

EXPLANATION OF REVISIONS

HAWAII ADMINISTRATIVE RULES

TITLE 4

DEPARTMENT OF AGRICULTURE

SUBTITLE 6

DIVISION OF PLANT INDUSTRY

CHAPTER 66

PESTICIDES

(2018 VERSION)

TITLE AND CHAPTER ANALYSES SECTION (aka Table of Contents)

NONSUBSTANTIVE CHANGES

To correct and update.

Historical Note:

NO CHANGE

§4-66-1 Objectives.

NONSUBSTANTIVE CHANGE

Added the acronym "HRS" for clarity and consistency throughout the rules.

§4-66-2 Definitions.

SUBSTANTIVE CHANGES

Definitions section amended to aid in rule interpretation.

Definition of "Attractant" and reference to "attractant" in the definition of "pesticide" have been deleted as unnecessarily restrictive (i.e. peanut butter is an attractant used in ant bait) and to accurately reflect the FIFRA and HRS section 149A-2 definitions of "pesticide", which do not include reference to "attractant".

Definition of "Board" added for clarity and consistency throughout the rules.

Definition of "Drift" or "pesticide spray drift" added for clarity throughout the rules.

Definition of "Enclosed space production" or "greenhouse production" added for clarity and consistency throughout the rules. To incorporate statutory language from the Worker Protection Standard into the rules.

Definition of "Environment" added for clarity and consistency throughout the rules.

Definition of "Fungicide" amended to incorporate definition from FIFRA.

Definition of "License" amended to incorporate definition from HRS section 149A-2.

Definition of "Licensee" added for clarity and to incorporate definition from HRS section 149A-2.

Definition of "Permittee" added to distinguish "licensee" and "permittee" as used in HRS sections 149A-17, 149A-18, 149A-19, and 149A-33.

Definition of "Person" added for clarity and consistency throughout the rules and to incorporate definition from HRS section 149A-2.

Definition of "Personal Protective Equipment" (PPE) added to incorporate statutory language from the Worker Protection Standard into the rules.

Definition of "Pesticide" amended by incorporating definitions from FIFRA and HRS section 149A-2.

Definition of "Reasonable" added to provide clarity and consistency throughout the rules when interpreting the terms "reasonable" and "unreasonable".

Definition of "Runoff" added to provide clarity. See HAR section 4-66-57.

Definition of "Surface water" added for purposes of providing clarity. See HAR section 4-66-57 and 4-66-58. To incorporate definition from the state water code, HRS section 174C-3, into the rules.

Definition of "Tolerance" added for clarity and consistency throughout the rules.

Definition of "Under the direct supervision of a certified

applicator" amended for clarity and consistency and to incorporate statutory language from the Worker Protection Standard into the rules. See also 40 CFR section 171.201 (May 22, 2018).

Definition of "Use" amended for clarity and consistency and to incorporate statutory language from the Worker Protection Standard into the rules. See also 40 CFR section 171.3 (May 22, 2018).

NONSUBSTANTIVE CHANGES

To correct grammar "which" replaced with "that".

("Which" is a non-restrictive pronoun that provides additional information about the subject or object; the information being nonessential to the meaning of the sentence; generally follows a comma.)

("That" is a restrictive pronoun that is essential to the meaning of the sentence; specifically identifies the subject; usually not set off by a comma.)

"§" to "section" for consistency throughout the rules and comply with the Administrative Rules Drafting Manual.

To correct punctuation (no period after "et").

"Man" replaced with the more inclusive term "human".

"Administrative" added to the definition of "head" to correspond with the actual title of the Plant Industry Administrator.

To clarify that a "licensed sales outlet" or "dealer" must get an "annual permit" as specified in HRS section 149A-17, as well as meet the requirements in HAR section 4-66-52.

To clarify that a "dealer" and "dealer representative" must obtain a "permit" (not license) as specified in HRS section 149A-17 and HAR section 4-66-52.

"Nematicide" added as an alternative spelling for "Nematocide" to conform to industry terminology.

Quotation marks added to "private applicator" to correct omission from prior amendment.

§4-66-3 Administration, enforcement, and penalty.

NONSUBSTANTIVE CHANGE

"This rule" replaced with "these rules" for consistency throughout the rules.

INCORPORATION OF FEDERAL LABELING STANDARDS

Pesticide labeling requirements are regulated by the EPA. States may not impose any requirements for labeling or packaging that are different from those required by the EPA. See 7 USC section 136v (b), which states: "Such State shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under this subchapter."

