Exhibit 2

HAWAII ADMINISTRATIVE RULES

TITLE 4

DEPARTMENT OF AGRICULTURE

SUBTITLE 6

DIVISION OF PLANT INDUSTRY

CHAPTER 66

PESTICIDES

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

§4-66-1 Objectives. The objectives of these rules are to implement the requirements of chapter 149A, Hawaii Revised Statutes (HRS), which provides for the registration, licensing, certification, recordkeeping, usage, and other activities related to the safe and efficacious use of pesticides. [Eff 7/13/81; comp 12/16/06; am and comp 08/23/19; comp] (Auth: HRS §149A-33) (Imp: HRS §149A-33)

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

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

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

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

"Board" means board of agriculture.

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

"Certification standard" means a requirement for certification.

"Changed use pattern" means a significant change from a use pattern approved in connection with the

registration of a pesticide product. Examples of significant changes include, but are not limited to, changes from nonfood to food use, outdoor to indoor use, ground to aerial application, terrestrial to aquatic use, and nondomestic to domestic use.

"Chemigation" means applying pesticides through irrigation systems.

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

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

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

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

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

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

than the area intended.

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

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

"EPA" means the United States Environmental Protection Agency.

"FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, title 7 United States Code (USC) sections 136 et seq., as amended.

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

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

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

(1) Products intended for use as seed or plant treatments to destroy or prevent fungus diseases;

(2) Products intended for use in disinfecting, sanitizing, or sterilizing premises or other inanimate objects to prevent or destroy organisms that cause diseases of humans or other animals;

(3) Products for use in reducing bacterial counts in water or air; and

(4) Products intended for use as wood preservatives that prevent rot or decay in wood by preventing or destroying organisms which cause decay or rot;

Products not considered fungicides include:

(1) Products intended for use in preventing or destroying any fungus or virus on or in living man or other animals and those on or in processed food, beverages or pharmaceuticals (the term processed foods includes processed animal feed and the term pharmaceuticals is

intended to include cosmetics); and

(2) Paints that are treated to protect the paint itself and bear no claim for preventing or destroying fungi after application to any surface.

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

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

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

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

"LC_{50}" means a concentration of substance, expressed as parts per million parts of medium, which is lethal to fifty per cent of the test population of animals under test conditions acceptable for registration under FIFRA.

"LD_{50}" means a single dermal or oral dose of a substance, expressed as milligrams per kilogram (mg/kg) of body weight, which is lethal to fifty per cent of the test population of animals under test conditions acceptable for registration under FIFRA.

"License" means the process of being allowed to register a pesticide product pursuant to provisions of chapter 149A, Hawaii Revised Statutes.

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

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

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

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

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

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

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

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

"Personal protective equipment" (PPE) means devices and apparel that are worn to protect the body from contact with pesticides or pesticide residues, including, but not limited to, coveralls, chemical-resistant suits, chemical-resistant gloves, chemical-resistant footwear, respiratory protection devices, chemical resistant aprons, chemical-resistant headgear, and protective eyewear, as further defined in title 40, Code of Federal Regulations section 170.507 [~~(2018)~~] (2023).

"Pesticide" means:

(1) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and

(2) Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

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

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

(a) Deodorizers, bleaches, and cleaning agents;

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

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

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

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

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

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

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

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

"Under the direct supervision of a certified applicator" means that, unless otherwise prescribed by a pesticide's labeling, a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is immediately able to communicate with the non-certified applicator, even though the certified applicator is not physically present at the time and place the pesticide is applied, and as further defined in section 171.201 of title 40, Code of Federal Regulations [~~(2018)~~] (2023).

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

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

(1) Pre-application activities involving mixing and loading the pesticide.

(2) Applying the pesticide, including, but not limited to, supervising the use of a pesticide by a non-certified applicator.

(3) Other pesticide-related activities, including, but not limited to, transporting or storing pesticide containers that have been opened, cleaning equipment, and disposing of excess pesticides, spray mix, equipment wash waters, pesticide containers, and other pesticide-containing materials.

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

(1) Target pest;

(2) Crop or animals treated;

(3) Application site; and

(4) Application technique, rate and frequency.

[Eff 7/13/81; am and comp 12/16/06; am and comp 08/23/19; comp] (Auth: HRS §149A-33) (Imp: HRS §149A-33)

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

The head may take any action as may be necessary in the administration and enforcement of the Act, these rules, and the penalty provisions as provided by law. [Eff 7/13/81; am and comp 12/16/06; am and comp 08/23/19; comp]
(Auth: HRS §149A-33) (Imp: HRS §149A-33)

§4-66-4 Incorporation of 40 CFR part 156 [~~(2017)~~] (2023); contents of the pesticide label; generally. (a) Title 40, part 156, Code of Federal Regulations (CFR), published by the Office of the Federal Register, as amended as of July 1, [~~2017,~~](2023), is made a part of this chapter subject to the substitutions and amendments set forth in sections 4-66-4 to 4-66-31. "Appendix B, 40 CFR part 156 [~~(2017)~~] (2023)," adopted ____, is appended at the end of this chapter.

