

State of Hawaii
Department of Agriculture
Agricultural Loan Division

February 28, 2023

**Department of Agriculture
Honolulu, Hawaii**

Subject: **Loan Presentation**

APPLICANT: Diamond B Ranch, LLC
103 A Maha Rd.
Makawao, HI 96768

Brendan L. Balthazar (Co-Borrower)
103 A Maha Rd.
Makawao, HI 96768

CLASSIFICATION & ELIGIBILITY:

Diamond B Ranch, LLC is a limited liability company and registered with the Hawaii Department of Commerce & Consumer Affairs on December 29, 2014. Brendan L. Balthazar is the sole member-manager and owns 100% of the company. He meets the eligibility requirements as a qualified farmer defined in Chapter 155 of the Hawaii Revised Statutes (HRS) §155-1 and general eligibility requirements cited in subsection §155-10. He has actively engaged in ranching for more than 50 years, is a U.S. citizen, and life-long resident of the State.

COMMODITY: Cattle, Sheep, Goats

CREDIT HISTORY: SEE EXHIBIT A (CONFIDENTIAL)

**OTHER STATE
AGRICULTURAL
LOANS:**

N/A

**LOAN REQUEST
& PURPOSE:**

<u>Amount</u>	<u>Class D - Direct Emergency Loan</u>
\$150,000	<u>Operating Expenses</u>
\$150,000	Total Class D Request

<u>Amount</u>	<u>Class C - Direct Operating Loan</u>
\$200,000	<u>Operating Expenses</u>
\$200,000	Total Class C Request

Migrating to seek forage and water, Axis deer, estimated at 60,000, continue to have devastating impacts on not only the applicant's pastures, but other Maui ranchers as well. The emergency loan program was enacted to provide relief for ranchers in managing their losses by assisting with the cost of fencing and other mitigation efforts.

Funds from both loans will be utilized for operating expenses associated with preparing and improving new and existing pastures which include but are not limited to fencing, clearing, machine work, feed, application of herbicide, and labor.

TERMS:

Amount: \$150,000 (Class D)
 Term: (13) Thirteen years
 Interest rate: 3.00%, fixed
 Repayment: Principal and interest payment of Fourteen thousand one hundred four and 43/100 (\$14,104.43) due annually on the first of the month until loan maturity.

Amount: \$200,000 (Class C)
 Term: (10) Ten years
 Interest rate: 3.75%, fixed
 Repayment: Principal and interest payment of Twenty four thousand three hundred fifty two and 27/100 (\$24,352.27) due annually on the first of the month until loan maturity.

SECURITY:

The Class-D and Class-C loan will be secured by the following:

- A first priority security interest in the ranch's accounts receivable, livestock, and farm equipment via a UCC Financing Statement and Security Agreement. (Class C Loan)
- A second priority security interest in the ranch's accounts receivable, livestock, and farm equipment via a UCC Financing Statement and Security Agreement. (Class D Loan)

The proposed loans will be well secured with a first and second security interest in the ranch's assets. The livestock value alone provides sufficient collateral for the loans.

GUARANTORS:

None

**FINANCIAL
CONDITION:**

SEE EXHIBIT A (CONFIDENTIAL)

**REPAYMENT
ABILITY:**

SEE EXHIBIT A (CONFIDENTIAL)

INSURANCE:

Evidence of liability insurance in the amount of \$1.0 million.

**BACKGROUND/
MANAGEMENT
ABILITY:**

Known as the last paniolo (cowboy) of Makawao, Brendan Balthazar started Diamond B Ranch in 1968 after retiring from Maui's Department of Fire and Public Safety as an engineer with nearly 37 years of service. He started his ranch with just one cow and through hard work and dedication expanded his operation to where it is today. Currently, his animal herd consists of hundreds of cows, goats, sheep, and includes 30 bulls, 6 horses, and 5 ranch dogs. Most of the cattle (cows and bulls) are Angus Plus, considered one of the more popular breeds of beef cattle. Calves are typically weaned for 8 to 9 months and shipped at 300 to 450 lbs. to a Texas buyer. Other livestock include Boer goats which are typically weaned for 3 months and Hair sheep.

Most of the pastures are leased and strategically situated along the slopes of Haleakala. Locations include Kaupo, Halehaku, Kula, and Haiku. In order to minimize the potential impact of drought, his decision to have pastures at different locations was prudent. Mr. Baltazar works 7 days a week to care for his animals and improve the parcels by clearing brush, removing invasive trees/plants, adding lime to improve soil pH, applying fertilizer, planting grass, and adding improvements such as corrals, fencing, and water systems at each site.

Ranch operations are nothing short of impressive. Besides the applicant, the ranch employs a total of four. Worker skill sets extend beyond animal care and include mechanical, welding, and fabrication techniques which are vital to maintenance of heavy equipment, pumps for irrigation, and fabrication of metal corrals. Mr. Balthazar's residence serves as the ranch headquarters with a corral, equipment, and storage area. He has ample equipment to operate his ranch including hauling vehicles to transport heavy equipment for pasture work and cattle to the dock for shipment to the mainland. A field visit in 01/2023 found the livestock, equipment, and pastures well-cared for.

SUMMARY:

Brendan Balthazar's experience and devotion to ranching is undeniable. As an active member of the Maui Cattlemen's Association (MCA) and Board member of the Hawaii Farm Bureau, he is respected throughout the industry and community as well. MCA was formed to provide a premium product that's local, forage-fed, and hormone and antibiotic-free. Loan proceeds will provide needed capital to install fencing to limit the adverse impacts associated with axis deer and assist in pasture maintenance.

The borrower has a track record of generating ample historical cash flow to service proposed and existing debt obligations. On top of that, his personal financial condition remains solid.

Benefits to the State include supporting cattle production which is a key contributor to the local economy. Based on cash receipts, beef currently ranks as one of Hawaii's top agricultural commodities. Moreover, ranching represents an important aspect of Maui's cultural heritage as the cattle industry dates back to 1793. Maui counts about 140 working cattle operations and its beef is said to belong to the best-tasting in the world.

TURNDOWNS:

Brendan Balthazar's loan request was denied by Bank of Hawaii and Maui County FCU based on:

- Does not offer type of loan using cattle as collateral.
- Inadequate collateral.

RECOMMENDATIONS: The loan is recommended for approval based on the applicant's ranching experience, collateral, ample cash flow, and strong financial condition.

Date

02/25/23

Recommended by:



Gareth Mendonsa
Business Loan Officer

Date

2/1/23

Reviewed and concurred by:

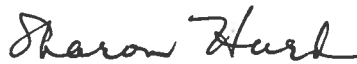


Morris M. Atta
Acting Administrator

Date

2/8/23

Approved for submission:



Sharon Hurd
Chairperson, Board of Agriculture

STATE OF HAWAII
DEPARTMENT OF AGRICULTURE
AGRICULTURAL RESOURCE MANAGEMENT DIVISION
HONOLULU, HAWAII 96814

February 28, 2023

Board of Agriculture
Honolulu, Hawaii

Subject: REQUEST FOR APPROVAL TO WITHDRAW TMK PARCEL (1) 4-1-010:004, KOOLAUPOKO, WAIMANALO, ISLAND OF OAHU, HAWAII, FROM GOVERNOR'S EXECUTIVE ORDER NO. 4535 AND RE-SET ASIDE TO THE DEPARTMENT OF LAND AND NATURAL RESOURCES PURSUANT TO ACT 90, SLH 2003, CODIFIED AS CHAPTER 166E, HAWAII REVISED STATUTES

Authority: Section 166E-3, Hawaii Revised Statutes (HRS)

Land Area: 14.054 gross acres

Tax Map Key: (1) 4-1-010:004 (Exhibit "A")

Land Status: Encumbered by Governor's Executive Order No. 4535

REMARKS:

Act 90, Session Laws of Hawaii (SLH 2003), established the Non-Agricultural Park Lands Program to which certain public lands classified for agricultural use by the Department of Land and Natural Resources (DLNR) should be transferred to the Department of Agriculture (DOA) in a manner consistent with article XI, section 10 of the State Constitution. Therefore, Hawaii Revised Statutes, Chapter 166E entitled Non-Agricultural Park Lands was established. Under section HRS 166-E transfer and management of Non-Agricultural Park Lands and related facilities to the DOA, "Upon mutual agreement and approval of the Board (of Agriculture) and the Board of Land and Natural Resources, the DOA may accept the transfer of and manage certain qualifying non-agricultural park lands..." Further, the program shall include the following conditions pertaining to encumbered Non-Agricultural Park Lands:

- (1) The lessee or permittee shall perform in full compliance with the existing lease or permit;
- (2) The lessee or permittee shall not be in arrears in the payment of taxes, rents, or other obligations owed to the State or any county;
- (3) The lessee's or permittee's agricultural operations shall be economically viable...

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Governor's Executive Order No. 4535 dated August 29, 2017 transferred a total of 25 leases and revocable permits without the approval of the Board of Agriculture. DOA declined to formally accept certain leases for transfer until additional due diligence was completed. When DOA staff reviewed the lease file and performed a site visit to the subject premises, it was determined that the Lessee was not in compliance with the lease. The Lessee has an active administrative proceeding before the City Department of Planning and Permitting and a separate lawsuit with their neighbor, and DLNR is a party to both actions. Pursuant 166E-3, HRS, the lessee is in violation of the lease and, therefore, the lease is unacceptable for transfer. DOA is requesting that TMK: (1) 4-1-010:004, be reset aside to DLNR.

RECOMMENDATION:

That the Board of Agriculture approve this request to have TMK parcel (1) 4-1-010:004 withdrawn from Governor's Executive Order No. 4535 and re-set aside to DLNR.

Respectfully submitted,



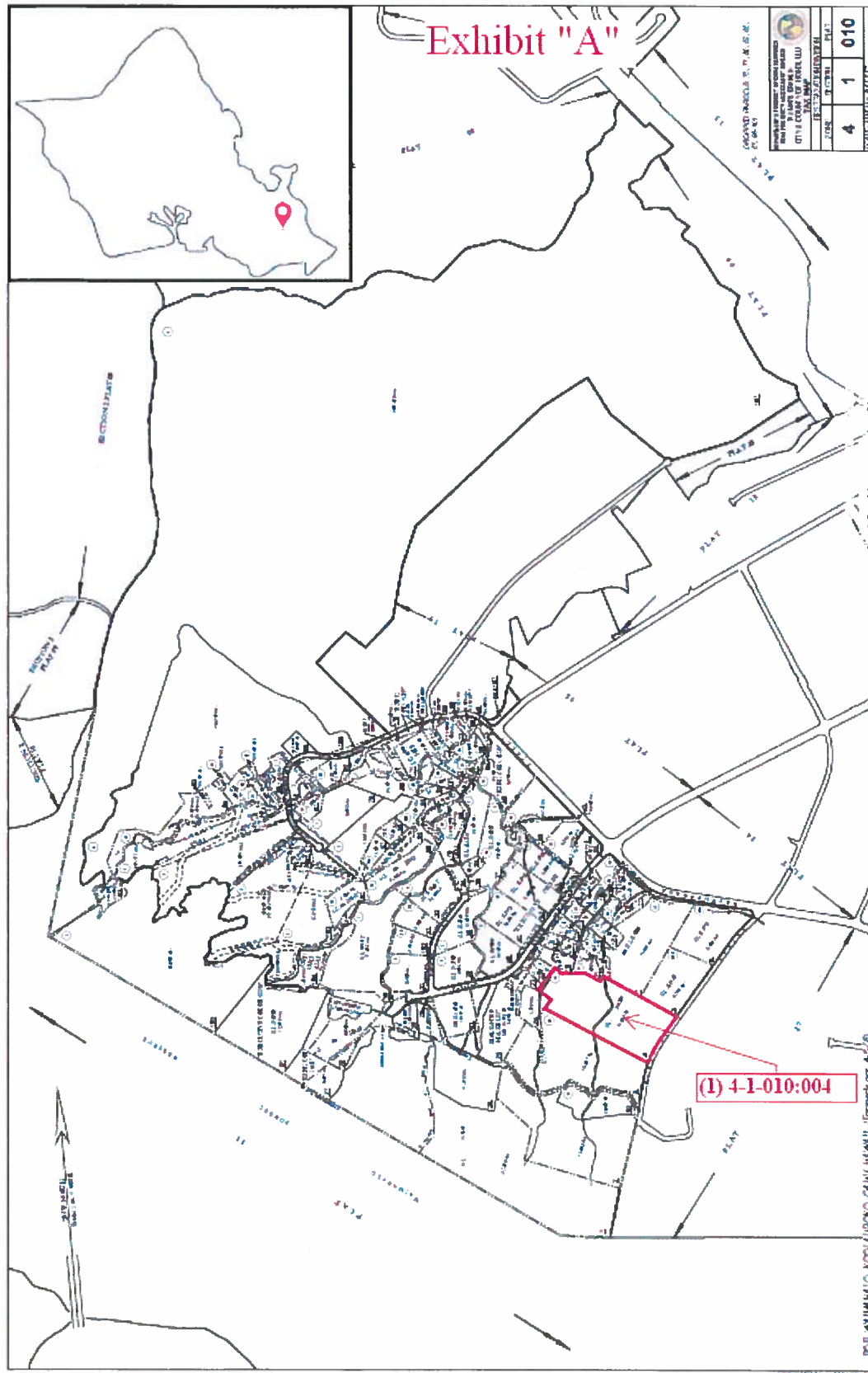
BRIAN KAU, P.E.
Administrator and Chief Engineer
Agricultural Resource Management Division

Attachments – Exhibits “A” and “B”

APPROVED FOR SUBMISSION:



SHARON HURD
Chairperson, Board of Agriculture



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Exhibit "B"

Photos of subject parcel



STATE OF HAWAII
DEPARTMENT OF AGRICULTURE
AGRICULTURAL RESOURCE MANAGEMENT DIVISION
HONOLULU, HAWAII

February 28, 2023

Board of Agriculture
Honolulu, Hawaii

Subject: REQUEST FOR APPROVAL TO ISSUE REVOCABLE PERMIT (RP) TO
MOLOKAI HOMESTEAD LIVESTOCK ASSOCIATION (MHLA); TMK: (2)
5-2-001:017, MOLOKAI AGRICULTURAL PARK, HOOLEHUA, ISLAND OF
MOLOKAI, HAWAII

Authority: Section 166-9, Hawaii Revised Statutes, and Section 4-158-3(b)(3),
Hawaii Administrative Rules (HAR)

Land Area: 3.769 acres, more or less

Tax Map Key: (2) 5-2-001:017 (see Exhibit "A")

Land Status: Encumbered by Governor's Executive Order No. 3801 to the Department
of Agriculture (DOA) for agricultural purposes October 15, 1999

Rental: \$167.00 per month

Character of Use: Diversified agriculture

Lease Term: Month-to-month revocable permit for a term of one year renewable on
approval of the Board of Agriculture

BACKGROUND:

A significant outbreak of bovine tuberculosis (bTB) on the island of Molokai in June of 2021 affecting six herds in central and west Molokai has resulted in an island wide quarantine of all ungulates that restricts their movement off of and on to the island and between premises on the island. Five infected herds have been completely depopulated with the sixth herd in the process of feeding out only test negative steers and heifers to market weight. No other infected herds have been found on the island and a second round of testing has commenced. Wildlife surveillance is underway with bTB being detected in just one axis deer from West Molokai so far. It is thought that the severe drought, high number of axis deer and feeding of livestock to keep them alive, in close association with cattle and swine at feeding and watering sites is where transmission likely occurred. Genomic information on the *Mycobacterium bovis* organisms

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detected in the affected livestock and wildlife found currently and historically indicate that certain wildlife species may be a reservoir maintaining the bTB on Molokai.

Because the bTB quarantine affects all livestock herds on the island, export of feeder calves to markets on the Mainland U.S. has become problematic. Cattle producers have joined together under the leadership of the Molokai Homestead Livestock Association (MHLA) and have come up with a plan to feed and finish cattle on Molokai as a result.

Together, with HDOA's Animal Industry (AI) Division, MHLA and other cattle producers on Molokai, they are requesting a RP for Lot 17 at the Molokai Agriculture Park to utilize as a quarantine site, to construct a livestock testing facility and to grow crops to be used as cattle feed. The lot is enclosed by an 8' fence that when repaired will exclude axis deer and feral pigs, both which have been implicated as potential reservoirs for bTB. In addition, producers will be working closely with AI to test negative cattle prior to entering the area. Cattle will be periodically tested to ensure they remain negative for bTB.

The Animal Industry Division recognizes the need to not only detect, eradicate, prevent and conduct surveillance for bTB in the Molokai livestock herds but to also assist the affected livestock industries to recover from the economic hardship caused by this outbreak.

The Molokai Homestead Livestock Association (MHLA) is requesting a revocable permit for TMK: (2) 5-2-001:017 for diversified agriculture use that includes the production of silage for livestock feed. MHLA is also requesting approval to allow the Department of Agriculture's Bovine TB Testing Center to use a portion of the lot of approximately one acre as a temporary holding area for quarantined animals.

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RECOMMENDATION:

That the Board approve issuance of a month-to-month revocable permit to the Molokai Homestead Livestock Association for diversified agricultural use and the request to allow the Department of Agriculture's Bovine TB Testing Center to use a portion of the lot, subject to the approval as to form of the revocable permit by the Department of the Attorney General.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Brian Kau", is written over a horizontal line.

BRIAN KAU, P.E.
Administrator and Chief Engineer
Agricultural Resource Management Division

Attachment – Exhibit "A"

APPROVED FOR SUBMISSION:

A handwritten signature in black ink, appearing to read "Sharon Hurd", is written over a horizontal line.

SHARON HURD
Chairperson, Board of Agriculture

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EXHIBIT A

PLAT 03
PLAT 04
PLAT 05
PLAT 06
PLAT 07
PLAT 08
PLAT 09
PLAT 10
PLAT 11
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PLAT 100

State of Hawaii
County of Maui
Lot No. 8
Total land 30.715 ac.
TMK: 2nd Div.: 5-2-01:17
Lot No. 8

NOTE: Parcel 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 67

EXHIBIT "B"



STATE OF HAWAII
DEPARTMENT OF AGRICULTURE
AGRICULTURAL RESOURCE MANAGEMENT DIVISION
HONOLULU, HAWAII

February 28, 2023

Board of Agriculture
Honolulu, Hawaii

Subject: REQUEST TO APPROVE RENTAL OFFSET, GENERAL LEASE NO. S-1001; HAWAII GOLDEN FARM LLC, LESSEE; TMK: (1) 8-5-034:001, LOT 1, WAIANAE AGRICULTURAL PARK, WAIANAE, ISLAND OF OAHU, HAWAII

Authority: Section 166-9, Hawaii Revised Statutes (HRS), and Section 4-153-24(2), Hawaii Administrative Rules (HAR)

Lessee: Hawaii Golden Farm LLC

Land Area: 5.042 gross acres

Tax Map Key: (1) 8-5-034:001 (Exhibit "A")

Land Status: Encumbered by Governor's Executive Order No. 3481, dated October 10, 1990, to the Department of Agriculture for agriculture purposes

Lease Term: 35 years, 8/1/2021 through 7/31/2056

Annual Base Rental: \$3,998.00 per year

Additional Rent: 1.5% of the gross proceeds from the sale of commodities produced on the demised premises which exceed the base annual rental

Character of Use: Diversified agriculture

BACKGROUND:

General Lease No. S-1001 was awarded to Hawaii Golden Farm LLC in 2021. The Lessee has submitted expense receipts for services, materials and supplies related to grubbing and clearing the land readying it for planting of curry leaf, Italian herb and moringa trees according to the Plan and Utilization and Development and Conservation Plan. The Lessee requests a rental offset of up to two years of annual lease rents of \$7,996,000. Total expenses exceeded \$16,000.00. Pursuant to 4-153-24(2), HAR, and General Lease No. S-1001, the Board of Agriculture may permit the Lessee to offset the cost of land clearance and improvements

BIO

against not more than two (2) years of base annual rental.

RECOMMENDATIONS:

That the Board of Agriculture approve the Lessee's request for rental offsets of up to two years of base annual lease rents from 8/1/2023 through 7/31/2025, in accordance with the terms and conditions of General Lease No. S-1001 and Section 4-153-24(2), HAR, and subject to other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

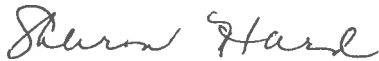
Respectfully submitted,



BRIAN KAU, P.E.
Administrator and Chief Engineer
Agricultural Resource Management Division

Attachments - Exhibits "A" and "B"

APPROVED FOR SUBMISSION:



SHARON HURD
Chairperson, Board of Agriculture

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Exhibit "B"

Photo below taken on 12/2/2020



Photo below taken on 11/15/2022



State of Hawai'i
Department of Agriculture
Plant Industry Division
Pesticide Branch

February 28, 2023

Board of Agriculture
Honolulu, Hawai'i

Subject: Request that the Final Order for In the Matter of Alii Pest Management and Louie Louis, Docket No. 20-PE-025, be Referred to the Attorney General for Collection.

PROCEDURAL BACKGROUND:

On November 9, 2020, the Pesticides Branch of the Hawai'i Department of Agriculture ("HDOA") Plant Industry Division issued a Notice of Finding of Violation and Proposed Order to Pay Civil Penalty ("NOV") to Respondent Alii Pest Management and Louie Louis ("Respondent Louis", collectively with Respondent Alii Pest Management, "Respondents") under Docket No. 20-PE-025. A copy of the NOV is attached hereto as "Exhibit A".

The NOV alleged that Respondents violated Hawai'i Administrative Rules ("HAR") Section 4-66-62 by failing to submit an annual report to HDOA for all restricted use pesticides applied by Respondent Louis during calendar year 2019. The NOV proposed a civil penalty in the amount of two hundred fifty dollars (\$250.00) be imposed for this violation. The NOV provided Respondents the opportunity to contest or negotiate the NOV within twenty calendar days from the date of receipt of the NOV or the NOV would become final. On November 20, 2020, the NOV was served on Respondents. HDOA did not receive any request from Respondents to contest the NOV.

On February 8, 2021, a Final Order to Pay Civil Penalty ("Final Order") was issued to Respondents for failing to respond to the NOV. The Final Order required Respondents to submit the original civil penalty of two hundred fifty dollars (\$250.00) to HDOA within twenty (20) business days from the date of receipt of the Final Order. The Final Order was served on Respondents on February 12, 2021, making the original civil penalty due and payable by March 15, 2021. A copy of the Final Order is attached hereto as "Exhibit B".

On November 2, 2022, HDOA issued a Demand Letter to the Respondents. The Demand Letter stated that the Respondents were in default due to Respondents' failure to abide by the terms and conditions of the Final Order. The Demand Letter required the Respondents to submit the original civil penalty of two hundred fifty dollars (\$250.00) by November 14, 2022, or HDOA would refer the matter to the Hawaii Department of the Attorney General for collection. On November 7, 2022, the Demand Letter was served on Respondents. A copy of the Demand Letter is attached hereto as "Exhibit C".

As of today's date, Respondents have failed to submit the original civil penalty amount of two hundred fifty dollars (\$250.00) to HDOA.

Request that the Final Order for In the Matter of ALII PEST MANAGEMENT and LOUIS LOUIS, Docket No. 20-PE-025, be Referred to the Attorney General for Collection
Page 2

AUTHORITY: Pursuant to section 149A-41(b)(4), *Hawai'i Revised Statutes* ("HRS"), in case of inability to collect the administrative penalty or failure of any person to pay all or such portion of the administrative penalty as the Board may determine, the Board shall refer the matter to the Attorney General, who shall recover the amount by action in the appropriate court.

RECOMMENDATION: The Pesticides Branch of HDOA, Plant Industry Division recommends that the Board refer the Final Order for In the Matter of Alii Pest Management and Louie Louis, Docket No. 20-PE-025, to the Attorney General for collection.

It is respectfully requested that the Board follow the recommendation set forth above.

Submitted by:



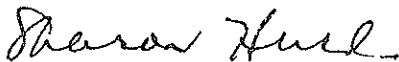
GREG TAKESHIMA
Acting Pesticides Branch Manager

CONCURRED:



HELMUTH ROGG
Administrator, Plant Industry

APPROVED FOR SUBMISSION:



SHARON HURD
Chairperson, Board of Agriculture

Attachments – Exhibits "A" through "C"

Exhibit A

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER
Chairperson, Board of Agriculture

MORRIS M. ATTA
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9800 FAX: (808) 973-9813

November 5, 2020

Certified Mail No. 7018 1130 0001 1420 1916
Return Receipt Requested

Mr. Louie M. Louis
Ali'i Pest Management
P.O. Box 751
Wailuku, Hawai'i 96793

Dear Mr. Louis:

Enclosed is a Notice of Finding of Violation and Proposed Order to Pay Civil Penalty issued under Docket No. 20-PE-025. The civil penalty is based upon evidence of failing to submit an annual report to the Hawai'i Department of Agriculture for all restricted use pesticides applied during calendar year 2019.

REVIEW THE ENCLOSED NOTICE CAREFULLY. In particular, please note that **the proposed civil penalty will become a final order unless a written request for hearing or informal settlement meeting is submitted to the Office of the Chairperson of the Department of Agriculture within twenty (20) calendar days from the date of receipt of this Notice of Violation.** If you wish to discuss the proposed actions, please contact the undersigned at (808) 973-9404.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Takeshima".

GREG TAKESHIMA
Acting Pesticides Program Manager

GT:sn
[K: LOUIELOUIS]

Enclosure



STATE OF HAWAI'I
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF

ALI'I PEST MANAGEMENT,
and LOUIE M. LOUIS,

Respondents.

DOCKET NO. 20-PE-025

NOTICE OF FINDING OF
VIOLATION; AUTHORITY;
ALLEGED VIOLATIONS; CAUSES
OF ACTION; ORDER TO CEASE
AND DESIST; PROPOSED ORDER
TO PAY CIVIL PENALTY;
OPPORTUNITY FOR HEARING

NOTICE OF FINDING OF VIOLATION

NOTICE IS HEREBY GIVEN that a records review conducted by the State of Hawai'i Department of Agriculture yielded evidence of a violation of section 4-66-62 of the *Hawai'i Administrative Rules* ("HAR").

AUTHORITY

The State of Hawai'i Department of Agriculture ("HDOA"), pursuant to the authority granted in sections 149A-26, 149A-34, 149A-31 and 149A-41 of the *Hawai'i Revised Statutes* ("HRS"), and HAR sections 4-66-3, and 4-66-66.1, does hereby bring this action against Respondent ALI'I PEST MANAGEMENT and Respondent LOUIE M. LOUIS for a violation of HAR section 4-66-62.

ALLEGED VIOLATION

1. **HRS section 149A-26** provides as follows: "(a) Beginning January 1, 2019, every user of restricted use pesticides shall be subject to the requirement to submit to the department,

for departmental use, an annual report of all use of restricted use pesticides as provided in this section. (b) No later than thirty days following the end of each calendar year, every entity that uses restricted use pesticides shall provide to the department a report of all restricted use pesticides used during the preceding calendar years. (c) The department shall adopt rules pursuant to chapter 91 requiring that the annual reports include the following information:

- (1) A listing, by federal and state registrations or permit numbers, commercial product names, and active ingredients, of all restricted use pesticides used;
 - (2) The total quantities used for each restricted use pesticide;
 - (3) A general description of the geographic location, including, at a minimum, the tax map key number, at which the restricted use pesticides were used; and
 - (4) The date on which the restricted use pesticide application occurred.”
2. **HRS section 149A-29** provides as follows: “The department shall adopt rules pursuant to chapter 91 to implement this part.”
3. **HRS section 149A-33** provides as follows: “The department shall have the authority to carry out and effectuate the purpose of this chapter by rules, including but not limited to the following: ... (4) To establish, as necessary, record keeping requirements for pesticide use by applicators; ...”
4. **HAR section 4-66-62** provides as follows: “**Certified pesticide applicator recordkeeping.** . . (f) Beginning January 1, 2019, every certified restricted use pesticide applicator shall submit to the department, for departmental use, an annual report of all use of restricted use pesticides. The report shall be submitted to the department no later than thirty days following the end of each calendar year on a form prescribed by the head. The report shall include:
 - (1) Name of certified applicator and his or her certification number;
 - (2) EPA registration number of each restricted use pesticide used;
 - (3) Commercial product name of each restricted use pesticide used;
 - (4) Active ingredient(s) of each restricted use pesticide used;
 - (5) The total quantities for each restricted use pesticide used;
 - (6) The total area treated for each restricted use pesticide used;
 - (7) The date on which the restricted use pesticide application occurred; and
 - (8) A general description of the geographic location, including, at a minimum the tax map key number, at which the restricted use pesticides were used.”

(Emphasis added.)

5. Based on a records review conducted by the HDOA, Pesticides Branch, it was determined that Respondent LOUIE M. LOUIS (“Respondent LOUIS”), certified restricted use pesticide (“RUP”) applicator for Respondent ALI’I PEST MANAGEMENT (collectively with “Respondent LOUIS”, “Respondents”) did not

submit an annual report of all RUPs applied by Respondent LOUIS during calendar year 2019 to HDOA by January 30, 2020.

6. Respondents were issued one or more of the following notifications by HDOA regarding the submittal of the annual report: Emails dated December 16, 2019 and January 6, 2020, and a letter issued on or about January 16, 2020. Respondents were informed that an annual report was required to be submitted to HDOA even if no RUPs were applied by Respondent LOUIS during calendar year 2019.
7. Respondents were issued a final notification letter, dated March 2, 2020, informing the Respondents that failure to submit the annual report of all RUPs applied during calendar year 2019 to HDOA by March 16, 2020 would result in civil action. Respondents were again informed that an annual report was required to be submitted to HDOA even if no RUPs were applied by Respondent LOUIS during calendar year 2019.
8. Respondents did not submit an annual report of all RUPs applied during calendar year 2019 to HDOA by March 16, 2020.
9. HRS section 149A-41(d) provides as follows: "Liabilities. When construing and enforcing the provisions of this chapter, 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."
10. HRS section 149A-34 provides as follows: "The department may deny issuance of a certificate for reasonable cause. Any certificate issued pursuant to rules adopted under section 149A-33(1) may be suspended or revoked by the department, after hearing, for violation of any condition of the certificate or of any law or rule pertaining to the use of any restricted use pesticide. Any order made by the department for the suspension or revocation of a certificate shall be in writing and shall set forth the reasons for the suspension or revocation. ..."

CAUSE OF ACTION

VIOLATION ONE:

HRS section 149A-26 provides:

- (a) Beginning January 1, 2019, every user of restricted use pesticides shall be subject to the requirement to submit to the department, for departmental use, an annual report of all use of restricted use pesticides as provided in this section.
- (b) No later than thirty days following the end of each calendar year, every entity that uses restricted use pesticides shall provide to the department a report of all restricted use pesticides used during the preceding calendar years.

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

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

HRS section 149A-29 provides:

“The department shall adopt rules pursuant to chapter 91 to implement this part.”

HRS section 149A-33 provides:

“The department shall have the authority to carry out and effectuate the purpose of this chapter by rules, including but not limited to the following: ... (4) To establish, as necessary, record keeping requirements for pesticide use by applicators; ...”

HAR section 4-66-62 provides:

Certified pesticide applicator recordkeeping.

* * *

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

- (1) Name of certified applicator and his or her certification number;
- (2) EPA registration number of each restricted use pesticide used;
- (3) Commercial product name of each restricted use pesticide used;
- (4) Active ingredient(s) of each restricted use pesticide used;
- (5) The total quantities for each restricted use pesticide used;
- (6) The total area treated for each restricted use pesticide used;
- (7) The date on which the restricted use pesticide application occurred; and
- (8) A general description of the geographic location, including, at a minimum the tax map key number, at which the restricted use pesticides were used.

(Emphasis added.)

On or about January 31, 2020, Respondent LOUIE M. LOUIS, being a certified restricted use pesticide applicator for Respondent ALI'I PEST MANAGEMENT, **violated HAR section 4-66-62** by failing to submit to HDOA an annual report for all restricted use pesticides applied during calendar year 2019, to wit:

On January 30, 2020, an annual report of all restricted use pesticides applied by Respondent LOUIE M. LOUIS during calendar year 2019 was due to HDOA. Respondent LOUIE M. LOUIS, the certified restricted use pesticide applicator for Respondent ALI'I PEST MANAGEMENT, did not submit an annual report of all restricted use pesticides applied during calendar year 2019 to HDOA by January 30, 2020.

ORDER TO CEASE AND DESIST

The State of Hawai'i, Department of Agriculture, pursuant to the provisions of HAR section 4-66-3, **DOES HEREBY ORDER RESPONDENTS TO CEASE AND DESIST VIOLATION OF CHAPTER 149A**. You are hereby notified that any further violation of HRS Chapter 149A will result in increased penalties as provided by law.

YOU ARE SO NOTIFIED.

PROPOSED ORDER TO PAY CIVIL PENALTY

THE STATE OF HAWAI'I DEPARTMENT OF AGRICULTURE finds and concludes that Respondents' actions, as set forth above, have violated HAR section 4-66-62.

HAVING VIOLATED the Hawai'i Pesticides Law as set forth in HRS Chapter 149A, RESPONDENTS ARE HEREBY ORDERED TO PAY the following civil penalty in accordance with HRS sections 149A-34 and 149A-41(b)(1)-(2), and HAR section 4-66-66.1:

Violation One: Two Hundred Fifty Dollars (\$250.00);

TOTAL CIVIL PENALTY: Two Hundred Fifty Dollars (\$250.00).

The civil penalty shall be paid within twenty (20) business days from the date of this Notice of Finding of Violation by delivering payment to:

State of Hawai'i Department of Agriculture
Pesticides Branch
1428 S. King Street
Honolulu, Hawai'i 96814

The Department of Agriculture may use all reasonable means to collect the full amount of the penalty, if not paid within the specified time period, as authorized by law.

OPPORTUNITY FOR HEARING

Pursuant to HRS section 149A-41(b)(3), **Respondents are entitled to a hearing** to contest this Proposed Order or any portion of this Notice of Finding of Violation. If you wish to contest this Proposed Order or any portion of this Notice of Finding of Violation, you must submit a **written request for hearing** to the Office of the Chairperson **within twenty (20) calendar days from the date of receipt** of this Notice of Finding of Violation. Upon receipt of the written request for hearing, a notice will be issued setting forth the date, time, and place where such hearing will be conducted. The hearing will be conducted pursuant to HRS Chapter 91, the Hawai'i Administrative Procedure Act.