HAR sections 4-66-4 to 4-66-31 (2006) were taken directly from 40 CFR Part 156, but in some instances State requirements were added that were different from those required by the EPA. For example, HAR 4-66-21(b)(3) states: "The **head** determines that it is not necessary for the directions to appear on the label." (Emphasis added.) According to 40 CFR section 156.10(i)(1)(ii)(C) and (i)(1)(iii)(A)(4), among others, the "Administrator" is the person who determines what directions shall appear on the label. The Administrator means the "Administrator of the Environmental Protection Agency."

In recognition of federal authority in this area, the department seeks to adopt and incorporate the federal labeling regulations into the rules. For ease of reference, a copy of 40 CFR part 156 (2017), entitled "Labeling requirements for pesticides and devices" shall be appended to the end of HAR chapter 4-66 as Appendix "B". The adoption and incorporation of the federal regulations will be accomplished as follows:

§4-66-4 Incorporation of 40 CFR part 156 (2017); Contents of the pesticide label; generally.

SUBSTANTIVE CHANGE

40 CFR section 156.10(a)(1) (2017) incorporated by reference.

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

SUBSTANTIVE CHANGE

40 CFR section 156.10(b)(1) (2017) incorporated by reference. State terms "Administrator" and "Registration" added for clarity.

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

SUBSTANTIVE CHANGE

40 CFR section 156.10(c) (2017) incorporated by reference.

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

SUBSTANTIVE CHANGE

40 CFR section 156.10(d) (2017) incorporated by reference.

§4-66-8 Label; product registration number.

SUBSTANTIVE CHANGE

40 CFR section 156.10(e) (2017) incorporated by reference.

§4-66-9 Label; producing establishment registration number.

SUBSTANTIVE CHANGE

40 CFR section 156.10(f) (2017) incorporated by reference.

§4-66-10 Label; ingredient statement; generally.

SUBSTANTIVE CHANGE

40 CFR section 156.10(g)(1) (2017) incorporated by reference.

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

SUBSTANTIVE CHANGE

40 CFR section 156.10(g)(2)(i) to (ii) (2017) incorporated by reference.

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

SUBSTANTIVE CHANGE

40 CFR section 156.10(g)(3) (2017) incorporated by reference.

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

SUBSTANTIVE CHANGE

40 CFR section 156.10(g)(4) (2017) incorporated by reference.

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

SUBSTANTIVE CHANGE

40 CFR section 156.10(g)(5) (2017) incorporated by reference.

§4-66-15 Label; deterioration.

SUBSTANTIVE CHANGE

40 CFR section 156.10(g)(6) (2017) incorporated by reference.

§4-66-16 Label; inert ingredients.

SUBSTANTIVE CHANGE

40 CFR section 156.10(g)(7) (2017) incorporated by reference.

§4-66-17 Label; warning and precautionary statements; generally.

SUBSTANTIVE CHANGE

40 CFR section 156.60 (2017) incorporated by reference.

§4-66-18 Label; required front panel statements.

SUBSTANTIVE CHANGE

40 CFR sections 156.62, 156.64, 156.66, and 156.68 (2017) incorporated by reference.

§4-66-19 Label; other required warnings and precautionary statements.

SUBSTANTIVE CHANGE

40 CFR sections 156.70 and 156.78 (2017) incorporated by reference.

§4-66-20 Label; directions for use; generally.

SUBSTANTIVE CHANGE

40 CFR section 156.10(i)(1)(i) (2017) incorporated by reference.

§4-66-21 Label; placement of directions for use.

SUBSTANTIVE CHANGE

40 CFR section 156.10(i)(1)(ii) (2017) incorporated by reference.

§4-66-22 Label; exception to requirement for directions for use.

SUBSTANTIVE CHANGE

40 CFR section 156.10(i)(1)(iii)(A) to (C) (2017) incorporated by reference.

§4-66-23 Label; contents of directions for use.

SUBSTANTIVE CHANGE

40 CFR section 156.10(i)(2) (2017) incorporated by reference.

§4-66-24 Label; statement of use classification; generally.

SUBSTANTIVE CHANGE

40 CFR section 156.10(j) (2017) incorporated by reference.
Federal term "general use" replaced with the State term
"nonrestricted" for clarity and consistency.

§4-66-25 Repealed. [R 12/16/06]

NONSUBSTANTIVE CHANGE

To comply with the Administrative Rules Drafting Manual
(2016).