(b) 40 CFR section 156.10(a)(1) [~~(2017)~~] (2023) is incorporated in this section. The federal term "Act" in 40 CFR section 156.10(a)(1) [~~(2017)~~] (2023) is supplemented with the indicated state term, as incorporated and amended in this section:

"Act" includes the Hawaii Pesticides Law, chapter 149A, Hawaii Revised Statutes. [Eff 7/13/81; am and comp 12/16/06; am and comp 08/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-5 Label; name, brand, or trademark. 40 CFR section 156.10(b)(1) [~~(2017)~~] (2023) is incorporated in this section. The federal terms "Administrator" and "Registration" in 40 CFR section 156.10(b)(1) [~~(2017)~~] (2023) are supplemented with the indicated state term, as incorporated and amended in this section:

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

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

Hawaii Revised Statutes. [Eff 7/13/81; comp 12/16/06; am and comp 08/23/19; am and comp] (Auth: HRS §§149A-14, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-6 Label; name and address of producer, registrant, or person for whom produced. 40 CFR section 156.10(c) [~~(2017)~~] (2023) is incorporated in this section. [Eff 7/13/81; comp 12/16/06; am and comp 08/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-7 Label; net weight or measure of contents. 40 CFR section 156.10(d) [~~(2017)~~] (2023) is incorporated in this section. [Eff 7/13/81; am and comp 12/16/2006; am and comp 08/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-8 Label; product registration number. 40 CFR section 156.10(e) [~~(2017)~~] (2023) is incorporated in this section. [Eff 7/13/81; comp 12/16/06; am and comp 08/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-9 Label; producing establishment registration number. 40 CFR section 156.10(f) [~~(2017)~~] (2023) is incorporated in this section. [Eff 7/13/81; comp 12/16/06; am and comp 08/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-10 Label; ingredient statement; generally. 40 CFR section 156.10(g)(1) [~~(2017)~~] (2023) is incorporated in this section. [Eff 7/13/81; comp 12/16/06; am and comp 08/23/19; am and comp]

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

§4-66-11 Label; position of ingredient statement. 40 CFR section 156.10(g)(2)(i) to (ii) [~~(2017)~~] (2023) is incorporated in this section. [Eff 7/13/81; comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-12 Label; names to be used in ingredient statement. 40 CFR section 156.10(g)(3) [~~(2017)~~] (2023) is incorporated in this section. [Eff 7/13/81; comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-13 Label; statements of percentages. 40 CFR section 156.10(g)(4) [~~(2017)~~] (2023) is incorporated in this section. [Eff 7/13/81; comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-14 Label; accuracy of stated percentages. 40 CFR section 156.10(g)(5) [~~(2017)~~] (2023) is incorporated in this section. [Eff 7/13/81; comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-15 Label; deterioration. 40 CFR section 156.10(g)(6) [~~(2017)~~] (2023) is incorporated in this section. [Eff 7/13/81; comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-16 Label; inert ingredients. 40 CFR section 156.10(g)(7) [~~(2017)~~] (2023) is incorporated in this section. [Eff 7/13/81; comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-17 Label; warning and precautionary statements; generally. 40 CFR section 156.60 [~~(2017)~~] (2023) is incorporated in this section. [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.60) (Imp: HRS §§149A-15,149A-33; 40 CFR §156.60)

§4-66-18 Label; required front panel statements. 40 CFR sections 156.62, 156.64, 156.66, and 156.68 [~~(2017)~~] (2023) are incorporated in this section. [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §§156.60 to 156.68) (Imp: HRS §§149A-15, 149A-33; 40 CFR §§156.60 to 156.68)

§4-66-19 Label; other required warnings and precautionary statements. 40 CFR sections 156.70 and 156.78 [~~(2017)~~] (2023) are incorporated in this section. [Eff 7/13/81; comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §§156.70, 156.78, 156.80 and 156.85) (Imp: HRS §§149A-15, 149A-33; 40 CFR §§156.70, 156.78, 156.80 and 156.85)

§4-66-20 Label; directions for use; generally. 40 CFR section 156.10(i)(1)(i) [~~(2017)~~] (2023) is incorporated in this section. [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-21 Label; placement of directions for use. 40 CFR section 156.10(i)(1)(ii) [~~(2017)~~] (2023) is

incorporated in this section. [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-22 Label; exceptions to requirement for directions for use. 40 CFR section 156.10(i)(1)(iii)(A) to (C) [~~(2017)~~] (2023) is incorporated in this section. [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-23 Label; contents of directions for use. 40 CFR section 156.10(i)(2) [~~(2017)~~] (2023) is incorporated in this section. Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-24 Label; statement of use classification; generally. 40 CFR section 156.10(j) [~~(2017)~~] (2023) is incorporated in this section. The federal term "General use" in 40 CFR section 156.10(j) [~~(2017)~~] (2023) is replaced by the indicated state term, as incorporated and amended in this section:

"General use" is replaced with the state term "nonrestricted". [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-25 Repealed. [R 12/16/06]

§4-66-26 Label; restricted use classification. 40 CFR section 156.10(j)(2) [~~(2017)~~] (2023) is incorporated in this section. 40 CFR section 156.10(j)(2)(i)(B) (2017) is replaced by the indicated paragraph, as incorporated and amended in this section:

"Directly below this statement on the front panel, a summary statement of the terms of restriction imposed as a precondition to registration shall appear. If use is restricted to certified applicators, the following statement is required: "For retail sale to and use only by Certified Applicators or persons under their direct supervision and only for those uses covered by the Certified Applicator's certification." If the head determines that other State regulatory restrictions shall be imposed for the protection of the public, the head may require appropriate terms of restriction as a condition of licensing." [Eff 7/13/81; comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-27 Label; prominence and legibility. 40 CFR section 156.10(a)(2) [~~(2017)~~] (2023) is incorporated in this section. The federal terms "Act" and "Regulation" in 40 CFR section 156.10(a)(2) [~~(2017)~~] (2023) are supplemented with the indicated state terms, as incorporated and amended in this section:

(1) "Act" includes the Hawaii Pesticides Law, chapter 149A, Hawaii Revised Statutes.

(2) "Regulation" includes the state term "rule", which refers to title 4, Hawaii Administrative Rules. [Eff 7/13/81; comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-28 Label; language to be used. 40 CFR section 156.10(a)(3) [~~(2017)~~] (2023) is incorporated in this section. The federal term "Agency" in 40 CFR section 156.10(a)(3) [~~(2017)~~] (2023) is supplemented with the indicated state term, as incorporated and amended in this section:

"Head" means the administrative head of the division of plant industry, Hawaii department of agriculture, or any officer or employee to whom authority has been duly delegated. [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-29 Label; placement. 40 CFR section 156.10(a)(4)(i) to (ii) [~~(2017)~~] (2023) is incorporated in this section. The federal term "Act" in 40 CFR section 156.10(a)(4)(i) to (ii) [~~(2017)~~] (2023) is supplemented by the indicated state term, as incorporated and amended in this section:

"Act" includes the Hawaii Pesticides Law, chapter 149A, Hawaii Revised Statutes. [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

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

(a) 40 CFR section 156.10(a)(5) [~~(2017)~~] (2023) is incorporated in this section.