In lieu of a hearing, you may request a meeting with representatives of the State of Hawai'i Department of Agriculture concerning an informal disposition pursuant to HRS section 91-9(d). The request to meet with representatives of the State of Hawai'i Department of Agriculture must be made **in writing within twenty (20) calendar days from the date of receipt** of this Notice of Finding of Violation. If a settlement can be reached, a Consent Agreement and Order will be signed by all parties. A Consent Agreement and Order shall constitute a waiver of your right to a hearing on any matter to which you have agreed.

The **civil penalty and any proposed corrective action** contained in the Notice of Finding of Violation shall become a **Final Order**, as set forth below, **unless the Respondents file a written request for hearing or meeting within twenty (20) calendar days from the date of receipt** of this Notice of Finding of Violation.

ISSUED THIS 5TH DAY OF November, 2020.


Pesticides Program Manager

THIS ORDER IS HEREBY DECLARED FINAL PURSUANT TO HRS Section 149A-41(b)(3).

Dated: _____
Honolulu, Hawai'i

PHYLLIS SHIMABUKURO GEISER,
Chairperson
Board of Agriculture

cc: file

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 Street and Apt. No., or P.O. Box No. P.O. Box 751
 City, State, ZIP+4® Wailuku, HI 96793

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

NOV 09 2020
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<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to: <u>20-PE-025</u> <u>Louie M. Louis</u> <u>P.O. Box 751</u> <u>Wailuku, HI 96793</u></p> <p>2. Article Number (Transfer from service label) <u>7018 1130 0001 1420 1916</u></p>	<p>A. Signature <u>X Louie M. Louis</u> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <u>Louie M. Louis</u> C. Date of Delivery <u>11-20-20</u></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Mail Restricted Delivery</p> <p><input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery</p>

9590 9402 4826 9032 1370 94

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER
Chairperson, Board of Agriculture

MORRIS M. ATTA
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

February 3, 2021

Certified Mail No. 7020 2450 0001 2279 3987
Return Receipt Requested

Mr. Louie M. Louis
Ali'i Pest Management
P.O. Box 751
Wailuku, Hawai'i 96793

Re: Respondents ALI'I PEST MANAGEMENT and LOUIE M. LOUIS, Docket No. 20-PE-025

FINAL ORDER TO PAY CIVIL PENALTY

Enclosed please find the FINAL ORDER TO PAY CIVIL PENALTY issued by the State of Hawai'i Department of Agriculture ("HDOA"), which imposes a civil penalty in the amount of TWO HUNDRED FIFTY DOLLARS (\$250.00). The enclosed final order was issued pursuant to section 149A-41(b)(1) and (3) of the *Hawai'i Revised Statutes* ("HRS").

On November 20, 2020, the Notice of Finding of Violation under Docket No. 20-PE-025 was served on the agent for ALI'I PEST MANAGEMENT ("Respondent ALI'I PEST MANAGEMENT") and LOUIE M. LOUIS ("Respondent LOUIS", collectively with Respondent ALI'I PEST MANAGEMENT, "Respondents") at the address listed in HDOA's certified restricted use pesticide applicators database. The Notice of Finding of Violation clearly advised the agent for Respondents that the Notice of Finding of Violation would become a FINAL ORDER unless Respondents filed a written request for hearing or settlement meeting within twenty (20) calendar days.

HRS section 149A-41(b)(3) provides:

No administrative penalty shall be assessed unless the person charged shall have been given notice and an opportunity for a hearing on the specific charge
The administrative penalty and any proposed action contained in the notice of finding of violation shall become a final order unless, within twenty days of receipt of the notice, the person or persons charged make a written request for a hearing. (Emphasis added.)

The twenty (20) day time period expired December 10, 2020. As of today's date, HDOA has yet to receive any communication from Respondents.



Accordingly, Respondents have waived the opportunity to challenge the finding of violation and the Notice of Finding of Violation has become a FINAL ORDER.


The TWO HUNDRED FIFTY DOLLAR (\$250.00) civil penalty is **due and payable within TWENTY (20) CALENDAR DAYS** following receipt of the enclosed FINAL ORDER.

Please be advised that should Respondents fail to pay the civil penalty within twenty (20) calendar days following receipt of the final order, **the matter will be referred to the State of Hawai'i Department of the Attorney General for collection.**

Pursuant to HRS section 149A-41(b)(4), once the matter has been referred to the attorney general, an action shall be filed in the appropriate court to recover the civil penalty imposed, and the "attorney general need only show that notice was given, . . . the time granted for requesting a hearing has expired without such a request, the administrative penalty was imposed, and that the penalty remains unpaid."

Should you have any questions regarding the TWO HUNDRED FIFTY DOLLAR (\$250.00) civil penalty imposed pursuant to the enclosed FINAL ORDER TO PAY CIVIL PENALTY issued under Docket No. 20-PE-025, please contact the undersigned at (808) 973-9404.

Sincerely yours,



GREG TAKESHIMA
Acting Pesticides Program Manager

GT:sn
[K:LOUIELOUIS]

Enclosure

STATE OF HAWAI'I
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF

ALI'I PEST MANAGEMENT
and LOUIE M. LOUIS,

Respondents.

DOCKET NO. 20-PE-025

FINDING OF VIOLATION;
AUTHORITY; VIOLATION; CAUSE
OF ACTION; FINAL ORDER TO PAY
CIVIL PENALTY

FINDING OF VIOLATION

A records review conducted by the State of Hawai'i Department of Agriculture yielded evidence of a violation of section 4-66-62 of the *Hawai'i Administrative Rules* ("HAR").

AUTHORITY

The State of Hawai'i Department of Agriculture ("HDOA"), pursuant to the authority granted in sections 149A-26, 149A-34, 149A-31 and 149A-41 of the *Hawai'i Revised Statutes* ("HRS"), and HAR sections 4-66-3, and 4-66-66.1, does hereby bring this action against Respondent ALI'I PEST MANAGEMENT and Respondent LOUIE M. LOUIS for a violation of HAR section 4-66-62.

VIOLATION

1. **HRS section 149A-26** provides as follows: “(a) Beginning January 1, 2019, every user of restricted use pesticides shall be subject to the requirement to submit to the department, for departmental use, an annual report of all use of restricted use pesticides as provided in this section. (b) No later than thirty days following the end of each calendar year, every entity that uses restricted use pesticides shall provide to the department a report of all restricted use pesticides used during the preceding calendar years. (c) The department shall adopt rules pursuant to chapter 91 requiring that the annual reports include the following information:
 - (1) A listing, by federal and state registrations or permit numbers, commercial product names, and active ingredients, of all restricted use pesticides used;
 - (2) The total quantities used for each restricted use pesticide;
 - (3) A general description of the geographic location, including, at a minimum, the tax map key number, at which the restricted use pesticides were used; and
 - (4) The date on which the restricted use pesticide application occurred.”
2. **HRS section 149A-29** provides as follows: “The department shall adopt rules pursuant to chapter 91 to implement this part.”
3. **HRS section 149A-33** provides as follows: “The department shall have the authority to carry out and effectuate the purpose of this chapter by rules, including but not limited to the following: ... (4) To establish, as necessary, record keeping requirements for pesticide use by applicators; ...”
4. **HAR section 4-66-62** provides as follows: “**Certified pesticide applicator recordkeeping.** . . (f) Beginning January 1, 2019, every certified restricted use pesticide applicator shall submit to the department, for departmental use, an annual report of all use of restricted use pesticides. The report shall be submitted to the department no later than thirty days following the end of each calendar year on a form prescribed by the head. The report shall include:
 - (1) Name of certified applicator and his or her certification number;
 - (2) EPA registration number of each restricted use pesticide used;
 - (3) Commercial product name of each restricted use pesticide used;
 - (4) Active ingredient(s) of each restricted use pesticide used;
 - (5) The total quantities for each restricted use pesticide used;
 - (6) The total area treated for each restricted use pesticide used;
 - (7) The date on which the restricted use pesticide application occurred; and
 - (8) A general description of the geographic location, including, at a minimum the tax map key number, at which the restricted use pesticides were used.”

(Emphasis added.)

5. Based on a records review conducted by the HDOA, Pesticides Branch, it was determined that Respondent LOUIE M. LOUIS ("Respondent LOUIS"), certified restricted use pesticide ("RUP") applicator for Respondent ALI'I PEST MANAGEMENT ("Respondent ALI'I PEST MANAGEMENT", collectively with "Respondent LOUIS", "Respondents") did not submit an annual report of all RUPs applied by Respondent LOUIS during calendar year 2019 to HDOA by January 30, 2020.
6. Respondents were issued one or more of the following notifications by HDOA regarding the submittal of the annual report: Emails dated December 16, 2019 and January 6, 2020, and a letter issued on or about January 16, 2020. Respondents were informed that an annual report was required to be submitted to HDOA even if no RUPs were applied by Respondent LOUIS during calendar year 2019.
7. Respondents were issued a final notification letter, dated March 2, 2020, informing the Respondents that failure to submit the annual report of all RUPs applied during calendar year 2019 to HDOA by March 16, 2020 would result in civil action. Respondents were again informed that an annual report was required to be submitted to HDOA even if no RUPs were applied by Respondent LOUIS during calendar year 2019.
8. Respondents did not submit an annual report of all RUPs applied during calendar year 2019 to HDOA by March 16, 2020.
9. HRS section 149A-41(d) provides as follows: "Liabilities. When construing and enforcing the provisions of this chapter, 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."
10. HRS section 149A-34 provides as follows: "The department may deny issuance of a certificate for reasonable cause. Any certificate issued pursuant to rules adopted under section 149A-33(1) may be suspended or revoked by the department, after hearing, for violation of any condition of the certificate or of any law or rule pertaining to the use of any restricted use pesticide. Any order made by the department for the suspension or revocation of a certificate shall be in writing and shall set forth the reasons for the suspension or revocation. ..."

CAUSE OF ACTION

VIOLATION ONE:

HRS section 149A-26 provides:

- (a) Beginning January 1, 2019, every user of restricted use pesticides shall be subject to the requirement to submit to the department, for departmental use, an annual report of all use of restricted use pesticides as provided in this section.

(b) No later than thirty days following the end of each calendar year, every entity that uses restricted use pesticides shall provide to the department a report of all restricted use pesticides used during the preceding calendar years.

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

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

HRS section 149A-29 provides:

“The department shall adopt rules pursuant to chapter 91 to implement this part.”

HRS section 149A-33 provides:

“The department shall have the authority to carry out and effectuate the purpose of this chapter by rules, including but not limited to the following: ... (4) To establish, as necessary, record keeping requirements for pesticide use by applicators; ...”

HAR section 4-66-62 provides:

Certified pesticide applicator recordkeeping.

* * *

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

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

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

(Emphasis added.)

On or about January 31, 2020, Respondent LOUIE M. LOUIS, being a certified restricted use pesticide applicator for Respondent ALI'I PEST MANAGEMENT, **violated HAR section 4-66-62** by failing to submit to HDOA an annual report for all restricted use pesticides applied during calendar year 2019, to wit:

On January 30, 2020, an annual report of all restricted use pesticides applied by Respondent LOUIE M. LOUIS during calendar year 2019 was due to HDOA. Respondent LOUIE M. LOUIS, the certified restricted use pesticide applicator for Respondent ALI'I PEST MANAGEMENT, did not submit an annual report of all restricted use pesticides applied during calendar year 2019 to HDOA by January 30, 2020.

FINAL ORDER TO PAY CIVIL PENALTY

THE STATE OF HAWAI'I DEPARTMENT OF AGRICULTURE finds and concludes that Respondents' actions, as set forth above, have violated HAR section 4-66-62.

Pursuant to HRS section 149A-41(b)(3), Respondents were entitled to a hearing to contest the Notice of Finding of Violation if a written request for a hearing was submitted to the Office of the Chairperson within twenty (20) calendar days from the date of receipt of the Notice of Finding of Violation. Respondents were served with the Notice of Finding of Violation on November 20, 2020. No request for a hearing was received by the Office of the Chairperson of the Department of Agriculture by December 10, 2020. Such inaction constitutes a waiver of Respondents' right to a hearing on this matter.

HAVING VIOLATED the Hawai'i Pesticides Law as set forth in HRS Chapter 149A, RESPONDENTS ARE HEREBY ORDERED TO PAY the following civil penalty in accordance with HRS sections 149A-34 and 149A-41(b)(1)-(2), and HAR section 4-66-66.1:

Violation One: Two Hundred Fifty Dollars (\$250.00);

TOTAL CIVIL PENALTY: Two Hundred Fifty Dollars (\$250.00).

The civil penalty shall be paid within twenty (20) business days from the date of receipt of this Final Order by delivering payment to:

State of Hawai'i Department of Agriculture
Pesticides Branch
1428 S. King Street
Honolulu, Hawai'i 96814

Pursuant to HRS section 149A-41(b)(4), "[i]n case of inability to collect the administrative penalty or failure of any person to pay all or such portion of the administrative penalty as the board may determine, the board shall refer the matter to the attorney general, who shall recover the amount by action in the appropriate court. For any judicial proceeding to recover the administrative penalty imposed, the attorney general need only show that notice was given, a hearing was held or the time granted for requesting a hearing has expired without such a request, the administrative penalty was imposed, and that the penalty remains unpaid."

THIS ORDER IS HEREBY DECLARED FINAL PURSUANT TO HRS SECTION 149A-41(b)(3)

Dated: 2-3-2021
Honolulu, Hawai'i

Phyllis Shimabukuro-Geiser
PHYLLIS SHIMABUKURO-GEISER,
Chairperson
Board of Agriculture

cc: file

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☐ Adult Signature Restricted Delivery \$

Postage \$
 Total Postage and Fees \$

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 City, State, ZIP+4

Mr. Louie M. Louis
 Alii Pest Management
 P.O. Box 751
 Wailuku, HI 96793

PS Form 3800, 7-15

FEB 08 2021
 FEB 08 2021
 Postmark Here

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<p>■ Complete Items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to:</p> <p>Mr. Louie M. Louis Alii Pest Management P.O. Box 751 Wailuku, HI 96793</p> <p>2. Article Number (Transfer from service label)</p> <p>7020 2450 0001 2279 3987</p>	<p>A. Signature X <i>Louie M. Louis</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) C. Date of Delivery 02/12/21</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Mail Restricted Delivery (X) <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery</p>

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

Exhibit C

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER
Chairperson, Board of Agriculture

MORRIS M. ATTA
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-8800 FAX: (808) 973-8813

October 31, 2022

Certified Mail No. 7022 0410 0002 3798 7093
Return Receipt Requested

Mr. Louie Louis
Agent for Alii Pest Management
P.O. Box 751
Wailuku, Hawai'i 96793

Re: In the Matter of ALII PEST MANAGEMENT and LOUIE M. LOUIS
Docket No. 20-PE-025

Dear Mr. Louis:

On November 9, 2020, a Notice of Finding of Violation and Proposed Order to Pay Civil Penalty ("NOV") was issued under Docket No. 22-PE-025 to ALII PEST MANAGEMENT and LOUIE M. LOUIS ("Respondents"). The NOV was based upon evidence of failing to submit an annual to the Hawai'i Department of Agriculture ("HDOA") for all restricted use pesticides applied during calendar year 2019. The NOV stipulated a civil penalty of two hundred fifty dollars (\$250.00). On November 20, 2020, the NOV was served on the agent for Respondents.

Pursuant to Hawai'i Revised Statutes ("HRS") section 149A-41(b)(3), Respondents were entitled to a hearing to contest the NOV if a written request for a hearing was submitted to the Office of the Chairperson within twenty (20) calendar days from the date of receipt of the NOV. The NOV clearly advised Respondents that the NOV would become a FINAL ORDER unless Respondents filed a written request for hearing within twenty (20) calendar days.

The twenty (20) day time period expired December 10, 2020; no request for a hearing was received by the Office of the Chairperson of HDOA by that time. Accordingly, Respondents waived the opportunity to challenge the finding of violation and the NOV became a FINAL ORDER.

On February 8, 2021, HDOA issued a Final Order to Respondents. The Final Order required Respondents to submit the civil penalty of two hundred fifty dollars (\$250.00) within twenty (20) business days from the receipt of the Final Order, or HDOA would refer the matter to the Hawai'i Department of the Attorney General for collection. The agent for Respondents was served with the Final Order on February 12, 2021. As of today's date, Respondent has failed to submit the civil penalty to HDOA and is now in DEFAULT.



ALII PEST MANAGEMENT and LOUIE M. LOUIS
October 31, 2022

HRS section 149A-41(b)(4) provides as follows:

In case of inability to collect the administrative penalty or failure of any person to pay all or such portion of the administrative penalty as the board may determine, **the board shall refer the matter to the attorney general, who shall recover the amount by action in the appropriate court.** For any judicial proceeding to recover the administrative penalty imposed, **the attorney general need only show that notice was given, a hearing was held or the time granted for requesting a hearing has expired without such a request, the administrative penalty was imposed, and that the penalty remains unpaid.** (Emphasis added.)

Please note that this letter and enclosures will be tendered to the State of Hawai'i Attorney General as evidence of RESPONDENTS' FAILURE TO SUBMIT THE CIVIL PENALTY TO HDOA AS AGREED. Respondents may be deemed liable for court costs, attorney fees, and interest should legal action be required to secure payment of the two hundred fifty dollar (\$250.00) civil penalty.

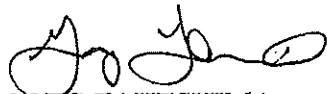
Please remit the two hundred fifty dollar (\$250.00) civil penalty by November 14, 2022 to:

State of Hawai'i Department of Agriculture
Pesticides Branch
1428 S. King Street
Honolulu, Hawai'i 96814

Copies of the NOV, Final Order, and signed certified mail return receipts are enclosed. **If no payment is received by November 14, 2022, pursuant to HRS section 149A-41(b)(4), the matter will be referred to the Hawai'i Department of the Attorney General for collection.**

Should you have any questions or concerns please contact the undersigned at (808) 973-9404 or via email at greg.y.takeshima@hawaii.gov

Sincerely yours,



GREG TAKESHIMA
Acting Pesticides Program Manager

GT:sn
[K:LOUIELOUIS]

Enclosures (18 pages)
cc: File
EPA Region IX

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 For delivery information, visit our website at www.usps.com

OFFICIAL USE

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☐ Certified Mail Restricted Delivery \$0.00
☐ Adult Signature Required \$0.00
☐ Adult Signature Restricted Delivery \$0.00

Postage \$1.92
 Total Postage and Fees \$5.92

Sent To:
 Louie Louis / Alii Pest Management
 Street and Apt. No., or P.O. Box No.
 P.O. Box 751
 City, State, ZIP+4®
 Wailuku, HI 96793

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

0013 13
 NOV - 2 2022
 11/02/2022
 SN

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to: Louie Louis Alii Pest Management P.O. Box 751 Wailuku, HI 96793</p> <p>2. Article Number (Transfer from service label) 7022 0410 0002 3798 7093</p>	<p>A. Signature x <i>Louie Louis</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™ <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p>

9590 9402 7214 1284 5615 82

PS Form 3811, July 2020 PSN 7530-02-000-9053 Domestic Return Receipt

State of Hawai'i
Department of Agriculture
Plant Industry Division
Pesticide Branch

February 28, 2023

Board of Agriculture
Honolulu, Hawai'i

Subject: Request that the Final Order for In the Matter of Big Island Ag Products, LLC and Tung Huynh, Docket No. 22-PE-050, be Referred to the Attorney General for Collection.

PROCEDURAL BACKGROUND:

On August 1, 2022, the Pesticides Branch of the Hawai'i Department of Agriculture ("HDOA") Plant Industry Division issued a Notice of Finding of Violation and Proposed Order to Pay Civil Penalty ("NOV") to Big Island Ag Products, LLC ("Respondent Big Island Ag Products") and Tung Huynh ("Respondent Huynh", collectively with Respondent Big Island Ag Products, "Respondents") under Docket No. 22-PE-050. A copy of the NOV is attached hereto as "Exhibit A".

The NOV alleged that Respondents violated Hawai'i Administrative Rules ("HAR") Section 4-66-62 by failing to submit an annual report to HDOA for all restricted use pesticides applied by Respondent Huynh during calendar year 2021. The NOV proposed a civil penalty in the amount of one hundred dollars (\$100.00) be imposed for this violation. The NOV provided Respondents the opportunity to contest or negotiate the NOV within twenty calendar days from the date of receipt of the NOV or the NOV would become final. On August 3, 2022, the NOV was served on Respondent Huynh, and on September 24, 2022, the NOV was served on Respondent Big Island Ag Products. HDOA did not receive any request from Respondents to contest the NOV.

On November 22, 2022, a Final Order to Pay Civil Penalty ("Final Order") was issued to Respondents for failing to respond to the NOV. The Final Order required Respondents to submit the original civil penalty of one hundred dollars (\$100.00) to HDOA within twenty (20) business days from the date of receipt of the Final Order. The Final Order was served on the Respondents on November 25, 2022, making the original civil penalty due and payable by December 23, 2022. A copy of the Final Order is attached hereto as "Exhibit B".

On January 13, 2023, HDOA issued a Demand Letter to the Respondents. The Demand Letter stated that the Respondents were in default due to Respondents' failure to abide by the terms and conditions of the Final Order. The Demand Letter required the Respondents to submit the original civil penalty of one hundred dollars (\$100.00) by January 23, 2023, or HDOA would refer the matter to the Hawai'i Department of the Attorney General for collection. On January 17, 2023, the Demand Letter was served on Respondent Big Island Ag Products, and on January 19, 2023, the Demand Letter was served on Respondent Huynh. A copy of the Demand Letter is attached hereto as "Exhibit C".

Request that the Final Order for In the Matter of Big Island Ag Products, LLC and Tung Huynh, Docket No. 22-PE-050, be Referred to the Attorney General for Collection

Page 2

As of today's date, Respondents have failed to submit the original civil penalty amount of one hundred dollars (\$100.00) to HDOA.

AUTHORITY: Pursuant to section 149A-41(b)(4), *Hawai'i Revised Statutes* ("HRS"), in case of inability to collect the administrative penalty or failure of any person to pay all or such portion of the administrative penalty as the Board may determine, the Board shall refer the matter to the Attorney General, who shall recover the amount by action in the appropriate court.

RECOMMENDATION: The Pesticides Branch of HDOA, Plant Industry Division recommends that the Board refer the Final Order for In the Matter of Big Island Ag Products, LLC and Tung Huynh, Docket No. 22-PE-050, to the Attorney General for collection.

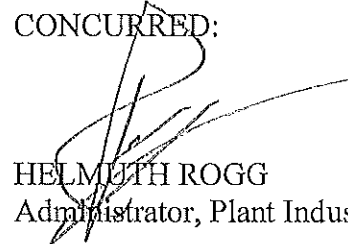
It is respectfully requested that the Board follow the recommendation set forth above.

Submitted by:



GREG TAKESHIMA
Acting Pesticides Branch Manager

CONCURRED:



HELMUTH ROGG
Administrator, Plant Industry

APPROVED FOR SUBMISSION:



SHARON HURD
Chairperson, Board of Agriculture

Attachments – Exhibits "A" through "C"

Exhibit A

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER
Chairperson, Board of Agriculture

MORRIS M. ATTA
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9800 FAX: (808) 973-9813

July 26, 2022

Certified Mail No. 7022 0410 0002 3798 7062
Return Receipt Requested

Mr. David Huynh
Big Island Ag Products, LLC
P.O. Box 866
Pepeekeo, Hawai'i 96783

Dear Mr. Huynh:

Enclosed is a Notice of Finding of Violation and Proposed Order to Pay Civil Penalty issued under Docket No. 22-PE-050. The civil penalty is based upon evidence of failing to submit an annual report to the Hawai'i Department of Agriculture for all restricted use pesticides applied during calendar year 2021.

REVIEW THE ENCLOSED NOTICE CAREFULLY. In particular, please note that the proposed civil penalty will become a final order unless a written request for hearing or informal settlement meeting is submitted to the Office of the Chairperson of the Department of Agriculture within twenty (20) calendar days from the date of receipt of this Notice of Violation. If you wish to discuss the proposed actions, please contact the undersigned at (808) 973-9404.

Sincerely,

GREG TAKESHIMA
Acting Pesticides Program Manager

GT:sn
[K: TUNGHUYNH]

Enclosure



DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER
Chairperson, Board of Agriculture

MORRIS M. ATTA
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-0800 FAX: (808) 973-9813

July 26, 2022

Certified Mail No. 7020 3160 0000 7395 9453
Return Receipt Requested

Mr. Tung Huynh
Big Island Ag Products, LLC
P.O. Box 677
Pepeekeo, Hawai'i 96783

Dear Mr. Huynh:

Enclosed is a Notice of Finding of Violation and Proposed Order to Pay Civil Penalty issued under Docket No. 22-PE-050. The civil penalty is based upon evidence of failing to submit an annual report to the Hawai'i Department of Agriculture for all restricted use pesticides applied during calendar year 2021.

REVIEW THE ENCLOSED NOTICE CAREFULLY. In particular, please note that **the proposed civil penalty will become a final order unless a written request for hearing or informal settlement meeting is submitted to the Office of the Chairperson of the Department of Agriculture within twenty (20) calendar days from the date of receipt of this Notice of Violation.** If you wish to discuss the proposed actions, please contact the undersigned at (808) 973-9404.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Takeshima".

GREG TAKESHIMA
Acting Pesticides Program Manager

GT:sn
[K: TUNGHUYNH]

Enclosure



STATE OF HAWAII
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF

BIG ISLAND AG PRODUCTS, LLC
and TUNG HUYNH,

Respondents.

DOCKET NO. 22-PE-050

NOTICE OF FINDING OF
VIOLATION; AUTHORITY;
ALLEGED VIOLATIONS; CAUSE OF
ACTION; ORDER TO CEASE AND
DESIST; PROPOSED ORDER TO
PAY CIVIL PENALTY;
OPPORTUNITY FOR HEARING

NOTICE OF FINDING OF VIOLATION

NOTICE IS HEREBY GIVEN that a records review conducted by the State of Hawai'i Department of Agriculture yielded evidence of a violation of section 4-66-62 of the *Hawai'i Administrative Rules* ("HAR").

AUTHORITY

The State of Hawai'i Department of Agriculture ("HDOA"), pursuant to the authority granted in sections 149A-26, 149A-34, 149A-31 and 149A-41 of the *Hawai'i Revised Statutes* ("HRS"), and HAR sections 4-66-3, and 4-66-66.1, does hereby bring this action against Respondent BIG ISLAND AG PRODUCTS, LLC and Respondent TUNG HUYNH for a violation of HAR section 4-66-62.

ALLEGED VIOLATION

1. **HRS section 149A-26** provides as follows: "(a) Beginning January 1, 2019, every user of restricted use pesticides shall be subject to the requirement to submit to the department,

for departmental use, an annual report of all use of restricted use pesticides as provided in this section. (b) No later than thirty days following the end of each calendar year, every entity that uses restricted use pesticides shall provide to the department a report of all restricted use pesticides used during the preceding calendar years. (c) The department shall adopt rules pursuant to chapter 91 requiring that the annual reports include the following information:

- (1) A listing, by federal and state registrations or permit numbers, commercial product names, and active ingredients, of all restricted use pesticides used;
 - (2) The total quantities used for each restricted use pesticide;
 - (3) A general description of the geographic location, including, at a minimum, the tax map key number, at which the restricted use pesticides were used; and
 - (4) The date on which the restricted use pesticide application occurred.”
2. **HRS section 149A-29** provides as follows: “The department shall adopt rules pursuant to chapter 91 to implement this part.”
3. **HRS section 149A-33** provides as follows: “The department shall have the authority to carry out and effectuate the purpose of this chapter by rules, including but not limited to the following: ... (4) To establish, as necessary, record keeping requirements for pesticide use by applicators; ...”
4. **HAR section 4-66-62** provides as follows: “**Certified pesticide applicator recordkeeping.** . . (f) Beginning January 1, 2019, every certified restricted use pesticide applicator shall submit to the department, for departmental use, an annual report of all use of restricted use pesticides. The report shall be submitted to the department no later than thirty days following the end of each calendar year on a form prescribed by the head. The report shall include:
 - (1) Name of certified applicator and his or her certification number;
 - (2) EPA registration number of each restricted use pesticide used;
 - (3) Commercial product name of each restricted use pesticide used;
 - (4) Active ingredient(s) of each restricted use pesticide used;
 - (5) The total quantities for each restricted use pesticide used;
 - (6) The total area treated for each restricted use pesticide used;
 - (7) The date on which the restricted use pesticide application occurred; and
 - (8) A general description of the geographic location, including, at a minimum the tax map key number, at which the restricted use pesticides were used.”

(Emphasis added.)

5. Based on a records review conducted by the HDOA, Pesticides Branch, it was determined that Respondent TUNG HUYNH (“Respondent HUYNH”), certified restricted use pesticide (“RUP”) applicator for Respondent BIG ISLAND AG PRODUCTS, LLC (“Respondent BIG ISLAND AG PRODUCTS”, collectively with “Respondent HUYNH”, “Respondents”) did not submit an annual report of all RUPs

applied by Respondent HUYNH during calendar year 2021 to HDOA by January 30, 2022.

6. HRS section 149A-41(d) provides as follows: "Liabilities. When construing and enforcing the provisions of this chapter, 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."
7. HRS section 149A-34 provides as follows: "The department may deny issuance of a certificate for reasonable cause. Any certificate issued pursuant to rules adopted under section 149A-33(1) may be suspended or revoked by the department, after hearing, for violation of any condition of the certificate or of any law or rule pertaining to the use of any restricted use pesticide. Any order made by the department for the suspension or revocation of a certificate shall be in writing and shall set forth the reasons for the suspension or revocation. ..."
8. On June 1, 2022, a Warning Notice was issued to Respondents for failure to submit an annual report of all RUPs applied (including a report of zero RUPs applied, if applicable) by Respondent HUYNH during calendar year 2021 to HDOA by January 30, 2022.
9. The June 1, 2022 Warning Notice instructed Respondents to submit the annual report of all RUPs applied during calendar year 2021 to HDOA within thirty (30) days of receipt of the June 1, 2022 Warning Notice.
10. The June 1, 2022 Warning Notice stated that if an annual report of all RUPs applied by Respondent HUYNH during calendar year 2021 was not received by HDOA within thirty (30) days of receipt of the June 1, 2022 Warning Notice, a Notice of Violation and Order with civil penalty and proposed corrective action would be issued to Respondents.
11. The June 1, 2022 Warning Notice was served on Respondents on June 18, 2022. HDOA did not receive an annual report of all RUPs applied by Respondent HUYNH during calendar year 2021 by July 18, 2022.

CAUSE OF ACTION

VIOLATION:

HRS section 149A-26 provides:

- (a) Beginning January 1, 2019, every user of restricted use pesticides shall be subject to the requirement to submit to the department, for departmental use, an annual report of all use of restricted use pesticides as provided in this section.
- (b) No later than thirty days following the end of each calendar year, every entity that uses restricted use pesticides shall provide to the department a report of all restricted use pesticides used during the preceding calendar years.

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

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

HRS section 149A-29 provides:

“The department shall adopt rules pursuant to chapter 91 to implement this part.”

HRS section 149A-33 provides:

“The department shall have the authority to carry out and effectuate the purpose of this chapter by rules, including but not limited to the following: ... (4) To establish, as necessary, record keeping requirements for pesticide use by applicators; ...”

HAR section 4-66-62 provides:

Certified pesticide applicator recordkeeping.

* * *

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

- (1) Name of certified applicator and his or her certification number;
- (2) EPA registration number of each restricted use pesticide used;
- (3) Commercial product name of each restricted use pesticide used;
- (4) Active ingredient(s) of each restricted use pesticide used;
- (5) The total quantities for each restricted use pesticide used;
- (6) The total area treated for each restricted use pesticide used;
- (7) The date on which the restricted use pesticide application occurred; and
- (8) A general description of the geographic location, including, at a minimum the tax map key number, at which the restricted use pesticides were used.

(Emphasis added.)

On or about January 31, 2022, Respondent TUNG HUYNH, being a certified restricted use pesticide applicator for Respondent BIG ISLAND AG PRODUCTS, LLC, violated HAR section 4-66-62 by failing to submit to HDOA an annual report for all restricted use pesticides applied (including a report of zero applications, if applicable) during calendar year 2021, to wit:

On January 30, 2022, an annual report of all restricted use pesticides applied (including a report of zero restricted use pesticides applied, if applicable) by Respondent TUNG HUYNH during calendar year 2021 was due to HDOA. Respondent TUNG HUYNH, the certified restricted use pesticide applicator for Respondent BIG ISLAND AG PRODUCTS, LLC, did not submit a restricted use pesticide annual report for calendar year 2021 to HDOA by January 30, 2022.

Respondents BIG ISLAND AG PRODUCTS, LLC and TUNG HUYNH were issued a Warning Notice, dated June 1, 2022, which instructed Respondents BIG ISLAND AG PRODUCTS, LLC and TUNG HUYNH to submit an annual report of all restricted use pesticides applied by Respondent TUNG HUYNH during calendar year 2021. The June 1, 2022 Warning Notice informed Respondents BIG ISLAND AG PRODUCTS, LLC and TUNG HUYNH that if an annual report was not received by HDOA within thirty (30) days of receipt of the June 1, 2022 Warning Notice, a Notice of Violation and Order with civil penalty and proposed corrective action would be issued. Respondents BIG ISLAND AG PRODUCTS, LLC and TUNG HUYNH were served with the June 1, 2022 Warning Notice on June 18, 2022. HDOA did not receive an annual report of all RUPs applied by Respondent TUNG HUYNH during calendar year 2021 by July 18, 2022.

ORDER TO CEASE AND DESIST

The State of Hawai'i, Department of Agriculture, pursuant to the provisions of HAR section 4-66-3, **DOES HEREBY ORDER RESPONDENTS TO CEASE AND DESIST VIOLATION OF CHAPTER 149A.** You are hereby notified that any further violation of HRS Chapter 149A will result in increased penalties as provided by law.

YOU ARE SO NOTIFIED.

PROPOSED ORDER TO PAY CIVIL PENALTY

THE STATE OF HAWAI'I DEPARTMENT OF AGRICULTURE finds and concludes that Respondents' actions, as set forth above, have violated HAR section 4-66-62.

HAVING VIOLATED the Hawai'i Pesticides Law as set forth in HRS Chapter 149A, RESPONDENTS ARE HEREBY ORDERED TO PAY the following civil penalty in accordance with HRS sections 149A-34 and 149A-41(b)(1)-(2), and HAR section 4-66-66.1:

Violation: One Hundred Dollars (\$100.00);

TOTAL CIVIL PENALTY: One Hundred Dollars (\$100.00).