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

SUBSTANTIVE CHANGE

40 CFR section 156.10(j)(2) (2017) incorporated by reference.
40 CFR section 156.10(j)(2)(i)(B) will be replaced with
provisions that allow the head to add restrictions to
licensed State restricted use pesticide products as necessary
for the protection of the public.

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

SUBSTANTIVE CHANGE

40 CFR section 156.10(a)(2) (2017) incorporated by reference.
State terms "Act" and "Rule" added for clarity.

§4-66-28 Label; language to be used.

SUBSTANTIVE CHANGE

40 CFR section 156.10(a)(3) (2017) incorporated by reference.
State term "Head" added for clarity.

§4-66-29 Label; placement.

SUBSTANTIVE CHANGE

40 CFR section 156.10(a)(4)(i) to (ii) (2017) incorporated by
reference. State term "Act" added for clarity.

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

SUBSTANTIVE CHANGE

40 CFR section 156.10(a)(5) (2017) incorporated by reference. State terms "Act", "Rule" and "nonchemical pest control device" added for clarity.

§4-66-31 Label; final printed form.

SUBSTANTIVE CHANGE

40 CFR section 156.10(a)(6)(i) to (ii) (2017) incorporated by reference. State terms "head", "license" and "text.PDF or similar format" added for clarity.

§4-66-32 Restricted use pesticides.

SUBSTANTIVE CHANGES

Currently the rules do not specify exactly how pesticides or pesticide uses are evaluated for classification as State restricted use when pesticides are suspected of causing health hazards. The proposed amendment requires the head to consult with the director of the State department of health when evaluating a pesticide for classification. The department of health is the entity responsible for monitoring potential chemical health hazards in Hawaii and has the knowledge, resources, and expertise necessary to make such a determination. See HRS sections 321-1 and 149A-4.

Utilizing rule amendment as a way of adding or deleting pesticide products from the list of State Restricted Use pesticides has proven to be problematic due to the complexity of the rule amendment process. It can take years to add or remove a pesticide from the list. In some instances, producers of agricultural commodities have been denied the use of safer and less expensive pesticide products due to the lengthy rule amendment process.

The department proposes to remove the State Restricted Use Pesticides list from the administrative rules and maintain the list on-line and at the Office of the Chairperson. Any additions to or deletions from the list will continue to undergo thorough internal review by the department using review processes that meet or exceed the EPA standards and those standards set forth in sections 4-66-32 and 4-66-32.1.

The head, in consultation with the pesticide advisory committee, will continue to be responsible for selecting those pesticide products to undergo internal review. The department's internal review process includes, among other things, a scientific review of all available data and information, review of the formula, active

ingredients, labeling, materials submitted by the licensee, and any other information requested by the head. The process is generally set forth below:

HAWAI'I DEPARTMENT OF AGRICULTURE
INTERNAL REVIEW PROCESS

1. Purpose

For use in the determination of State restricted use pesticides in conjunction with section 4-66-32, *Hawai'i Administrative Rules* ("HAR") (2018).

2. Scope

These procedures should be followed to ensure all pesticides being considered, or re-considered, as a candidate for State restricted use classification do not adversely impact human health, animal health, or the environment, by thorough and complete review in accordance with state and federal statutes, rules, regulations, and policy.

3. Procedures

a. New active ingredient.

An active ingredient is "new" if it is not found in a pesticide product currently registered in Hawai'i. All applications for licensing of a new active ingredient shall be reviewed with the objective of preventing unreasonable adverse effects on the environment.

The licensee shall submit an application on a form prescribed by the department.

The licensee shall submit a detailed cover letter that contains:

- The name and address of the licensee;
- The name and address of the name that will appear on the label, if different from the licensee;
- The name of the pesticide;
- EPA registration number (if applicable);
- The reason for the submission (new product, new end-use, etc.);
- A complete copy of the labeling accompanying the pesticide;
- A statement of all claims made for the pesticide;
- The directions for use; and
- A full description of all tests made and the results thereof.

The licensee shall submit all environmental fate information as requested, including but not limited to, distribution coefficient (K_d); sorption coefficient (K_{oc}) and its standard deviation; aerobic soil metabolism half-life and its standard deviation; and hydrolysis half-life.

The licensee shall submit a preliminary ground water review. If preliminary ground water review indicates likely to leach, the department shall submit the new active ingredient for full groundwater review.