(b) The federal terms "Act" and "Regulation" in 40 CFR section 156.10(a)(5) [~~(2017)~~] (2023) are supplemented with the indicated state term, as incorporated and amended in this section:

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

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

(c) The federal term "device" in 40 CFR section 156.10(a)(5) [~~(2017)~~] (2023) is replaced by the indicated state term, as incorporated and amended in this section:

(1) "Device" is replaced with the state term "nonchemical pest control device". [Eff 7/13/81; am and comp 12/16/06; am and comp

8/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

§4-66-31 Label; final printed form. (a) 40 CFR section 156.10(a)(6)(i) to (ii) [~~(2017)~~] (2023) is incorporated in this section.

(b) The federal terms "Agency" and "Registration" in 40 CFR section 156.10(a)(6)(i) to (ii) [~~(2017)~~] (2023) are supplemented with the indicated state term, as incorporated and amended in this section:

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

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

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

(1) "Microfilm" is replaced with the state term "text.PDF or similar format". [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: HRS §§149A-15, 149A-33; 40 CFR §156.10) (Imp: HRS §§149A-15, 149A-33; 40 CFR §156.10)

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

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

(1) Pesticides in toxicity categories I and II as defined in section 4-66-18 (40 CFR sections 156.62, 156.64, 156.66, and 156.68 [~~(2017)~~]

(2023));

(2) Pesticides or pesticide uses that are determined by the head, in consultation with the director of the department of health, to be a health hazard for one or more reasons including, but not limited to, toxicity, body storage, oncogenicity, mutagenicity, and teratogenicity or other reproductive effects;

(3) Pesticides or pesticide uses that can reasonably be anticipated to result in contamination of groundwater or significant reductions in non-target organisms, or fatality to members of endangered species; and

(4) Pesticides or pesticide uses authorized under section 18, the Emergency Exemption provision, of FIFRA.

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

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

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

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

(g) The board, upon adoption of those pesticides, pesticide formulations, pesticide products, or pesticide

uses recommended for classification as a State restricted use pesticide, shall maintain a list of all State restricted use pesticides at the department Office of the Chairperson. The list of State restricted use pesticides shall also be posted on the department's website. [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: HRS §§149A-19, 149A-33; 7 USC §136v (a)-(b), 7 USC §136w-1 (a)-(b)) (Imp: HRS §§149A-19, 149A-33)

§4-66-32.1 Evaluation of pesticides uses. (a) The head may, at any time, evaluate a licensed pesticide or pesticide proposed for licensing, to carry out the provisions of the Act. The head shall investigate all reported events and information received that indicates any pesticide may have caused, or is likely to cause, unreasonable adverse effects to humans or the environment. If the head finds from the investigation that unreasonable adverse effects to humans or the environment have occurred or are likely to occur, the pesticide shall be evaluated.

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

(1) Public or worker health hazard;
(2) Pesticide residues in drinking water are present in levels that are equal to or exceed twenty per cent of the established federal or State health standards or advisories;
(3) Pesticide residues in food or feed are present in levels exceeding the established tolerances;
(4) Fish or wildlife hazard, including hazards to endangered species;
(5) Toxicity to non-target organisms;
(6) Hazardous packaging;

(7) Misbranded as established in sections 4-66-4 to 4-66-30 (40 CFR part 156 (2017));

(8) Other information suggesting unreasonable adverse effects on humans or the environment associated with the use of a specific pesticide; and

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

(c) The evaluation of any pesticide shall consist of identification of unreasonable adverse effects to humans or the environment, including the social, economic, and environmental costs of the pesticide, identification of the uses of the pesticide, identification of the benefits of the pesticide, identification of alternatives to the pesticide, identification of regulatory controls considered by the head in mitigating unreasonable adverse effects on humans or the environment, determination by the head as to whether the effects on humans or the environment are unreasonable, and recommendation by the head for regulatory actions. Evaluation may lead to no change, restriction of use, refusal to issue or renew a license, requirement of an annual use permit, or cancellation or suspension of the license. The evaluation shall be made available to all interested parties to provide them with an opportunity to submit additional information, and comment on the evaluation. [Eff and comp 12/16/06; am and comp 8/23/19; comp] (Auth: HRS §§149A-14, 149A-33) (Imp: HRS §149A-33)

§4-66-33 Pesticide licensing; exceptions. (a) Any manufacturer, packer, seller, distributor, or shipper of a pesticide may apply to license a pesticide.

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

(1) Pesticides transferred between EPA registered establishments operated by the same producer for packaging or for use in producing another pesticide, provided the pesticides are labeled to clearly show the identity and purpose for which the pesticides are being transferred;

(2) Pesticides distributed under an experimental

use permit issued by the head;

(3) Pesticides transferred for purpose of disposal when marked to show the pesticides are for disposal only, and accompanied by sufficient information to identify products and to ensure that product can be handled with minimum hazard to humans or the environment;

(4) Pesticides intended solely for export when prepared or packed according to specifications of foreign purchaser;

(5) Pesticides being distributed under a FIFRA, section 18 emergency exemption; and

(6) Upon written notice to the head, pesticides distributed to research laboratories for the purpose of laboratory or enclosed space production tests, or limited replicated field trials of less than one-fourth acre, to determine toxicity or other properties, and from which the producer, researcher, or applicator or any other person conducting the laboratory or enclosed space production tests or field trial, does not expect to receive any benefit in pest control from its use. Notice shall be provided on forms prescribed by the head. [Eff 7/13/81; comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: 40 CFR §152.30; HRS §§149A-13, 149A-19, 149A-33) (Imp: HRS §§149A-13, 149A-19, 149A-33)

§4-66-34 Applications for licensing pesticides and for approval of nonchemical pest control devices. The procedures for licensing pesticides, or approval of nonchemical pest control devices as defined in chapter 460J, Hawaii Revised Statutes, are as follows:

(1) Applications shall be filed by the applicant or by an agent whom the applicant has designated as such by a notarized letter.