The civil penalty shall be paid within twenty (20) business days from the date of receipt of this Notice of Finding of Violation by delivering payment to:

State of Hawai'i Department of Agriculture
Pesticides Branch
1428 S. King Street
Honolulu, Hawai'i 96814

The Department of Agriculture may use all reasonable means to collect the full amount of the penalty, if not paid within the specified time period, as authorized by law.

An annual report of all restricted use pesticides applied by Respondent TUNG HUYNH (including a report of zero restricted use pesticides applied, if applicable) during

calendar year 2021 shall also be submitted to the Department of Agriculture within twenty (20) business days from the date of receipt of this Notice of Finding of Violation.

OPPORTUNITY FOR HEARING

Pursuant to HRS section 149A-41(b)(3), Respondents are entitled to a hearing to contest this Proposed Order or any portion of this Notice of Finding of Violation. If you wish to contest this Proposed Order or any portion of this Notice of Finding of Violation, you must submit a **written request for hearing** to the Office of the Chairperson **within twenty (20) calendar days from the date of receipt** of this Notice of Finding of Violation. Upon receipt of the written request for hearing, a notice will be issued setting forth the date, time, and place where such hearing will be conducted. The hearing will be conducted pursuant to HRS Chapter 91, the Hawai'i Administrative Procedure Act.

In lieu of a hearing, you may request a meeting with representatives of the State of Hawai'i Department of Agriculture concerning an informal disposition pursuant to HRS section 91-9(e). The request to meet with representatives of the State of Hawai'i Department of Agriculture must be made in **writing within twenty (20) calendar days from the date of receipt** of this Notice of Finding of Violation. If a settlement can be reached, a Consent Agreement and Order will be signed by all parties. A Consent Agreement and Order shall constitute a waiver of your right to a hearing on any matter to which you have agreed. If no settlement can be reached, Respondents shall not be entitled to a hearing unless Respondents had submitted a **written request for hearing** to the Office of the Chairperson **within twenty (20) calendar days from the date of receipt** of this Notice of Finding of Violation, and the Notice of Finding of Violation shall become a Final Order.

The civil penalty and any proposed corrective action contained in the Notice of Finding of Violation shall become a Final Order, as set forth below, unless the Respondents file a **written request for hearing within twenty (20) calendar days from the date of receipt** of this Notice of Finding of Violation, or unless a settlement has been reached and a Consent and Order has been signed by all parties.

ISSUED THIS 26th DAY OF July, 2022.


Pesticides Program Manager

THIS ORDER IS HEREBY DECLARED FINAL PURSUANT TO HRS Section 149A-41(b)(3).

Dated: _____
Honolulu, Hawai'i

PHYLLIS SHIMABUKURO GEISER,
Chairperson
Board of Agriculture

cc: file

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☐ Return Receipt (electronic) \$1.25
☐ Certified Mail Restricted Delivery \$3.00
☐ Adult Signature Required \$3.00
☐ Adult Signature Restricted Delivery \$3.00

Postage \$0.84

Total Postage and Fees \$3.09

Sent To
Tung Huynh / Big Island Ag Products LLC
Street and Apt. No., or PO Box No.
P.O. Box 677
City, State, ZIP+4®
Pepeekeo, HI 96783

Pepeekeo, HI 96783

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

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☐ Return Receipt (electronic) \$1.25
☐ Certified Mail Restricted Delivery \$3.00
☐ Adult Signature Required \$3.00
☐ Adult Signature Restricted Delivery \$3.00

Postage \$0.84

Total Postage and Fees \$3.09

Sent To
David Huynh / Big Island Ag Products
Street and Apt. No., or PO Box No.
P.O. Box 866
City, State, ZIP+4®
Pepeekeo, HI 96783

Pepeekeo, HI 96783

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Tung Huynh
Big Island Ag Products LLC
P.O. Box 677
Pepeekeo, HI 96783



9590 9402 6810 1074 6565 29

2. Article Number (Transfer from service label)
7020 3160 0000 7395 9453

PS Form 3811, July 2020 PSN 7630-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☒ Agent
X *Baum* ☐ Addressee
- B. Received by (Printed Name) *TAMMY LE*
- C. Date of Delivery *8/2/22*
- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
- ☐ Adult Signature
 - ☐ Adult Signature Restricted Delivery
 - ☐ Certified Mail®
 - ☐ Certified Mail Restricted Delivery
 - ☐ Collect on Delivery
 - ☐ Collect on Delivery Restricted Delivery
 - ☐ Priority Mail Express®
 - ☐ Registered Mail™
 - ☐ Registered Mail Restricted Delivery
 - ☐ Signature Confirmation™
 - ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
David Huynh
Big Island Ag Products, LLC
P.O. Box 866
Pepeekeo, HI 96783



9590 9402 7214 1284 5616 29

2. Article Number (Transfer from service label)
7022 0410 0002 3798 7062

PS Form 3811, July 2020 PSN 7630-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☐ Agent
X *Baum* ☐ Addressee
- B. Received by (Printed Name) *TAM LE*
- C. Date of Delivery *09/24/22*
- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
- ☐ Adult Signature
 - ☐ Adult Signature Restricted Delivery
 - ☐ Certified Mail®
 - ☐ Certified Mail Restricted Delivery
 - ☐ Collect on Delivery
 - ☐ Collect on Delivery Restricted Delivery
 - ☐ Priority Mail Express®
 - ☐ Registered Mail™
 - ☐ Registered Mail Restricted Delivery
 - ☐ Signature Confirmation™
 - ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



Exhibit B

PHYLLIS SHIMABUKURO-GEISER
Chairperson, Board of Agriculture

MORRIS M. ATTA
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2612
Phone: (808) 973-0600 FAX: (808) 973-0613

November 10, 2022

Certified Mail No. 7021 0350 0002 0811 8709
Return Receipt Requested

Mr. David Huynh
Agent for Big Island Ag Products, LLC
P.O. Box 866
Pepeekeo, Hawai'i 96783

Certified Mail No. 7021 0350 0002 0811 8723
Return Receipt Requested

Mr. Tung Huynh
P.O. Box 677
Pepeekeo, Hawai'i 96783

Re: Respondent BIG ISLAND AG PRODUCTS, LLC and Respondent TUNG HUYNH,
Docket No. 22-PE-050
FINAL ORDER TO PAY CIVIL PENALTY

Enclosed please find the FINAL ORDER TO PAY CIVIL PENALTY issued by the State of Hawai'i Department of Agriculture ("HDOA"), which imposes a civil penalty in the amount of ONE HUNDRED DOLLARS (\$100.00). The enclosed final order was issued pursuant to section 149A-41(b)(1) and (3) of the *Hawai'i Revised Statutes* ("HRS").

On August 3, 2022, the Notice of Finding of Violation under Docket No. 22-PE-050 was served on the agent for BIG ISLAND AG PRODUCTS, LLC ("Respondent BIG ISLAND AG PRODUCTS") and Respondent TUNG HUYNH ("Respondent HUYNH", collectively with Respondent BIG ISLAND AG PRODUCTS, "Respondents"). The Notice of Finding of Violation clearly advised Respondents that the Notice of Finding of Violation would become a FINAL ORDER unless Respondents filed a written request for hearing or settlement meeting within twenty (20) calendar days.

HRS section 149A-41(b)(3) provides:

No administrative penalty shall be assessed unless the person charged shall have been given notice and an opportunity for a hearing on the specific charge
The administrative penalty and any proposed action contained in the notice of finding of violation shall become a final order unless, within twenty days of



BIG ISLAND AG PRODUCTS, LLC and TUNG HUYNH

Page 2

receipt of the notice, the person or persons charged make a written request for a hearing. (Emphasis added.)

The twenty (20) day time period expired October 14, 2022. As of today's date, HDOA has yet to receive any communication from Respondents.

Accordingly, Respondents have waived the opportunity to challenge the finding of violation and the Notice of Finding of Violation has become a FINAL ORDER.

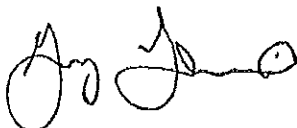
The ONE HUNDRED DOLLAR (\$100.00) civil penalty is due and payable within TWENTY (20) BUSINESS DAYS following receipt of the enclosed FINAL ORDER.

Please be advised that should Respondents fail to pay the civil penalty within twenty (20) business days following receipt of the final order, the matter will be referred to the State of Hawai'i Department of the Attorney General for collection.

Pursuant to HRS section 149A-41(b)(4), once the matter has been referred to the attorney general, an action shall be filed in the appropriate court to recover the civil penalty imposed, and the "attorney general need only show that notice was given, . . . the time granted for requesting a hearing has expired without such a request, the administrative penalty was imposed, and that the penalty remains unpaid."

Should you have any questions regarding the ONE HUNDRED DOLLAR (\$100.00) civil penalty imposed pursuant to the enclosed FINAL ORDER TO PAY CIVIL PENALTY issued under Docket No. 22-PE-050, please contact the undersigned at (808) 973-9404.

Sincerely yours,



GREG TAKESHIMA
Acting Pesticides Program Manager

GT:sn
[K: TUNGHUYNH]

Enclosure

STATE OF HAWAII
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF

BIG ISLAND AG PRODUCTS, LLC
and TUNG HUYNH,

Respondents.

DOCKET NO. 22-PE-050

FINDING OF VIOLATION;
AUTHORITY; VIOLATION; CAUSE
OF ACTION; FINAL ORDER TO PAY
CIVIL PENALTY

FINDING OF VIOLATION

A records review conducted by the State of Hawai'i Department of Agriculture yielded evidence of a violation of section 4-66-62 of the *Hawai'i Administrative Rules* ("HAR").

AUTHORITY

The State of Hawai'i Department of Agriculture ("HDOA"), pursuant to the authority granted in sections 149A-26, 149A-34, 149A-31 and 149A-41 of the *Hawai'i Revised Statutes* ("HRS"), and HAR sections 4-66-3, and 4-66-66.1, does hereby bring this action against Respondent BIG-ISLAND AG PRODUCTS, LLC and Respondent TUNG HUYNH for a violation of HAR section 4-66-62,

VIOLATION

1. HRS section 149A-26 provides as follows: "(a) Beginning January 1, 2019, every user of restricted use pesticides shall be subject to the requirement to submit to the department, for

departmental use, an annual report of all use of restricted use pesticides as provided in this section. (b) No later than thirty days following the end of each calendar year, every entity that uses restricted use pesticides shall provide to the department a report of all restricted use pesticides used during the preceding calendar years. (c) The department shall adopt rules pursuant to chapter 91 requiring that the annual reports include the following information:

- (1) A listing, by federal and state registrations or permit numbers, commercial product names, and active ingredients, of all restricted use pesticides used;
 - (2) The total quantities used for each restricted use pesticide;
 - (3) A general description of the geographic location, including, at a minimum, the tax map key number, at which the restricted use pesticides were used; and
 - (4) The date on which the restricted use pesticide application occurred.”
2. HRS section 149A-29 provides as follows: “The department shall adopt rules pursuant to chapter 91 to implement this part.”
3. HRS section 149A-33 provides as follows: “The department shall have the authority to carry out and effectuate the purpose of this chapter by rules, including but not limited to the following: ... (4) To establish, as necessary, record keeping requirements for pesticide use by applicators; ...”
4. HAR section 4-66-62 provides as follows: “**Certified pesticide applicator recordkeeping.** . . (f) Beginning January 1, 2019, every certified restricted use pesticide applicator shall submit to the department, for departmental use, an annual report of all use of restricted use pesticides. The report shall be submitted to the department no later than thirty days following the end of each calendar year on a form prescribed by the head. The report shall include:
 - (1) Name of certified applicator and his or her certification number;
 - (2) EPA registration number of each restricted use pesticide used;
 - (3) Commercial product name of each restricted use pesticide used;
 - (4) Active ingredient(s) of each restricted use pesticide used;
 - (5) The total quantities for each restricted use pesticide used;
 - (6) The total area treated for each restricted use pesticide used;
 - (7) The date on which the restricted use pesticide application occurred; and
 - (8) A general description of the geographic location, including, at a minimum the tax map key number, at which the restricted use pesticides were used.”

(Emphasis added.)

5. Based on a records review conducted by the HDOA, Pesticides Branch, it was determined that Respondent TUNG HUYNH (“Respondent HUYNH”), certified restricted use pesticide (“RUP”) applicator for Respondent BIG ISLAND AG PRODUCTS, LLC (“Respondent BIG ISLAND AG PRODUCTS”, collectively with “Respondent HUYNH”,

"Respondents") did not submit an annual report of all RUPs applied by Respondent HUYNH during calendar year 2021 to HDOA by January 30, 2022.

6. HRS section 149A-41(d) provides as follows: "Liabilities. When construing and enforcing the provisions of this chapter, 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."
7. HRS section 149A-34 provides as follows: "The department may deny issuance of a certificate for reasonable cause. Any certificate issued pursuant to rules adopted under section 149A-33(1) may be suspended or revoked by the department, after hearing, for violation of any condition of the certificate or of any law or rule pertaining to the use of any restricted use pesticide. Any order made by the department for the suspension or revocation of a certificate shall be in writing and shall set forth the reasons for the suspension or revocation. ..."
8. On June 1, 2022, a Warning Notice was issued to Respondents for failure to submit an annual report of all RUPs applied (including a report of zero RUPs applied, if applicable) by Respondent HUYNH during calendar year 2021 to HDOA by January 30, 2022.
9. The June 1, 2022 Warning Notice instructed Respondents to submit the annual report of all RUPs applied during calendar year 2021 to HDOA within thirty (30) days of receipt of the June 1, 2022 Warning Notice.
10. The June 1, 2022 Warning Notice stated that if an annual report of all RUPs applied by Respondent HUYNH during calendar year 2021 was not received by HDOA within thirty (30) days of receipt of the June 1, 2022 Warning Notice, a Notice of Violation and Order with civil penalty and proposed corrective action would be issued to Respondents.
11. The June 1, 2022 Warning Notice was served on Respondents on June 18, 2022. HDOA did not receive an annual report of all RUPs applied by Respondent HUYNH during calendar year 2021 by July 18, 2022.

CAUSE OF ACTION

VIOLATION:

HRS section 149A-26 provides:

- (a) Beginning January 1, 2019, every user of restricted use pesticides shall be subject to the requirement to submit to the department, for departmental use, an annual report of all use of restricted use pesticides as provided in this section.
- (b) No later than thirty days following the end of each calendar year, every entity that uses restricted use pesticides shall provide to the department a report of all restricted use pesticides used during the preceding calendar years.

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

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

HRS section 149A-29 provides:

“The department shall adopt rules pursuant to chapter 91 to implement this part.”

HRS section 149A-33 provides:

“The department shall have the authority to carry out and effectuate the purpose of this chapter by rules, including but not limited to the following: ... (4) To establish, as necessary, record keeping requirements for pesticide use by applicators; ...”

HAR section 4-66-62 provides:

Certified pesticide applicator recordkeeping.

* * *

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

- (1) Name of certified applicator and his or her certification number;
- (2) EPA registration number of each restricted use pesticide used;
- (3) Commercial product name of each restricted use pesticide used;
- (4) Active ingredient(s) of each restricted use pesticide used;
- (5) The total quantities for each restricted use pesticide used;
- (6) The total area treated for each restricted use pesticide used;
- (7) The date on which the restricted use pesticide application occurred; and
- (8) A general description of the geographic location, including, at a minimum the tax map key number, at which the restricted use pesticides were used.

(Emphasis added.)

On or about January 31, 2022, Respondent TUNG HUYNH, being a certified restricted use pesticide applicator for Respondent BIG ISLAND AG PRODUCTS, LLC, **violated HAR section 4-66-62** by failing to submit to HDOA an annual report for all restricted use pesticides applied (including a report of zero applications, if applicable) during calendar year 2021, to wit:

On January 30, 2022, an annual report of all restricted use pesticides applied (including a report of zero restricted use pesticides applied, if applicable) by Respondent TUNG HUYNH during calendar year 2021 was due to HDOA. Respondent TUNG HUYNH, the certified restricted use pesticide applicator for Respondent BIG ISLAND AG PRODUCTS, LLC, did not submit a restricted use pesticide annual report for calendar year 2021 to HDOA by January 30, 2022.

Respondents BIG ISLAND AG PRODUCTS, LLC and TUNG HUYNH were issued a Warning Notice, dated June 1, 2022, which instructed Respondents BIG ISLAND AG PRODUCTS, LLC and TUNG HUYNH to submit an annual report of all restricted use pesticides applied by Respondent TUNG HUYNH during calendar year 2021. The June 1, 2022 Warning Notice informed Respondents BIG ISLAND AG PRODUCTS, LLC and TUNG HUYNH that if an annual report was not received by HDOA within thirty (30) days of receipt of the June 1, 2022 Warning Notice, a Notice of Violation and Order with civil penalty and proposed corrective action would be issued. Respondents BIG ISLAND AG PRODUCTS, LLC and TUNG HUYNH were served with the June 1, 2022 Warning Notice on June 18, 2022. HDOA did not receive an annual report of all RUPs applied by Respondent TUNG HUYNH during calendar year 2021 by July 18, 2022.

FINAL ORDER TO PAY CIVIL PENALTY

THE STATE OF HAWAII DEPARTMENT OF AGRICULTURE finds and concludes that Respondents' actions, as set forth above, have violated HAR section 4-66-62.

Pursuant to HRS section 149A-41(b)(3), Respondents were entitled to a hearing to contest the Notice of Finding of Violation if a written request for a hearing was submitted to the Office of the Chairperson within twenty (20) calendar days from the date of receipt of the Notice of Finding of Violation. Respondents were served with the Notice of Finding of Violation on September 24, 2022. No request for a hearing was received by the Office of the Chairperson of the Department of Agriculture by October 14, 2022. Such inaction constitutes a waiver of Respondents' right to a hearing on this matter.

HAVING VIOLATED the Hawai'i Pesticides Law as set forth in HRS Chapter 149A, RESPONDENTS ARE HEREBY ORDERED TO PAY the following civil penalty in accordance with HRS sections 149A-34 and 149A-41(b)(1)-(2), and HAR section 4-66-66.1:

Violation: One Hundred Dollars (\$100.00);

TOTAL CIVIL PENALTY: One Hundred Dollars (\$100.00).

The civil penalty shall be paid within twenty (20) business days from the date of receipt of this Notice of Finding of Violation by delivering payment to:

State of Hawai'i Department of Agriculture
Pesticides Branch
1428 S. King Street
Honolulu, Hawai'i 96814

Pursuant to HRS section 149A-41(b)(4), "[i]n case of inability to collect the administrative penalty or failure of any person to pay all or such portion of the administrative penalty as the board may determine, the board shall refer the matter to the attorney general, who shall recover the amount by action in the appropriate court. For any judicial proceeding to recover the administrative penalty imposed, the attorney general need only show that notice was given, a hearing was held or the time granted for requesting a hearing has expired without such a request, the administrative penalty was imposed, and that the penalty remains unpaid."

THIS ORDER IS HEREBY DECLARED FINAL PURSUANT TO HRS SECTION 149A-41(b)(3)

Dated: 11-10-2022
Honolulu, Hawai'i

Phyllis Shimabukuro-Geiser
PHYLLIS SHIMABUKURO-GEISER,
Chairperson
Board of Agriculture

cc: file

7021 0350 0002 0811 8723

U.S. Postal Service
CERTIFIED MAIL RECEIPT

For delivery information, visit our website at www.usps.com

Pepeekeo, HI 96783

OFFICIAL USE

Certified Mail Fee \$4.00

Extra Services & Fees (check box, add fee as appropriate)

☒ Return Receipt (hardcopy) \$3.25

☐ Return Receipt (electronic) \$0.00

☐ Certified Mail Restricted Delivery \$0.00

☐ Adult Signature Required \$0.00

☐ Adult Signature Restricted Delivery \$0.00

Postage \$0.84

Total Postage and Fees \$8.09

Postmark Here NOV 22 2022

Postage \$0.84

Total Postage and Fees \$8.09

Sent To
Tung Huynh
Street and Apt. No., or PO Box No.
P.O. Box 677
City, State, ZIP+4®
Pepeekeo, HI 96783

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7021 0350 0002 0811 8709

U.S. Postal Service
CERTIFIED MAIL RECEIPT

For delivery information, visit our website at www.usps.com

Pepeekeo, HI 96783

OFFICIAL USE

Certified Mail Fee \$4.00

Extra Services & Fees (check box, add fee as appropriate)

☒ Return Receipt (hardcopy) \$3.25

☐ Return Receipt (electronic) \$0.00

☐ Certified Mail Restricted Delivery \$0.00

☐ Adult Signature Required \$0.00

☐ Adult Signature Restricted Delivery \$0.00

Postage \$0.84

Total Postage and Fees \$8.09

Postmark Here NOV 22 2022

Postage \$0.84

Total Postage and Fees \$8.09

Sent To
David Huynh / Big Island Ag Products
Street and Apt. No., or PO Box No.
P.O. Box 866
City, State, ZIP+4®
Pepeekeo, HI 96783

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

■ Complete Items 1, 2, and 3.
■ Print your name and address on the reverse so that we can return the card to you.
■ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Mr. Tung Huynh
P.O. Box 677
Pepeekeo, HI 96783

2. Article Number (Transfer from service label)
7021 0350 0002 0811 8723

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [Signature]

B. Received by (Printed Name)
TAM LE

C. Date of Delivery
11/25/22

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

22-PE-050
Final Order

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery

☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

■ Complete Items 1, 2, and 3.
■ Print your name and address on the reverse so that we can return the card to you.
■ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Mr. David Huynh
Big Island Ag Products, LLC
P.O. Box 866
Pepeekeo, HI 96783

2. Article Number (Transfer from service label)
7021 0350 0002 0811 8709

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [Signature]

B. Received by (Printed Name)
TAM LE

C. Date of Delivery
11/25/22

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

22-PE-050
Final Order

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery

☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

JOSH GREEN, M.D.
Governor

SYLVIA LUKE
Lt. Governor



State of Hawai'i
DEPARTMENT OF AGRICULTURE
KA 'ŌI HANA MAHI'AI
1428 South King Street
Honolulu, Hawai'i 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

Exhibit C

SHARON HURD
Chairperson, Board of Agriculture

MORRIS M. ATTA
Deputy to the Chairperson

January 6, 2023

Certified Mail No. 7022 2410 0002 4840 7621

Return Receipt Requested

Mr. David Huynh
Agent for Big Island Ag Products, LLC
P.O. Box 866
Pepeekeo, Hawai'i 96783

Certified Mail No. 7022 2410 0002 4840 7638

Return Receipt Requested

Mr. Tung Huynh
P.O. Box 677
Pepeekeo, Hawai'i 96783

Re: In the Matter of BIG ISLAND AG PRODUCTS, LLC and TUNG HUYNH
Docket No. 22-PE-050

Dear Agent:

On August 1, 2022, a Notice of Finding of Violation and Proposed Order to Pay Civil Penalty ("NOV") was issued under Docket No. 22-PE-050 to BIG ISLAND AG PRODUCTS, LLC ("Respondent BIG ISLAND AG PRODUCTS") and TUNG HUYNH ("Respondent HUYNH, collectively with Respondent BIG ISLAND AG PRODUCTS, "Respondents"). The NOV was based upon evidence of failing to submit an annual to the Hawai'i Department of Agriculture ("HDOA") for all restricted use pesticides applied during calendar year 2021. The NOV stipulated a civil penalty of one hundred dollars (\$100.00). On August 3, 2022, the NOV was served on Respondent HUYNH, and on September 24, 2022, the NOV was served on the agent for Respondent BIG ISLAND AG PRODUCTS.

Pursuant to Hawai'i Revised Statutes ("HRS") section 149A-41(b)(3), Respondents were entitled to a hearing to contest the NOV if a written request for a hearing was submitted to the Office of the Chairperson within twenty (20) calendar days from the date of receipt of the NOV. The NOV clearly advised Respondents that the NOV would become a FINAL ORDER unless Respondents filed a written request for hearing within twenty (20) calendar days.



BIG ISLAND AG PRODUCTS, LLC and TUNG HUYNH
Page 2

The twenty (20) day time period expired October 14, 2022; no request for a hearing was received by the Office of the Chairperson of HDOA by that time. Accordingly, Respondents waived the opportunity to challenge the finding of violation and the NOV became a FINAL ORDER.

On November 22, 2022, HDOA issued a Final Order to Respondents. The Final Order required Respondents to submit the civil penalty of one hundred dollars (\$100.00) within twenty (20) business days from the receipt of the Final Order, or HDOA would refer the matter to the Hawai'i Department of the Attorney General for collection. The agent for Respondents was served with the Final Order on November 25, 2022. As of today's date, Respondent has failed to submit the civil penalty to HDOA and is now in **DEFAULT**.

HRS section 149A-41(b)(4) provides as follows:

In case of inability to collect the administrative penalty or failure of any person to pay all or such portion of the administrative penalty as the board may determine, the board shall refer the matter to the attorney general, who shall recover the amount by action in the appropriate court. For any judicial proceeding to recover the administrative penalty imposed, the attorney general need only show that notice was given, a hearing was held or the time granted for requesting a hearing has expired without such a request, the administrative penalty was imposed, and that the penalty remains unpaid. (Emphasis added.)

Please note that this letter and enclosures will be tendered to the State of Hawai'i Attorney General as evidence of RESPONDENTS' FAILURE TO SUBMIT THE CIVIL PENALTY TO HDOA AS AGREED. Respondents may be deemed liable for court costs, attorney fees, and interest should legal action be required to secure payment of the one hundred dollar (\$100.00) civil penalty.

Please remit the one hundred dollar (\$100.00) civil penalty by January 23, 2023 to:

State of Hawai'i Department of Agriculture
Pesticides Branch
1428 S. King Street
Honolulu, Hawai'i 96814

Copies of the NOV, Final Order, and signed certified mail return receipts are enclosed. If no payment is received by January 23, 2023, pursuant to HRS section 149A-41(b)(4), the matter will be referred to the Hawai'i Department of the Attorney General for collection.

Should you have any questions or concerns please contact the undersigned at (808) 973-9404 or via email at greg.y.takeshima@hawaii.gov

Sincerely yours,



GREG TAKESHIMA

Acting Pesticides Program Manager

GT:sn

[K: TUNGHUYNH]

Enclosures (21 pages)

cc: File

EPA Region IX

7022 2410 0002 4840 7621

U.S. Postal Service
CERTIFIED MAIL RECEIPT

For delivery information, visit our website at www.usps.com

OFFICIAL USE

Pepeekeo, HI 96783

Certified Mail Fee \$4.00

Extra Services & Fees (check box, add fee as appropriate)

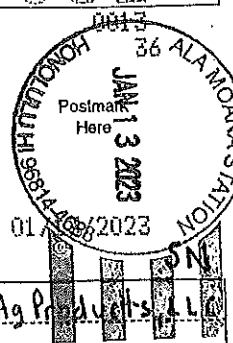
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<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00

Postage \$2.16

Total Postage and Fees \$7.41

Sent To
David Huynh / Big Island Ag Products, LLC
P.O. Box 866
Pepeekeo, HI 96783

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions



7022 2410 0002 4840 7622

U.S. Postal Service
CERTIFIED MAIL RECEIPT

For delivery information, visit our website at www.usps.com

OFFICIAL USE

Pepeekeo, HI 96783

Certified Mail Fee \$4.00

Extra Services & Fees (check box, add fee as appropriate)

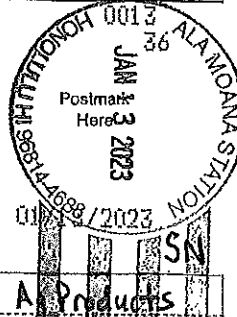
<input checked="" type="checkbox"/> Return Receipt (hardcopy)	\$3.25
<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00

Postage \$2.16

Total Postage and Fees \$7.41

Sent To
Mr. Tung Huynh / Big Island Ag Products
P.O. Box 677
Pepeekeo, HI 96783

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions



SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY												
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. <p>Addressed to:</p> <p>Mr. David Huynh Big Island Ag Products, LLC P.O. Box 866 Pepeekeo, HI 96783</p> <p>2. Article Number (Transfer from service label)</p> <p>7022 2410 0002 4840 7621</p>	<p>A. Signature</p> <p>X <i>[Signature]</i> <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name)</p> <p>DAVID HUYNH 1/17/23</p> <p>C. Date of Delivery</p> <p>1/17/23</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:</p> <p>3. Service Type</p> <table border="0"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail Express®</td> </tr> <tr> <td><input type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input type="checkbox"/> Registered Mail™</td> </tr> <tr> <td><input checked="" type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation™</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td></td> </tr> </table>	<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®	<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™	<input checked="" type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery	<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Signature Confirmation™	<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery	<input type="checkbox"/> Collect on Delivery Restricted Delivery	
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PS Form 3811, July 2020 PSN 7530-02-000-9053 Domestic Return Receipt

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY												
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. <p>1. Article Addressed to:</p> <p>Mr. Tung Huynh Big Island Ag Products, LLC P.O. Box 677 Pepeekeo, HI 96783</p> <p>2. Article Number (Transfer from service label)</p> <p>7022 2410 0002 4840 7638</p>	<p>A. Signature</p> <p>X <i>[Signature]</i> <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name)</p> <p>TUNG HUYNH 01/19/23</p> <p>C. Date of Delivery</p> <p>01/19/23</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:</p> <p>3. Service Type</p> <table border="0"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail Express®</td> </tr> <tr> <td><input type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input type="checkbox"/> Registered Mail™</td> </tr> <tr> <td><input checked="" type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation™</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td></td> </tr> </table>	<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®	<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™	<input checked="" type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery	<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Signature Confirmation™	<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery	<input type="checkbox"/> Collect on Delivery Restricted Delivery	
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PS Form 3811, July 2020 PSN 7530-02-000-9053 Domestic Return Receipt

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

February 28, 2023

Board of Agriculture
Honolulu, Hawaii

Subject: Request for: (1) Preliminary Approval of the Proposed Changes to Hawaii Administrative Rules, Chapter 4-71, to Place the Unlisted Northern Largemouth Bass, *Micropterus salmoides salmoides*, on the List of Restricted Animals (Part A) for ecosystem and fishery impact research for the Wahiawa Public Fishing Area by the Hawaii Department of Land and Natural Resources, Division of Aquatic Resources, and (2) Authorization for the Chairperson to Schedule Public Hearings and Appoint One or More Hearings Officers in Connection With the Proposed Amendments to Chapter 4-71, Hawaii Administrative Rules.

I. Background:

On August 31, 2022, the Office of the Chairperson received a petition from the Hawaii Department of Land and Natural Resources (DLNR), Division of Aquatic Resources (DAR) requesting the Hawaii Board of Agriculture (Board) add the Northern Largemouth Bass, *Micropterus salmoides salmoides* to the List of Restricted Animals, Part A (RA List). The DLNR DAR petition is included as Appendix A.

The Northern Largemouth Bass, *Micropterus salmoides salmoides*, is currently an unlisted animal. Animals not found on any list are considered prohibited until placed on a list. Species on the RA List are available for research by universities and government agencies, exhibition in municipal zoos and government-affiliated aquariums, and for other institutions for medical and scientific purposes as determined by the Board.

DLNR DAR is requesting list placement of the unlisted Northern Largemouth Bass, *Micropterus salmoides salmoides* to comply with Act 223, Session Laws of Hawaii (SLH) 2021, to establish a pilot project to enhance and support recreational fishing in the Wahiawa Public Fishing Area. A copy of Act 223, SLH 2021 is included as Attachment 1.

On October 11, 2022, the Board recommended preliminary approval of DLNR DARs petition. Pursuant to 150A-10, Hawaii Revised Statutes, the Advisory Committee on

LSI

Plants and Animals (Advisory Committee) must make a recommendation on proposed changes prior to initiating the public hearing process of Chapter 91, HRS. A summary of the Advisory Committee's recommendations is below. At this time, DLNR DAR is only seeking list placement and a review of their import request will undergo the full review process at a future date before being brought to the Board.

II. Summary of Petitioner's Proposed Additions to the List of Restricted Animals, Part A

The DLNR DAR petition requests the following addition to the List of Restricted Animals (Part A) in Chapter 4-71, Hawaii Administrative Rules (HAR) as listed below. A copy of the proposed change in Ramseyer format is included as Appendix B.

§4-71-6.5, HAR, List of Restricted Animals (Part A):

Adds: "FAMILY Centrarchidae", Scientific Name "Micropterus salmoides salmoides" and Common Name "bass, northern largemouth".

III. Advisory Committee Review:

This request was reviewed by the Advisory Committee at its meeting on February 15, 2023. Acting Plant Quarantine Branch Manager Jonathan Ho provided a synopsis of the request.

Advisory Committee Member Rob Hauff said that the approved purposes for RA List organisms appear to require containment. Because this request is for eventual release, is there a conflict with the purpose and the rules? Mr. Ho said that it is PQB's understanding that DLNR DAR would like to do research first, which would be in containment. Because DAR is the primary agency responsible for fisheries stocking, they want to ensure that the introduction is safe before release. Mr. Hauff asked whether once the research was completed, would another rule change be needed for the release? Mr. Ho said yes.

Advisory Committee Chairperson Darcy Oishi asked what list would it need to be placed on, the Conditionally Approved List or the Restricted B List? Mr. Ho said that it could be on either list, provided there were conditions that allowed the release. Mr. Ho noted he thought about Mr. Hauff's question about the requirement for a list change for release. He said government use is allowed for RA Listed organisms and if DAR, being the agency responsible for fish stocking, would be the only entity to possess and release the bass, it could be done while on the RA List. However, if DAR were to want to distribute it to other organizations, then it would likely require a list change.


Chairperson Oishi asked if this request was only for list placement and the import request would come at a later date? Mr. Ho said that was correct.

Chairperson Oishi asked if there were additional questions. Hearing none, he asked for a motion to approve. Advisory Committee member Dr. Sam Gon made a motion to approve. Advisory Committee Member Pam Mizuno seconded the motion. Chairperson Oishi asked if there were any public comments. Hearing none, he asked if there were additional questions from the Advisory Committee members. Hearing none, he called for a vote.

Vote: 6/0 recommend approval (Hauff, Oishi, Mizuno, Gon, Eisen, Simmons).

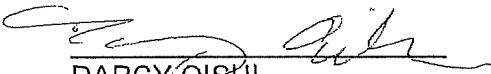
STAFF RECOMMENDATION: Based on the favorable comments and unanimous (6-0) recommendation from the Advisory Committee on Plants and Animals to approve this request, the Plant Quarantine Branch recommends the Board: (1) preliminarily approve the change to Chapter 4-71, Hawaii Administrative Rules, to place the Northern Largemouth Bass, *Micropterus salmoides salmoides*, on the List of Restricted Animals (Part A), and (2) authorize the Chairperson to schedule public hearings and appoint one or more Hearings Officers in connection with the proposed amendments to Chapter 4-71, Hawaii Administrative Rules.