An evaluation of all materials submitted by the licensee shall be reviewed by State of Hawai'i personnel qualified to conduct such an evaluation.

The evaluation shall include, but shall not be limited to:

- Summary of all materials provided by licensee;
- Summary of EPA registration review;
- Comparison of EPA approved label and labeling provided by licensee;
- Review of Confidential Statement of Formula;
- Data gaps shall be identified and resolved;
- Conduct risk assessment (human health, environment, endangered species);
- Draft results of investigation;
- Make draft results and evaluation materials available for public review and comment and specify response deadline (no less than 30 days);
- Request review by:
 - Stakeholders
(agriculture/structural/dealers/manufacturers/health, etc.);
 - Pesticide Advisory Committee Members;
- Review comments received;
- Draft recommendation to the Board; include any risk mitigation efforts such as label modification or use restrictions.

b. New product licensing/renewal of license.

The licensee shall submit a new product/renewal application on forms prescribed by the department. If information received indicates environmental concerns, an evaluation of all materials submitted by the licensee shall be reviewed by State of Hawai'i personnel qualified to conduct such an evaluation. See paragraph 3b above.

4. References

- Chapter 149A, *Hawai'i Revised Statutes* (2011 & Supp. 2016).
- Chapter 4-66, *Hawai'i Administrative Rules* (as amended).
- Parts 150 to 189 of Title 40, *Code of Federal Regulations* (2017).

EPA protocols will be used to evaluate the pesticides, along with other protocols developed specifically for use in Hawaii. The pesticide advisory committee, other knowledgeable individuals, and stakeholders will be asked to provide comments. A risk/benefit assessment will be conducted.

After the review process has been completed, the head will finalize the selection of pesticide products to be submitted to the board for adoption. The head is also responsible for preparing proposed findings and recommendations for the board's review. Public comment

on changes to the State restricted use pesticide list will be accepted at the board meetings.

NONSUBSTANTIVE CHANGES

To clarify that this section applies to State restricted use pesticides.

To correct grammar "which" replaced with "that".

Added punctuation.

Replaced "nontarget" with "non-target" for consistency throughout the rules and to comply with the Administrative Rules Drafting Manual (2016).

To clarify that Section 18 of FIFRA is commonly referred to as the "Emergency Exemption Provision". See HAR section 4-66-33.

§4-66-32.1 Evaluation of pesticides uses.

SUBSTANTIVE CHANGES

The scope of evaluation was expanded to include pesticide products proposed for licensing in addition to already licensed products.

A standard has been added ("to a reasonable degree of scientific certainty") that must be met before the head will be required to conduct an adverse effects evaluation.

Actions the Department may take in response to an adverse evaluation have been increased.

NONSUBSTANTIVE CHANGES

To comply with the Administrative Rules Drafting Manual (2016).

Replaced "nontarget" with "non-target" and "percent" with "per cent" for consistency throughout the rules, and to comply with the Administrative Rules Drafting Manual (2016).

To correct grammar "which" replaced with "that".

To correct 2006 amendment, where the phrase "fish or wildlife hazard" was intended to be listed as circumstance number (4), but was inadvertently combined with circumstance (3), listed directly above.

§4-66-33 Pesticide licensing; exceptions.

SUBSTANTIVE CHANGES

The current rule allows persons conducting laboratory tests, enclosed space production tests, or field trials, unfettered access to unlicensed pesticides as long as the testing is conducted 1) on less than one-fourth of an acre; 2) to determine toxicity or other properties; and 3) the person does not expect to receive any benefit in pest control from its use.

As amended, researchers will still be able to test unlicensed pesticides under the conditions listed, as long as the head has been notified that unlicensed pesticide testing is being conducted. The amendment will enable the department to track what unlicensed pesticides are being brought into the State. Such knowledge will also permit the State to properly respond in the event of an emergency.

NONSUBSTANTIVE CHANGES

To correct grammar "which" replaced with "that".

To comply with the Administrative Rules Drafting Manual (2016) (use of pronouns).

"Man" replaced with the more inclusive term "human".

To clarify that Section 18 of FIFRA is commonly referred to as the "Emergency Exemption Provision". See HAR section 4-66-32.

Replaced the term "Greenhouse" with "enclosed space production" for clarity and consistency throughout the rules. To conform to EPA definition and incorporate statutory language from the Worker Protection Standard into the rules.

Added punctuation.

§4-66-34 Applications for licensing pesticides and for approval of nonchemical pest control devices.