(2) Applications shall be made on forms prescribed by the department and shall contain the following information: name and address of the applicant and any other person whose name will appear on the labeling or in the directions

for use, name of the pesticide or nonchemical pest control device as shown on the label, the EPA registration number (for pesticides), the EPA establishment number, and the signature of the applicant or applicant's designated agent.

(3) Applications shall be submitted no less than thirty calendar days prior to the date licensing is desired to take effect.

(4) Applications shall be accompanied by one copy of the final printed label in text.pdf or similar format, the EPA stamped "ACCEPTED" label, if applicable, and any other printed or graphic matter that is required to accompany the pesticide or nonchemical pest control device when offered for sale or distribution, including all claims, directions for use, and any other materials specified by the head.

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

(6) If requested by the head, the applicant for nonchemical pest control device approval shall provide a description of the principles fundamental to the efficacy of the nonchemical pest control device, a description of the tests conducted according to the procedures described below and test results thereof on which claims are based, including efficacy, reliability, safety, and other supporting data that shows the nonchemical pest control device will perform its intended function without causing unreasonable adverse effects on humans or the environment.

(7) Each test submitted pursuant to this section shall be based on a written protocol that clearly indicates the objectives and all the methods for the conduct of the test. The

protocol shall contain, but not be limited to, the following information:

(A) A descriptive title and statement of the purpose of the study;

(B) The name and address of the sponsor and address of the testing facility at which the study was conducted;

(C) Justification for the selection of the test organism;

(D) Where applicable, the number, body weight range, sex, source of supply, species, strain, substrain and age of the organisms tested;

(E) A description of the experimental design, including methods for the control of bias;

(F) Where applicable, a description or identification of the diet for the test animals or fertilization and irrigation schedules for plants used in the test;

(G) Treatments, such as the test frequency and volume for nonchemical pest control devices, and the method and frequency of administration;

(H) The type and frequency of data collection, and measurements to be made;

(I) The records to be maintained;

(J) The date of approval by the sponsor and the signature of the test director; and

(K) A statement of the proposed statistical analyses to be used.

(8) The department may test nonchemical pest control devices to determine the reliability, efficacy and safety of the nonchemical pest control device. The applicant shall provide any nonchemical pest control devices to the department for testing upon request.

(9) The department shall provide the applicant with a description of the tests to be conducted, and estimated schedule to complete the tests.

(10) The applicant may initiate tests required pursuant to (8) above, using qualified testing

facilities, with the concurrence of the department. [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; comp] (Auth: HRS §§149A-13, 149A-15, 149A-19, 149A-33, 460J-24.5) (Imp: HRS §§149A-13, 149A-15, 149A-19, 149A-33, 460J-24.5)

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

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

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

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

(1) The pesticide product is in the manufacturer's or registrant's original unbroken container;

(2) The claims made in the pesticide product's directions for use, use classification, and other information contained in the labeling, do not differ from those made in conjunction with the license currently in effect; and

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

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

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

the environment. [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; comp] (Auth: HRS §§149A-13, 149A-19, 149A-33) (Imp: HRS §§149A-13, 149A-19, 149A-33)

§4-66-36 Pesticide licenses; corrections. (a) The head shall require the licensee to make necessary changes should the labeling claims of the pesticide be unwarranted, or if the pesticide and its labeling or other material required to be submitted do not comply with the Act or these rules, or when necessary to prevent any unreasonable adverse effect on humans or the environment.

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

(1) Refuse to license the pesticide;

(2) Cancel the pesticide license; and

(3) Change the classification of the pesticide.

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

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

(e) Any licensee aggrieved by a determination of the head relative to refusing, canceling, or suspending a pesticide license, may request a hearing as provided in section 149A-14(d), Hawaii Revised Statutes. [Eff 7/13/81 am and comp 12/16/06; am and comp 8/23/19; comp] (Auth: HRS §§149A-13, 149A-14, 149A-19, 149A-33) (Imp: HRS §§149A-13, 149A-14, 149A-19, 149A-33)

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

(a) The head may register pesticide products for

special local needs. All applicants for registration of pesticides to meet special local needs shall submit the following information:

(1) The name and address of the applicant and any other person whose name shall appear on the labeling or in the directions for use;

(2) The name of the pesticide product, and if application is for an amendment to a federally registered product, the EPA registration number of that product;

(3) A copy of proposed labeling, including all claims made for the product; directions for use to meet the special local need; the complete proposed labeling for a new product, or the proposed supplemental labeling for registration of an additional use of a federally registered product, and the complete formula of the product if the application is for a new product; and any other information specified by the head that is required to be reviewed prior to registration under this section.

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

(c) The head shall determine whether the claims made for the product in the registration application are warranted. [Eff 7/13/81; comp 12/16/06; am and comp 8/23/19; comp] (Auth: HRS §§149A-19, 149A-22, 149A-33; 7 USC §136v (c); 40 CFR §§162.152, 162.153) (Imp: HRS §§149A-19, 149A-22, 149A-33; 7 USC §136v (c); 40 CFR §§162.152, 162.153)

§4-66-38 Special local need; unreasonable adverse effects. (a) Under the following circumstances, prior to issuing a special local need registration, the head shall determine that use of the product for which registration is sought would not cause unreasonable adverse effects on humans or the environment, when used in accordance with

labeling directions or widespread and commonly recognized practices:

(1) For the use of a product that has a composition not similar to any federally registered product;

(2) For the use of a product involving a use pattern not similar to any federally registered use of the same product, or of a product with a similar composition; or

(3) For the use of a product for which other uses of the same product, or of a product with a similar composition, have had federal registration denied, disapproved, suspended, or canceled by the EPA administrator.