Respectfully Submitted,



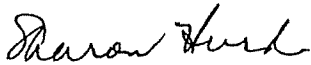
JONATHAN HO
Acting Manager, Plant Quarantine Branch

CONCURRED:



DARCY OISHI
Acting Administrator, Plant Industry Division

APPROVED FOR SUBMISSION:



SHARON HURD
Chairperson, Board of Agriculture

CSB

APPENDIX A

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF AQUATIC RESOURCES
1151 PUNCHBOWL STREET, ROOM 330
HONOLULU, HAWAII 96813

August 31, 2022

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Hawaii Department of Agriculture
Attn: Board of Agriculture Chairperson
1428 South King Street
Honolulu, HI 96814

Subject: Petition to the Board of Agriculture to place the Northern Largemouth Bass (*Micropterus salmoides salmoides*) on the List of Restricted Animals – For Research (Chapter 71, AR-71RA) for a one-time importation to research the fishery and ecosystem impacts of introducing new largemouth bass genetics into the Wahiawa Public Fishing Area.


The Department of Land and Natural Resources (DLNR), Division of Aquatic Resources (DAR), is requesting a proposed rule amendment to place the Northern Largemouth Bass (*Micropterus salmoides salmoides*) on the List of Restricted Animals – For Research (Chapter 71, AR-71RA) for a one-time importation to research the fishery and ecosystem impacts of introducing new largemouth bass genetics into the Wahiawa Public Fishing Area.

DAR's interest is based on Act 223 (SLH 2021), which requires DAR to establish a pilot project to restock the Wahiawa Reservoir with northern largemouth bass and/or butterfly peacock bass to help improve the recreational fishery in the Wahiawa Public Fishing Area.

The 2021 Legislature enacted Act 223 for the purpose of restocking the Wahiawa Reservoir with new stocks of northern largemouth bass and butterfly peacock bass to refresh the genetic diversity of these populations. The Legislature found that the Board of Agriculture can allow the importation of butterfly peacock bass and establish appropriate permit conditions, since it is already on the list of conditionally approved animals and is eligible for importation. The Legislature also found that DLNR will need to request the Board of Agriculture to place the northern largemouth bass on the list of restricted animals that require a permit for both import into the State and possession, pursuant to section 150A-6.2, Hawaii Revised Statutes. The purpose of Act 223 is to establish a pilot project within DLNR to work with a public or private organization to import live northern largemouth bass and butterfly peacock bass for the purpose of enhancing and supporting the pre-existing populations for continued recreational fishing in Hawaii.

BOA Petition to Place Northern Largemouth Bass on Restricted A List
Page 2 of 2

Brian Neilson, Administrator
1151 Punchbowl Street, Rm# 330
Honolulu, HI 96813
(808) 277-7677

Signature  Date Aug 31, 2022

David Sakoda, Fisheries Program Manager
1151 Punchbowl Street, Rm# 330
Honolulu, HI 96813
(808) 265-0629

Signature  Date Aug 31, 2022

Glenn Higashi, Aquatic Biologist
1151 Punchbowl Street, Rm# 330
Honolulu, HI 96813
(808) 722-7363

Signature  Date Aug 31, 2022

Rodney Young, Fisheries Technician
1309 Sand Island Parkway
Honolulu, HI 96819
(808) 348-1138

Signature  Date Aug 31, 2022

SCIENTIFIC NAMECOMMON NAME

CLASS Osteichthyes

ORDER Acipenseriformes

FAMILY Acipenseridae

Acipenser baeri
Acipenser brevirostrum
Acipenser fulvescens
Acipenser guldenstadti
Acipenser guldenstadti x Huso huso
Acipenser medirostris
Acipenser oxyrhynchus
Acipenser ruthenus

sturgeon, Siberian
 sturgeon, shortnose
 sturgeon, lake
 sturgeon, Russian
 sturgeon, Okeber
 sturgeon, green
 sturgeon, Atlantic
 sturgeon, Siberian;
 sterlet
 sturgeon, Bester
 sturgeon, Servuga (starry)
 sturgeon, Beluga
 sturgeon, pallid
 sturgeon, shovelnose

Acipenser ruthenus x Huso huso
Acipenser stellatus
Huso huso
Scaphirhynchus albus
Scaphirhynchus platorhynchus

FAMILY Polyodontidae

Polyodon spathula

paddlefish

ORDER Atheriniformes

FAMILY Atherinidae

Menidia beryllina

silverside

ORDER Cypriniformes

FAMILY Cyprinidae

Notemigonus crysoleucas
Pimephales promelas

minnow, golden shiner
 minnow, fathead

FAMILY Erythrinidae

Hoplias malabaricus

tiger fish

ORDER Perciformes

FAMILY Centrarchidae

Micropterus salmoides salmoides

bass, northern largemouth

FAMILY Mugilidae

Mugil cephalus

mullet, striped

FAMILY Nototheniidae

Dissostichus mawsoni
Notothenia (all species in genus)

cod, Antarctic
 cod, Antarctic

ACT 223

S.B. NO. 1313

A Bill for an Act Relating to Sport Fish.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the northern largemouth bass and butterfly peacock bass, also known as tucunare, are some of the most popular gamefish in the United States, with northern largemouth bass existing in the State's artificial reservoirs since 1896, and butterfly peacock bass existing since 1957. More than 828,000 jobs nationally are directly supported in some way by bass fishing and more than \$48,000,000,000 in retail sales are directly attributed to bass fishing activities. Arkansas, Illinois, Kentucky, Michigan, Mississippi, Missouri, New Hampshire, and Vermont all recognize bass fishing as a high school sport.

The legislature further finds that based upon fishing licenses issued by the department of land and natural resources to fish for northern largemouth bass and butterfly peacock bass, bass fishing in the State is far less popular than in other states. One reason for the small number of anglers fishing for bass is the lack of a diverse population of these sport fish in Hawaii's artificial reservoirs. Restocking the reservoirs with new stocks of northern largemouth bass and butterfly peacock bass will refresh the genetic diversity of these fish populations. The legislature further finds that the board of agriculture can allow the importation of butterfly peacock bass and establish appropriate permit conditions, since it is already on the list of conditionally approved animals and is eligible for importation. The legislature also finds that the department of land and natural resources will need to request the board of agriculture to place the northern largemouth bass and butterfly peacock bass on the list of restricted animals that require a permit for both import into the State and possession, pursuant to section 150A-6.2, Hawaii Revised Statutes.

The purpose of this Act is to establish a pilot project in the department of land and natural resources to work with a public or private organization to import live northern largemouth bass and butterfly peacock bass for the purpose of enhancing and supporting the pre-existing populations for continued recreational fishing in Hawaii.

SECTION 2. No later than January 1, 2023, the division of aquatic resources of the department of land and natural resources shall establish a pilot project to restock northern largemouth bass, butterfly peacock bass, or both, in the Wahiawa public fishing area in central Oahu; provided that the board of agriculture has placed the northern largemouth bass and the butterfly peacock

bass on the list of restricted animals that require a permit for import into the State maintained pursuant to section 150A-6.2, Hawaii Revised Statutes. The division of aquatic resources shall apply to the board of agriculture for the permit to import the northern largemouth bass and butterfly peacock bass and may work with another public entity or partner with a private entity to accomplish the pilot project.

SECTION 3. This Act shall take effect on July 1, 2021.

(Approved July 6, 2021.)

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

February 28, 2023

Board of Agriculture
Honolulu, Hawaii

SUBJECT: Request to: (1) Allow the Importation of Maize chlorotic mottle virus (MCMV), a Virus on the List of Restricted Microorganisms Part A, by Permit, for Laboratory Work and Shade House Inoculations by Pioneer Hi-Bred International, Inc.; and (2) Establish Permit Conditions for the Importation of Maize chlorotic mottle virus (MCMV), a Virus on the List of Restricted Microorganisms Part A, for Laboratory Work and Shade House Inoculations by Pioneer Hi-Bred International, Inc.

I. Summary Description of the Request

PQB NOTES: *The Plant Quarantine Branch (PQB) submittal for requests for import or possession permits, as revised, distinguishes information provided by the applicant from procedural information and advisory comments and evaluation presented by PQB. With the exception of PQB notes, hereafter "PQB NOTES," the text shown below in Section II from page 2 through 6 of the submittal was taken directly from Kimberly Johnson's application and subsequent written communications provided by the applicant, Ms. Kimberly Johnson. For instance, the statements on page 6 of the submittal regarding the effects on the environment are the applicant's statements, and not PQB's. This approach for PQB submittals aims for greater applicant participation in presenting import requests in order to move these requests to the Board of Agriculture (Board) more quickly, while distinguishing applicant provided information from PQB information. The portion of the submittal prepared by PQB, including proposed Permit Conditions, Advisory Subcommittee Review, and Advisory Committee review are identified as sections III, IV, and V of the submittal, which starts at pages 6, 10, and 12 respectively.*

We have a request to review the following:

COMMODITY: Single shipment of three 50ml Falcon tubes containing leaves inoculated with Maize chlorotic mottle virus with appropriate escape-proof packaging.

Maize chlorotic mottle virus
Corteva
February 28, 2023

SHIPPER: [] CBI

IMPORTER: [] CBI

PQB NOTES: *The SHIPPER and IMPORTER are redacted in an effort to protect Corteva's trade secret information and preventing the disruption of biotechnology research and the safety of Corteva's research personnel and research location including fields. Throughout this submittal In instances where the applicant has made this claim, "CBI" will be indicated for the information between "[" and "]".*

CATEGORY: MCMV is a microorganism on the List of Restricted Microorganisms Part A. Microorganisms on this list are classified as high risk. Pursuant to Hawaii Administrative Rules (HAR), Chapter 4-71A, any microorganisms on the List of Restricted Microorganisms Part A, which includes MCMV, can only be introduced into the State under permit approved by the Board, subject to conditions established by the Board.

II. Information Provided by the Applicant in Support of the Application

PROJECT: The inoculations of maize chlorotic mottle virus (MCMV) in Hawaii are part of a Maize Lethal Necrosis (MLN) project done in collaboration with The International Maize and Wheat Improvement Center (CIMMYT) and the Bill and Melinda Gates Foundation (BMGF), (see Boddupalli P, et al. Virus Research 282 (2020) 197943). MLN is caused by simultaneous infections of maize by both MCMV and one of the *Potyviridae* viruses, causing severe loss of yield. This is prevalent in eastern Africa where maize yield losses from MLN can range from 23-100% of the crop.

The overall project includes many collaborators and multiple potential strategies to combat this disease. Corteva Agriscience's role in this project is to develop certain gene edited maize lines with potential resistance to MCMV. Both gene edited maize lines and non-edited maize controls will be used and only the MCMV component of MLN infection will be addressed in this study.

PURPOSE: MCMV is a component of MLN infection. Testing the gene-edited maize lines for resistance to MCMV will provide insight into MLN resistance.

OBJECTIVE: The objectives are to test certain gene-edited maize lines against MCMV in an environment similar to Africa's. As MCMV is also a plant pest in

Hawaii and other parts of the world, genetic resistance to MCMV would provide additional means of controlling this disease.

PROCEDURE:

- The MCMV isolate was originally collected in Waialua, Hawaii, and shipped to Johnston, Iowa for laboratory confirmation of purity, increased, and then shipped back to Hawaii for use in this project.
 - This helps ensure that only pure strains of MCMV will be utilized in the proposed field studies.
- The federal Interstate Movement and Release permit P526P-21-04098 for import and shade house release of MCMV isolates, was reviewed by Hawaii state officials and has been approved by USDA/APHIS.
- Packaging/Handling: All packages will minimally consist of both inner/primary and outer/secondary packages securely sealed so that both are designed to be effective barriers to escape or unauthorized dissemination of the listed materials/organisms. The inner/primary package(s) will contain all regulated materials/organisms and will be cushioned and sealed in such a way to remain sealed during shock, impact, and pressure changes that may occur. The outer/secondary shipping container will be rigid and strong enough to withstand typical shipping conditions (dropping, stacking, impact from other freight, etc.) without opening.
- Organisms will be shipped, or transported to the shadehouse, in packages designed to be leak-proof and escape-proof. Inoculum may be transported to the shadehouse via personal or project/company owned vehicles.
- Inoculations will be performed on approximately 100 maize plants, including controls, in a shadehouse in Honolulu County.
- MCMV inoculations will be performed per protocols in Boddupalli P, et al. Virus Research 282 (2020) 197943.

Basic procedure and safeguards:

- Infected leaves are ground with a carborundum abrasive in a buffer solution to make a sap solution (a viscous liquid containing mostly water and plant material).
- Sap solution is kept in sealed Falcon tubes until use.
- Sap solution is rubbed directly on leaves for inoculation. No spraying is involved.
- Personnel will wear proper PPE (lab coat, safety glasses, nitrile gloves).

Maize chlorotic mottle virus
Corteva
February 28, 2023

- All un-used inoculum is chemically treated with a 10% bleach solution to kill all plant pests prior to disposal.
- At the conclusion of the study, all plants will be incinerated and residue buried.

DISCUSSION:

1. **Person Responsible:** [] **CBI**

2. **Safeguard Facility and Practices:** [] **CBI**

1. Corteva takes necessary precautions designed to prevent escape of regulated microorganisms received under permit. See additional information in #2 below.
2.
 - All Corteva employees complete yearly biosafety training.
 - The samples will arrive in a 50ml Falcon tubes, double bagged in a sealed cooler inside a sealed cardboard box and stored in a similar container at our permitted facility. Inoculum will be prepared at the permitted facility and transported in sealed Falcon tubes, then double bagged. These will be devitalized after inoculations are complete.
 - All regulated microorganisms are stored in a secure facility with an orange "Restricted Access" sign(s) stating that regulated materials are stored inside.
 - All facilities are in a restricted access/gated area with security coded gates, only employees are able to access the facility.
 - The shadehouse will be locked so that only staff associated with the study can access it.
 - In areas that are common use, orange restricted access signs are posted on specific shelves, racks, equipment, etc. associated with the regulated material.
 - Only authorized personnel will have access and will be trained to handle permitted microorganisms.
 - All areas have placards indicating the area contains permitted microorganism.
 - Regulated microorganisms are separated from non-regulated microorganisms to avoid inadvertent mixing.

Maize chlorotic mottle virus
Corteva
February 28, 2023

- Examples: different incubators or separate shelves within the incubator
- Regulated microorganisms are labeled to avoid inadvertent mixing with microorganisms not received under permit.
 - Any unlabeled microorganisms or microorganisms with an unknown status (i.e. regulated or non-regulated) will be handled as regulated.
- Necessary precautions are taken, which are designed to prevent escape of regulated microorganisms received under permit.
 - The samples will arrive in a 50ml Falcon tubes, double bagged in a sealed cooler inside a sealed cardboard box and stored in a similar container at our permitted facility. Inoculum will be prepared at the permitted facility and transported in sealed Falcon tubes, then double bagged. These will be devitalized after inoculations are complete.
- Regulated microorganisms will be maintained at the work address listed on the permit and internal protocols dictate that regulated articles may not be removed from designated storage or contained experimental area.

[Please see Page 7 for the map of Corteva's Parent Seed Station in Waialua.]

CBI

3. **Method of Disposition:**

All un-used inoculum will be chemically treated by inactivation with 10% bleach solution to kill all plant pests prior to disposal. At the conclusion of the study, all plant material will be incinerated and residue buried.

4. **Abstract of Organism:**

Taxonomic Classification:

Domain: Virus

Group: "Positive sense ssRNA viruses" Group: "RNA viruses"

Family: *Tombusviridae*

Genus: *Machlomovirus*

Species: Maize chlorotic mottle virus

EPPO code: MCMV00

Additional Characteristics:

Maize chlorotic mottle virus
Corteva
February 28, 2023

MCMV was first identified in Peru in 1971 and has since been found in parts of the central continental US, Hawaii, Mexico, South America, Asia and eastern Africa.

The Family *Poaceae* is the only natural host of MCMV, with optimal temperature ranges being any maize-growing region.

The virus is transmitted by 6 species of *Chrysomelid* beetles and thrips *Frankliniella williamsi* and is also seed transmitted but at a low level. Insect netting is used in the shadehouse as an additional barrier.

MCMV has a single-stranded positive sense RNA genome that is encased in a 30-nm icosahedral virion.

5. Effects on the Environment:

We have no reason to believe that this study would have any impact on the surrounding areas, economy, or society.

MCMV has been observed in Hawaii and the Family *Poaceae* is the only natural host, we have no reason to believe that an accidental release of MCMV would have an environmental, economic, or societal impact on other plants, animals, or humans.

It is well known that the virus is present in Kauai, Oahu, Molokai and Maui. Please see: Nelson S, Brewbaker J, Hu J. 2011. Maize chlorotic mottle. Honolulu (HI): University of Hawaii. 6 p. (Plant Disease; PD-79). Corteva is unaware of publications that document the prevalence or scope of infection to non-crop species.

Please note, the virus (inoculum) in use was isolated from the Waialua location and is endemic to Oahu. It has been kept in a BLS2 containment facility at Corteva in Johnston, Iowa where its purity was maintained and confirmed.

III. Proposed Permit Conditions:

1. The restricted article(s), Maize Chlorotic Mottle Virus (MCMV), shall be used for laboratory work and plant inoculations in a shade house, purposes approved by the Board of Agriculture (Board), and shall not be sold, given away, and/or transferred in Hawaii, unless approved by the Board. Release of the restricted article(s) into the environment is prohibited.
2. The permittee, Pioneer Hi-Bred International, [address CBI], shall be responsible and accountable for all restricted article(s) imported, from the time of their arrival to their final disposition.

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3. The restricted article(s) are subject to the pre-entry requirements of section 4-71A-8 and the inspection requirements of section 4-71A-9, Hawaii Administrative Rules (HAR).
4. The restricted article(s) shall be safeguarded at the Pioneer Hi-Bred International, [address CBI], a site inspected and approved by the Plant Quarantine Branch (PQB) prior to importation. Prior to the removal of the restricted article(s) to another site, a site inspection and prior approval by the PQB Chief is required.
5. The restricted article(s) shall be maintained by [CBI], as the responsible person, or by trained or certified personnel designated by the permittee.
6. The restricted article(s) shall be imported only through the port of Honolulu except as designated by the Board. Entry into Hawaii through another port is prohibited unless designated by the Board.
7. Each shipment shall be accompanied by a complete copy of the PQB permit for the restricted article(s) and an invoice, packing list, or other similar PQB approved document listing the scientific and common names of the restricted article(s), the quantity of the restricted article(s), the shipper, and the permittee for the restricted article(s).
8. At least four sides of each parcel containing the restricted article(s) shall be clearly labeled with "Live Microorganisms" and "This Parcel May be Opened and Delayed for Agriculture Inspection" in 1/2-inch minimum sized font.
9. The permittee shall adhere to the use, facility, equipment, procedures, and safeguards described in the permit application, and as approved by the Board and the PQB Chief.
10. The approved site, restricted article(s), and records pertaining to the restricted article(s) under permit shall be subject to post-entry inspections pursuant to section 4-71A-16, HAR. The permittee shall make the site, restricted article(s), and records pertaining to the restricted article(s) available for inspection upon request by a PQB inspector.
11. The permittee shall immediately notify the PQB Chief verbally and in writing under the following circumstances:
 - a. If any theft, accidental release, exposure, or disease outbreaks involving the restricted article(s) under this permit occurs.
 - b. If any changes to the approved site, facility, and/or procedures regarding the restricted article(s) occur or are to be made, the permittee shall obtain

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written approval from the PQB Chief as soon as practicable (if unplanned) or prior to implementation (if planned). Also, the permittee shall submit a written report documenting the specific changes to the PQB Chief.

- c. If a shipment of the restricted article(s) is delivered to the permittee without a PQB "Passed" stamp, tag or label affixed to the article, container, or delivery order that indicates that the shipment has passed inspection and is allowed entry into the State, then the permittee shall not open or tamper with the shipment and shall secure, as evidence, all restricted article(s), shipping container(s), shipping document(s) and packing material(s) for PQB inspection.
 - d. If the permittee will no longer import or possess the restricted article(s) authorized under this permit.
- 12. The permittee shall submit an annual report of all the restricted article(s) imported for the calendar year by January 31st of the following year. The report shall include the permit number, scientific name and quantity of each restricted article(s) imported, and status of use of the restricted article(s) imported and possessed.
 - 13. Upon completion or termination of the study, the restricted article(s), media, and plants inoculated with the restricted article(s) shall be destroyed by autoclaving. In the event autoclaving is not possible, the permittee shall obtain written authorization from the PQB Chief for an appropriate alternate method of destruction prior to implementation.
 - 14. The permittee shall submit a final report on the method of destruction of the restricted article(s) to the PQB chief within 30 days of completion or termination of the use of the restricted article(s).
 - 15. The permittee shall have a biosecurity manual available for review and approval by the PQB, at the time of the initial site inspection and any subsequent post-entry inspection(s), which identifies the practices and procedures to be adhered to by the permittee to minimize or eliminate the risk of theft, escape, or accidental release of the restricted article(s), including the risk of introduction and spread of diseases and pests associated with the restricted article(s) to the environment. The permittee shall adhere to all practices and procedures as stated in this biosecurity manual.
 - 16. It is the responsibility of the permittee to comply with all applicable requirements of municipal, state, or federal law pertaining to the restricted article(s).
 - 17. The permittee shall submit a copy of all valid licenses, permits, certificates or other similar documents required by other agencies for the restricted article(s) to

- the PQB Chief. The permittee shall immediately notify the PQB Chief in writing when any of the required documents are suspended, revoked, or terminated. This permit may be amended, suspended, or canceled by the PQB Chief upon suspension, revocation, or termination of any license, permit, certificate, or similar documents required for the restricted article(s).
18. Any violation of the permit conditions may result in citation, permit cancellation, and enforcement of any or all of the penalties set forth in HRS §150A-14.
 19. The permittee is responsible for costs, charges, or expenses incident to the inspection, treatment, or destruction of the restricted article(s), as provided in Act 173, Session Laws of Hawaii 2010, Section 13, including, if applicable, charges for overtime wages, fixed charges for personnel services, and meals.
 20. A cancelled permit is invalid and upon written notification from the PQB Chief, all restricted article(s) listed on the permit shall not be imported. In the event of permit cancellation, any restricted article(s) imported under permit may be moved, seized, treated, quarantined, destroyed, or sent out of State at the discretion of the PQB Chief. Any expense or loss in connection therewith shall be borne by the permittee.
 21. The permit conditions are subject to cancellation or amendment at any time due to changes in statute or administrative rules restricting or disallowing import of the restricted article(s) or due to Board action disallowing a previously permitted use of the restricted article(s).
 22. These permit conditions are subject to amendment by the PQB Chief in the following circumstances:
 - a. To require disease screening, quarantine measures, and/or to place restrictions on the intrastate movement of the restricted article(s), as appropriate, based on scientifically validated risks associated with the restricted article(s), as determined by the PQB Chief, to prevent the introduction or spread of disease(s) and/or pests associated with the restricted article(s).
 - b. To conform to more recent Board approved permit conditions for the restricted article(s), as necessary to address scientifically validated risks associated with the restricted article(s).
 23. The permittee shall agree in advance to defend and indemnify the State of Hawaii, its officers, agents, employees, and the Board of Agriculture members for any and all claims against the State of Hawaii, its officers, agents, employees, or Board of Agriculture members that may arise from or be attributable to any of the restricted article(s) that are introduced under this permit. This permit condition

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shall not apply to a permittee that is a federal or State of Hawaii entity or employee, provided that the state or federal employee is a permittee in the employee's official capacity.

24. For all laboratory use of the restricted article(s), the permittee shall comply with the Centers for Disease Control and Prevention (CDC) Biosafety Level 2 laboratory design, safety equipment and standard and special microbiological practices as found in the current edition of the CDC's handbook, "Biosafety in Microbiological and Biomedical Laboratories."

IV. Advisory Subcommittee Review

This request was submitted to the Advisory Subcommittee on Viruses for their review. Their recommendations and comments are as follows.

PQB NOTES: *Some questions were brought up regarding the exclusion of pests, particularly thrips from entering the shade house, sap solution and plant material disposal and standard operating procedures for handling MCMV materials. For the shade house, the applicant states that thrips screens will be used to provide a physical barrier to insects from entering. In addition, they have the ability to use pesticides if insect thresholds are reached so as to not compromise the experiment.*

As for the disposal of un-used inoculum, plant material, and contaminated material, a 10% sodium hypochlorite will be used. Treated waste will be double bagged prior to disposal. The Advisory Subcommittee on Viruses were satisfied with the applicant's responses to these questions.

1. **I recommend approval ____ / ____ disapproval to allow the importation Maize chlorotic mottle virus (MCMV), a virus on the List of Restricted Microorganisms Part A, by permit, for laboratory work and shade house inoculations by Pioneer Hi-Bred International, Inc.**

Dr. Edward Desmond: Recommends approval.

Dr. Michael Shintaku: Recommends approval.

Comments: "My recommendation leans heavily on their statement that the virus they wish to import was originated in Waialua."

Mr. David Clements: Recommends approval.

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Comments: "Given the presence of the virus in Hawaii there is minimal risk and Hawaii provides an appropriate location to conduct the proposed test. Nevertheless, it is important that the appropriate precautions and procedures are in place. In the application a heavy emphasis is placed on the precautions and procedures on the application of sap solution to the test plants in the shade house, whereas there is minimal description placed on the preparation of the sap solution in the lab from the imported infected leaf samples. The virus is in its most concentrated form at this stage and proper precautions and procedures are important at this stage. As stated above, "for laboratory and shade house inoculations.: Both areas of work need to be treated with equal emphasis. Also, there is no mention of BSL-2 handling in the application. My approval is conditional in the HDOA is satisfied that the importer has the proper documents and procedures in place to address the initial handling of the imported material."

Dr. Hongwei Li: Recommends approval.

Comments: "The MCMV isolate to be imported was originally collected in Waialua, Hawaii; and MCMV has also been found on other Hawaii islands. The proposed project to study the MCMV resistance of gene edited maize poses a minimal environment impact."

Dr John Hu: Recommends approval.

Dr. Raquel Wong: Recommends approval.

2. **I recommend approval ____ / ____ disapproval to establish permit conditions for importation Maize chlorotic mottle virus (MCMV), a virus on the List of Restricted Microorganisms Part A, by permit, for laboratory work and shade house inoculations by Pioneer Hi-Bred i International, Inc.**

Dr. Edward Desmond: Recommends approval.

Dr. Michael Shintaku: Recommends approval.

Mr. David Clements: Recommends approval.

Comments: "The permit conditions listed in the application are

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appropriate for the material to be imported and the work to be conducted. To emphasize the points in the above comments, these are directly addressed by permit conditions, these are covered by conditions 13, 15, and 24.”

Dr. Hongwei Li: Recommends approval.

Dr John Hu: Recommends approval.

Dr. Raquel Wong: Recommends approval.

V. Advisory Committee Review

This request was submitted to the Advisory Committee on Plants and Animals (Committee) at its February 15, 2023, meeting. PQB Acting Manager Jonathan Ho provided a synopsis of the request. Mr. Ho noted that the applicant was available for questions.

Committee Member Robert Hauff said that the Committee normally receives background on the facility, and other information that is usually provided, such as certification. He asked how the Committee could review the request if the information is not provided. Mr. Ho said the applicant has provided the site and facility to PQB and their processes are laid out in the submittal, which are things that PQB agrees with, such as containment and destruction. He noted their claims of confidential business information (CBI), which PQB respects. However, he noted that if there were a challenge, the applicant would have to defend those claims. He understood that the Committee’s recommendations would need to be based heavily on PQB’s recommendations through what PQB staff have seen. He said PQB sees no major issues or concerns based on the particular use of this microorganism and the facility in conjunction with the practices that they will be using.

Committee member Thomas Eisen asked if there was any history that demonstrates the applicant is complying with basic procedures and safeguards. Mr. Ho said he was not aware of any issues with regards to any of the work they have done and PQB has not seen anything that would raise significant concerns or flags with regards to this particular work.

Advisory Committee Member Dr. Sam Gon noted that the Advisory Subcommittee on Viruses took a look at the request and most of them approved it without any comments. He noted the comments that were made did not seem to reveal any underlying hesitations or concerns. He said based on that and what Mr. Ho told the Committee, in his opinion, it appeared good to move forward at this stage.

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Advisory Committee Chairperson Darcy Oishi asked the applicant, Ms. Kimberly Johnson, who rendered the identification of the virus and what methodology did you use? Ms. Johnson introduced herself and noted that Dr. Scott Heuchelin and Dr. Mark Jung were in the room with her and would be answering the questions. Dr. Heuchelin said they have one diagnostic lab in Waialua, another on Kauai, and the main diagnostic lab in Johnston, Iowa. The diagnostic lab in Waialua sent a sample of suspected MCMV to the Johnston diagnostic lab using their 526 permit (PPQ permit) for diagnostics which include MCMV. Once in the lab, confirmation was made through both serological technique and MCMV PCR primers. He said they confirmed that the sample did not contain any of the other common viruses that are found on the island. He said it was then moved to a BSL2 level facility where the virus was maintained on susceptible material for mechanical inoculations and then used that leaf material for further investigations for MCMV within the BSL2 facility. He noted the need for pure inoculum that is confirmed to not be cross contaminated with other viruses. The purpose was to move this inoculum from the lab in the Johnston BSL2 facility to Waialua for these experiments. He said that would be done by taking leaf material, packing it with buffer, and send it in Falcon tubes with appropriate boxing and protection to the Waialua location where it would then be used for inoculations.

Chairperson Oishi noted in the application and in comments that the applicant has a permit from the U.S. Department of Agriculture (USDA), Animal and Plant Health Inspection Service, Plant Protection and Quarantine for interstate movement. He asked if the permit was just for diagnostics or did it include movement and release or was that a separate permit? Ms. Johnson responded the federal permit is for both interstate transport and use and is valid until July of 2024. Chairperson Oishi asked if the permit can be provided to the Committee and the Board of Agriculture. Ms. Johnson responded, "absolutely."

Chairperson Oishi noted there were some comments from the advisory subcommittee members indicating that they were supportive of this work because it was a local isolate. He asked what is the typical chain of custody that is followed to ensure that this is the local isolate that was collected in Waialua as it went through all the processes in the Iowa lab? Dr. Heuchelin said the sample went directly from the Waialua diagnostic lab to the Johnston diagnostic lab through overnight express. Per protocol, upon receipt in the diagnostic lab, the package is opened in a type 2 bio containment hood and the material is examined to determine what type of analysis needs to occur. He said at that point, it was determined that the leaf samples showed viral symptoms and was then prepared for both serological and PCR analysis to confirm that it was indeed MCMV. He said it is tested against the other common viruses such as Maize Mosaic Virus, which is also endemic on the island, to ensure that it was pure and that there was no other viruses in that material. From that point, he said it was transferred in a cart with double containment, about probably 50 yards, to the BSL2 containment facility where it went through the vestibule and into a conviron growth chamber with material that is known to be susceptible to MCMV and then the inoculation is done with mechanical inoculation using carborundum and buffer. He said collection of that material occurred

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in the BSL2 facility, where it was again transported in a cart with double containment to the diagnostic lab and placed in a freezer in the diagnostic lab. The sample was brought out periodically to ensure that good infections could be maintained with frozen MCMV material from the BSL2 containment room. He said they were able to get good infectivity, confirming it will work well for this particular use as far as shipping it back to the Waialua facility.

Chairperson Oishi asked if PQB received a copy of the Federal permit? Mr. Ho said he did not believe it was received but would have to confirm with Mr. Wil Leon Guerrero, Microorganism specialist.

Chairperson Oishi asked Ms. Johnson if there are conditions in the federal permit related to the release and use of MCMV in shade houses. Ms. Johnson confirmed that the federal permit is for release in shade houses. Chairperson Oishi asked if there are specific permit conditions attached to that? Ms. Johnson responded "Yes."

Chairperson Oishi asked if there were any other questions from the Committee?

Advisory Committee Member Pam Mizuno asked if we would be issuing permit conditions that are similar to the USDA permit? Chairperson Oishi said he could not answer because he did not see the USDA permit conditions. Mr. Ho said that the proposed permit conditions contain a requirement that the permittee must comply with all state and federal and other regulations. He noted the conditions that PQB would be obligated to enforce are the ones contained within the submittal, however, the applicant is still mandated to comply with whatever federal regulations there are regardless of what the state permit requires. He said the federal permit may exceed the scope of PQB's authority and there is an assumption that by having the federal permit, the applicant is in compliance. He noted that if PQB came across a federal violation, it would be referred to USDA because PQB does not have jurisdiction. He reiterated that there is a built-in assumption that applicants will be in complying with all other regulations, not just PQB's.

Committee member Mizuno asked if PQB would be conducting a site inspection. Mr. Ho said it would be done prior to the issuance of the permit. Chairperson Oishi asked if it would be done in conjunction with USDA? Mr. Ho said it could be done.

Chairperson Oishi asked if there any other questions or concerns with from the Committee? Committee member Gon asked if there was an upcoming federal inspection scheduled? Ms. Johnson said there was not one to her knowledge. Committee member Gon said he liked the idea that there is an opportunity to coordinate a concurrent state and federal inspection.

Chairperson Oishi said that he would like to see the USDA permit. He then made a motion to recommend approval of the request contingent upon the applicant providing

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the USDA permit to PQB prior to the Board's review. Committee member Hauff seconded the motion. Chairperson Oishi asked if there was further discussion?

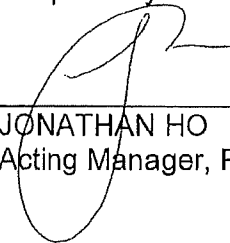
PQB NOTES: *Ms. Johnson emailed a copy of the USDA permit to Microorganism Specialist Wil Leon Guerrero shortly after the meeting adjourned. See Attachment 2.*

Committee member Gracelda Simmons asked if there was a timeframe for the federal permit to be submitted to ensure that things continue forward. Ms. Johnson said that she would email the federal permit to PQB at the conclusion of the meeting. Chairperson Oishi asked Mr. Ho if he had questions on the motion. Mr. Ho responded that he understood. Chairperson Oishi asked if there were questions or comments from members of the public? Hearing none, Chairperson Oishi called for the vote.

Vote: 6/0 Approve (Hauff, Oishi, Mizuno, Gon, Eisen, Simmons).