NONSUBSTANTIVE CHANGES

Replaced "non-chemical" with "nonchemical pest control device" for consistency throughout the rules.

Replaced "provided" with "prescribed" for consistency throughout the rules.

Clarify that the thirty day time period is "calendar" days.

Specify quantity of printed labels to be provided.

Updated the method by which the label may be provided to the department.

To correct grammar "which" replaced with "that".

Corrected and added punctuation.

For consistency and clarity throughout the rules.

To correct grammar.

Deleted procedure no longer necessary due to amendment of HAR section 4-66-66, which adds a nonchemical pest control device evaluation fee.

§4-66-35 Pesticide licensing; effective date.

NONSUBSTANTIVE CHANGES

Added punctuation.

To comply with the Administrative Rules Drafting Manual (2016).

For clarity and consistency throughout the rules.

§4-66-36 Pesticide licenses; corrections.

SUBSTANTIVE CHANGES

Period of time that pesticide licensee has to make label changes has been extended from fifteen days to thirty days. Fifteen days has proven to be an insufficient amount of time for label changes to be made.

NONSUBSTANTIVE CHANGES

Added punctuation.

"This rule" replaced with "these rules" for consistency throughout the rules.

For clarity and consistency throughout the rules.

To correct grammar "which" replaced with "that".

To comply with the Administrative Rules Drafting Manual (2016).

§4-66-37 Special local need (SLN) registration.

NONSUBSTANTIVE CHANGES

Corrected punctuation.

For clarity and consistency throughout the rules.

§4-66-38 Special local need; unreasonable adverse effects.

NONSUBSTANTIVE CHANGES

For clarity and consistency throughout the rules.

To correct grammar "which" replaced with "that".

Added punctuation.

To comply with the Administrative Rules Drafting Manual (2016).

§4-66-39 Special local need; label, packaging and coloration requirements.

NONSUBSTANTIVE CHANGES

To conform to FIFRA.

To correct grammar "which" replaced with "that".

For clarity and consistency throughout the rules.

To correct citation (section 4-66-42 was repealed in 2006 and replaced with 4-66-42.1).

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

NONSUBSTANTIVE CHANGES

For clarity and consistency throughout the rules.

To correct "registered" to "restricted".

§4-66-41 Special local need; notification and submission of data to the Environmental Protection Agency (EPA).

NONSUBSTANTIVE CHANGES

To correct "or" to "of".

For clarity and consistency throughout the rules.

§4-66-42 Repealed. [R 12/16/06]

NONSUBSTANTIVE CHANGE

To comply with the Administrative Rules Drafting Manual (2016).

§4-66-42.1 Coloration of pesticides.

NONSUBSTANTIVE CHANGES

Updated statutory references (40 CFR 180.1001 & 180.2010 were replaced by 180.910 & 180.920).

Added citation to Federal Food, Drug and Cosmetic Act for clarity.

§4-66-43 Enforcement.

SUBSTANTIVE CHANGES

Clarified that entry onto property for investigative purposes must be lawful.

Replaced "shall" with "may" to give inspectors discretion on how evidentiary samples will be collected.

Clarified that chain-of-custody must be maintained for each sample once collected.

Federal tolerances for chemical residue on crops have been adopted for enforcement purposes.

Adopted 20th edition of AOAC Official Methods of Analysis as preferred method for analysis of samples.

NONSUBSTANTIVE CHANGES

"Device" replaced with "nonchemical pest control device" for consistency throughout the rules.

"This rule" replaced with "these rules" for consistency throughout the rules.

For clarity and consistency throughout the rules.

To correct grammar "which" replaced with "that".

§4-66-44 Notice of enforcement action.

SUBSTANTIVE CHANGES

To enable the department to provide information to the public regarding final enforcement actions in addition to criminal or seizure court judgments.

NONSUBSTANTIVE CHANGES

"This rule" replaced with "these rules" for consistency throughout the rules.

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

NONSUBSTANTIVE CHANGE

To correct grammar "which" replaced with "that".

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

NONSUBSTANTIVE CHANGES

To correct grammar "which" replaced with "that".

For clarity and consistency throughout the rules.

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

SUBSTANTIVE CHANGES

The current rule allows research personnel to conduct laboratory tests, enclosed space production tests, or field trials on less than one-fourth of an acre without obtaining an experimental use permit as long as 1) the testing is to determine the value of the substance as a pesticide; 2) conducted by recognized research personnel; and 3) the research personnel do not expect to receive any benefit, other than the research, in pest control from its use.