(b) The determination required by subsection (a) shall be based on data and criteria consistent with federal regulations applicable to the type of product or use under consideration. [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; comp] (Auth: HRS §§149A-19, 149A-22, 149A-33; 7 USC §136v (c); 40 CFR §162.153) (Imp: HRS §§149A-19, 149A-22, 149A-33; 7 USC §136v (c); 40 CFR §162.153)

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

(1) A copy of the final printed labeling shall be reviewed by the head as soon as practicable after a registration is issued in order to verify compliance;

(2) A new product registered [~~shall~~] must be accompanied, at the time of use, by labeling meeting all applicable criteria of sections 4-66-4 to 4-66-31. New product labeling [~~shall~~] must also contain a statement identifying "For distribution and use only within the State of Hawaii" and the assigned special local need number.

(3) For a registration of an additional use of a federally registered product, labeling from the federally registered product [~~shall~~] must

be accompanied at the time of use by supplemental labeling that contains:

(A) A statement identifying "For distribution and use only within the State of Hawaii";

(B) Directions for use to meet the special local need which satisfy the criteria of sections 4-66-10 to 4-66-31;

(C) The trade name of the product;

(D) The name and address of the special local need registrant;

(E) The EPA registration number of the federally registered product;

(F) The assigned special local need number;

(G) A statement requiring a person using the product to comply with all applicable directions, restrictions, and precautions found in the labeling of the federally registered product; and

(H) A statement prohibiting the use of the product in a manner inconsistent with federal and accompanying supplemental labeling.

(4) If the head classifies for restricted use a product or product use registered by the head, which is not required to be classified as restricted use by section 4-66-32, then the head shall require supplemental labeling for the product or product use to have additional appropriate precautions, and a statement that the product or product use is for restricted use.

(b) All products registered by the head [~~shall~~] must meet all appropriate federal packaging standards as well as all appropriate standards for coloration established and contained in section 4-66-42.1. Prior to issuing any registration, the head shall determine that the product conforms to these requirements. [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: HRS §§149A-19, 149A-22, 149A-33; 7 USC §136v (c); 40 CFR §162.153) (Imp: HRS §§149A-19, 149A-22, 149A-33; 7 USC §136v (c); 40 CFR §162.153)

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

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

(b) A product or product use thereof registered by The head shall be classified by the head for restricted use if the product is identical or similar in composition to a federally registered product for which the use has been classified as restricted under federal law or for which a use similar to the registered use has been classified as restricted use under federal law, and the registered product or product use meets the criteria for classification as restricted use pesticides under section 4-66-32. [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; comp] (Auth: HRS§§149A-19, 149A-22, 149A-33; 7 USC §136v (c); 40 CFR §162.153) (Imp: HRS §§149A-19, 149A-22, 149A-33; 7 USC §136v (c); 40 CFR §162.153)

§4-66-41 Special local need; notification and submission of data to the Environmental Protection Agency (EPA). (a) Within ten working days from the date of issuance of amendments or revocation of a registration, the head shall notify EPA in writing, of the action. Notification of registrations, or amendments thereto, shall include the confidential statements of the formula of any new product, and a copy of the draft labeling reviewed and approved by the head, provided that labeling previously approved by the EPA as part of a federal registration need not be submitted.

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

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

(d) Within fifteen working days from receipt of a request from EPA, the head shall submit any data used to determine that any unreasonable adverse effect on humans or the environment shall not be caused by a registration of a product with a composition not similar to any federally registered product, or an additional use of a

federally registered product, or a use of a product with a composition similar to that of a federally registered product, or if registration of other uses of the federally registered product has been denied, suspended, or canceled because of health, safety, or environmental concerns. [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; comp] (Auth: HRS §§149A-19, 149A-22, 149A-33; 7 USC §136v (c); 40 CFR §162.153) (Imp: HRS §§149A-19, 149A-22, 149A-33; 7 USC §136v (c); 40 CFR §162.153)

§4-66-42 Repealed. [R 12/16/06]

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

(b) Seed Treatment products.

(1) Pesticide products intended for use in treating seeds must contain an EPA-approved dye to impart an unnatural color to the seed, unless appropriate tolerances or other clearances have been established for residues of the pesticide under title 21 United States Code section 346a (a)-(q) (2017), the Federal Food, Drug and Cosmetic Act.

(2) The following products are exempt from the requirement of paragraph (b)(1) of this section:

(A) Products intended and labeled for use solely for commercial seed treatment, provided that the label bears a statement requiring the user to add an EPA-approved dye with the pesticide during the seed treatment process.

(B) Products intended and labeled for use solely as at-planting or hopper box treatments.

(C) Products, which are gaseous in form or are used as fumigants.

(3) EPA-approved dyes for seed treatment are those listed in sections 180.910, 180.920, or

180.2020, title 40, Code of Federal Regulations (2017). [Eff and comp 12/16/06; am and comp 8/23/19; comp] (Auth: HRS §§149A-16, 149A-33; 40 CFR §§153.140, 153.155) (Imp: HRS §§149A-16, 149A-33; 40 CFR §§153.140, 153.155)

§4-66-43 Enforcement. (a) As allowed by law, the head may enter any place or conveyance where pesticides or nonchemical pest control devices are manufactured, stored, packed, delivered for transportation, transported, offered for sale or sold, and may inspect and take samples of the pesticides and nonchemical pest control devices. An unbroken package may be taken as the official sample where the pesticide is packed in small bottles, or small packages. Where the pesticide is packed in large containers, the official samples may be a portion taken from one original unopened package in a lot. A chain-of-custody for each sample, from collection through analysis and final disposition, shall be maintained on forms prescribed by the head.