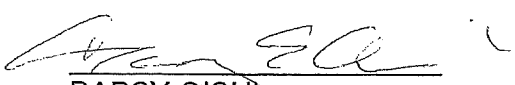
STAFF RECOMMENDATION: Based on the recommendations and comments of the Advisory Subcommittee on viruses and the Advisory Committee's (6-0) recommendation to approve this request, the Plant Quarantine Branch recommends approval of this request.

Respectfully Submitted,




JONATHAN HO
Acting Manager, Plant Quarantine Branch

CONCURRED:



DARCY OISHI
Acting Administrator, Plant Industry Division

APPROVED FOR SUBMISSION:



SHARON HURD
Chairperson, Board of Agriculture



State of Hawaii
Department of Agriculture
PLANT QUARANTINE BRANCH
1849 Auliki Street, Honolulu, HI 96819-3100
Phone: (808) 832-0566, FAX: (808) 832-0584

PERMIT APPLICATION FOR RESTRICTED COMMODITIES INTO HAWAII

For Office Use Only

Fee: \$ _____ Receipt No. _____

☐ Approve Permit No. _____ Date: _____

☐ Disapprove ☐ Other _____

Processed by: _____ Date: _____

Date: August 25, 2021

In accordance with the provision of Chapter _____, Hawaii Administrative Rules of the Division of Plant Industry, Department of Agriculture, a permit is requested for the following commodities:

Please type or print clearly.

[illegible]

Name and address of shipper: _____

CBI

(Mainland or Foreign address)

Approximate date of arrival: January 2022

Mode of Shipment: ☐ Mail ☒ Air Freight ☐ Boat

Type of Permit:

--- Import

☒ one time only ☐ multi-shipments

Intrastate shipment

☐ one time only ☐ multi-shipments

- ☐ Possession

Object of importation:

☐ Kept caged at all time

- ☐ Used for propagation

☐ Imported for exhibition☒ Imported for liberation☐ Other purposes - specify _____

Please type or print clearly.

Applicant's Name Kimberly Johnson

Company Name Pioneer Hi-Bred International, Inc
(if applicable)

Hawaii Mailing Address []

CBI

[]

CBI

Telephone number 1 2 3 4 5 6 7 8 9 0

CBI

Facsimile number []

CBI

Fee Amount Enclosed (cash, check or mail order) \$ _____

(complete reverse side)

PLEASE COMPLETE THE FOLLOWING INFORMATION (attach extra sheet if necessary)

1. State in detail the reasons for introduction (include use or purpose).

The MCMV isolate was originally collected in Waialua, Hawaii, and shipped to Johnston, Iowa for laboratory confirmation of purity, increased, and then shipped back to Hawaii for use in this project. The inoculations of maize chlorotic mottle virus (MCMV) in Hawaii are part of a Maize Lethal Necrosis (MLN) project done in collaboration with The International Maize and Wheat Improvement Center (CIMMYT) and the Bill and Melinda Gates Foundation (BMGF), (see Boddupalli P, et al. Virus Research 282 (2020) 197943).

2. Person responsible for the organism (include name, address and phone number).

[

]

CBI

3. Location(s) where the organism will be kept and used (include address, contact and phone number).

[

]

CBI

4. Method of disposition.

All un-used inoculum is sufficiently heat or chemically treated to kill all plant pests prior to disposal. Corteva protocol prohibits MCMV isolates from having direct contact with the environment outside of the shade house.

5. Give an abstract of the organism with particular reference to potential impact on the environment of Hawaii (include impact to plants, animals and humans).

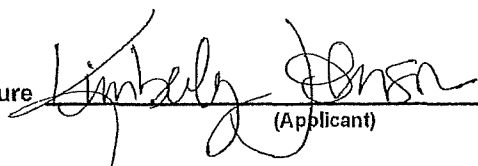
MCMV (Family: Tombusviridae Genus: Machlomovirus) has been observed in Hawaii, all measures will be taken to ensure there is not an accidental release. Maize (Family: Poaceae) is the only natural host of MCMV, an accidental release would not have significant impact on other plants, animals or humans

I request permission to import the articles as listed on the permit application and further, request that the articles be examined by an authorized agent of the Department of Agriculture upon arrival in Hawaii.

I agree that I, as the importer, will be responsible for all costs, charges or expenses incident to the inspection or treatment of the imported articles.

I further agree that damages or losses incident to the inspection or the fumigation, disinfection, quarantine, or destruction of the articles, by an authorized agent of the Department of Agriculture, shall not be the basis of a claim against the department or the inspectors for the damage or loss incurred.

Signature


(Applicant)

Date

Aug 25, 2021

Maize Chlorotic Mottle

Scot Nelson,¹ James Brewbaker,² and John Hu¹

¹Department of Plant and Environmental Protection Sciences

²Department of Tropical Plant and Soil Sciences

Maize (*Zea mays* L., corn) ranks as the second largest crop in the world, according to the Food and Agriculture Organization of the United Nations. The annual yield of maize in 2009 exceeded 800 million tons, and its value exceeded \$51 billion (FAO-STAT 2009). Maize has become an integral part of modern society: It is a staple food for humans and livestock and has a variety of other uses. Corn has also become Hawai'i's most valuable crop.

Seed crops are Hawai'i's most valuable farm commodities. In 2008, seed corn made up 95% of the seed market and was valued at \$213.6 million (Statistics of Hawaii Agriculture 2009). Eleven farms grew corn seed crops that year on over 6,300 acres. Farmers also grew 400 acres of sweet corn, valued at more than \$1.23 million. With ever more acres being devoted to sweet corn, forage, feed grain, biofuel, and popcorn, maize has become essential to Hawai'i's modern agricultural economy.

A range of important insects, weeds, and plant pathogens cause damage to corn in Hawai'i. Among the pathogens, fungi and viruses cause yield-limiting diseases to which temperate-climate field corn and

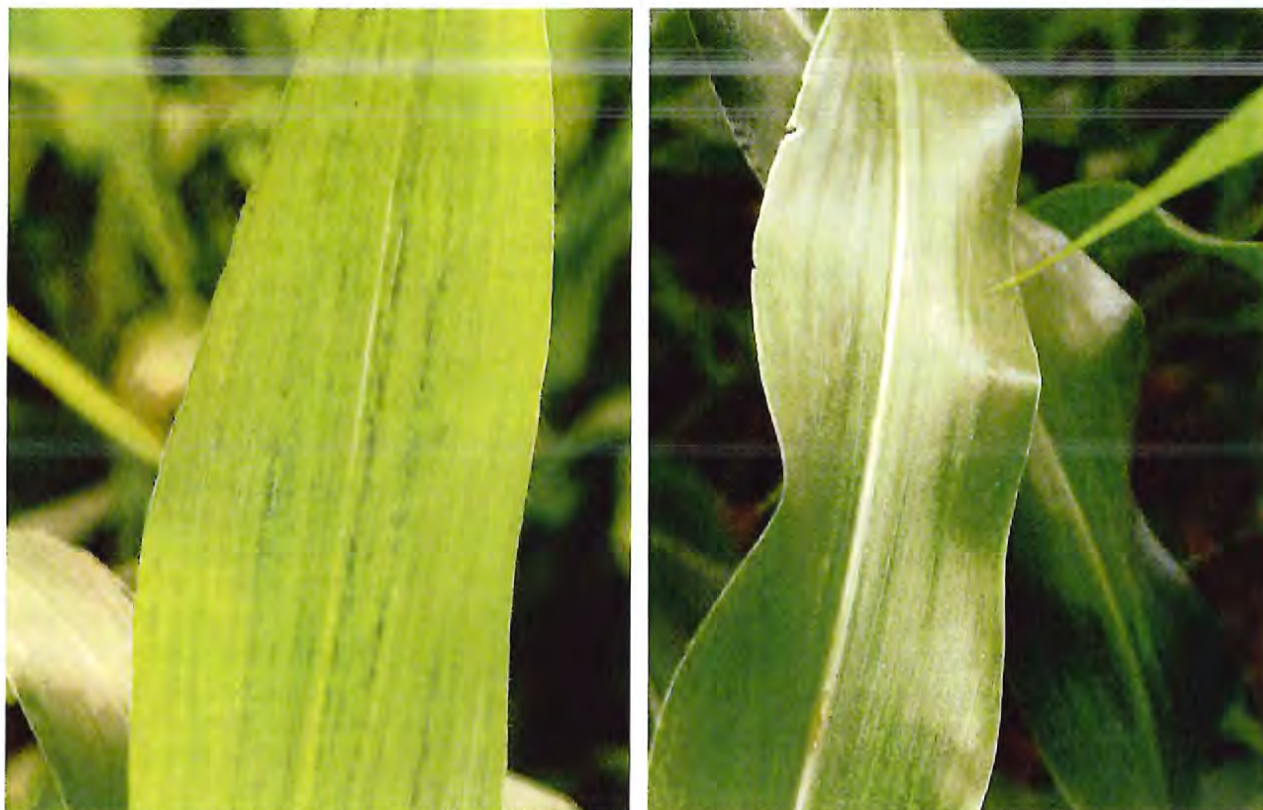


Disease symptoms on a tasseling corn plant in Hawai'i infected with *Maize chlorotic mottle virus* (MCMV): pale green stripes or blotches running parallel to leaf veins, mosaic, and severe stunting (reduced distance between leaf internodes).

sweet corn often lack resistance. Pathogens that cause fungal diseases include southern rust and a viral disease, maize mosaic, caused by *Maize mosaic virus* (MMV), both of which have been targeted for decades by the corn-breeding program at the University of Hawai'i's College of Tropical Agriculture and Human Resources (UH-CTAHR). Open-pollinated varieties such as Hawaiian Supersweet #9 (yellow) and Hawaiian Supersweet 'Silver' (white) are among the few sweet corn varieties available with a high level of resistance to MMV and southern rust. All sweet corn and field corn hybrids derived from these varieties and released by CTAHR are highly resistant (www.ctahr.hawaii.edu/hfs).

A newly emergent viral disease of corn, maize chlorotic mottle, appeared on Kaua'i in the early 1990s. *Maize chlorotic mottle virus* (MCMV) now poses

a significant threat to temperate-zone seed corn crops and some of the locally developed tropical corn varieties. This disease was controlled for several years on Kaua'i by destroying infected crops, but it has since spread to other islands, including O'ahu and Maui. Most of the temperate-zone seed corn produced in Hawai'i is



Typical mosaic symptoms on corn leaves (left) caused by MCMV in Hawai'i. Nearly asymptomatic leaves are shown at right.

highly susceptible to MCMV, and locally bred sweet corn varieties often show some genetic susceptibility. Producers of corn seed on all Hawaiian islands now spray regularly after planting to control the insects that spread of the virus.

In Hawai'i MMV, transmitted by the leafhopper, *Peregrinus maidis*, is more damaging than MCMV (Ming et al. 1997). However, the former disease can be effectively controlled by regular insecticide applications. MMV resistance in corn is monogenic and rare among temperate-zone corn varieties but common in all Hawai'i germplasm. MMV resistance in corn does not provide resistance to MCMV. When both viruses are present in a plant, in fact, the plants often age prematurely. The condition is called corn lethal necrosis (CLN).

The level of MCMV resistance varies widely among pure lines that have been tested in Hawai'i, so it is considered a quantitative trait. Almost all temperate

climate inbreds and hybrids are highly susceptible to the virus. As a result, growers in Hawai'i's seed industry routinely spray insecticides on their predominately temperate-zone seed stock to control the thrips that are the vector of MCMV. In contrast, many tropical field corn lines and varieties are fully resistant. In CTAHR breeding nurseries at Waimanalo Research Station, the disease was first observed in early 2011. Maize chlorotic mottle is not widespread, but an epidemic occurred at a Kahuku sweet corn farm in 2010, causing severe yield loss. Preliminary inheritance studies on the inheritance of traits suggest a polygenic control of the disease, with resistance being partially dominant. This encourages the commercial production of hybrids only if both parents are resistant to the pathogen.

There are a number of important unanswered questions about MCMV and its vectors, as well as about maize chlorotic mottle. Here we discuss these ques-

tions, the pathogen, vectors and virus transmission, and the disease epidemiology and symptoms. We suggest integrated practices for its successful management and also identify areas of future research needed to gain a fuller understanding leading to better management of epidemics of maize chlorotic mottle.

Pathogen

Maize chlorotic mottle virus is the only species in the genus *Machlomovirus* (family *Tombusviridae*). The virions of this single-stranded RNA virus are isometric, and the single-component particles have a smooth spherical or hexagonal shape (Scheets 2010). The virus was first reported to infect *Z. mays* in Peru (Hebert and Castillo 1973). MCMV is not widespread in the United States, having been reported only in Nebraska, Kansas, and Hawai'i. Globally, the virus occurs in Argentina, Mexico, and Peru. At least two genetically and geographically distinct strains of MCMV have been reported, MCMV-P (Peru) and MCMV-K (Kansas) (Nyvall 1999).

Transmission

MCMV transmission occurs through insect vectors, mechanically, and by seed at very low rates (Jensen et al. 1991). MCMV is possibly also transmitted through infested soil, as the virus can survive in corn residue (Nyvall 1999). Continuous maize production in a field greatly increases the incidence of maize chlorotic mottle.

The following insect species can transmit MCMV (Nyvall 1999):

- Corn thrips (*Frankliniella williamsi*)
- Three species of corn rootworms (*Diabrotica*): the southern corn rootworm (*D. undecimpunctata*), the northern corn rootworm (*D. lonicornis*), and the western corn rootworm (*D. virgifera*)
- The corn flea beetle (*Chaetocnema pulicaria*)
- The flea beetle (*Systema frontalis*)
- The cereal leaf beetle (*Oulema melanopa*)

Corn thrips is the only widely distributed vector of MCMV in Hawai'i and is likely the primary vector. It transmits MCMV in a non-persistent manner. Although maize is the preferred host, corn thrips can survive on a number of plants, including cassava, beans, maize, sor-

ghum, onions, various grasses, rice, peppers coriander, peas, and the weedy species *Bidens pilosa* and *Tithonia diversifolia* (Capinera 2008; ICPEI Thrips 2011; Frison and Feliu 1989; King and Saunders 1984).

Plant host range for MCMV

Maize is the only natural host reported for MCMV. Hosts that can be infected experimentally are limited to the grasses in the family *Poaceae* (Scheets 2004). Among these grasses, 73 plant species in 35 genera have been tested for susceptibility to virus strains MCMV-Kansas, MCMV-Peru, or both (Table 1).

Table 1. Plants tested for susceptibility to strains of MCMV (Scheets 2004).

Immune genera ¹	Susceptible genera	Genera with both immune and susceptible species
<i>Axonopus</i> <i>Chloris</i> <i>Elymus</i> <i>Festuca</i> <i>Lolium</i> <i>Oryza</i> <i>Paspalum</i> <i>Poa</i> <i>Saccharum</i>	<i>Andropogon</i> <i>Avena</i> <i>Bouteloua</i> <i>Buchloe</i> <i>Calamovilfa</i> <i>Eleusine</i> <i>Eragrostis</i> <i>Euchlaena</i> <i>Hordeum</i> <i>Secale</i> <i>Sorghastrum</i> <i>Sorghum</i> <i>Spartina</i> <i>Tripsacum</i> <i>Triticum</i>	<i>Agropyron</i> <i>Bromus</i> <i>Cenchrus</i> <i>Cynodon</i> <i>Dactylis</i> <i>Digitaria</i> <i>Echinochloa</i> <i>Panicum</i> <i>Phalaris</i> <i>Setaria</i> <i>Zea</i>

¹Status of hosts listed in this table are a result of experimental inoculations, not natural field infection.

Hosts of MCMV found in Hawai'i include the following plant species (common names in parentheses) (Brunt et al. 2010):

- *Bromus mollis* (soft chess; soft brome)
- *Panicum dichotomiflorum* Michx. (fall panic grass; fall panicum)
- *Panicum maximum* Jacq. (guinea grass)
- *Panicum miliaceum* (proso; broomcorn millet)
- *Zea mays* (corn)

The host status (either natural or experimental) of other



Variation in host response to infection by MCMV among inbred corn lines growing at Waimanalo, Hawai'i. Symptoms range from severe mosaic and stunting (foreground) to virtually asymptomatic (background). These corn lines express varying degrees of resistance and susceptibility to the virus, suggesting that improved varieties can be developed through traditional breeding and selection.

Bromus spp. and *Panicum* spp. found in Hawai'i for the Hawaiian strain(s) of MCMV is unknown.

Disease symptoms

Disease symptoms vary in severity depending on plant age at the time of infection, environment, and maize variety or genotype (Scheets 2004). Symptoms of maize chlorotic mottle include the following:

- Leaf mosaic with fine, chlorotic, longitudinal yellow streaks parallel to leaf veins develops about 10 days after inoculation.
- Streaks may coalesce to create chlorotic mottling.
- Chlorotic mottling may be followed by leaf necrosis, stunting, and plant death.
- Ears are short, malformed, and partially filled, often with prematurely aged husks
- Yield reductions are possible with natural infections and range up to 60% with experimental infections (Scheets 2004).
- Male inflorescences (tassels) may be shortened.

Disease diagnosis and virus detection

In maize, MCMV has been detected in leaves, pollen, female and male inflorescences, ear husks, cotyledons, and seeds (pericarps, endosperm, cotyledons, and embryo) (Scheets 2004). The most reliable methods for detecting MCMV in host tissues include ELISA (enzyme-linked immunosorbent assay), Northern blots, and polymerase chain reactions (PCR) for detection of virus RNA. There are no reliable local lesion hosts. Maize chlorotic mottle may be difficult to diagnose based on symptoms alone, because some of its symptoms (stunting, chlorosis) may resemble those caused by nutrient deficiencies or maize mosaic. CTAHR can provide diagnostic inbreds with high susceptibility or high resistance for virus-resistance testing (www.ctahr.hawaii.edu/hfs).

Disease management

The most effective management of maize chlorotic mottle is through the integration of cultural practices with insecticides and host resistance. Superior resistance to MCMV is widely available in tropical corn seed stocks and provides the best control for this disease. Most temperate-climate varieties of field and sweet corn, however, are highly susceptible. Some locally bred sweet corn hybrids are intermediate in tolerance.

The following integrated practices are recommended to control maize chlorotic mottle:

- Plant maize lines resistant to MCMV.
- Apply insecticide sprays, weekly if necessary, to control thrips vectors.
- Control alternate weed hosts, especially grassy

weeds, to reduce populations of MCMV and corn thrips.

- Scout fields regularly and remove any symptomatic plants.
- Keep unnecessary people and machines out of the field to reduce mechanical transmission and spread of MCMV.

Deployment of host resistance

The most effective management strategy is to plant MCMV-resistant varieties. Many tropical inbreds and varieties were highly resistant to MCMV in 2011 trials. For example, 30 of 40 (75%) of UH-bred field-corn inbreds tested were resistant. Complete immunity, however, has not been observed. Sweet corn developed for the Hawai'i market often shows some susceptibility, but the level of resistance is being increased through breeding. The severity of the disease depends on the cropping environment, or location. Therefore, the best approach is to employ the integrated management practices listed above, including the use of disease-resistant plants.

Future research needs

To manage maize chlorotic mottle disease more effectively in Hawai'i, the following questions still need to be answered. What other grassy weeds are potential hosts of MCMV? Is more than one virus strain present in Hawai'i, and how do strains differ? What genes are responsible for host resistance, and how can these genes be incorporated into commercial seed stock? How effectively can Hawaiian strains of MCMV be spread by seed? How does the environment in which corn is grown affect the severity of disease? Are thrips the only vector of MCMV in Hawai'i? If so, can the disease be managed by controlling them? What is the best strategy for controlling thrips in Hawai'i? Research is needed to address these questions in order to develop improved scientific understanding and better management of epidemics.

Acknowledgements

The authors acknowledge Fred Brooks and Wayne Borth of UH-CTAHR for their thoughtful reviews of this manuscript.



Young corn plants infected with MCMV in Hawai'i showing the typical symptoms of leaf mosaic.

References

- Brunt, A.A., Crabtree, K., Dallwitz, M.J., Gibbs, A.J., Watson, L. and Zurcher, E.J. (eds.) 2010. Plant Viruses Online: Descriptions and Lists from the VIDE Database. Version: 20th August 1996. <http://biology.anu.edu.au/Groups/MES/vide>
- Capinera, J. (ed). 2008. *Encyclopedia of entomology: A-E*, Volume 1 (2nd edition). Springer.
- FAOSTAT, Food and Agricultural Commodities Production. 2009. Food and Agriculture Organization of the United Nations. <http://faostat.fao.org/site/339/default.aspx>

- Frison, E.A., and Feliu, E. (eds). 1989. FAO/IBPGR technical guidelines for the safe movement of cassava germplasm. FAO/IBBGR, Rome.
- Haselwood, E.L., and Motter, G.G. 1966. *Handbook of Hawaiian weeds*. Hawaiian Sugar Planter's Association, Honolulu, HI
- Hebert, T.T. and Castillo, J. 1973. A new virus disease of maize in Peru. *Abstr. 2nd Int. Congr. Pl. Path., Minneapolis*, No. 72.
- ICIPE Thrips. Occurrence of *Frankliniella williamsi* Hood, 1915 in East Africa <http://finwebsvr.icipe.org:8000/thrips/> (accessed 7 November 2011)
- Jensen, S.G., Wysong, D.S., Ball, E.M., and Higley, P.M. 1991. Seed transmission of maize chlorotic mottle virus. *Plant Dis.* 75:497–498.
- King, A.B.S., and Saunders, J.L. 1984. *The invertebrate pests of annual food crops in Central America: a guide to their recognition and control*. Overseas Development Administration, London.
- Ming, R., Brewbaker, J.J., Pratt, R.C., Musket, T.A., and McMullen, M.D. 1997. Molecular mapping of a major gene conferring resistance to maize mosaic virus. *Theor. Appl. Genetics* 95:271–275.
- Nyvall, R. 1999. Field crop diseases (Third Edition). Iowa State University Press, Ames, Iowa.
- Scheets, K. 2010. Machlomovirus. pp. 204–209 In: *Desk encyclopedia of plant and fungal virology*, Mahy, B.W.J., and Van Regenmortel, M.H.V. (eds). Academic Press, Oxford.
- Scheets, K. 2004. Maize chlorotic mottle. In: H. Lapiere and P.-A. Signoret (eds.) *Viruses and virus diseases of Poaceae (Gramineae)*. Institut National de la Recherche Agronomique, Paris.
- Statistics of Hawaii Agriculture. 2009. Hawaii Department of Agriculture, Agriculture Development Division,
- United States Department of Agriculture, National Agriculture Statistics Service.
- Wagner, W.L., Herbst, D.R., and Sohmer, S.H. 1999. *Manual of the flowering plants of Hawaii*. University of Hawai'i, Bishop Museum Press, Honolulu, HI.

United States Department of Agriculture
Animal and Plant Health Inspection Service
Plant Protection & Quarantine
4700 River Road
Riverdale, MD 20737

Permit to Move Live Plant Pests, Noxious Weeds, and Soil
Interstate Movement
Regulated by 7 CFR 330

This permit was generated electronically via the ePermits system

PERMITTEE NAME:	Kimberly Johnson	PERMIT NUMBER:	P526P-21-04098
ORGANIZATION:	Pioneer Hi-Bred International, Incorporated	APPLICATION NUMBER:	P526-210521-012
ADDRESS:	7100 NW 62nd Avenue P.O. Box 1000 Johnston, IA 50131	DATE ISSUED:	07/09/2021
MAILING ADDRESS:	67-172 Farrington Highway P.O. Box 520 Waialua, HI 96791	EXPIRES:	07/09/2024
PHONE:	515-535-6127	FACILITY NUMBER:	N/A
ALT. PHONE:		HAND CARRY:	Yes
EMAIL:	kimberly.johnson@corteva.com		
FAX:			
DESTINATION:	67-172 Farrington Highway, Waialua, HI 96791		
RELEASE:	HI, (County: Honolulu)		

Under the conditions specified, this permit authorizes the following:

Regulated Article	Life Stage(s)	Intended Use	Shipment Origins	Originally Collected	Culture Designation
Maize chlorotic mottle virus	Any	Research - Field	Continental U.S.	Originally Collected from HI or U.S. Pacific Territory	

PERMIT GUIDANCE

- 1) Importation, interstate movement, and environmental release of the listed regulated organisms that have been genetically engineered may require a different permit issued under regulations at 7 CFR part 340. Any unauthorized importation, interstate movement, or environmental release (including accidental release) of a regulated GE organism would be a violation of those regulations. Before moving genetically engineered organisms, contact APHIS Biotechnology Regulatory Services (BRS) at: <https://www.aphis.usda.gov/aphis/ourfocus/biotechnology>. If BRS does not require a permit, contact the Pest, Pathogen, and Biocontrol permit unit for further guidance at: pest.permits@usda.gov
- 2) If an animal pathogen is identified in your shipment, to ensure appropriate safeguarding, please refer to http://www.aphis.usda.gov/import_export/animals/animal_import/animal_imports_and_products.shtml
- 3) If a human pathogen is identified, please refer to the CDC Etiologic Agent Import Permit Program at <http://www.cdc.gov/od/eaipp/>

Permit Number P526P-21-04098

THIS PERMIT HAS BEEN APPROVED ELECTRONICALLY BY THE FOLLOWING
PPQ HEADQUARTER OFFICIAL VIA EPERMITS.



Colin Stewart

DATE

07/09/2021

WARNING: Any alteration, forgery or unauthorized use of this Federal Form is subject to civil penalties of up to \$250,000 (7 U.S.C. 7734(b)) or punishable by a fine of not more than \$10,000, or imprisonment of not more than 5 years, or both (18 U.S.C. 1001)

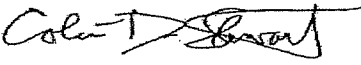
- 4) This permit DOES NOT fulfill the requirements of other federal or state regulatory authorities. Please contact the appropriate agencies, such as the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the U.S. Food and Drug Administration, the Centers for Disease Control and Prevention, the APHIS Veterinary Services unit, the APHIS Biotechnology Regulatory Services, or your State's Department of Agriculture to ensure proper permitting.
- 5) If you are considering renewal of this permit, an application should be submitted at least 90 days prior to the expiration date of this permit to ensure continued coverage. Permits requiring containment facilities may take a longer period of time to process.

PERMIT CONDITIONS

USDA-APHIS issues this permit to Kimberly Johnson, Pioneer Hi-Bred International, Incorporated, Waialua, Hawaii. This permit authorizes the interstate movement of Maize chlorotic mottle virus from the listed states to Hawaii.

This permit authorizes the use of the regulated materials/organism for field research in a shade house in Honolulu County, Hawaii.

1.
 - This permit is issued by the United States Department of Agriculture's Animal and Plant Health Inspection Service (APHIS). It conveys APHIS regulations and requirements for the material(s) listed on this permit. It does not reduce or eliminate your legal duty and responsibility to comply with all other applicable Federal and State regulatory requirements.
 - The permit number or a copy of the permit must accompany the shipment.
 - You must be an individual at least 18 years old, or legal entity such as partnership, corporation, association, or joint venture.
 - You are legally responsible for complying with all permit requirements and permit conditions.
 - If you violate any applicable laws associated with this permit, you may face substantial civil or criminal penalties. We may cancel all current permits and deny future permit applications.
 - Without prior notice and during reasonable hours, authorized Federal and State Regulators must be allowed to inspect the conditions associated with the regulated materials/organisms authorized under this permit.
2. The permit holder must:
 - maintain a valid PPQ526 permit so long as the regulated materials/organisms are alive or viable,

Permit Number P526P-21-04098	
THIS PERMIT HAS BEEN APPROVED ELECTRONICALLY BY THE FOLLOWING PPQ HEADQUARTER OFFICIAL VIA EPERMITS.	DATE
 Colin Stewart	07/09/2021

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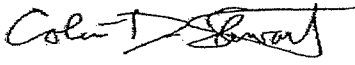


- not assign or transfer this permit to other persons without APHIS PPQ authorization,
- maintain an official permanent work assignment, residence, or affiliation at the address on this permit,
- notify the Pest Permit Staff as soon as possible of any change in the permit holder's work assignment, residence, or affiliation,
- notify the Pest Permit Staff of the receipt of unauthorized and/or misdirected shipments of regulated materials/organisms,
- adequately mitigate environmental impacts resulting from unauthorized release of regulated materials/organisms and notify the Pest Permit staff immediately if one occurs,
- notify the Pest Permit Staff if the facility is damaged/destroyed or if you wish to decommission the facility,
- destroy all regulated materials/organisms prior to departure from the organization unless other arrangements are confirmed by the Pest Permit Staff.

Notifications to the Pest Permit Staff must be made via 866-524-5421 or pest.permits@usda.gov within one business day of the event triggering a notification.

3. This permit does not authorize movement or use of organisms listed in the Public Health Security and Bioterrorism Preparedness and Response Act of 2002. If any organism listed as a Select Agent is identified from materials associated with this research, the permit holder is required to notify APHIS, Agriculture Select Agent Services (AgSAS) immediately by phone at 301-851-3300 option 3, and within seven (7) days submit APHIS/CDC Form 4A (Report of Identification of a Select Agent or Toxin in a Clinical or Diagnostic Laboratory) to APHIS, AgSAS; 4700 River Rd, Unit 2, Riverdale, MD 20737 (see instructions at: https://www.selectagents.gov/resources/APHIS-CDC_Form_4_Guidance_Document.pdf). Failure to comply with this requirement is a violation of the Agricultural Bioterrorism Protection Act of 2002. For a complete list of Select Agents please visit: <https://www.selectagents.gov/selectagentsandtoxinslist.html>
- Select agents include: *Peronosclerospora philippinensis* (*Peronosclerospora sacchari*), *Coniothyrium glycines* (formerly *Phoma glycinicola* and *Pyrenochaeta glycines*), *Ralstonia solanacearum*, *Rathayibacter toxicus*, *Sclerophthora rayssiae*, *Synchytrium endobioticum*, *Xanthomonas oryzae*, *Bacillus anthracis*, *Brucella abortus*, *Brucella melitensis*, *Brucella suis*,

Permit Number P526P-21-04098

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Burkholderia mallei, and Burkholderia pseudomallei.

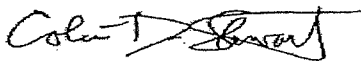
For applicants applying for a permit for Ralstonia solanacearum non-race 3 biovar 2, an exclusion letter will need to be submitted along with the application

4. All persons working with the listed regulated materials/organisms must be informed of these permit conditions. Anyone working with these materials/organisms must agree to adhere to and sign/initial these conditions before beginning work. These signed conditions do not need to be submitted to USDA/APHIS but must be readily accessible and made available to Federal and State regulators upon request.

Note: these conditions may be copied and stored electronically for electronic signature and initialing provided that the permit number, authorized materials/organisms and life stages, release locations if applicable, and authorization statement all appear on the document with the permit number. Signing these conditions only indicates that the person working under this permit has read them; the permit holder is the sole responsible party under this permit.

5. The permit holder should contact Hawaii Department of Agriculture to ensure proper State permitting.
6. Inoculum for field trials must originate from pure cultures of identified organisms.
7. Only U.S. isolates are authorized. Isolates must be representative (e.g. races, chemotypes) of those found in the state of release or in contiguous states. No foreign isolates are authorized.
8. All packages for transport to the destination location listed above in Hawaii must minimally consist of both inner/primary and outer/secondary packages securely sealed so that both are effective barriers to escape or unauthorized dissemination of the listed materials/organisms. The inner/primary package(s) will contain all regulated materials/organisms and must be cushioned and sealed in such a way that it remains sealed during shock, impact, and pressure changes that may occur. The outer/secondary shipping container must be rigid and strong enough to withstand typical shipping conditions (dropping, stacking, impact from other freight, etc.) without opening.
9. Organisms must be shipped, or transported to the field, in sturdy leak-proof and escape-proof packages. Inoculum may be transported to the field via personal or project/company owned vehicles.
10. All un-used inoculum will be sufficiently heat or chemically treated to kill all plant pests prior to disposal. Alternatively, un-used inoculum and packing materials may be deep buried (at least two feet deep) on-site at the release site, or double bagged and disposed of in a municipal landfill.
11. You must notify us at Pest.Permits@usda.gov as soon as possible but not later than within 5 working days if the plant pathogen or associated host organism is found to have characteristics substantially different from those expected, or suffers any unusual occurrence (excessive mortality or morbidity, or unanticipated effect on non-target organisms).

Permit Number P526P-21-04098

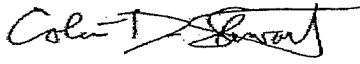
<p>THIS PERMIT HAS BEEN APPROVED ELECTRONICALLY BY THE FOLLOWING PPQ HEADQUARTER OFFICIAL VIA EPERMITS.</p> <p style="text-align: center;"></p> <p style="text-align: center;">Colin Stewart</p>	<p>DATE</p> <p style="text-align: center;">07/09/2021</p>
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12. There is to be no further movement or distribution of the listed regulated materials/organisms within the United States and its territories unless the recipient holds, or is named as a responsible party on a valid PPQ526 permit for receipt of such materials/organisms.

END OF PERMIT CONDITIONS

Permit Number P526P-21-04098

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

February 28, 2023

Board of Agriculture
Honolulu, Hawaii

SUBJECT: Request for: (1) Preliminary Approval of the Proposed Amendment and Compilation of Hawaii Administrative Rules, Chapter 4-72, entitled "Plant and Non-Domestic Animal Quarantine Plant Intrastate Rules" to among other things: Implement Plant Quarantine Interim Rule 22-1, Regarding Quarantine Restrictions on the Coconut Rhinoceros Beetle (CRB) and CRB host materials; Implement Fees for Inspections and the Processing and Issuance of Permits; Establish Authority to Prohibit the Movement of Infested Materials Within the State; Include Penalties for Non-compliance; Make Other Changes for Clarity or Simplification and Other Non-substantive Changes Correcting Grammar, Punctuation, or Typeface; and (2) Authorization for the Chairperson to Schedule Public Hearings and Appoint One or More Hearings Officers in Connection With the Proposed Amendments to Chapter 4-72, Hawaii Administrative Rules.

A summary of the proposed changes is included below.

I. Introduction

The Hawaii Department of Agriculture (HDOA) Plant Quarantine Branch (PQB) is proposing various amendments to Chapter 4-72, Hawaii Administrative Rules (HAR) primarily to implement Plant Quarantine Interim Rule 22-1 to implement quarantine restrictions on the Coconut Rhinoceros Beetle (CRB) and CRB host materials. The proposed amendments also include implementing inspection fees pursuant to Act 273, SLH 2010; implementing fees for the processing and issuance of permits; providing authority to prohibit movement of infested materials; inclusion of penalties; and other changes for clarity or simplification and other non-substantive changes correcting grammar, punctuation, or typeface.