As amended, researchers will still be able to conduct testing on one-fourth of an acre without obtaining an experimental use permit as long as the head has been notified that experimental pesticide testing is being conducted. This will enable the department to track what pesticide products are being brought into the state and allow the state to properly respond in the event of an emergency.

NONSUBSTANTIVE CHANGES

Replace the term "greenhouse" with "enclosed space production"

to conform to EPA definition and incorporate statutory language from the Worker Protection Standard into the rules.

For clarity and consistency throughout the rules.

"This rule" replaced with "these rules" for consistency throughout the rules.

§4-66-48 Experimental use permits; provisions for issuance.

SUBSTANTIVE CHANGES

To clarify that a shipper may be exempt from some application requirements at the head's discretion.

NONSUBSTANTIVE CHANGES

To correct grammar "which" replaced with "that".

Updated statutory references and added citations to the Federal Food, Drug and Cosmetic Act.

For clarity and consistency throughout the rules.

"Man" replaced with the more inclusive term "human."

To add punctuation.

To comply with FIFRA.

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

SUBSTANTIVE CHANGES

Eliminates estimated length of experimental use permits ("usually one year").

Retains language informing permittee that permit is effective for specified time period.

Clarifies that the head will assign an appropriate time period for the permit.

To encourage early renewal, permits must be renewed at least thirty-days before the permit expiration date.

NONSUBSTANTIVE CHANGES

For clarity and consistency throughout the rules.

To comply with the Administrative Rules Drafting Manual (2016).

§4-66-50 Experimental use permits; reports.

NONSUBSTANTIVE CHANGES

For clarity and consistency throughout the rules.

To comply with the Administrative Rules Drafting Manual (2016).

§4-66-51 Experimental use permits; monitoring and revocation.

SUBSTANTIVE CHANGES

"Holder of permit" replaced with "permittee".

Identified the head as the person the permittee must immediately notify of any adverse effects.

Added advisement to permittee that penalties may result from failure to abide by permit conditions.

NONSUBSTANTIVE CHANGES

For clarity and consistency throughout the rules.

To comply with the Administrative Rules Drafting Manual (2016).

§4-66-52 Restricted use pesticide dealer and dealer representative.

SUBSTANTIVE CHANGES

Adds reference to "special permit to apply restricted use pesticides by aerial application" in support of new section added to the rules that separates aerial pesticide application from other mechanical pesticide application devices.

To encourage early permit renewals, the time period to renew the dealer and dealer representative permits must be accomplished thirty days before the permit expires on January 1st.

Adds language from HRS section 149A-11(a) & (b) to remind restricted use pesticide dealer's and dealer representative that only certified applicator's, or persons operating under the certified applicator's supervision, are allowed to obtain restricted use pesticides and that a penalty may result from violation of statute.

Removed the penalty limitation caused by citing only HRS section 149A-41, and expanded available penalties to those allowed by law.

NONSUBSTANTIVE CHANGES

Rearranged subsections.

Added punctuation.

For clarity and consistency throughout the rules.

Replaced the term "license" with "permit" to accurately track statutory language. See HRS section 149A-17.

Adds "rules" as a topic for examination to acknowledge the difference between federal regulations and state rules.

"This rule" replaced with "these rules" for consistency throughout the rules.

To comply with the Administrative Rules Drafting Manual (2016).

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

SUBSTANTIVE CHANGES

Add reference to "special permit to apply restricted use pesticides by aerial application" and "special permit" to accommodate new section added to the rules that makes aerial pesticide application a single application category, requiring a special permit, and requiring recordkeeping.

Added notice that penalty may be assessed for failure to submit sales records within fifteen calendar days after the end of each month.

NONSUBSTANTIVE CHANGES

To correct citation (HAR section 4-66-63 was repealed in 2006 and replaced with 4-66-63.1).

For clarity and consistency throughout the rule.

Replace "license" with "permit" to accurately track statutory language. See HRS section 149A-17.

To comply with the Administrative Rules Drafting Manual (2016).

§4-66-54 Storage, display, and sale of pesticides.

SUBSTANTIVE CHANGES

Subsection (d) added to comply with HRS section 149A-15.5,

which was enacted in 2007, and required the department to adopt rules regarding retail pesticide warning signs.

NONSUBSTANTIVE CHANGE

To comply with the Administrative Rules Drafting Manual (2016).