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

(c) Methods of analyzing samples shall be those adopted and published by the Association of Official Analytical Chemists, Official Methods of Analysis of AOAC International (20th edition 2016), where applicable, and other methods as may be necessary to determine whether the product complies with the Act or these rules.

(d) A notice of violation shall include:

(1) If from an examination or analysis, a pesticide or nonchemical pest control device appears to be in violation of the Act or these rules, a notice in writing shall be sent to the person against whom proceedings are contemplated, giving that person the

opportunity to offer a written explanation. The notice shall state the manner in which the sample failed to meet the requirements of the Act or these rules; and

(2) Any person may, in addition to this written reply to the notice, file with the head within twenty days of receipt of the notice a written request for a hearing in connection therewith.

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

(1) Upon receipt of the "stop sale" or "removal from sale" order, the vendors shall correct the violation and effect full compliance therewith. The articles shall not hereafter be sold, offered for sale, transferred or disposed of except upon authorization by the head; and

(2) No person shall remove, deface or tamper with any "stop sale" and "removal from sale" notice issued by the head.

(f) The head may seize any pesticide or nonchemical pest control device that is distributed, sold, offered for sale, transported, or delivered for transportation in violation of the Act or these rules. No notice or hearing shall be required prior to the seizure of a pesticide or nonchemical pest control device. [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; comp] (Auth: HRS §§149A-11, 149A-20, 149A-21, 149A-33) (Imp: HRS §§149A-11, 149A-20, 149A-21, 149A-33)

§4-66-44 Notice of enforcement action. Publication of judgments of the courts in cases arising under the criminal or seizure provisions of the Act or these rules, and any final order issued by the department for violation of the Act or these rules, may be made in the form of notices, circulars, or bulletins as the head may direct. [Eff 7/13/81; comp 12/16/06; am and comp

8/23/19; comp] (Auth: HRS §§149A-21, 149A-33) (Imp: HRS §§149A-21, 149A-33)

§4-66-45 Experimental use permits; generally. Experimental use permits may be issued for the intrastate shipment, delivery or use of a pesticide product that is to be tested further to determine the scope and limitations of its usefulness and the effect of its use on humans and the environment. Permits may be issued for products for use in experimental programs under the supervision of applicators certified in demonstration and research pest control and broad scale testing under normal conditions of use. The head may require the information and data concerning the product and the proposed testing program that is deemed necessary to make determinations on the merits of the proposals. [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; comp] (Auth: HRS §§149A-19, 149A-22, 149A-33; 40 CFR §§172.20 to 172.26) (Imp: HRS §§149A-19, 149A-22, 149A-33; 40 CFR §§172.20 to 172.26)

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

(1) A product containing an active or inert ingredient that is currently subject to an EPA cancellation or suspension of registration order, or that is currently subject to an EPA notice of intent to suspend or cancel registration because of human health, environmental, or efficacy consideration; except that a permit may be issued for such a product for a purpose or in a formulation that:
   (A) Is not specifically considered in, or that is not subject to, suspension or cancellation proceedings, after consultation with appropriate EPA officials; or
   (B) Was specifically considered during the proceedings but not suspended, canceled, or subject to a notice of intent to suspend or cancel.

(2) A use of a product that has been the subject of a notice of denial of registration under FIFRA; and

(3) A use of a product, which may involve use in or on food or feed other than as authorized in section 4-66-47. [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; comp] (Auth: HRS §§149A-19, 149A-22, 149A-33; 40 CFR §172.24) (Imp: HRS §§149A-19, 149A-22, 149A-33; 40 CFR §172.24)

§4-66-47 Experimental use permits; exceptions. Upon written notification of the head, no experimental use permit is required for the intrastate shipment or use of a substance or mixture of substances being put through laboratory, enclosed space production, or limited field trials of less than one-fourth acre, in which the following three criteria have been met: (1) the purpose of the laboratory, enclosed space production, or limited field trials is to determine the value of a substance or mixture of substances as a pesticide or to determine its toxicity, or other properties; (2) the tests will be conducted by recognized research personnel; and (3) the research personnel conducting the tests do not expect to receive any benefit, other than the research, in pest control from the use of the substance or mixture of substances.

If these three criteria are met, the substances or mixture of substances are not considered to be pesticides within the meaning of the Act or these rules. No State experimental use permit is required if an experimental use permit has been issued by the EPA for the proposed trial(s).

Written notification shall be submitted on forms prescribed by the head. [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; comp] (Auth: HRS §§149A-19, 149A-22, 149A-33; 7 USC §136v (a)) (Imp: HRS §§149A-19, 149A-22, 149A-33)

§4-66-48 Experimental use permits; provisions for issuance. (a) A permit is required for a pesticide intended for experimental use that is not exempt under

section 4-66-47. If a pesticide is to be tested for a use, which is likely to result in a residue on or in food or feed, a permit for experimental use may be issued provided:

(1) A tolerance or exemption from the requirements of a tolerance has been established under section 408 of the Federal Food, Drug, and Cosmetic Act, codified at title 21 United States Code section 346a (2017); or a regulation established under section 409 of the Federal Food, Drug, and Cosmetic Act, codified at title 21 United States Code section 348 (2017); or

(2) The food or feed product derived from the experimental use permit shall be destroyed or used as feed only for laboratory or experimental animals for testing purposes; or

(3) Convincing evidence is submitted by the applicant that the proposed use shall not result in residues in or on food or feed that would be in excess of that authorized under section 408 of the Federal Food, Drug, and Cosmetic Act, codified at title 21 United States Code section 346a (2017), or a regulation established under section 409 of the Federal Food, Drug, and Cosmetic Act, section 348 of title 21, United States Code (2017), which would be hazardous to humans, other animals, or the environment.