II. Summary of Proposed Changes to 4-72, HAR:

Listed below is a summary of the proposed changes to Chapter 4-72, HAR and the reasons for the proposed amendments.

A copy of the proposed rules detailing the exact changes in Ramseyer format is included as Appendix A. For clarity on Ramseyer format, text that is underlined is a



proposed addition and text that is bracketed and ~~strikethrough~~ is a proposed deletion. Changes that were made after the Advisory Committee on Plants and Animals (Advisory Committee) review will also be shown in Ramseyer format and is also highlighted in yellow to indicate additions, and grey ~~strikethrough~~ to indicate deletions, to make the changes easier to identify from the initial version of the proposed amendments.

1. Chapter 4-72 title is amended by adding "and Pest Host Material". Chapter 4-72 is amended by adding headings for "Subchapter 1 General Provisions" and "Subchapter 2 Intrastate Restrictions".
2. Amending Section 4-72-1, Objective by clarifying that Chapter 4-72 is implementing Chapter 141, Hawaii Revised Statutes (HRS) and by deleting "their plant or commodity hosts" and adding "infested or infected pest host material" and references to insects and diseases.
3. Amending Section 4-72-2 Definitions as follows:
 - a. The definition "Board" is corrected.
 - b. The definition "Department" is moved to appear in alphabetical order.
 - c. The definition "Chief" is deleted. All references to "chief" are changed to "SPRO" throughout.
 - d. The definition "Compliance agreement" is added.
 - e. The definition "Infested" is added.
 - f. The definition "Person" is added.
 - g. The definition "Pest" is added.
 - h. The definition "Pest host material" is added.
 - o. The definition "Restricted area" is corrected.
 - j. The definition "Soil" is added.
 - k. The definition "SPRO" is added.
 - l. The definition "State " is added.
4. Amending Section 4-72-3 Inspectional requirements. Adds "soil" to items required to be inspected by HDOA prior to being transported between the islands of the State, unless authorized by section 4-72-4(c). Clarifies that non-propagative plant parts may be inspected, at HDOA's discretion, when being transported between the islands of the State.
5. Amending Section 4-72-4 Prohibited transportations to:
 - a. Clarify that plants, propagative plant parts, and soil not inspected as required by section 4-72-3 may not be transported between islands of the State.
 - b. Add that pest host material that is infested or infected with an insect, disease, or pest, or that is itself a pest may not be transported between or

- within islands of the State unless it has been treated as approved by the SPRO or the transportation is authorized by the SPRO.
- c. Add subsection (c) that the inspectional requirements and prohibitions on transportation do not apply to HDOA moving items for diagnostics, research, testing, or educational purposes or to items moved pursuant to a permit approved by the SPRO and issued to an institution approved by the Board, a government agency, or a university for diagnostics, research, testing, or educational purposes.
6. Amending and renumbering Section 4-72-4.5 Designation of infested areas; expansion as section 4-72-10 (see below for proposed changes).
 7. Adds new Section 4-72-5, Restrictions related to pest host material available to the public which authorizes the SPRO to:
 - a. Quarantine or prohibit the movement of items that are for sale or otherwise available to the public, institutions, or government agencies, that are infested or infected with an insect, disease, or pest.
 - b. Require treatment of an area where the infested or infected items are stored.
 - c. Determine the disposition of the infested or infected items.
 8. Amending and renumbering Section 4-72-8 Restrictions on transport, harboring, rearing, or breeding of pests as Section 4-72-6. Amendments allow the harboring, rearing, or breeding of a pest in the following instances:
 - a. For diagnostics, research, testing, or educational purposes by HDOA, or for a government agency, or a university at sites approved by the SPRO.
 - b. By an institution approved by the Board, pursuant to a permit approved by the SPRO.
 9. Adds new Section 4-72-7, Permit and inspection fees to establish fees as follows:
 - a. The fee for a permit under chapter 4-72 is \$20 per permit for a single shipment within one year and \$100 per permit for unlimited shipments within one year.
 - b. The fee for a site inspection is \$25 per site inspected, plus mileage reimbursement.
 10. Adds new Section 4-72-8, Inspection fees to set fees plus mileage reimbursement pursuant to Act 173, SLH 2010 for:
 - a. Inspections and other actions by HDOA carried out beyond regular work hours at \$50.00 per inspection, including applicable charges for overtime, fixed charges, and meals, as appropriate.
 - b. Inspections conducted away from a port or HDOA office at \$50.00 per hour.

11. Adds new Section 4-72-9, Economic loss or damage to clarify that the State is not responsible for economic loss or damages related to actions by HDOA in carrying out Chapter 4-72.
12. Amending and renumbering Section 4-72-4.5 Designation of infested areas; expansion as section 4-72-10 to:
 - a. Make technical amendments regarding press releases and written notices.
 - b. Delete "its plant or commodity hosts" and add "its pest host material".
 - c. Remove the requirement that the Board's action to expand an infested area occur on the island where a new infestation has occurred, following written notice to industry groups likely to be affected.
13. Adds new Section 4-72-11, Penalties to clarify that violations of Chapter 4-72 are subject to penalties pursuant to Chapters 150A-14 and 141-7, HRS.
14. Adds new Section 4-72-12, Scientific and common names to clarify that if a scientific or common name set out in Chapter 4-72 is changed to a new scientific or common name the reference in the chapter shall be construed to refer to the new name.
15. Adds new Section 4-72-13, Severability to clarify that if a provision of Chapter 4-72 is found to be unconstitutional or invalid, the other provisions of the chapter are not affected.
16. Amending and renumbering Section 4-72-5 Examples of regulated pests as Section 4-72-15. Amendments are proposed to make technical changes, including updating scientific and common names, and to add new examples of regulated pests.
17. Amending and renumbering Section 4-72-6 Restrictions on sugarcane as Section 4-72-16. Amendments are proposed to make technical changes and add that a university or government agency may conduct research on sugarcane, pursuant to a permit.
18. Amending and renumbering Section 4-72-7 Restrictions on soil, sand, and animal manure as Section 4-72-17. Amendments are proposed to make technical changes, delete "artificial" and add "soil-less", and add that an institution approved by the Board, university, or government agency is eligible for a permit for diagnostic purposes.
19. Amending and renumbering Section 4-72-9 Restrictions on dasheen and taro as Section 4-72-18. Deletes "corms" from the heading and throughout the section.

20. Amending and renumbering Section 4-72-10 Restrictions on papaya and cucurbit as Section 4-72-19. Amendments make technical changes to scientific and common names.
21. Amending and renumbering Section 4-72-11 Restrictions on banana as Section 4-72-20. Amendments include adding restrictions for *Fusarium* tropical race 4 and make technical changes for clarity.
22. Amending and renumbering Section 4-72-12 Restrictions on coffee as Section 4-72-21. Amendments make technical changes for clarity and allow coffee plants and plant parts for propagation to be quarantined at a facility approved by the SPRO.
23. Amending and renumbering Section 4-72-13 Quarantine restrictions on ohia and soil from rapid ohia death infested areas as Section 4-72-22. Amendments make technical changes, including updating scientific names.
24. Adds new Section 4-72-23, Quarantine restrictions on CRB and CRB host material to make permanent Plant Quarantine Interim Rule 22-1. The proposed Section:
 - a. Designates the entire island of Oahu as the CRB infested area.
 - b. Prohibits a person from: transporting CRB host material from a CRB infested area to a CRB restricted area, or from transporting, receiving, processing, selling, bartering, donating, otherwise giving away, and exporting CRB host material within or from the CRB infested area except by HDOA; by permit for monitoring, control, eradication or scientific purposes approved by the SPRO; by permit for noncommercial activities subject to an appropriate treatment; pursuant to a compliance agreement issued by the SPRO, or directly exporting the material out of State.
25. Other changes are proposed throughout Chapter 4-72 for clarity, simplification, or to correct format, grammar, punctuation, and typeface.

III. Advisory Subcommittee Review:

This was sent to the Various Microorganism Advisory Subcommittees and the Advisory Subcommittee on Entomology for their comments and recommendations. Only the responsive members have been shown.

I recommend approval ____ / ____ disapproval to implement the proposed changes to Hawaii Administrative Rules, Chapter 4-72, entitled "Plant and Non-Domestic Animal Quarantine Plant Intrastate Rules", to among other things:

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- A. **Implement Plant Quarantine Interim Rule 22-1, regarding quarantine restrictions on the Coconut Rhinoceros Beetle (CRB) and CRB host materials;**
- B. **Implement fees for inspections and the processing and issuance of permits;**
- C. **Establish authority to prohibit the movement of infested materials within the state;**
- D. **Include penalties for non-compliance; and**
- E. **Make other changes for clarity or simplification and other non-substantive changes correcting grammar, punctuation, or typeface.**

Advisory Subcommittee on Entomology:

Dr. Peter Follett – recommends approval.

Comments: none

Dr. Daniel Rubinoff – recommends approval.

Comments: “I would only suggest that suppression activity continue for CRB on Oahu, or introduction to other islands will be inevitable.”

Dr. Mark Wright - recommends approval.

Comments: “The proposed changes address a number of important issues. Modifying the language to properly address CRB management is very timely. All other changes appear to be appropriate.”

Ms. Janis Matsunaga – recommends approval.

Comments: “I approve only under the conditions that further edits and changes be incorporated. I have included some edits to common and scientific names and authorities in the document through tracked changes. I am not clear on why some parentheses were deleted from the authorities’ names but I have added the necessary ones back in.

I am listing here some of the larger edits:

§4-72-2 Definitions

“Compliance agreement” means a written agreement between the department and a person who carries out commercial activities that includes any terms or conditions the SPRO

determines will slow or prevent the spread of a pest. A compliance agreement between the department and a person is a permit issued by the department to that person for the purposes of section 150A-8, HRS.

Question: Should this be limited to Chapter 150A? Should 141 also be included?

PQB NOTES: *This language is included to manage the requirements of 150A-8.*

"Pest host material" means any plant, propagative plant part, non-propagative plant part, soil, or any other thing that is found to be transporting or harboring a pest. It does not include fruit or vegetative scraps;

Question: Why are fruit and vegetative scraps not included? They can be pest host material as well.

PQB NOTES: *This can be removed.*

§4-72-3 Inspectional requirements.

(b) Cut or harvested flowers, foliage, fruits, vegetable, and other non-propagative plant parts need not be inspected prior to being transported between the islands of the State

Question: It was asked, what about cut hāpu'u logs (non-living) which may be infested with LFA or other pests?

PQB NOTES: *If infested action can be taken. As the rule stands, the requirement to inspect prior to movement is not included in this section.*

§4-72-5 Prohibition on movement of infested material. (a) The SPRO may prohibit the movement of any pest host material that is offered for sale, for barter, or by donation or otherwise to be given away to the public if the SPRO determines that the pest host material is infested or infected with a pest. The SPRO may compel treatment or destruction of the material per subsection (b). If such material was or is stored in an area that is infested or infected with a pest, then the SPRO may require appropriate

Question: Staff asked: Does this mean the SPRO has carte blanche powers? I.e. the pest is not listed anywhere? Say spotted lantern fly?

PQB NOTES: *This only applies to pests as approved by the Board. To enable carte blanche authority, the definition of pest would need to be expanded or additional language included after the term "pest" to cover these situations.*

- (1) Subjected to a treatment to eradicate the pest, as approved and supervised by the SPRO;

The term eradicate should be changed. Eradicate should be changed to eliminate or something of that nature

- (2) Destroyed using a method approved and supervised by the SPRO; or

- (3) If not treated or destroyed under paragraphs (1) or (2), then:

- (A) Transported only pursuant to a permit issued by the SPRO; or

- (B) Subject to any other disposition approved by the SPRO, including authorizing the transportation of untreated infested or infected pest host material or a pest to an island or location where the target pest is known to be established. [Eff and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§141-2, 150A-8)

Staff asked: Why do we need to include anything beyond "approved by the SPRO". Does the SPRO have carte blanche ability to approve treatments?

PQB NOTES: *The intent is to have the flexibility to be able to deal with unusual circumstances. The SPRO does have that ability.*

§4-72-6 Restrictions on transport, harboring, rearing, or breeding of pests. (a) The transport, harboring, rearing, or breeding of any pest is prohibited except:

Staff asked: How does harboring, in this context, relate, if at all, to nursery stock or other material that may move interisland? This would include compost held in an area....

PQB NOTES: Harboring deals with the intent to keep something, generally in secret. In the nursery context, harboring generally would not apply. Compost itself is not a pest, so would not be a violation under this particular section.

- (1) For research, testing, or educational purposes by the department;

Diagnostic work should be included

PQB NOTES: This can be included.

- (2) Pursuant to a permit approved by the SPRO and issued to an institution approved by the board; or
(3) By a government agency, or a university for research, testing, or educational purposes at a site inspected and approved by the SPRO prior to movement. [Eff 7/13/81; comp 9/19/91; am and comp 2/24/12; am and ren §4-72-6; and comp] (Auth: HRS §§141-2, 150A-9, 150A-53) (Imp: HRS §§141-2, 150A-8, 150A-53)

Diagnostic work should be included

PQB NOTES: This can be included.

§4-72-7 User permit and site inspection fees. (a) A fee for the processing of an application and issuance of a permit under this chapter is as follows:

- (1) \$20 per permit for a single shipment within one year from the date of issuance;
(2) \$100 per permit for unlimited shipments within one year from the date of issuance; and
(3) All applicable fees shall be paid in full at the time of request and are non-refundable except as approved by the SPRO.

(b) In addition to the requirements of subsection (a), a fee for a site inspection as required by this chapter or by permit conditions shall be \$25 per site inspection, plus mileage

reimbursement. [Eff and comp] (Auth: HRS
§§141-2, 150A-7.5, 150A-7.6, 150A-9) (Imp: HRS §§141-2, 150A-9)

Staff asked: Is a 40-yard container of compost site inspection the same as 1 plant? When is a permit needed? Is a permit needed if someone wants to take an orchid in a pot interisland? Can they expect to have a permit in real time if they are unaware?

PQB NOTES: *In this instance a site inspection fee would only occur if the permit required it. The fee for the inspection required for movement would be covered in section 4-72-8. If done off-site, the fees would be the same. The intent of the fees is to incentivize shippers to bring plants to us as opposed to PQB going to them.*

§4-72-8 Inspection fees. (a) Fees for inspections pursuant to this chapter are as follows:

What is the difference between a site inspection fee and an inspection fee? It may be beneficial to define "site inspection".

PQB NOTES: *Additional language can be added for clarity. Generally, inspections are done prior to movement, whereas a site inspection is done as a prerequisite to the issuance of a permit or compliance agreement.*

§4-72-15: Examples of taxa which should be deleted due widespread current distribution:

[Please review other edits in tracked changes]

- (1) Oriental beetle- [CORRECT NAME] *Anomala orientalis* (Waterhouse)
- (2) Fern weevil- *Syagrus fulvitaris* Pascoe
This is on all major islands except Moloka'i. Should this remain on this list?
- (3) Giant African snail- [CORRECT NAME] *Lissachatina fulica* (Bowdich)
This should be deleted as it is found on all major islands
- (4) Cactus mealybug- [CORRECT NAME] *Dactylopius opuntiae* (Cockerell)
This should be deleted. This is a purposefully released biological control and is a beneficial organism
- (5) Hunting billbug- *Sphenophorus venatus vestitus* Chittenden
This is found on all islands except Lāna'i. Should it remain on this list?

- (9) Orange spiny whitefly- [CORRECT NAME] *Aleurocanthus spiniferus* (Quaintance)
- (10) Bristly rose slug- [CORRECT NAME] *Cladius difformis* (Panzar)
This should be deleted. It was collected just one time in the 1970s in Volcano, Hawai'i and has been assumed as not established
- (11) Croton whitefly- [CORRECT NAME] *Orchamoplatus mammaeferus* (Quaintance and Baker)
This is found on all major islands except Moloka'i. Keep on?
- (12) Anthurium whitefly- [CORRECT NAME] *Aleurotulus anthuricola* Nakahara
- (13) An anthurium whitefly- [CORRECT NAME] *Crenidorsum aroidephagus* Martin & Aguiar
- (14) Euasian pine aphid- [CORRECT NAME] *Pineus pini* (Macquart)
This is found on all islands except Lāna'i. I suggest deleting it as it is only a pine
- (15) Fiery skipper- [CORRECT NAME] *Hylephila phyleus* (Drury)
I don't think this is as much of a concern as before, but can keep on?
- (16) Taro root aphid- [CORRECT NAME] *Pemphigus populitransversus* Riley
- (17) Eucalyptus canker- [CORRECT NAME] *Chrysosporthe cubensis* (Bruner) Gryzenh. & M.J. Wingf.
- (21) Fusarium wilt of banana- [CORRECT NAME] *Fusarium oxysporum* f. sp. *cubense* W.C. Snyder & H.N. Hansen
- (22) Citrus huanglongbing- [CORRECT NAME] *Candidatus Liberibacter asiaticus* Jagoueix, Bové & Garnier
- (23) Lethal yellowing of palms- [CORRECT NAME] *Candidatus Phytoplasma palmae* (16SrIV-A subgroup)

I suggest the following additions of invasive plant pest arthropods with limited distribution. However, I am unclear on "regulated" status. Are the currently listed species in another chapter as well under "regulated pests"?

- (1) Hala scale- *Thysanococcus pandani* Stickney, a serious pest of hala, an environmentally and culturally significant indigenous plant

(2) *Macadamia feltd coccid- Acanthococcus ironsidei* (Williams, 1973), a detrimental pest to the macadamia nut industry in Hawaii

(3) *Acalolepta aesthetica* (Olliff) an invasive longhorn beetle that attacks many plant species

PQB NOTES: *This section exists to list specific pests designated by the Board. Some may be in other sections of the rules or statutes and those particular requirements are in effect including those found in 4-72.*

As a result of the Advisory Committee discussion, the changes were made to correct nomenclature and to include the three species indicated.

§4-72-[11]20 Restrictions on banana. (a)

Transportation of banana plants and plant parts except fruits is prohibited from the island of Oahu and from the North Kona and South Kona Districts on the island of Hawaii, which are banana bunchy top virus infested areas, to other islands and localities within the State except by permit pursuant to subsection (b).

(b) A permit to allow transportation of banana plants and plant parts from an infested area may be issued by the [ehief]SPRO subject to permit conditions established by the board to prevent the movement of banana bunchy top virus from banana bunchy top virus infested areas. The [ehief]SPRO may, without submitting a permit application to the board, approve the issuance of a permit with conditions previously mandated by the board upon the [ehief]SPRO's determination that, for the proposed transport, the previously established conditions are adequate to preserve the quarantine. [Eff 7/13/81; comp 9/19/91; am 4/13/98; am and comp 2/24/12; ren §4-72-20; and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§141-2, 150A-8)

Given the impact of Fusarium TR 4 would have, it is suggested Plant Quarantine be proactive and restrict the movement of propagative plants. Otherwise, TR4 will spread by the time an interim rule is placed.

PQB NOTES: *PQB has amended this section to include Fusarium TR 4*

§4-72-21[2] Restrictions on coffee.

(a) Transportation of coffee plants and parts thereof, including unroasted seeds (green coffee beans), used coffee

bags, and coffee harvesting equipment, including baskets, sacks, or containers, is prohibited from a coffee berry borer infested area to a coffee berry borer restricted area except by permit pursuant to subsection (b).

(b) A permit may be issued by the [chief]SPRO for the transportation of a commodity or item listed in subsection (a), with conditions established by the [chief]SPRO appropriate for each of the following circumstances:

- (1) Coffee plants and plant parts for propagation when subject to treatment with an approved pesticide, and grown and monitored in quarantine for a period of not less than one year at a [s]State facility or other facility approved by the SPRO;
- (2) Coffee plants and plant parts that have been shipped using safeguards approved by the [chief]SPRO to an approved facility for research purposes;
- (3) Roasting of green coffee beans that have been subjected to treatments approved by the [chief]SPRO;
- (4) Roasting of untreated green coffee beans that have been shipped using safeguards approved by the [chief]SPRO to an approved facility that is located at least 5 miles away from a commercial coffee growing area;
- (5) Used coffee bags that have been subjected to treatments approved by the [chief]SPRO; or
- (6) Coffee harvesting equipment that has been subjected to treatments approved by the [chief]SPRO.

(c) The [chief]SPRO is authorized to approve treatments and mitigative measures as they are scientifically validated and may revise permit conditions accordingly, as necessary to prevent movement of the coffee berry borer from the infested area and to preserve the quarantine. Organic treatment methods are available, as approved by the [chief]SPRO.

(d) Coffee plants, plant parts, green coffee beans, and used coffee bags for export are not subject to quarantine restrictions, provided that they are exported directly from the coffee berry borer infested area and are not transshipped through a coffee berry borer restricted area in the State. Coffee plants, plant parts, green coffee beans, and used coffee bags for export that move from one infested area to another or that are exported via transshipment through a coffee berry borer restricted area must be double-bagged in thick, transparent, non-permeable plastic bags that are sealed and labeled to identify their contents as being from a specific coffee berry

borer infested area, provided that the [chief]SPRO is authorized to revise these required safeguards, as necessary.

(e) The island of Hawaii is designated as a coffee berry borer infested area, notwithstanding ongoing control projects on the island, and other islands in the State are designated as coffee berry borer restricted areas. The designated coffee berry borer infested area may be expanded by board action as provided in [~~\$4-72-4.5.~~]section 10. [Eff and comp 2/24/12; am and ren \$4-72-21; and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§141-2, 150A-8)

Coffee berry borer and coffee leaf rust are now found on all islands/statewide, therefore, should these restrictions not be deleted?"

PQB NOTES: PQB's policy has been to maintain regulations until industry/stakeholders deems the regulation unnecessary. This is done to ensure that there is no perception of lessening regulations which could benefit some stakeholders and not others.

Microbial Subcommittee members:

Dr. A. Christian Whelen – recommends approval.

Comments: "I only saw one reference to a bacterium (*Fusarium* sp.), but the status of valid (and invalid) taxonomic names can be checked at LPSN - List of Prokaryotic names with Standing in Nomenclature, which you may want to add to this section: §4-72-12 Scientific and common names."

Dr. Raquel Wong – recommends approval.

Comments: none

Mr. David Clements – recommends approval.

Comments: none

Dr. Rosanna Alegado – recommends approval.

Comments: none

Dr. Henry Trapido-Rosenthal – recommends approval.

Comments: "A short amount of time to look at a lot, but ok."

IV. Advisory Committee Review:

This request was reviewed by the Advisory Committee at its meeting on February 15, 2023. Acting PQB Manager Jonathan Ho provided a synopsis of the request. He noted that there were some Subcommittee responses that were received after the request was sent to the Advisory Committee and read those recommendations. He noted that there were comments provided by Subcommittee Member Janis Matsunaga to delete the reference to fruit and vegetable scraps in the definition of pest host material; to include diagnostics as an allowable purpose in section 4-72-5; and to make corrections to nomenclature and also include additional species to section 4-72-15, all of which were relevant for change.

PQB NOTES: While the Advisory Committee did not specifically address Ms. Matsunaga's changes to remove the reference to fruit and vegetable scraps and include diagnostics in section 4-72-5, PQB has included these changes as they should be made.

Mr. Ho noted that the definition of "pest" created some issues with regards to taking actions on infested materials, due to the fact that there can be times that what is found is not a pest that is determined by the Board. He noted that the testimony provided by the Coordinating Group on Alien Pest Species (CGAPS) provided a reasonable solution to cover that gap. He also noted that the additional proposed changes indicated by CGAPS fit the intent of the rules, but the actual language that was provided would be up for discussion. Deputy Attorney General (DAG) Jodi Yi emphasized that the term pest is defined in section 150A-2, Hawaii Revised Statutes (HRS), therefore the definition in the HAR cannot be broader than the statutory definition.

Advisory Committee Chairperson Darcy Oishi asked DAG Yi if CGAPS proposed definition exceeds the HRS definition. DAG Yi said if the definition does not include the Board designation, to include it in the HAR would require a change to the HRS. Chair Oishi clarified that 4-68 and 4-69 contain the lists of pests. Mr. Ho added that proposed section 4-72-15 also contains examples of pests.

Chair Oishi asked if animals on the List of Prohibited Animals are considered pests? Mr. Ho said that an animal can be deemed a pest, referencing the coqui frog. However, he noted that just being listed on the List of Prohibited Animals would not necessarily make that animal a pest. He said the best way to deal with non-domestic animals would be to make a separate set of rules to manage them, specifically. He said that 4-72 is designed to manage the intrastate movement of plants. Chair Oishi asked if that only meant vertebrates? Advisory Committee member Rob Hauff said the definition of pest includes plants and animals. Mr. Ho said that these rules are set up to restrict the commodities or hosts of pests to prevent their movement or spread, not necessarily to

prevent the movement of the pest itself. Mr. Ho said that there is some inconsistency, referring to the CRB amendments that prevent the movement of CRB itself, but said in the long-term, it would be best to create a new section to manage the movement of an organism itself, as opposed to a commodity or host material that could be infested, because there are different risks to manage.

Mr. Ho suggested that instead of changing the definition of pest, adding “insect” and “disease” prior to “pest” would provide for the authority to stop the sale or movement of infested commodities. He noted that HRS 150A-5 already has similar language referring to insects and diseases. Advisory Committee member Hauff noted that the invasive species community considers many invasive plant species to be pests, so would it be helpful to use a term such as “non-plant pest” because things could be infested with invasive plant seeds. Chairperson Oishi noted that federal partners would consider that term to include things like frogs or mosquitoes. Mr. Ho said he understood where Mr. Hauff was coming from and noted that creating a section in the rules to manage noxious weeds could be done. Advisory Committee Member Dr. Sam Gon noted that in section 4-72-15, plants on the noxious weed list would be considered pests and prohibited movement. Advisory Committee member Hauff was glad to see that plants are being considered as pests, however he was troubled by the need for multiple lists and the amount of work it takes for HDOA staff to manage the bureaucracy.

Advisory Committee member Hauff asked what was the procedure for adding an organism to the pest list? He said he understood how the noxious weeds are listed, but how is it done here? Mr. Ho said in Chapter 4-71, the Board has the authority to add or delete things from the list by a Board Order. In this chapter, there are examples, but no actual list. Mr. Ho said a new section could be added which would create a list and it would then be amended through the rulemaking process. He noted that he was basing his response on how the regulations currently exist and was not aware if the list could be maintained outside of the rules and if it would have the same authority. He noted the idea may be outside the overall scope of the rules as presented.

Advisory Committee member Hauff said the definition of a pest is “as approved by the Board”, so could the process be where PQB staff go before the Board and then the Board make a pest determination? He noted many of the pests on the list are very old, so he suspected there is a process and the process itself is likely part of the problem based on how the list really has not changed. Mr. Ho said he believed the rules were created in 1981 and to his knowledge, the pests listed had not changed. He said that Advisory Committee member Hauff was likely correct that a process existed but he did not know what it was. Mr. Ho said because the examples are in the rules, changing them would require a rule change. He noted that there are likely other ways to handle this, but it would require additional research by PQB to determine what that would be. He recognized that whatever the process is, it should have some flexibility to deal with outbreaks, similar to the ability to make interim rules.

Chairperson Oishi asked DAG Yi if she had comments. DAG Yi asked Mr. Ho if there was a requirement that a pest be listed in the rules? Mr. Ho said there is no requirement. Using Advisory Committee member Hauff's example of PQB staff bringing a prospective pest before the Board, if it is determined by the Board to be a pest, he said it would meet the statutory definition. He said it would allow action to be taken to prevent movement but was concerned that it may not have the same force of law to enact penalties or sanctions. He said if it was in the rules it would be clear.

Chairperson Oishi said the pests referenced in 4-68 and 4-69 are by rule amendment, but in 4-72, it was not clear, and a Board Action could suffice. Mr. Ho said that the processes of dealing with the issue of pest designation can be further researched outside this meeting. He noted codifying the CRB interim rule is what precipitated the overall rule amendment and suggested keeping the pest list as is, in the interest of ensure that the interim rule does not lapse. He said PQB can look into the matter, and if the Board's determination is all that is needed, then no further action is required. However, if it not sufficient, PQB can come up with a proposal to address the issue because it is necessary.

Advisory Committee member Hauff said he understood, but noted that this review exists to help with the rules and noted rulemaking is time intensive and does not happen often. He said this could be a major gap in the State's biosecurity and possibly a statutory change is needed to address this. Chairperson Oishi agreed with Advisory Committee member Hauff that statutory changes may be needed and the discussion, while important, may be better suited if it is determined statutory changes are required to resolve the issue. He noted the discussion was important, but did not want to forget the main reason was for CRB.

Chairperson Oishi asked if there are substantive changes made to the rules, could that affect the ability to implement the CRB rule in a timely fashion? Mr. Ho said "yes" and noted there was still a lot of other steps that need to be completed before the rule is enacted. He noted that the next Board Meeting in on February 28th, which is confirmed, and if PQB was to miss that it would be another month till the next meeting in March. Should there be no March meeting, the rule would likely not make it in time. Mr. Ho said if this was just to add the CRB portion, this would have been much simpler. He said PQB used the opportunity with CRB to try and do an overall update to the rules yet provide for enough time to get this done before the CRB interim rule expires on June 30.

Chairperson Oishi asked DAG Yi if Mr. Ho's assessment on the timeline was accurate. DAG Yi said "yes" and noted that rulemaking is extremely complicated and achieving it in time would be challenging.

Chairperson Oishi asked Mr. Ho if he agreed with CGAPS's testimony regarding CRB movement. After looking at the rule, Mr. Ho said he did agree that the rule as presented

was incorrect because it prevented all interisland movement with only limited exceptions. Mr. Ho said that sections (d) and (e) appear to overlap which is creating the issue, but didn't have an exact solution at this time. Chairperson Oishi noted that CGAPS has identified an issue with the language, but in the interest of time, will move the discussion to other sections and specific language can be drafted later.

Chairperson Oishi said *Fusarium* tropical race 4 (tr4) does not exist in the state, but is very bad, so the restriction should be in place if it does show up. Mr. Ho said that the rule section would be relatively simple to incorporate, restricting banana plants from an infested area to a non-infested one. He noted he was unsure if fruit would also need to be restricted. Chairperson Oishi said fruit would not be restricted. Mr. Ho said it could be easily incorporated into the existing banana regulations.

Chairperson Oishi asked if there were additional questions or comments from the Advisory Committee? Advisory Committee member Hauff asked if specific pest was cryptic and there was a need to restrict the hosts, would that be a rule amendment, referencing the restrictions for Rapid Ohia Death, or were there other methods? Mr. Ho said it would depend on the host material. If the pest was only on propagative plant material, because all propagative plant material requires inspection, staff could be notified and immediate action could be taken to detect the pest and then take appropriate action. For cryptic pests, it is best to enact a rule because PQB then has the ability to compel additional requirements such as treatment or other mitigation measures prior to movement.

Advisory Committee Member Hauff noticed that the section 4-72-4.5, designating infested areas, is proposed for deletion and asked how that affected the ability to implement quarantines. Mr. Ho said that the deletion was made to move it to 4-72-10 in the rules, effectively just moving it further down. Mr. Hauff asked if there were any changes. Mr. Ho said that there was a requirement to provide written notice to affected industry members, which was removed. He said the requirements for public notices still exist, just not to the affected industry groups. Mr. Hauff said there was a provision that the expansion of a quarantine needed to occur on the island where the quarantine was being implemented. With virtual meetings, he asked if that was necessary? Mr. Ho said the regulation was made prior to virtual meetings and the spirit was to ensure that those on that island had an opportunity to have their voices heard. He agreed that technology now actually creates more opportunities and still meet the spirit of the law, so that requirement is also removed.

Advisory Committee Member Hauff asked why the pest list reference examples, as opposed to just being a list? Mr. Ho said he was unsure why, but making a change to the title could be a solution. He said that it was clear that if a particular pest is listed, action can be taken, so only additions were made. Mr. Hauff said the idea of examples meant there was likely a process that didn't involve rulemaking. Dr. Gon said that he agreed with the use of examples because it suggests there are more species besides

those in the rules. He felt that the list should be shortened, but that was with the idea that a list of pests existed. Dr. Gon said that he is ok with the proposal as it is now, knowing that changes can still be made, such as including categories to organize the species and shortening with two examples per category, through the public hearing process. However, he was not proposing that it be done now.

Advisory Committee Member Hauff asked if this was something that could be done before it gets to the Board, or would that be asking too much? Mr. Ho said that it could be done and that what is presented to the Board would be extremely similar to what the Advisory Committee already has before them. He said that any proposed changes would be color coded to make them easy to identify and noted that PQB understands the changes that the Advisory Committee would like to see based on the discussions. Mr. Ho said whatever the Board approves, including any changes made after the Advisory Committee's review would then need to be finalized for the public hearing process and Governor's signature, which is where the work would really be. He said that the public hearing process still allows for changes and the Department of Land and Natural Resources can submit additional changes for the Board's consideration at that time. Dr. Gon said he agreed with Mr. Hauff that completing this is an important step towards generalizing the list, which is important for the State's biosecurity.

Advisory Committee member Hauff asked if the definition of restricted area could be amended to allow more flexibility to allow partners or cooperators to be more involved with control efforts because that is more and more the case, as opposed to limiting it only to the department. Mr. Ho said that the definition could be amended to make it as "as determined by the Department", which still give the Department control over specific projects, but creates flexibility for others. He said the rule was designed for the Department's Plant Pest Control Branch (PPC), but if deemed necessary, a change to that definition would be easy to accommodate. Dr. Gon said that he has seen language in other sections of law that allow for something to the effect of "the department, its assignees, or designees."

Chairperson Oishi asked for additional questions or comments. Advisory Committee member Tom Eisen asked how the CRB interim rule has been going, since the proposal is to make the rule permanent? Chairperson Oishi said the interim rule has not worked as well as hoped in preventing spread within the island of O'ahu, but it was likely due to the timing of outreach regarding the implementation of the interim rule. He said that interisland movement appears to be effective, and noted that there have been some challenges, but deemed the implementation successful overall. Chairperson Oishi thanked the CRB Response Team and PQB for addressing gaps as they arose.

Chairperson Oishi said if there were no additional questions or comments from the Advisory Committee, he would like to hear from the public, noting that a testifier had their hand raised. Ms. Stephanie Easley, a legal fellow with CGAPS, introduced herself and thanked the Advisory Committee for the opportunity to testify, and thanked the

Plant Industry Division, PQB, and Attorney General's office (AG), for the months of hard work that have gone in, resulting in the proposed rules getting to this point. She noted that as support staff to CGAPS and being on the Early Detection and Rapid Response group, she had worked on prior iterations of these rules and was very familiar with them.