§4-66-55 Disposal of pesticides and empty pesticide containers.

SUBSTANTIVE CHANGES

Update rules to meet current industry practices. (40 CFR sections 156.140 TO 156.156 require pesticide labels to specify disposal methods.)

Subsection (c) was added to comply with HRS section 149A-19(a)(7) that requires the department to adopt rules to establish procedures for the disposal of pesticides. Contact the pesticide branch for guidance is the established procedure.

NONSUBSTANTIVE CHANGES

To update citation for HAR Chapter 11-262 that was repealed in 2017 and replaced with 11-262.1.

For clarity and consistency throughout the rules.

To comply with the Administrative Rules Drafting Manual (2016).

§4-66-56 Certification of applicators.

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

§4-66-58 Specific standards for certification of applicators.

§4-66-60 Certification procedures; certificate renewal.

SUBSTANTIVE CHANGES

The sections addressing certification of restricted use pesticide applicators (HAR sections 4-66-56, 4-66-57, 4-66-58, 4-66-60) have been updated to strengthen the applicator requirements in the interest of public safety. The proposed rule amendments were inspired by certification changes proposed by the EPA. The department recognizes that certified applicators of restricted use pesticides are the ones responsible for protecting human health and the environment during application of these higher risk pesticide products.

The updated rules are far superior to the 2006 certification standards. Certified applicators are being held to the same

standards as pest control operators. (See HRS section 460J-8.) Certification procedures have been clarified. Minimum age requirements have been established. Certification categories have been added or amended. Stricter certification examination procedures have been established. Safety training requirements have been strengthened and competency standards for certified applicators have been raised.

New requirements for direct supervision of non-certified applicators by certified applicators have been added. Applicants must demonstrate the ability to read and understand pesticide labeling to ensure compliance with state and federal label laws. Recordkeeping requirements have been expanded. Time for training class sponsor or provider to submit attendance records to the department have been increased to thirty days. Non-English Proficient Certification Procedures have been renamed Certification Under Special Circumstances to cover situations where the need for some accommodation may arise.

The department notes that these changes have become necessary to address significant irregularities in the certification process and the irresponsible conduct of certified applicators that have come to light over the last decade.

NONSUBSTANTIVE CHANGES

For clarity and consistency throughout the rules.

To comply with the Administrative Rules Drafting Manual (2016).

§4-66-59 Repealed. [R 12/16/06]

NONSUBSTANTIVE CHANGES

To comply with the Administrative Rules Drafting Manual (2016).

§4-66-60 Certification procedures; certificate renewal.

SUBSTANTIVE CHANGES

Increased the time period, from fourteen days to thirty days, in which a continuing education training provider must submit an application to the department for approval of certification credits. Allows the department to charge a fee for expedited review of application for certification credit approval (less than thirty days) to offset the increased time constraints imposed by expedited review.

§4-66-61 Conditions on the use of restricted use pesticides by non-certified applicator.

SUBSTANTIVE CHANGES

The department recognizes that certified applicators of restricted use pesticides are responsible for protecting human health and the environment caused by application of these higher risk pesticide products. The rule amendments were inspired by suggested changes to the certified applicator supervision requirements proposed by the EPA. The strengthening of certified applicator supervisory obligations has become necessary due to the increasingly lax supervision of non-certified applicators, which has become an enforcement problem. The amendments provide greater protection for the non-certified applicator and the public.

Subsection 6 added to provide notice to certified applicator that penalty may result from failure to properly supervise non-certified applicator.

NONSUBSTANTIVE CHANGES

For clarity and consistency throughout the rules.

"This rule" replaced with "these rules" for consistency throughout the rules.

To comply with the Administrative Rules Drafting Manual (2016).

§4-66-62 Certified pesticide applicator recordkeeping.

SUBSTANTIVE CHANGES

Added subsections (e), (f), and (g) to clarify that the commercial applicator must retain copies of records being provided to the agricultural employer for two years, and make these records available for copying by the department; to keep records in compliance with the newly implemented Worker Protection Standards (40 CFR Part 170 (2018)); and, to provide notice to certified applicators that penalty may result from failure to keep accurate records.

NONSUBSTANTIVE CHANGES

For clarity and consistency throughout the rules.

To comply with the Administrative Rules Drafting Manual (2016).

§4-66-63 Repealed. [R 12/16/06]

NONSUBSTANTIVE CHANGE

To comply with the Administrative Rules Drafting Manual (2016).