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

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

(1) Name and address of the shipper, the consignee, and place or places from which the shipment shall be made;

(2) Proposed date of shipment, or proposed shipping period that shall not exceed one year from the permit application date, and quantity to be shipped;

(3) A statement of the composition of material to be covered by the permit, which shall apply to a single material or similar formulations of the material;
(4) The name, address and telephone number and qualification of the person responsible for conducting the test;
(5) Available data or reference to available data on the analytical method and toxicity of the pesticide;
(6) The purpose or objective of the proposed tests; a description of the proposed testing program including test parameters; a designation of the pest organism or organisms involved; the amount of pesticide product proposed for use; the crops, fauna, flora, sites, modes, dosage rate, and situation of applications on or in which the pesticide is to be used; the number of acres, number of structure sites, or number of animals to be treated or included in the area of experimental use; the proposed dates, or period, or periods during which the testing program is to be conducted and the manner in which supervision of the program shall be accomplished; and the method of destruction or disposal of treated food or feed;
(7) A statement that the pesticide is intended for experimental use only;
(8) Proposed labeling that shall bear:
    (A) The prominent statement "For Distribution and Experimental Use Only Within Hawaii" in the container label and any accompanying circular or other labeling;
    (B) A warning or caution statement that may be necessary and if complied with is adequate for the protection of those who may handle or be exposed to the experimental formulations;
    (C) The name and address of the applicant for the permit;
    (D) The name or designation of the formulation; and
    (E) If the pesticide is to be sold to

experimental use program participants, a statement of the names and percentages of the principal active ingredients in the product; provided that, if the shipper submits a copy of a valid experimental use permit issued under the provisions of FIFRA, and the accepted labeling related thereto, at the head's discretion, the head may exempt the shipper from the requirement of submitting a part of the application, the data, and information specified in this subsection; and

(9) A statement as to the disposal of any unused portions of the experimental pesticide. [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; comp] (Auth: HRS §§149A-19, 149A-22, 149A-33; 40 CFR §172.24) (Imp: HRS §§149A-19, 149A-22, 149A-33; 40 CFR §172.24)

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

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

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

(c) Unless revoked by the head, experimental use permits shall be effective for a specified period of time, depending upon the crop or site to be treated and the testing program submitted. Permits may be renewed upon request if circumstance warrants. Applications for renewal of experimental use permits shall be submitted no less than thirty days prior to the permit expiration dated. [Eff 7/13/81; comp 12/16/06; am and comp 8/23/19; comp] (Auth: HRS §§149A-19, 149A-22, 149A-33; 40 CFR §172.25) (Imp: HRS §§149A-19, 149A-22, 149A-33; 40 CFR §172.25)

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

(1) Quantity of the pesticide shipped and used during the reporting period;
(2) Name and address of consignee and ultimate destination and amount of each shipment;
(3) A summary of data on effectiveness, phytotoxicity, or other pertinent information regarding usefulness obtained during the permit period;
(4) Any additional data obtained on residue or analytical methods obtained;
(5) Any additional data obtained on toxicity or unreasonable adverse effects to humans, non-target animals, or the environment;
(6) Any residue data obtained on the treated crop or site on which determination can be made regarding reentry into the treated area;
(7) Disposition of unused pesticide; and
(8) Such other information and data as may be prescribed by the head. [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; comp] (Auth: HRS §§149A-19, 149A-22, 149A-33; 40 CFR §172.25) (Imp: HRS §§149A-19, 149A-22, 149A-33; 40 CFR §172.25)

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

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

(c) Failure to comply with the terms or conditions of any State issued experimental use permit may subject the permittee, or person supervising the experiment, or both, to additional penalties as provided by law. [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; comp] (Auth: HRS §§149A-19, 149A-22, 149A-33; 40 CFR §172.25) (Imp: HRS §§149A-19, 149A-22, 149A-33; 40 CFR §172.25)

§4-66-52 Restricted use pesticide dealer and dealer representative. (a) Persons who sell restricted use pesticides, pesticides requiring an annual use permit or special permit to apply restricted use pesticides by aerial application, shall obtain a dealer sales permit for that purpose from the department. The dealer sales permit shall expire on December 31 of each year and shall be renewed no less than thirty calendar days before January 1 of each year.

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

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

(d) All restricted use pesticides dealer sales outlets shall have a pesticide dealer representative. The names of the pesticide dealer representatives shall be submitted together with the application for the dealer sales outlet permit. Each restricted use pesticide dealer representative shall obtain a permit.

(e) Persons seeking to obtain a pesticide dealer representative permit shall apply for examination on

forms prescribed by the head. To qualify, an applicant shall pass a written examination at a time and place designated by the head. Examination shall test the applicant's knowledge of pesticide laws, rules, and regulations, pesticide hazards, proper usage, safe storage and distribution and disposal methods. The restricted use pesticide dealer shall notify the head within thirty calendar days of any personnel change in the restricted use pesticide dealer representative position.

(f) A permit issued to a restricted use pesticide dealer representative shall be valid for five years. Renewal shall be by examination. Applications for renewal of restricted use pesticide dealer representative permits shall be submitted no less than thirty days prior to the permit expiration date.

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

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

(i) Any violation of the Act or these rules, whether committed by the dealer, dealer representative, or by any other officer, agent, or employee of the dealer may result in suspension or revocation of the dealer's permit or the dealer representative's permit, or both, as well as any other penalty provided by law. [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; comp] (Auth: HRS §§149A-11, 149A-17, 149A-18, 149A-19, 14'A-33) (Imp: HRS §§149A-11, 149A-17, 149A-18, 149A-19, 149A-33)

§4-66-53 Dealers' records and reports. (a) Dealers permitted to sell or distribute restricted use

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

(b) Records [~~shall~~] must show the name and address of purchaser, a description of the activity affecting the amount of restricted use pesticide or pesticide requiring an annual permit or special permit, date of sale or other activity affecting the inventory amount, identity of the formulation or brand sold and quantity (including product name and EPA registration number and any applicable emergency exemption or special local need registration number), and for sales of restricted use pesticides, the applicator's certification number, certification category and certification expiration date, intended use and the name or initials of the employee making the sale or record entry.