Ms. Easley had testimony prepared, but in the interest of time, said she would abbreviate it. She addressed Advisory Committee member Hauff's question on the definition of restricted area, to propose the change be "as approved by the SPRO". With regards to the definition of pest as proposed by CGAPS, knowing the AG interpretation, would there be another way to address it, such as using another term. As she understood the current operational processes, using hay as an example, if it was found to be infested with two-lined spittlebug, PQB would not allow it to move. She noted the idea was to codify what PQB is already doing into the rules. Mr. Ho said Ms. Easley was correct in her explanation of how PQB would act. He said he understood the statutory definition of pest cannot be exceeded, but noted that the statute regulating import also refer to insects and diseases, as well as pests. For the sake of this rule, he said everyone was trying to "streamline" the idea of what is actionable by using a single term that everyone could agree upon. Mr. Ho suggested that adding the terms "insect" and "disease" in front of the references to pest would create a similar authority to import regulations, while ensuring the statutory definition of pest was not compromised. He noted the definition of pest host material would also need this change and a more detailed analysis of each reference to pest in rules would also be needed to see if the addition of insect and disease would be warranted. DAG Yi said that there were other authorities that could prohibit the movement of two-lined spittlebug, such as the need for a permit or prohibition because if it was unlisted. Mr. Ho said that could work, but felt the intent of the rule is to let people know that infested material cannot move and we could act, such as compelling treatment. Chairperson Oishi asked if hay would require inspection. Mr. Ho said the proposed rules do not require an inspection in that instance. Chair Oishi said the discussion highlights there are multiple way to address pests should they be found during an inspection. Mr. Ho said yes.

Chairperson Oishi asked Ms. Easley if she had additional comments. She said she wanted to emphasize strong support for proposed section 4-72-5 giving HDOA authority to stop the sale of infested merchandise and emphasized proposed changes providing additional clarity, which were covered in their written testimony. She noted a technical change involving HDOA's statutory authority for biosecurity being referenced in proposed section 4-72-6, and suggested it be also added to sections 4-72: 1, 2, 3, 4, 5, 9, 10, 15, 22, and 23. She said HDOA has 3 statutory sections coving biosecurity and inclusion would make it clearer of what is intended. She said she was available for questions.

Chairperson Oishi asked if there were questions for Ms. Easley. Hearing none, he asked if there were additional testifiers. None responded. He asked if the Advisory Committee members had additional questions or comments. Dr. Gon asked if the

changes that have been discussed throughout the meeting would be incorporated, provided the rules move forward. He noted it was understood that what is being presented today would not be the same as what would be presented to the Board. Advisory Committee member Hauff asked if the motion would need to cover all the points of discussion? Chairperson Oishi deferred to DAG Yi. DAG Yi said it could be very specific, such as referencing individual parts of the rules, or could be general, such as all proposed changes by CGAPS. She said as long as the motion was clear, it would not be a problem. Chairperson Oishi took a 10-minute recess.

Upon reconvening, Chairperson Oishi made a motion to approve the rule amendment with the following changes: revising the proposed section on CRB following the recommendations from CGAPS making changes to sections (d) and (e) to address the issues brought forth by CGAPS; to include language regarding *Fusarium* tropical race 4 as it relates to the banana industry; include all proposed additions and corrections to the examples of pests; and to address the definition of pest to include references to insects, diseases, or pests, as warranted by the PQB. Advisory Committee Member Pam Mizuno seconded the motion.

Chairperson Oishi asked if there was additional discussion. Advisory Committee member Hauff, referring to the examples of pests, asked if the additions would only be limited to the comments provided by Subcommittee Member Matsunaga or would it include CGAPS. Chairperson Oishi said it would cover both. Mr. Hauff said there was discussion about keeping all examples and would that occur? Chairperson Oishi said the motion did not involve any deletions. Chairperson Oishi asked Mr. Ho if he understood it was only additions and not deletions? Mr. Ho said he understood. Chairperson Oishi also noted that CGAPS' proposed additions would be reviewed by PPC staff to ensure they are correct.

Chairperson Oishi asked for additional comments or questions from the Advisory Committee members. DAG Yi asked if the examples were already determined as pests by the Board? Chairperson Oishi said it was understood, that by approving the rules, they would be designated. DAG Yi affirmed that was acceptable. Advisory Committee member Hauff asked if there was an opportunity at the Board meeting to add additional pest species? Mr. Ho said he did not see why it could not occur.

Chairperson Oishi asked if there was additional questions or comments. He asked Ms. Easley if she had any. She responded in the negative. Hearing no other comments, he called for the vote.


Vote: 6/0 approve. (Oishi, Hauff, Gon, Simmons, Eisen, Mizuno)

C90

V. Staff Recommendation

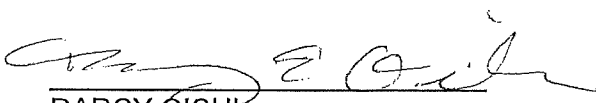
Based on the favorable responses from the various Subcommittees and Advisory Committee on Plants and Animals, the PQB recommends that the Board: (1) preliminarily approve the proposed amendments and compilation of Chapter 4-72, HAR, entitled "Plant and Non-Domestic Animal Quarantine Plant Intrastate Rules" and (2) authorize the Chairperson to schedule public hearings and appoint one or more hearings officers in connection with the proposed amendments to Chapter 4-72, HAR.

Respectfully Submitted,



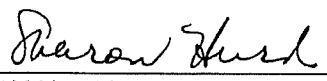
JONATHAN K. HO
Acting Manager, Plant Quarantine Branch

CONCURRED:



DARCY QISHI
Acting Administrator, Plant Industry Division

APPROVED FOR SUBMISSION:



SHARON HURD
Chairperson, Board of Agriculture

Amendment and Compilation of Chapter 4-72
Hawaii Administrative Rules

Date (month day, year)

1. Chapter 4-72, Hawaii Administrative Rules entitled "Plant and Non-Domestic Animal Quarantine Plant Intrastate Rules, Chapter 72, Hawaii Administrative Rules", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 4 DEPARTMENT OF AGRICULTURE

SUBTITLE 6 DIVISION OF PLANT INDUSTRY

CHAPTER 72

PLANT AND NON-DOMESTIC ANIMAL QUARANTINE

PLANT AND PEST HOST MATERIAL INTRASTATE RULES

Subchapter 1 General Provisions

<u>\$4-72-1</u>	Objective
<u>\$4-72-2</u>	Definitions
<u>\$4-72-3</u>	Inspectional requirements
<u>\$4-72-4</u>	Prohibited transportations
<u>[\$4-72-4.5</u>	Designation of infested areas; expansion]
<u>\$4-72-5</u>	<u>Prohibition on movement of infested material</u>
<u>\$4-72-6</u>	<u>Restrictions on transport, harboring,</u> <u>rearing, or breeding of pests</u>
<u>\$4-72-7</u>	<u>User permit and site inspection fees</u>
<u>\$4-72-8</u>	<u>Inspection fees</u>
<u>\$4-72-9</u>	<u>Economic loss or damages</u>

<u>§4-72-10</u>	<u>Designation of infested areas; expansion</u>
<u>§4-72-11</u>	<u>Penalties</u>
<u>§4-72-12</u>	<u>Scientific and common names</u>
<u>§4-72-13</u>	<u>Severability</u>
<u>§4-72-14</u>	<u>(Reserved)</u>

Subchapter 2 Intrastate Restrictions

<u>§4-72-15</u>	<u>Examples of regulated pests</u>
<u>§4-72-16</u>	<u>Restrictions on sugar[-]cane</u>
<u>§4-72-17</u>	<u>Restrictions on soil, sand, and animal manure</u>
[§4-72-8]	Restrictions on transport, harboring, rearing, or breeding of pests]
<u>§4-72-[9]18</u>	<u>Restrictions on dasheen and taro[-corms]</u>
<u>§4-72-1[0]9</u>	<u>Restrictions on papaya and cucurbit</u>
<u>§4-72-[11]20</u>	<u>Restrictions on banana</u>
<u>§4-72-21[2]</u>	<u>Restrictions on coffee</u>
<u>§4-72-[13]22</u>	<u>Quarantine restrictions on ohia and soil from rapid ohia death infested areas</u>
<u>§4-72-23</u>	<u>Quarantine restrictions on coconut rhinoceros beetle and host material</u>

Historical note: Chapter 72 of Title 4 is based substantially upon Regulation 4 [E]ntitled "Concerning Transportation of Plant or Parts of Same, Plant Materials and Plant Products Between the Hawaiian Islands," of the Division of Entomology, Board of Commissioners of Agriculture and Forestry [Eff 12/12/41 as Reg 14; ren Reg 4 8/30/47; R 7/13/81]; Regulation 4.1 [E]ntitled "Concerning Transportation of Plants or Parts of Same, Plant Materials or Plant Products from Oahu to Other Islands of the Hawaiian Group," of the Division of Entomology, Board of Commissioners of Agriculture and Forestry [Eff 12/12/41 as §2 of Reg 14; ren Re 4.1 8/30/47; R 7/13/81]; Regulation 4.2 [E]ntitled "Concerning the Transportation of Soil, Earth or Sand from the Islands of Oahu, Hawaii, Lanai and Kauai to Other Islands of the Hawaiian Group," of the Division of Entomology, Board of Commissioners of Agriculture

and Forestry [Eff 12/12/41 as §§4 and 5 of Reg 14; ren Reg 4.2 8/30/47; R 7/13/81]; Regulation 4.3 [E]entitled "Concerning the Movement of Fern Plants or Parts Thereof Between the Islands of the Hawaiian Group," of the Division of Entomology, Board of Commissioners of Agriculture and Forestry [Eff 12/12/41 as Reg 15; ren Reg 4.3 8/30/47; R 7/13/81]; Regulation 4.4 [E]entitled "Concerning the Giant African Snail (*Achatina Fulica* Bowdich)," of the Division of Plant Industry, Department of Agriculture [Eff 7/1/42 as Reg 18; ren Reg 4.4 8/30/47; am 5/26/64; R 7/13/81]; and Regulation 4.7 [E]entitled "Concerning the Transportation of Cactus or Cactaceous Plants or Parts Thereof from the Island of Hawaii to Other Islands of the Hawaiian Group," of the Division of Entomology, Board of Commissioners of Agriculture and Forestry. [Eff 7/13/81; comp 9/19/91; am 4/13/1998; comp 2/24/12]. (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§ 141-2, 150A-8)

SUBCHAPTER 1

GENERAL PROVISIONS

§4-72-1 Objective. The objective of this chapter is to implement the requirements of chapters 141 and 150A, Hawaii Revised Statutes, by restricting or prohibiting the interisland and intraisland transportation of plant pests and ~~[their plant or commodity hosts]~~ infested or infected pest host material to prevent the spread and establishment of plant pests detrimental to agriculture, horticultural industries and forest lands on uninfested islands and in uninfested localities of the State. [Eff 7/13/81; comp 9/19/91; am 4/13/1998; comp 2/24/12; am and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§141-2, 150A-8)

§4-72-2 Definitions. As used in this chapter:

"Advisory Committee" means the advisory committee on plants and animals;

"Animal manure" means manure from poultry or livestock;

"Board" means the board of agriculture;

~~["Department" means department of agriculture;]~~

~~["Chief" means chief of the plant quarantine branch;]~~

"Compliance agreement" means a written agreement between the department and a person who carries out commercial activities that includes any terms or conditions the SPRO determines will slow or prevent the spread of a pest. A compliance agreement between the department and a person is a permit issued by the department to that person for the purposes of section 150A-8, HRS.

"Department" means the department of agriculture;

"Infested" means harboring a pest;

"Infested area" means an island or locality within the State where a specific pest is known to be established; [and]

"Person" means any individual, firm, corporation, association, partnership, or other entity, including a governmental or not-for-profit entity;

"Pest" means any animal, insect, disease agent or other organism in any stage of development that is detrimental or potentially harmful to agriculture, or horticulture, or animal or public health, or natural resources including native biota or has an adverse effect on the environment as determined by the board;

"Pest host material" means any plant, propagative plant part, non-propagative plant part, soil, or any other thing that is found to be transporting or harboring an insect, disease, or pest. It does not include fruit or vegetative scraps;

"Restricted area" means an island or locality within the State where a specific pest is not known to be established or where an eradication or control project for a specified pest is being conducted by the [plant pest control branch.] department;

"Soil" means that part of the upper layer of earth in which plants can grow; this material may or may not contain organic matter and includes such planting media as deteriorated peat;

"SPRO" means the State Plant Regulatory Official for Hawaii or a designee of the SPRO; and

"State" means the State of Hawaii. [Eff 7/13/81; comp 9/19/91; am and comp 2/24/12; am and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§141-2, 150A-8)

§4-72-3 Inspectional requirements. (a) [Plant and] Except as provided in section 4-72-4(c), plants, propagative plant parts, and soil shall be inspected prior to being transported between the islands of the State. A certificate of inspection shall indicate satisfaction of the requirement for inspection.

(b) Cut or harvested flowers, foliage, fruits, vegetable, and other non-propagative plant parts need not be inspected prior to being transported between the islands of the State; provided that these commodities [shall] do not have additional requirements found within this chapter, and may be subject to [periodic-random] inspection at either the port of departure or port of entry[-], at the discretion of the department. [Eff 7/13/81; comp 9/19/91; am and comp 2/24/12; am and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§141-2, 150A-8)

§4-72-4 Prohibited transportations. (a) [The] Except as provided in subsection (c), the interisland transportation of [a-commodity] plants, propagative plant parts, or soil that is not inspected pursuant to [§4-72-3] section 3, is prohibited.

(b) [A-commodity] Pest host material that is infested or infected with a[ny] insect, disease, or pest, or that is itself a pest[defined in §150A-2,

~~Hawaii Revised Statutes,~~] shall not be transported between the islands or from one part or locality of any island to another part or locality of the same island unless it has been subjected to an appropriate treatment~~[-that exterminates the pest]~~, as approved by the ~~[ehief]~~SPRO. Appropriate treatment may include, but is not limited to, pesticide or fumigation treatment. The ~~[ehief]~~SPRO may, however, authorize the transportation of an untreated infested ~~[eommodity]~~or infected pest host material to an island or location where the **insect, disease, or** pest is known to be established.

~~[(c) Specific commodities shall not be transported pursuant to their respective restrictions in §§ 4-72-6, 4-72-7, 4-72-8, 4-72-9, 4-72-10, 4-72-11, and 4-72-12.]~~

(c) Notwithstanding subsections (a) and (b) and section 3, plants, plant parts, soil, or pest host material infested or infected with **an insect, disease, or** pest may be transported without inspection between islands or between parts or localities of the same island:

- (1) For **diagnostics**, research, testing, or educational purposes by the department; or
 - (2) Pursuant to a permit approved by the SPRO and issued to an institution approved by the board, a government agency, or a university for **diagnostics**, research, testing, or educational purposes at a site inspected and approved by the SPRO prior to movement.
- [Eff 7/13/81; am and comp 9/19/91; am and comp 2/24/12; am and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§141-2, 150A-8)

~~[§4-72-4.5 Designation of infested areas; expansion. (a) The area of infestation as designated by rule, including interim rule, may be expanded by the board to reflect the spread of a specific pest infestation in order to implement quarantine measures to prevent movement of the pest and its plant or~~

~~commodity hosts from the expanded area of infestation to restricted areas, provided that:~~

- ~~(1) The board first obtains advice from qualified persons with relevant expertise, but need not obtain advisory committee review;~~
- ~~(2) The board designates the expanded infested area, identifying the revised geographical extent of the infestation;~~
- ~~(3) The board's action occurs at a meeting on the island where the new infestation has occurred, following written notice of the proposed board designation to industry groups likely to be affected;~~
- ~~(4) The department issues a press release and written notice of the designation of expansion of the infested area to affected industry groups prior to the effective date of designation of expanded infested area; and~~
- ~~(5) Notice of the board's action, including its effective date, is posted by the following day on the department's website and is given in a daily or weekly publication of statewide circulation or in separate daily or weekly publications whose combined circulation is statewide within twelve days of the board's action.~~

~~(b) The board's designation of an expanded infested area shall be effective the day following the board's action, unless a later effective date is specified by the board's action. [Eff and comp 2/24/12] (Auth: HRS §§141-2, 150A-9, 150A-9.5) (Imp: HRS §§141-2, 150A-8)]~~

§4-72-5 Prohibition on movement of infested material. (a) The SPRO may prohibit the movement of any pest host material that is offered for sale, for barter, or by donation or otherwise to be given away to the public if the SPRO determines that the pest host material is infested or infected with an insect, disease, or pest. The SPRO may compel treatment or destruction of the material per subsection (b). If

such material was or is stored in an area that is infested or infected with an insect, disease, or pest, then the SPRO may require appropriate treatment of the area prior to authorizing the movement of the material.

(b) An item subject to the prohibition in subsection (a) shall be:

- (1) Subjected to a treatment to eradicate the insect, disease, or pest, as approved and supervised by the SPRO;
- (2) Destroyed using a method approved and supervised by the SPRO; or
- (3) If not treated or destroyed under paragraphs (1) or (2), then:
 - (A) Transported only pursuant to a permit issued by the SPRO; or
 - (B) Subject to any other disposition approved by the SPRO, including authorizing the transportation of untreated infested or infected pest host material or an insect, disease, or pest to an island or location where the target insect, disease, or pest is known to be established. [Eff and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§141-2, 150A-8)

§4-72-6 Restrictions on transport, harboring, rearing, or breeding of pests. (a) The transport, harboring, rearing, or breeding of any pest is prohibited except:

- (1) For diagnostics, research, testing, or educational purposes by the department;
- (2) Pursuant to a permit approved by the SPRO and issued to an institution approved by the board; or
- (3) By a government agency, or a university for diagnostics, research, testing, or educational purposes at a site inspected and approved by the SPRO prior to movement.

[Eff 7/13/81; comp 9/19/91; am and comp
2/24/12; am and ren §4-72-6; and comp
] (Auth: HRS §§141-2, 150A-9, 150A-53)
(Imp: HRS §§141-2, 150A-8, 150A-53)

§4-72-7 User permit and site inspection fees.

(a) A fee for the processing of an application and issuance of a permit under this chapter is as follows:

- (1) \$20 per permit for a single shipment within one year from the date of issuance;
- (2) \$100 per permit for unlimited shipments within one year from the date of issuance;
and
- (3) All applicable fees shall be paid in full at the time of request and are non-refundable except as approved by the SPRO.

(b) In addition to the requirements of subsection (a), a fee for a site inspection as required by this chapter or by permit conditions shall be \$25 per site inspection, plus mileage reimbursement. [Eff and comp] (Auth: HRS §§141-2, 150A-7.5, 150A-7.6, 150A-9) (Imp: HRS §§141-2, 150A-9)

§4-72-8 Inspection fees. (a) Fees for inspections pursuant to this chapter are as follows:

- (1) A fee of \$50 for any inspection, safeguarding, witnessing treatment, or certification requiring the services of personnel beyond regular work hours, including applicable charges for overtime wages, fixed charges for personnel services, and meals as appropriate;
- (2) A fee of \$50 per hour for any inspection conducted away from the port or department office during regular work hours pursuant to requirements for certification, interisland or intraisland movement, or disposition

other than release at a port of arrival, such as witnessing departure, destruction, or treatment.

(b) In addition to any fee required by subsection (a), all inspections shall include mileage reimbursement.

(c) The person receiving the inspection shall be responsible for all costs, charges, treatment, destruction, or expenses incident to the inspection of the material, as appropriate. [Eff and comp] (Auth: HRS §§141-2, 150A-7.5, 150A-9) (Imp: HRS §§141-2, 150A-9)

§4-72-9 Economic loss or damages. The State shall not be responsible for any economic loss or damages related to any actions by the department pursuant to this chapter. Actions include treatment, quarantine, or destruction of any item. [Eff and comp] (Auth: HRS §§141-2, 141-3, 141-5, 150A-9) (Imp: HRS §§141-2, 141-3, 141-5, 150A-8)

§4-72-10 Designation of infested areas; expansion. (a) If the infested area of a pest is designated by rule, including interim rule, that area may be expanded by an order of the board to reflect the spread of a specific pest infestation in order to implement quarantine measures to prevent movement of the pest and its pest host material from the infested area to restricted areas, provided that:

- (1) The board first obtains advice from qualified persons with relevant expertise, but need not obtain advisory committee review;
- (2) The board designates the expanded infested area, identifying the revised geographical extent of the infestation;
- (3) The department issues a press release describing the expansion of the infested

area prior to the effective date of designation of the expanded infested area; and

- (4) Notice of the board's action, including its effective date, is posted by the following day on the department's website and is given in a daily or weekly publication of statewide circulation or in separate daily or weekly publications whose combined circulation is statewide, within twelve days of the board's action.

(b) The board's designation of an expanded infested area shall be effective the day following the board's action, unless a later effective date is specified by the board's action. [Eff and comp 2/24/12; am and ren §4-72-10; and comp]
(Auth: HRS §§141-2, 150A-9, 150A-9.5) (Imp: HRS §§141-2, 150A-8)

§4-72-11 Penalties. Any person who violates any provision or requirement of this chapter or of any notice given pursuant thereto, shall be subject to the penalties provided for under section 150A-14, HRS, or section 141-7, HRS, if appropriate. [Eff and comp] (Auth: HRS §§141-7, 150A-9, 150A-14) (Imp: HRS §§141-7, 150A-14)

§4-72-12 Scientific and common names. If the scientific name or common name of a taxon referred to in this chapter is changed to a new scientific name or common name accepted by the International Code of Zoological Nomenclature (ICZN) or the International Plant Names Index (IPNI) the reference in this chapter shall be construed to refer to the new scientific name or common name, as appropriate. [Eff and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§141-2, 150A-9)

§4-72-13 Severability. If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality and validity of the remainder of this chapter and applicability thereof to other persons and circumstances shall not be affected. [Eff and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§141-2, 150A-9)

§4-72-14 Reserved.

SUBCHAPTER 2

INTRASTATE RESTRICTIONS

§4-72-15 Examples of regulated pests. Examples of [~~pests for the purposes of §4-72-4 shall~~] taxa that are pests include, but are not [~~be~~] limited to the following:

- (1) Oriental beetle - [~~Anomala orientalis~~] *Anomala orientalis* (Waterhouse), a serious insect pest of sugarcane;
- (2) Fern weevil - [~~Syagrus fulvitarisis~~] *Syagrus fulvitarisis* Pascoe, an insect pest injurious to fern plants;
- (3) Giant African snail - [~~Achatina fulica~~] *Lissachatina fulica* (Bowdich), a serious pest of horticultural and vegetable crops;
- (4) Cactus mealybug - [~~Dactylopius opuntiae~~] *Dactylopius opuntiae* (Cockerell) and other insects feeding on [~~opuntia spp.~~] *Opuntia* species of cactus, pests injurious to cactus utilized for forage or ornamental purposes;

- (5) Hunting billbug - [~~Sphenophorus venatus vestitus~~] Sphenophorus venatus vestitus Chittenden, a serious insect pest of turf and range grasses;
- (6) Coconut scale - [~~Aspidiotus destructor~~] Aspidiotus destructor Signoret, a serious insect pest of palms, bananas, and more than 400 more plants;
- (7) Sugarcane smut - [~~Ustilago Scitaminea~~] Ustilago scitaminea Syd., a serious fungus disease of sugarcane;
- (8) Papaya [~~mesaie~~] ringspot virus, a serious virus disease of papaya;
- (9) Orange spiny whitefly - [~~Aleurocanthus spiniferus~~] Aleurocanthus spiniferus (Quaintance), a serious insect pest of rose and citrus;
- (10) Bristly rose slug - [~~Cladius differmis~~] Cladius diff**ormis** (Panzar), a pest injurious to the rose plant;
- (11) Croton whitefly - [~~Orchamplatus mammaeferus~~] Orcham**oplatus** mammaeferus (Quaintance and Baker), a serious insect pest of croton and citrus;
- (12) Anthurium whitefly - [~~Aleurotulus~~] Aleurotulus [~~sp.~~] **anthuricola** **Nakahara**, a serious insect pest of anthurium;
- (13) An anthurium whitefly - [~~Crenidorsum~~] Crenidorsum [~~sp.~~] **aroidephagus** **Martin & Aguiar**, a serious insect pest of anthurium, philodendron, and monstera;
- (14) Eurasian pine aphid - [~~Pineus pini~~] Pineus pini [~~Koch~~] (**Macquart**), a serious insect pest of pine;
- (15) Fiery skipper - [~~Hylephila phyleus~~] Hylephila phyleus (**Drury**), a serious pest of turf and pasture grasses and ornamental sedges;
- (16) Taro root aphid - [~~Pemphigus~~] Pemphigus [~~sp.~~] **populitransversus** **Riley**, a serious pest of dryland taro; [~~and~~]

- (17) Eucalyptus canker - [~~Cryphonectria~~
~~cubensis~~] *Chrysosporthe cubensis* (Bruner)
Gryzenh. & M.J. Wingf. [Hedges], a serious
disease of [~~Eucalyptus~~] *Eucalyptus*
[~~ssp.~~] species;
- (18) Giant salvinia - *Salvinia molesta*
Mitchell;
- (19) Water spangles - *Salvinia minima* Baker;
- (20) Water lettuce - *Pistia stratiotes* L.;
- (21) Fusarium wilt of banana - *Fusarium*
oxysporum f. sp. *cubense* W.C. Snyder & H.N.
Hansen;
- (22) Citrus huanglongbing - *Candidatus*
Liberibacter asiaticus Jagoueix, Bové &
Garnier, responsible for citrus greening;
- (23) Palm lethal yellows - *Candidatus*
Phytoplasma palmae (16SrIV-A subgroup),
responsible for lethal diseases of palm;
- (24) Colocasia bobone disease associated virus
- *Cytorhabdovirus colocasiae*, a lethal
pathogen associated with alomae bobone
disease of taro;
- (25) Sweet potato virus disease - Sweet potato
chlorotic stunt virus, a lethal disease of
sweet potato; and
- (26) Hala scale - *Thysanococcus pandani* Stickney,
a serious pest of hala, an environmentally
and culturally significant indigenous plant;
- (27) Macadamia felted coccid - *Acanthococcus*
ironsidei (Williams, 1973), a detrimental
pest to the macadamia nut industry in
Hawaii;
- (28) *Acalolepta aesthetica* (Olliff), an invasive
longhorn beetle that attacks many plant
species;
- (29) Two-lined spittlebug - *Prosapia bicincta*
(Say), a serious pest of range grasses;
- (30) Citrus canker - *Xanthomonas citri* subsp.
citri, a serious disease of citrus;
- (31) Citrus black spot - *Phyllosticta*
citricarpa (McAlpine) Aa, a serious disease
of citrus; and

(32) Any taxa designated as a pest for control or eradication pursuant to chapter 4-69A, including any taxa designated as a noxious weed pursuant to chapter 4-68. [Eff 7/13/81; am and comp 9/19/91; comp 2/24/12; am and ren §4-72-15; and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§141-2, 150A-8)

§4-72-16 Restrictions on sugarcane. (a) Transportation of sugarcane plants and parts thereof including leaves, roots, and cuttings which are hosts of the oriental beetle and sugarcane smut disease shall be prohibited from an infested area to a restricted area for the oriental beetle and sugarcane smut disease except by permit pursuant to subsection (b).

(b) A permit may be issued by the ~~[chief]~~SPRO to the ~~[Hawaiian Sugar Planters' Association (HSPA)]~~Hawaii Agricultural Research Center (HARC) and to persons conducting research under the auspices of the ~~[HSPA]~~ HARC or a university or government agency for the transportation of a limited quantity of sugarcane plants and parts from an infested area to a restricted area for the oriental beetle or sugarcane smut disease. [Eff 7/13/81; comp 9/19/91; comp 2/24/12; am and ren §4-72-16; and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§141-2, 150A-8)

§4-72-17 Restrictions on soil, sand, and animal manure. (a) Transportation of the following is prohibited from an infested island to a restricted island for the oriental beetle[-]:

- (1) Soil, sand contaminated with visible amounts of soil, and animal manure in bulk shipment or in individual containers except

- by permit issued pursuant to subsection (b); and
- (2) A plant in soil, sand, or ~~[artificial]~~soil-less planting media except~~[+]~~:
- (A) A plant from a certified nursery;
 - (B) A plant from a commercial nursery located 1/4 mile or further from a field planted in sugarcane;
 - (C) A plant that has been verified by an inspector as grown in a locality 1/4 mile or further from a field planted in sugarcane;
 - (D) A plant that has been treated with an appropriate soil pesticide;
 - (E) A plant that has been bare-rooted; or
 - (F) ~~[Orchid p]~~Plants in cinders, hapuu or other artificial planting media.
- (b) Permits required pursuant to subsection (a)(1) shall be issued by the ~~[chief]~~SPRO under ~~[either one of]~~ the following circumstances:
- (1) Fresh or composted animal manure that has not supported any plant growth from an area located 1/4 mile or further from any field planted in sugarcane; ~~[or]~~
 - (2) Animal manure, soil, and sand contaminated with soil that has been fumigated, ~~[or]~~ treated with an appropriate pesticide~~[+]~~, or subjected to a treatment, as approved and witnessed by the SPRO; or
 - (3) For diagnostic purpose by an institution approved by the board, a university, or government agency. [Eff 7/13/81; comp 9/19/91; comp 2/24/12; am and ren §4-72-17; and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§141-2, 150A-8)

~~**[§4-72-8 Restrictions on transport, harboring, rearing, or breeding of pests.**~~ (a) ~~The transport, harboring, rearing, or breeding of any pest defined in §150A-2, Hawaii Revised Statutes is prohibited except~~

~~under safeguards in an area infested by the pest involved for research, testing, or educational purposes by:~~

- ~~(1) The plant pest control branch;~~
- ~~(2) An agency, school, or university via permit issued by the chief. [Eff 7/13/81, comp 9/19/91, am and comp 2/24/12] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§141-2, 150A-8)]~~

§4-72-[9]18 Restrictions on dasheen and taro~~[eorms]~~. Transportation of dasheen and taro ~~[eorms]~~ are prohibited from an infested island to a restricted island for taro root aphid except:

- (1) Taro ~~[eorms]~~ consigned to a poi factory or other food processing plant;
- (2) Dasheen and taro ~~[eorms]~~ consigned to produce wholesalers, supermarkets, retail food stores, and restaurants;
- (3) Taro ~~[eorms]~~ verified as wetland taro; and
- (4) Taro consigned to individuals for food preparation with the corm's "huli" removed. [Eff 7/13/81; comp 9/19/91; comp 2/24/12; am and ren §4-72-18 and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§141-2, 150A-8)

4-72-1[0]9 Restrictions on papaya and cucurbit. Transportation of papaya *Carica papaya* and cucurbit (plants in the family ~~[cucurbitaceae]~~ *Cucurbitaceae*) plants and plant parts except seed and fruit are prohibited from an infested area to a restricted area for papaya ~~[mosaic]~~ ringspot virus disease. [Eff 7/13/81; comp 9/19/91; comp 2/24/12; am and ren §4-72-19; and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§141-2, 150A-8)

§4-72-[11]20 Restrictions on banana. (a) Transportation of banana plants and plant parts

except fruits is prohibited from the island of Oahu and from the North Kona and South Kona Districts on the island of Hawaii, which are banana bunchy top virus infested areas, or from a *Fusarium tropical* race 4 infested area, to other islands and localities within the State except by permit pursuant to subsection (b).

(b) A permit to allow transportation of banana plants and plant parts from an infested area may be issued by the ~~[chief]~~SPRO subject to permit conditions established by the board to prevent the movement of banana bunchy top virus from banana bunchy top virus infested areas. The ~~[chief]~~SPRO may, without submitting a permit application to the board, approve the issuance of a permit with conditions previously mandated by the board upon the ~~[chief]~~SPRO's determination that, for the proposed transport, the previously established conditions are adequate to preserve the quarantine. [Eff 7/13/81; comp 9/19/91; am 4/13/98; am and comp 2/24/12; ren §4-72-20; and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§141-2, 150A-8)

§4-72-21[2] Restrictions on coffee. (a)

Transportation of coffee plants and parts thereof, including unroasted seeds (green coffee beans), used coffee bags, and coffee harvesting equipment, including baskets, sacks, or containers, is prohibited from a coffee berry borer infested area to a coffee berry borer restricted area except by permit pursuant to subsection (b).

(b) A permit may be issued by the ~~[chief]~~SPRO for the transportation of a commodity or item listed in subsection (a), with conditions established by the ~~[chief]~~SPRO appropriate for each of the following circumstances:

- (1) Coffee plants and plant parts for propagation when subject to treatment with an approved pesticide, and grown and monitored in quarantine for a period of not

- less than one year at a [§]State facility or other facility approved by the SPRO;
- (2) Coffee plants and plant parts that have been shipped using safeguards approved by the [chief]SPRO to an approved facility for research purposes;
 - (3) Roasting of green coffee beans that have been subjected to treatments approved by the [chief]SPRO;
 - (4) Roasting of untreated green coffee beans that have been shipped using safeguards approved by the [chief]SPRO to an approved facility that is located at least 5 miles away from a commercial coffee growing area;
 - (5) Used coffee bags that have been subjected to treatments approved by the [chief]SPRO; or
 - (6) Coffee harvesting equipment that has been subjected to treatments approved by the [chief]SPRO.

(c) The [chief]SPRO is authorized to approve treatments and mitigative measures as they are scientifically validated and may revise permit conditions accordingly, as necessary to prevent movement of the coffee berry borer from the infested area and to preserve the quarantine. Organic treatment methods are available, as approved by the [chief]SPRO.

(d) Coffee plants, plant parts, green coffee beans, and used coffee bags for export are not subject to quarantine restrictions, provided that they are exported directly from the coffee berry borer infested area and are not transshipped through a coffee berry borer restricted area in the State. Coffee plants, plant parts, green coffee beans, and used coffee bags for export that move from one infested area to another or that are exported via transshipment through a coffee berry borer restricted area must be double-bagged in thick, transparent, non-permeable plastic bags that are sealed and labeled to identify their contents as being from a specific coffee berry borer infested area, provided that the [chief]SPRO is authorized to revise these required safeguards, as necessary.

(e) The island of Hawaii is designated as a coffee berry borer infested area, notwithstanding ongoing control projects on the island, and other islands in the State are designated as coffee berry borer restricted areas. The designated coffee berry borer infested area may be expanded by board action as provided in ~~§4-72-4.5.~~ section 10. [Eff and comp 2/24/12; am and ren §4-72-21; and comp]
 (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§141-2, 150A-8)

§4-72-[13]22 Quarantine restrictions on ohia and soil from rapid ohia death infested areas. (a) The board has determined that the disease called ohia wilt (also known as rapid ohia death) presents a serious danger to ohia (*Metrosideros*), the ohia forests of Hawaii, and horticultural and agricultural industries.

