connections and installations as described in this section of the rules. Failure on the part of the consumer to comply with the BWS requirements relative to cross-connections and backflow prevention will be sufficient reason for discontinuing water services.

Ensure distribution of water to all requisite consumers; health and safety compliance; and be compliant with the applicable statutes, rules and regulations of the United States Environmental Protection Agency (EPA).

**17. Rules; Charter 7-105; HRS CH. 54**

Justification – Fire service will be furnished as a public service only where adequate provision is made to prevent diversion of water through such service for other purposes. The fire connection shall be paid for by the consumer. Any water lost through leakage or used in violation of the conditions shall be paid by the consumer at the regular schedule of water rates and charges.

Protection of limited resource for public health and safety. To achieve water conservation and water resource sustainability.

**18. Rules; Charter 7-105; HRS CH. 54**

Justification – Any use of a fire hydrant for purposes other than fire protection is prohibited. Damage to hydrant or property shall be paid for by the person or legal entity responsible for the damage. The BWS must give prior approval for a change in location of a hydrant and such cost of all labor, material, equipment, etc. are paid by the person requesting the change. The consumer shall, at his own expense, test periodically and maintain in good and safe working condition all private hydrants under his control and not under the jurisdiction of the BWS.

Public health and safety compliance. Prevent loss of resources.

**19. Rules; Charter 7-105; HRS CH. 54**

Justification – Under the provisions of this section of the rules, the consumer shall permit the BWS to inspect the installation of the water system for compliance with BWS requirements and shall enter into an agreement with the BWS agreeing to accept such water service as the system is able to provide and to hold the BWS harmless for all claims due to any inadequacy of water supply.

Public health and safety compliance, obligation to make system self-supporting.

**20. Rules; Charter 7; HRS CH. 54**

Justification – BWS to shut off water service for emergencies at expense to the customer.

Public health and safety compliance.

**21. Rules; Charter 7-105; HRS CH. 54**

Justification – Special rates and charges may apply during a critical low groundwater condition period.

Prevent loss of resources.

## County of Maui

The following is a list of rules that affect small business that were approved during the period of July 1, 2015 through June 30, 2017, and include reasons justifying the rules' continued implementation:

### Department of Public Works

- 1. Maui County Code 18.20.130A; Rules for the Design of Storm Drainage Facilities in the County of Maui, Title MC-15, Subtitle 01, Chapter 4**  
Justification – These rules govern the design of storm drainage facilities in the County of Maui. No effect on small businesses.
- 2. Maui County Code 16.26B.3900, and 18.20.135; Rules for the Design of Storm Water Treatment Best Management Practices, Title MC-15, Subtitle 01, Chapter 111**  
Justification – These rules establish controls on the timing and rate of discharge of storm water runoff to reduce storm water runoff pollution from private property over one acre in size. No effect on small businesses.
- 3. Maui County Code 18.20.060; Street Lighting Standards, Title MC-15, Subtitle 02, Chapter 201**  
Justification – These rules provide standards for outdoor lighting to provide a level of safety for the vehicular and pedestrian traffic while not excessively interfering with nighttime viewing nor trespass onto private property. No effect on small business.
- 4. Maui County Code 18.32.030; Rules for Flexible Design Standards, Title MC-15, Subtitle 01, Chapter 107**  
Justification – These rules establish a process for approving flexible design standards in certain developments when deviation from normal subdivision standards is appropriate to encourage and implement smart growth principles. No effect on small business.
- 5. Maui County Code 16.26B.105.3.3; Rules Pertaining to Plan Review Waiver Building Permits, Title MC-15, Subtitle 01, Chapter 101**  
Justification – These rules set forth the procedures for obtaining plan review waiver building permits. These rules have a positive effect on small business as these rules are often used for tenant Improvements so businesses can get started faster.

## County of Kauai

As of the printing of this report, the County of Kauai has not submitted information in regards to the SBRRB's request.



***Small Business Regulatory Review Board***

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## **V. Administrative Matters**

B. Update on the Board's Upcoming Advocacy Activities and Programs in Accordance with the Board's Powers under Section 201M-5, HRS

1. Discussion of Potential Changes to the Board's Monthly Board Meetings



# SMALL BUSINESS REGULATORY REVIEW BOARD

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Director, DBEDT

**Members**  
Anthony Borge  
Chair  
Oahu

Robert Cundiff  
Vice Chair  
Oahu

Garth Yamanaka  
2<sup>nd</sup> Vice Chair  
Hawaii

Harris Nakamoto  
Oahu

Nancy Atmospera-Walch  
Oahu

Mary Albitz  
Maui

William Lydgate  
Kauai

Director, DBEDT  
Voting Ex Officio

## MEMORANDUM

TO: SBRRB Members  
FROM: Dori Palcovich *Dori Palcovich*  
DATE: October 8, 2018  
SUBJECT: **2019 SBRRB Meeting Schedule – Room 436 at 10:00 a.m.**

Below are the 2019 SBRRB meeting dates. All meetings are scheduled for the 3rd Wednesday of the month except **January** and **December 2019**.

### Date

- Jan. 23<sup>rd</sup> (4<sup>th</sup> Wednesday)
- Feb. 20<sup>th</sup>
- Mar. 20<sup>th</sup>
- Apr. 17<sup>th</sup>
- May 15<sup>th</sup>
- Jun. 19<sup>th</sup>
- July 17<sup>th</sup>
- Aug. 21<sup>st</sup>
- Sep. 18<sup>th</sup>
- Oct. 16<sup>th</sup>
- Nov. 20<sup>th</sup>
- Dec. 11<sup>th</sup> (2<sup>nd</sup> Wednesday)