§4-66-63.1 Annual Use Permit.

SUBSTANTIVE CHANGES

Clarify that it is the Board's responsibility to determine what pesticide products require an annual use permit. The process used by the department to evaluate whether a pesticide product requires an annual use permit will remain the same.

Utilizing the rules as a way of listing pesticide products that require an annual use permit has proven to be a management problem due to the complexity of the rule amendment process. Rather than maintain the list in the rules, the department proposes to maintain the annual use permit pesticide list on-line and at the office of the chairperson.

Any change to the annual use permit list already requires board approval. The public will have the opportunity to provide comments on proposed list changes at the board meeting.

Subsection (e) added to provide notice to annual use permittees that penalty may result from failure to abide by the terms and conditions of the annual use permit.

NONSUBSTANTIVE CHANGES

For clarity and consistency throughout the rules.

To comply with the Administrative Rules Drafting Manual (2016).

§4-66-64 Conditions and limitations on aerial application of restricted use pesticides.

SUBSTANTIVE CHANGES

HAR section 4-66-64 currently combines application of restricted use pesticide by aircraft with application of any pesticide by mechanical means other than aircraft. As amended, the section has been divided into two sections: one addressing aerial application of restricted use pesticides (HAR section 4-66-64); and one addressing application of any pesticide by means other than aerial application (HAR section 4-66-64.1).

Terms "manned or unmanned" aircraft were added to incorporate pesticide application by drones or other unmanned application method.

Clarified that a "special permit" is required for aerial application.

Rewords the application process to eliminate the inference that the "applicant" must be the certified applicator.

Added requirement that equipment be properly inspected and maintained.

Compliance with FAA Regulations was added.

The head has been given the authority to add conditions to the special permit for aerial application as deemed necessary to protect the public.

Subsection (d) was amended to provide notice to certified applicator that penalty may result from failure to comply with permit conditions.

NONSUBSTANTIVE CHANGES

For clarity and consistency throughout the rules.

Added punctuation.

To comply with the Administrative Rules Drafting Manual (2016).

§4-66-64.1 Conditions and limitations on pesticide application by means other than aerial treatment.

SUBSTANTIVE CHANGES

Pesticide application methods by means other than aerial treatment was added to accommodate the separation of aerial applications from other mechanical application methods that were formerly combined in HAR section 4-66-64.

Clarified that all pesticides must be applied according to the label directions, and if applied by mechanical means, the equipment must be appropriate and well maintained.

NONSUBSTANTIVE CHANGES

For clarity and consistency throughout the rules.

To comply with the Administrative Rules Drafting Manual (2016).

§4-66-65 Repealed. [R 12/16/06]

NONSUBSTANTIVE CHANGE

To comply with the Administrative Rules Drafting Manual (2016).

§4-66-66 Fees.

SUBSTANTIVE CHANGES

The fee to license pesticide products for sale in Hawaii has been increased from \$330 to \$930 per product. All other fees have been doubled. The last fee increase was in 2006. By increasing the licensing fee, revenue to the Pesticide Use Revolving Fund established by HRS section 149A-13.5 will increase, making more funds available for training, education, and other programs. Even with tripling the current licensing rates, Hawaii licensing prices remain low compared to other states.

A onetime fee of \$330 has been added for assessment of nonchemical pest control devices.

Clarifies that copying fee applied to all documents, whether paper or electronic.

Allows the department to charge up to \$100 for expedited approval of requests for certification of training credits received less than thirty calendar days prior to the scheduled class.

Allows the department to hire independent contractors to proctor exams or conduct educational classes.

Allows the head to reduce or waive fees upon demonstrated need.

NONSUBSTANTIVE CHANGES

The term "license" replaced with "permit" to accurately track statutory language. See HRS section 149A-17.

For clarity and consistency throughout the rules.

Corrected and added punctuation.

To comply with the Administrative Rules Drafting Manual (2016).

§4-66-66.1 Enforcement action and penalty assessment schedule.

SUBSTANTIVE CHANGES

Changed mandatory use of enforcement action and penalty assessment schedule to discretionary use. Revised rule and enforcement action and penalty assessment schedule to reflect actual language of HRS sections 141-7, 149A-20, 149A-33, and 149A-41.

NONSUBSTANTIVE CHANGES

For clarity and consistency throughout the rules.

To comply with the Administrative Rules Drafting Manual (2016).

§4-66-67 Severability.

NO CHANGES

End of Explanation of Revisions.