(b) Transportation of soil and ohia (*Metrosideros*, all species in genus) plants, plant parts, including flowers, leaves, seeds, stems, twigs, cuttings, mulch, greenwaste, frass, wood, logs, and posts is prohibited from a rapid ohia death infested area to a rapid ohia death restricted area except as allowed by permit pursuant to subsection (c), or as otherwise provided herein.

(c) A permit may be issued by the ~~[chief]~~SPRO for the transportation of a material or commodity listed in subsection (b), subject to laboratory analysis or other science-based method approved by the ~~[chief]~~SPRO, as appropriate, to determine whether the material or commodity is free of ~~[the fungus, *Ceratocystis fimbriata*,]~~ the causal agents of ohia wilt disease, *Ceratocystis lukuohia* and *C. huliohia*, and subject to appropriate conditions established by the ~~[chief]~~SPRO.

(d) Material or a commodity listed in subsection (b) that tests positive for *Ceratocystis* ~~[*fimbriata*]~~ *lukuohia* or *C. huliohia*, other than material or a commodity for research or diagnostic purposes, shall not be shipped from a rapid ohia death infested area

to a rapid ohia death restricted area, nor shall any material or commodity in the same lot for shipment be shipped, unless an effective treatment to destroy *Ceratocystis* [~~fimbriata~~]*lukuohia* and *C. huliokia* is available, is approved by the [chief]SPRO, and the shipment has been subjected to the approved treatment.

(e) Transportation of a material or commodity listed in subsection (b) for research or diagnostic purposes moving from a rapid ohia death infested area to a rapid ohia death restricted area of the State, shall be under permit, using safeguards approved by the [chief]SPRO, to [~~an approved~~] a facility[.] inspected and approved by the SPRO prior to transport.

(f) Soil, including soil as a planting medium, may be shipped from a rapid ohia death infested area to a rapid ohia death restricted area of the State subject to pre-shipment testing as provided in subsection (c) and, if applicable, subject to treatment as provided in subsection (d). A shipper of soil that is an active participant in the department's intrastate compliance agreement program in which the shipper is required to maintain *Ceratocystis* [~~fimbriata-free~~]*lukuohia* and *C. huliokia-free* status as a condition for soil movement from an infested area is subject to testing as required by the compliance agreement and permit.

(g) Finished ohia wood products, such as wood flooring, furniture, bowls, picture frames, carvings, and jewelry that have been subjected to a treatment approved by the [chief]SPRO do not require a permit for intrastate transportation.

(h) The [chief]SPRO is authorized to approve treatments and mitigative measures as they are scientifically validated and may revise permit conditions accordingly, as necessary to prevent movement of ohia wilt disease from the infested area and to preserve the quarantine.

(i) The island of Hawaii is designated as a rapid ohia death infested area, notwithstanding any ongoing control projects on the island, and other islands in the State are designated as rapid ohia

death restricted areas. The designated rapid ohia death infested area may be expanded by board action as provided in [~~\$4-72-4.5.~~] section 10.

(j) The shipper is responsible for all costs, charges, or expenses incident to the inspection or treatment of the soil and ohia material or commodity listed in subsection (b), including charges for overtime wages, fixed charges for personnel services, and meals. [Eff and comp 11/27/16; am and ren \$4-72-22; and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§141-2, 150A-8)

\$4-72-23 Quarantine restrictions on coconut rhinoceros beetle and host material. (a) The board has determined that the coconut rhinoceros beetle, *Oryctes rhinoceros* (CRB), presents a serious danger to the horticultural and agricultural industries and the forests of Hawaii.

(b) As used in this section:

(1) "CRB host material" means the host material of the coconut rhinoceros beetle; and

(A) Includes decaying plant material, mulch, trimmings, fruit and vegetative scraps, wood, stumps, compost, and CRB host palms; and

(B) Does not include:

(i) Plant products intended for consumption, such as coconuts, fruits, nuts, edible leaves, leaves used for cooking, and spices;

(ii) Plant products preserved from decay by treatment or use, such as lumber, woven hats, dried and painted coconuts, wooden posts, wood carvings, and firewood;

(iii) Seeds for planting,

(iv) New and unused commercially bagged plant propagation media or landscaping materials that have

not been staged or stored in an infested area for more than 30 days;

- (v) Cut flowers and foliage for decoration, such as lei, floral bouquets, or arrangements;
 - (vi) Plant propagation media in live plantings (except when used as propagative material for CRB host palms);
 - (vii) Live propagative plants (except CRB host palms); and
 - (viii) Rock, coral, sand, and gravel.
- (2) "CRB host palms" means all live palm plants in the genera *Cocos*, *Livistona*, *Phoenix*, *Pritchardia*, *Roystonea*, and *Washingtonia* and does not include unsprouted seeds.
- (3) "Transport" means movement of CRB host material out of a single Tax Map Key (TMK) parcel.

(c) The coconut rhinoceros beetle infested area is designated as the island of Oahu and any other area of the State per section 10.

(d) Except as provided in subsection (e), no person may transport coconut rhinoceros beetle host material from a coconut rhinoceros beetle infested area to a coconut rhinoceros beetle restricted area within the State or, transport, receive (accept delivery of CRB host material for any purpose), process (meaning the conversion of solid waste into a useful product or preparing for its disposal), sell, barter, donate or otherwise give away, or export CRB host material within a coconut rhinoceros beetle infested area is prohibited except:

- (1) By the department or an agent of the department for the purposes of monitoring, control, eradication, or scientific or educational purposes;
- (2) Pursuant to a permit issued by the department for purposes of coconut rhinoceros beetle monitoring, control, eradication, or scientific or educational

purposes at a site inspected and approved by the SPRO prior to transportation;

- (3) Pursuant to a permit issued by the SPRO for noncommercial activities, subject to an appropriate treatment or mitigation, as required by the SPRO;
- (4) Pursuant to a compliance agreement issued by the department for commercial activities; or
- (5) Nursery stock that is directly exported from a coconut rhinoceros beetle infested area to a destination outside of the State.

~~(e) Except as provided in subsection (f), no person may transport, receive (accept delivery of CRB host material for any purpose), process (meaning the conversion of solid waste into a useful product or preparing for its disposal), sell, barter, donate or otherwise give away, or export CRB host material within a coconut rhinoceros beetle infested area except:~~

- ~~(1) Pursuant to a compliance agreement issued by the department for commercial activities;~~
- ~~(2) Pursuant to a permit issued by the SPRO for noncommercial activities, subject to an appropriate treatment or mitigation, as required by the SPRO; or~~
- ~~(3) Nursery stock that is directly exported from a coconut rhinoceros beetle infested area to a destination outside of the State.~~

~~(fe)~~ The SPRO is authorized to exempt from the requirements of subsection (ed) categories of CRB host material, and activities involving CRB host material that pose a low risk of spreading CRB. [Eff and comp] (Auth: HRS §§141-2, 150A-9)
(Imp: HRS §§141-2, 150A-8)

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 chapter 4-72, 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.

Chairperson, Board of
Agriculture

APPROVED AS TO FORM:

Deputy Attorney General

Ho, Jonathan K

From: Danielle Frohlich <[REDACTED]>
Sent: Tuesday, February 14, 2023 6:27 AM
To: HDOA.PQ.TESTIMONY
Subject: [EXTERNAL] RE: Testimony HAR Chapter 4-72

Dear Advisory Committee on Plants & Animals,
I would like to submit my support for Agenda item 3, "Request for Review and Recommendation on the Proposed Changes to Hawaii Administrative Rules, Chapter 4-72, entitled "Plant and Non-Domestic Animal Quarantine Plant Intrastate Rules".
Thank you,
Danielle Frohlich
Invasive Species Specialist/Botanist

Ho, Jonathan K

From: Keith Weiser, CRB Deputy of Operations <crbops01@hawaii.edu>
Sent: Tuesday, February 14, 2023 9:05 AM
To: HDOA.PQ.TESTIMONY
Subject: [EXTERNAL] RE: Testimony HAR Chapter 4-72

Date: February 14, 2023
To: Advisory Committee on Plants & Animals, c/o HDOA.PQ.Testimony@hawaii.gov
From: Dr. Keith Weiser, Hawai'i CRB Response
RE: Testimony on Agenda item 3

Advisory Committee on Plants & Animals, with this letter I support Agenda item 3, "Request for Review and Recommendation on the Proposed Changes to Hawaii Administrative Rules, Chapter 4-72, entitled "Plant and Non-Domestic Animal Quarantine Plant Intrastate Rules".

My particular area of interest is the continuation of the requirement for compliance agreements for the legal movement of material potentially infested with Coconut Rhinoceros Beetle (CRB) which is currently implemented via an interim rule (22-1). The interim rule creates additional costs for some businesses but it prevents costs for many other businesses and organizations.

The businesses that are probably most affected are businesses that ship compost products between islands followed by businesses that ship palms inter-island. Shipments of compost from Oahu, which happen dozens of times each year, are primarily from Wahiawa and Waianae which are both infested with CRB. If CRB were to get to other islands, the costs to businesses and residents from damage to palms there would far eclipse the costs of prevention incurred by businesses shipping off Oahu.

Research and approval of new techniques is ongoing for the CRB situation in Hawai'i. The mechanism of the compliance agreement is ideal because it allows requirements to be updated periodically in response to new techniques, procedures, and infestation status.

The CRB response has pivoted away from eradication and is pursuing containment and control. Several parts of these rule changes are very beneficial for containment and control of CRB and other current and future pests and diseases of plants. I believe that Hawai'i will benefit from making the requirements of the interim rule to control CRB permanent.

Thank you for this opportunity to share my opinion and for your work to improve the systems to support agriculture in Hawai'i.

Respectfully,

Dr. Keith Weiser

Deputy Incident Commander

Hawai'i Coconut Rhinoceros Beetle Response

Phone: (808) 347-1699

Email: crbops01@hawaii.edu

Ho, Jonathan K

From: Teya Penniman <[REDACTED]>
Sent: Tuesday, February 14, 2023 12:19 PM
To: HDOA.PQ.TESTIMONY
Subject: [EXTERNAL] Advisory Committee on Plants & Animals - Agenda Item 3

February 14, 2023

Advisory Committee on Plants and Animals
Hawai'i Department of Agriculture
c/o HDOA.PQ.Testimony@hawaii.gov

Subject: Testimony on Agenda Item 3

I support the proposed recommendations for changes to Hawai'i Administrative Rules, Chapter 4-72, "Plant and Non-Domestic Animal Quarantine Plant Intrastate Rules." I am writing in my personal capacity, but my perspectives are informed by more than two decades of work on invasive species in Hawai'i. Prevention and control of invasive species is one of the most pressing and challenging environmental issues in Hawai'i. It is absolutely unreasonable that the problem is made worse by the knowing or negligent intra- or inter-island movement of long-recognized invasive species. Despite millions of dollars spent on control of species such as the coqui frog, little fire ant, and coconut rhinoceros beetle, gaps in the regulatory framework have hampered the ability of state agencies to take action.

I emphasize my support for the proposed changes to the following specific sections:

- Section 4-72-3: I support adding "soil" as material to be inspected by HDOA.
- Section 4-72-5: I support the clear language against the sale of pest-infested materials and designation of authority to the SPRO to compel treatment or otherwise authorize destruction of the infested material.
- Section 7-72-8: I support establishing reasonable inspection fees.
- Section 4-12-12: I support clarifying that violations of Chapter 4-72 are subject to penalties.
- Section 4-12-23: I support the proposed quarantine against movement of coconut rhinoceros beetles or host materials from infested areas (currently limited to O'ahu) as an important part of efforts to prevent the inter-island spread of CRB.

Mahalo for your consideration and the opportunity to testify.

Teya M. Penniman

[REDACTED]
Makawao, HI 96768

JOSH GREEN, M.D.
GOVERNOR | KE KĀ'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KĀ'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE
1151 PUNCHBOWL STREET, ROOM 325
HONOLULU, HAWAII 96813

February 14, 2023

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE
MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES
ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND

TO: Department of Agriculture Advisory Committee on Plants and Animals
FROM: Department of Land and Natural Resources, Division of Forestry and Wildlife
SUBJECT: Testimony on Advisory Committee on Plants and Animals Agenda Item 3

The Department of Land and Natural Resources, Division of Forestry and Wildlife (Department) is in support of Agenda Item 3, Request for Review and Recommendation on the Proposed Changes to Hawaii Administrative Rules, Chapter 4-72, entitled "Plant and Non-Domestic Animal Quarantine Plant Intrastate Rules".

The proposed changes to Chapter 72 will benefit Hawaii's agricultural industry and resources and our natural and cultural resources from the impacts of invasive species. The implementation of "Plant Quarantine Interim Rule 22-1, Regarding Quarantine Restrictions on the Coconut Rhinoceros Beetle (CRB) and CRB host materials" is a necessary step to mitigating the continued spread of this high-impact pest on O'ahu to neighboring islands. CRB is a major pest to palms, but damage has also been observed on bananas, hala, and Hawaii's native loulu palms.

Addressing the inter/intra island movement of materials that can harbor unwanted pests has been a major challenge to controlling the spread of species like little fire ant and coqui frogs that are continually being reintroduced to areas where they are not considered established. The 2017-2027 Hawai'i Interagency Biosecurity Plan, the State's comprehensive strategy to preventing and managing invasive species, identified the need for two high priority actions that would be accomplished through approval of these rule changes:

- PostBorder Policy 1.3: A comprehensive approach to minimize the interisland movement of plant pathogen and pests via the interisland transport of agricultural products.
- PostBorder Policy 1.5: Update HAR Chapter 4-72 to further prevent the interisland movement of pathogens and pests via soil as one of the highest priority actions.

The Hawai'i Invasive Species Council (HISC) endorsed the plan and committed to its implementation. The HISC is an interdepartmental collaboration co-chaired by the Department and Hawai'i Department of Agriculture with representation from the Departments of Transportation, Business and Economic Development, Health, and the University of Hawai'i for the purpose of providing policy level direction, coordination, and planning amongst the state departments and agencies. The HISC is administered through the Department.

The proposed changes to HAR Chapter 72 are essential to managing the threat of invasive species and moving toward a more bio-secure Hawai'i.

Mahalo for the opportunity to provide testimony in support of Agenda Item 3.

Ho, Jonathan K

From: Early Detection <earlydetectionmaui@gmail.com>
Sent: Tuesday, February 14, 2023 1:37 PM
To: HDOA.PQ.TESTIMONY
Subject: [EXTERNAL] Advisory Committee on Plants & Animals - Agenda Item 3

February 14, 2023

Advisory Committee on Plants and Animals
Hawai'i Department of Agriculture
c/o HDOA.PQ.Testimony@hawaii.gov

Subject: Testimony on Agenda Item 3

I support the proposed recommendations for changes to Hawai'i Administrative Rules, Chapter 4-72, "Plant and Non-Domestic Animal Quarantine Plant Intrastate Rules."

I am writing this testimony in my personal capacity, but I have spent the past 20+ years working on invasive species issues across the state. Invasive species impacts are felt across all sectors to the detriment of our local agriculture and food security, our environment and our way of life. Despite millions of dollars spent on control of species such as the coqui frog, little fire ant, and coconut rhinoceros beetle, gaps in the regulatory framework have hampered the ability of state agencies to take action. These changes will help HDOA stop the intra- or inter-island movement of long-recognized invasive species.

I support for the proposed changes to the following specific sections:

- Section 4-72-3: I support adding "soil" as material to be inspected by HDOA.
- Section 4-72-5: I support the clear language against the sale of pest-infested materials and designation of authority to the SPRO to compel treatment or otherwise authorize destruction of the infested material.
- Section 7-72-8: I support establishing reasonable inspection fees
- Section 4-12-12: I support clarifying that violations of Chapter 4-72 are subject to penalties
- Section 4-12-23: I support the proposed quarantine against movement of coconut rhinoceros beetles or host materials from infested areas (currently limited to O'ahu) as an important part of efforts to prevent the inter-island spread of CRB.

Mahalo for your consideration and the opportunity to testify.

Elizabeth Speith
[REDACTED]
Makawao, HI 96768

Big Island Invasive Species Committee
23 E. Kawili St
Hilo HI 96771
(808) 933-3340



February 14, 2023

To: Advisory Committee on Plants and Animals
RE: Testimony HAR Chapter 4-72 (Agenda item #3)

The Big Island Invasive Species Committee would like to express our support for the proposed changes to Ch 4-72. As a community already deluged with invasive insects, we appreciate all of the efforts to keep coconut rhinoceros beetle (CRB) from spreading to the outer islands, and would like to see the interim rule for quarantine restrictions made permanent with the proposed measures and suggested language changes included.

We also support the mechanism allowing for fees to be charged for inspection and penalties to be assessed for noncompliance. The cost of establishment of a pest on an island far outweighs the small additional costs a producer may be subject to in the course of shipping interisland.

We would also like to share that we strongly feel that the current language, which is in many cases limits HDOA response to only *listed* pests, may not be sufficient for the increase in potential harmful pests and diseases arriving in our state. Unlisted pests like *Acalolepta aesthetica*, which has been shown to cause serious harm nowhere else but Hawai'i, now significantly affects our cacao growers and has become a pest of concern for ulu and citrus growers as well. The process to include new pests on lists can result in delays of months or years and cause the loss of precious time necessary to respond to a new invasive species. We suggest that in a future meeting, consideration be given to adopting language which can allow an immediate response by HDOA for unlisted pests which demonstrate a potential for harm.

Overall, we are in support of all of the proposed changes to HAR 4-72 on the agenda today. I appreciate the opportunity to provide testimony in this matter. Please do not hesitate to contact me for more information.

Mahalo,

Franny Kinslow Brewer
Program Manager
fbrewer@hawaii.edu



Advisory Committee on Plants and Animals
February 15, 2023
9 a.m. Plant Quarantine Branch Conference Room
1849 Auiki Street
Honolulu, Hawaii 96819

Testimony in Support of the Proposed Changes to Hawaii Administrative Rules, Chapter 4-72

Aloha Advisory Committee Chair and Members,

The Coordinating Group on Alien Pest Species (CGAPS) **supports the proposed changes made to chapter 72, Hawaii Administrative Rules, and provides comments for Advisory Committee consideration.** The changes proposed by the Hawaii Department of Agriculture (HDOA) to chapter 72, Hawaii Administrative Rules (HAR), provide important clarifications of HDOA's authorities to prevent the spread of invasive pests within Hawaii. We also particularly highlight our support for making the current interim coconut rhinoceros beetle (CRB) administrative rule (§4-22.1-1 HAR) permanent as proposed in §4-72-23 HAR.

Chapter 72 HAR is the only chapter available to Plant Industry and its Plant Quarantine Branch (PQB) to regulate the movement of pests within the State of Hawaii. There is no corresponding chapter for animal or microorganism pests (although in cases where importation or possession of a regulated animal or microorganism requires a permit, the permit could restrict its movement). HDOA's statutory authorities to make rules to prevent the movement of any kind of pest are set out in §§150A-8, 150A-53, and 141-2 Hawaii Revised Statutes (HRS). Each of these sections provides HDOA distinct legal authorities, as discussed below, that should be implemented in chapter 72 HAR to regulate the movement of pests within Hawaii. Therefore, CGAPS respectfully requests that HDOA adopt and amend specific rules in chapter 72 HAR to allow for the sensible regulation of those invasive pests that are, or are likely to be, harmful to the environment, public health, agricultural interests, or natural and cultural resources and that the Advisory Committee on Plants and Animals consider these modifications to the proposed changes to chapter 72 HAR to do so.

Authorities

1. **Section 150A-8 HRS** provides HDOA the authority to require a permit to move flora and fauna specified in rules and regulations within the State.¹

¹ "Flora and fauna specified by rules and regulations of the department shall not be moved from one island to another island within the State or from one locality to another on the same island except by a permit issued by the department." §150A-8 HRS

2. **Section 150A-53 HRS** was adopted in 2008 and is part of HDOA's biosecurity program. The objectives of the biosecurity program are to:

- “(1) Establish a multi-dimensional system to prevent the entry into the State and interisland movement of pests and prohibited or restricted organisms without a permit; and
- (2) Respond effectively to eradicate, control, reduce, and suppress incipient pest populations and established pests and seize and dispose of prohibited or restricted organisms without a permit.” (§ 150A-52)

To implement these objectives, §150A-53(a)(3) HRS authorizes HDOA to "Develop, implement, and coordinate post-entry measures to eradicate, control, reduce, and suppress pests and, as appropriate, eradicate or seize and dispose of prohibited or restricted organisms without a permit that have entered the State." This authority is utilized throughout chapter 72 HAR but §150A-53 HRS is currently only cited as a section implemented in proposed §4-72-6 HAR. CGAPS requests that §150A-53 be added as a section implemented for proposed §§4-72-1, 4-72-2, 4-72-3, 4-72-4, 4-72-5, 4-72-9, 4-72-10, 4-72-15, 4-72-22, and 4-72-23 HAR.

3. **Section 141-2 HRS**, unlike §§150A-8 and 150A-53, is not tied to the §150A-2 definition of "pest" (discussed below) and provides broad authority for HDOA to adopt rules "for and concerning" the "quarantine, inspection, fumigation, disinfection, destruction, or exclusion, either upon introduction into the State, or at any time or place within the State" and for the inter- and intra-island movement of: any live bird, reptile, insect, or other animal; plant materials; sand, soil, or earth; and the items that contain those articles "that is or may be diseased or infested with insects or likely to assist in the transmission or dissemination of any insect or plant disease injurious, harmful, or detrimental, or likely to become injurious, harmful, or detrimental to the agricultural or horticultural industries or the forests of the State, or that is or may be in itself injurious, harmful, or detrimental to the same[.]" (emphasis added)

Proposed Modifications

I. Propose modifying the definition of "pest" in §4-72-2 to clearly define "pest" to include all "pests", as defined in §150A-2 HRS, and authorized to be regulated by HDOA under §141-2 HRS, which is an authorizing and implemented section of chapter 72 HAR. This definition of pest could look like:

"Pest means:

- (1) Any pest as defined in section 150A-2, Hawaii Revised Statutes; and
- (2) Any plant, animal, pathogen, or other organism that is or may be injurious, harmful, or detrimental to the agricultural or horticultural industries or the forests of the State."

Currently, the draft uses the definition of "pest" set out in §150A-2 HRS, which is:

"Pest" means any animal, insect, disease agent or other organism in any stage of development that is detrimental or potentially harmful to agriculture, or horticulture, or animal or public health, or natural resources including native biota or has an adverse effect on the environment as determined by the [Board of Agriculture]."

The issue is the phrase "as determined by the [Board of Agriculture]." HDOA needs the authority to stop the intrastate movement of any organism that is detrimental or potentially harmful to agriculture, or horticulture, or animal or public health, or forests and other natural resources, not just for specific taxa as determined by the Board of Agriculture (Board). New pests may be discovered within the State at any time. Unfortunately, adding a new species to a list can take months or even years. This proposed change to the pest definition provides HDOA the authority to protect the agricultural or horticultural industries or the forests and other natural resources of the State, at the time the pest is discovered.

II. Propose modifying §4-72-5:

- i. By modifying the heading to read "**Restrictions related to material for sale and available to the public**";
- ii. In subsection (a), by inserting "quarantine or " after "The SPRO may"; and
- iii. In subsection (a), by striking "to be given away to the public" and inserting "provided to the public, an educational institution, or a department, agency, or other entity of a government."

The proposed new heading and subsection (a) would read as follows:

"§4-72-5 **Restrictions related to material for sale and available to the public.** (a) The SPRO may quarantine or prohibit the movement of any pest host material that is offered for sale, for barter, or by donation or otherwise provided to the public, an educational institution, or any department, agency, or other entity of a government if the SPRO determines that the pest host material is infested or infected with a pest. The SPRO may compel treatment or destruction of the material per subsection (b). If such material was or is stored in an area that is infested or infected with a pest, then the SPRO may require appropriate treatment of the area prior to authorizing the movement of the material."

This important new section provides HDOA the clear authority to immediately address a situation where a vendor is selling merchandise that is infested or infected with a pest. There are examples in Hawaii where a nursery or big box store is known to be infested with a high priority pest such as little fire ant or coqui frog and HDOA is limited to asking the retailer to voluntarily not sell the infested merchandise. In some cases, the vendor has declined HDOA's request. This new section sets out together the relevant rules related to merchandise. We propose changing the current heading from "Prohibitions on movement of infested material." This does not clearly

let a reader know that the provisions relate to material for sale and is confusing, especially as the immediately preceding section, §4-72-4, has the heading "Prohibited transportations." We suggest adding the word "quarantine" to indicate that the intent of the section is to stop the sale and movement of infested or infected merchandise. We further propose adding educational institutions and government entities to address the limited circumstance in which infested or infected material is going to be made available to a school or government agency but not to the public.

III. Propose modifying section 4-72-23(d) to correct an error. New §4-82-23 "Quarantine restrictions on coconut rhinoceros beetle and host material" has a serious error in subsection (d) which could prohibit routine landscaping around the State. The subsection currently provides:

"(d) Transporting coconut rhinoceros beetle **host material** within the State is prohibited, except:

- (1) By [HDOA or its agent]...; or
- (2) [Pursuant to a permit] for purposes of coconut rhinoceros beetle monitoring, control, eradication, or scientific or educational purposes at a site inspected and approved by the SPRO prior to transportation."

Presumably, subsection (d) is intended only to prohibit the movement of coconut rhinoceros beetle insects themselves, not CRB host material, which includes mulch, trimmings, and a variety of live palm species. The reference to "host material" highlighted above should be deleted. Otherwise, routine landscaping throughout the State that involves CRB host material would be prohibited. This appears to be a typo that needs to be fixed.

IV. Other proposed changes:

i. §4-72-1 Objectives: Strike "plant pests" and inset "pests and other insects or pathogens" or conform with the modified definition of "pest" as described above.

ii. §4-72-2 Definitions:

a. In the definition of "pest host material", strike "It does not include fruit or vegetative scraps;" at the end. This language is misplaced here.

b. The definition of "restricted areas" should be modified to include an eradication or control project conducted by an Invasive Species Committee or other entity identified by the SPRO. Amend to read as follows:

"Restricted area" means an island or locality within the State where a specific pest is not known to be established or where an eradication or control project for a specified pest is being conducted, ~~[by the plant pest control branch.]~~ as identified by the SPRO;

iii. §4-72-7 User permit and site inspection fees and §4-72-8 Inspection fees. HDOA may want to consider adding the authority for the SPRO to waive a proposed fee if the waiver is in the interest of the State of Hawaii.

iv. §4-72-8 Inspection fees. In subsection (a)(1), change “including” to “in addition to”. It is confusing as written.

v. §4-72-15 Examples of regulated pests: Consider adding:

- a. USDA-regulated citrus diseases: citrus canker (*Xanthomonas axonopodis*) and citrus black spot (*Phyllosticta citricarpa*).
- b. *Acalolepta aesthetica*, a long horned beetle native to Australia that is established on the Big Island.
- c. *Prosapia bicincta*, two lined spittlebug, a serious pest of range land on the Big Island.
- d. Any plant, animal, or microorganism that is subject to a permit issued under chapter 150A Hawaii Revised Statutes and that is being moved in violation of that permit.

Thank you for the opportunity to comment on this measure.

Aloha,

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CGAPS

Listed below is a summary of the specific proposed changes to Chapter 4-72, Hawaii Administrative Rules.

1. Chapter 4-72 title is amended by adding "and Pest Host Material". Chapter 4-72 is amended by adding headings for "Subchapter 1 General Provisions" and "Subchapter 2 Intrastate Restrictions".
2. Amending Section 4-72-1, Objective by clarifying that Chapter 4-72 is implementing Chapter 141, Hawaii Revised Statutes (HRS) and by deleting "their plant or commodity hosts" and adding "infested or infected pest host material" and references to insects and diseases.
3. Amending Section 4-72-2 Definitions as follows:
 - a. The definition "Board" is corrected.
 - b. The definition "Department" is moved to appear in alphabetical order.
 - c. The definition "Chief" is deleted. All references to "chief" are changed to "SPRO" throughout.
 - d. The definition "Compliance agreement" is added.
 - e. The definition "Infested" is added.
 - f. The definition "Person" is added.
 - g. The definition "Pest" is added.
 - h. The definition "Pest host material" is added.
 - o. The definition "Restricted area" is corrected.
 - j. The definition "Soil" is added.
 - k. The definition "SPRO" is added.
 - l. The definition "State " is added.
4. Amending Section 4-72-3 Inspectional requirements. Adds "soil" to items required to be inspected by HDOA prior to being transported between the islands of the State, unless authorized by section 4-72-4(c). Clarifies that non-propagative plant parts may be inspected, at HDOA's discretion, when being transported between the islands of the State.
5. Amending Section 4-72-4 Prohibited transportations to:
 - a. Clarify that plants, propagative plant parts, and soil not inspected as required by section 4-72-3 may not be transported between islands of the State.
 - b. Add that pest host material that is infested or infected with an insect, disease, or pest, or that is itself a pest may not be transported between or within islands of the State unless it has been treated as approved by the SPRO or the transportation is authorized by the SPRO.
 - c. Add subsection (c) that the inspectional requirements and prohibitions on transportation do not apply to HDOA moving items for diagnostics, research, testing, or educational purposes or to items moved pursuant to a permit approved by the SPRO and issued to an institution approved by the Board, a government agency, or a university for diagnostics, research, testing, or educational purposes.
6. Amending and renumbering Section 4-72-4.5 Designation of infested areas; expansion as section 4-72-10 (see below for proposed changes).

7. Adds new Section 4-72-5, Restrictions related to pest host material available to the public which authorizes the SPRO to:
 - a. Quarantine or prohibit the movement of items that are for sale or otherwise available to the public, institutions, or government agencies, that are infested or infected with an insect, disease, or pest.
 - b. Require treatment of an area where the infested or infected items are stored.
 - c. Determine the disposition of the infested or infected items.
8. Amending and renumbering Section 4-72-8 Restrictions on transport, harboring, rearing, or breeding of pests as Section 4-72-6. Amendments allow the harboring, rearing, or breeding of a pest in the following instances:
 - a. For diagnostics, research, testing, or educational purposes by HDOA, or for a government agency, or a university at sites approved by the SPRO.
 - b. By an institution approved by the Board, pursuant to a permit approved by the SPRO.
9. Adds new Section 4-72-7, Permit and inspection fees to establish fees as follows:
 - a. The fee for a permit under chapter 4-72 is \$20 per permit for a single shipment within one year and \$100 per permit for unlimited shipments within one year.
 - b. The fee for a site inspection is \$25 per site inspected, plus mileage reimbursement.
10. Adds new Section 4-72-8, Inspection fees to set fees plus mileage reimbursement pursuant to Act 173, SLH 2010 for:
 - a. Inspections and other actions by HDOA carried out beyond regular work hours at \$50.00 per inspection, including applicable charges for overtime, fixed charges, and meals, as appropriate.
 - b. Inspections conducted away from a port or HDOA office at \$50.00 per hour.
11. Adds new Section 4-72-9, Economic loss or damage to clarify that the State is not responsible for economic loss or damages related to actions by HDOA in carrying out Chapter 4-72.
12. Amending and renumbering Section 4-72-4.5 Designation of infested areas; expansion as section 4-72-10 to:
 - a. Make technical amendments regarding press releases and written notices.
 - b. Delete "its plant or commodity hosts" and add "its pest host material".
 - c. Remove the requirement that the Board's action to expand an infested area occur on the island where a new infestation has occurred, following written notice to industry groups likely to be affected.
13. Adds new Section 4-72-11, Penalties to clarify that violations of Chapter 4-72 are subject to penalties pursuant to Chapters 150A-14 and 141-7, HRS.
14. Adds new Section 4-72-12, Scientific and common names to clarify that if a scientific or common name set out in Chapter 4-72 is changed to a new scientific or common name the reference in the chapter shall be construed to refer to the new name.
15. Adds new Section 4-72-13, Severability to clarify that if a provision of Chapter 4-72 is found to be unconstitutional or invalid, the other provisions of the chapter are not affected.

16. Amending and renumbering Section 4-72-5 Examples of regulated pests as Section 4-72-15. Amendments are proposed to make technical changes, including updating scientific and common names, and to add new examples of regulated pests.
17. Amending and renumbering Section 4-72-6 Restrictions on sugarcane as Section 4-72-16. Amendments are proposed to make technical changes and add that a university or government agency may conduct research on sugarcane, pursuant to a permit.
18. Amending and renumbering Section 4-72-7 Restrictions on soil, sand, and animal manure as Section 4-72-17. Amendments are proposed to make technical changes, delete “artificial” and add “soil-less”, and add that an institution approved by the Board, university, or government agency is eligible for a permit for diagnostic purposes.
19. Amending and renumbering Section 4-72-9 Restrictions on dasheen and taro as Section 4-72-18. Deletes “corms” from the heading and throughout the section.
20. Amending and renumbering Section 4-72-10 Restrictions on papaya and cucurbit as Section 4-72-19. Amendments make technical changes to scientific and common names.
21. Amending and renumbering Section 4-72-11 Restrictions on banana as Section 4-72-20. Amendments include adding restrictions for *Fusarium* tropical race 4 and make technical changes for clarity.
22. Amending and renumbering Section 4-72-12 Restrictions on coffee as Section 4-72-21. Amendments make technical changes for clarity and allow coffee plants and plant parts for propagation to be quarantined at a facility approved by the SPRO.
23. Amending and renumbering Section 4-72-13 Quarantine restrictions on ohia and soil from rapid ohia death infested areas as Section 4-72-22. Amendments make technical changes, including updating scientific names.
24. Adds new Section 4-72-23, Quarantine restrictions on CRB and CRB host material to make permanent Plant Quarantine Interim Rule 22-1. The proposed Section:
 - a. Designates the entire island of Oahu as the CRB infested area.
 - b. Prohibits a person from: transporting CRB host material from a CRB infested area to a CRB restricted area, or from transporting, receiving, processing, selling, bartering, donating, otherwise giving away, and exporting CRB host material within or from the CRB infested area except by HDOA; by permit for monitoring, control, eradication or scientific purposes approved by the SPRO; by permit for noncommercial activities subject to an appropriate treatment; pursuant to a compliance agreement issued by the SPRO, or directly exporting the material out of State.
25. Other changes are proposed throughout Chapter 4-72 for clarity, simplification, or to correct format, grammar, punctuation, and typeface.