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

(d) Failure to submit a copy of the permitted sales outlet's records to the head within fifteen calendar days after the end of each calendar month shall subject the dealer permitted to sell or distribute restricted use pesticides to penalties pursuant to section 149A-41, Hawaii Revised Statutes or any other penalty provided by law. [Eff 7/13/81; am and comp 12/16/06; am and comp 08/23/19; am and comp] (Auth: HRS §§149A-17, 149A-19, 149A-33) (Imp: HRS §§149A-17, 149A-19, 149A-33)

§4-66-54 Storage, display, and sale of pesticides. (a) No pesticide shall be stored, displayed, placed for sale or transported where food and food containers,

feed, water for human or animal consumption, or any other items are likely to become contaminated and may create a hazard or cause injury to humans, vegetation, crops, livestock, wildlife, beneficial insects and aquatic life.

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

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

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

(1) Information regarding the proper handling, storage, and disposal of all pesticides sold;

(2) Emergency telephone numbers to call in case of poisoning from the pesticides; and

(3) A statement that use of any pesticide product in a manner inconsistent with its label is prohibited by law.

The warning sign shall be no less than seventeen inches by twenty two inches and contain lettering of sufficient size, no less than sixteen point bold type, which will enable the sign to be read from a distance of six feet under all lighting conditions normally encountered during business hours. [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; comp] (Auth: HRS §§149A-15.5, 149A-31, 149A-33) (Imp: HRS §§149A-15.5, 149A-31, 149A-33)

§4-66-55 Disposal of pesticides and empty pesticide containers. (a) Pesticides and empty containers shall be disposed of in accordance with label

directions and, if applicable, at a facility authorized to accept solid waste pursuant to chapter 11-58.1, Hawaii Administrative Rules, or in accordance with chapter 11-262.1, Hawaii Administrative Rules.

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

(c) Owners of unused pesticides may contact the Department's Pesticide Branch for information on pesticide disposal. [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; comp] (Auth: HRS §§149A-19, 149A-33) (Imp: HRS §§149A-19, 149A-33)

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

(1) A commercial pesticide applicator; or

(2) A private pesticide applicator.

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

(1) Category 1, agricultural pest control, which includes the following subcategories:

(A) Crop pest control. For persons using or supervising the use of restricted use pesticides in production of agricultural commodities, including but not limited to grains, seeds, soybeans, feed and forage crops, vegetables, fruits, trees and nuts, as well as non-crop agricultural lands;

(B) Animal pest control. For persons using or supervising the use of restricted use pesticides to control pests on animals including, but not limited to, beef and

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

(C) Soil and non-soil fumigant pest control. For persons using or supervising the use of restricted use pesticides to fumigate soil and to fumigate anything other than soil;

(D) Seed treatment. For persons using or supervising the use of restricted use pesticides other than by fumigation on seeds in seed treatment facilities;

(2) Category 2, forest pest control. For persons using or supervising the use of restricted use pesticides in forests, forest nurseries, and forest seed production;

(3) Category 3, ornamental and turf pest control. For persons using or supervising the use of restricted use pesticides to control pests in the maintenance and production of ornamental plants, trees, shrubs, flowers and turf;

(4) Category 4, aerial pest control. For persons using or supervising the use of restricted use pesticides by aerial application;

(5) Category 5, aquatic pest control. For persons using or supervising the use of restricted use pesticides purposefully applied to standing or running water, excluding applicators engaged in public health related activities included in sections 4-66-56(8) and 4-66-56(9);

(6) Category 6, right-of-way pest control. For persons using or supervising the use of restricted use pesticides in the maintenance of roadsides, powerlines, pipelines, and railway rights-of-way, and similar areas, but excluding aquatic rights-of-way;

(7) Category 7, industrial, institutional, and structural pest control, which includes the following subcategories:

(A) Fumigation pest control. For persons using or supervising the use of fumigant restricted use pesticides to control termites and other pests in or around food handling establishments, human dwellings, institutions such as schools and hospitals, industrial sites such as warehouses, grain elevators, and any other structures and adjacent area, public or private, and for the protection of stored, processed or manufactured products. The corresponding branch of pest control established pursuant to section 460J-12, Hawaii Revised Statutes, is Branch 1, Fumigation;

(B) Termite pest control. For persons using or supervising the use of restricted use pesticides other than by fumigation to control subterranean and drywood termites in or around human dwellings, institutions such as schools and hospitals, hotels, industrial sites, and any other structures and adjacent area, public or private. The corresponding branch of pest control established pursuant to section 460J-12, Hawaii Revised Statutes, is Branch 3, Termite;

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

(D) Institutional pest control. For persons

using or supervising the use of restricted use pesticides exclusive of fumigants to control pests at institutions (e.g., schools, hotels, hospitals, warehouses, industrial sites), or establishments (e.g., grain elevators, restaurants, bakeries, fast food outlets) where they are employed;

(E) Vault fumigation pest control. For persons using or supervising the use of restricted use pesticides to fumigate vaults or chambers, to control pests in agricultural commodities or structural materials, and including stored, processed or manufactured products, exclusive of those individuals licensed as pest control operators and certified in category 7(A), 7(B), or 7(C);

(F) Specialty categories. For persons using or supervising the use of restricted use pesticides where the scope of application is typically limited to a single active ingredient, a single site, a single facility or a single application method, such as using restricted use pesticides for controlling roots in sewer lines, prevention of pests on marine surfaces through the use of restricted use coatings, controlling wood pests through the use of pressure or submergence treatment, and persons who use chlorine gas;

(8) Category 8, public health pest control. For federal, state or other governmental employees and contractors using or supervising the use of restricted use pesticides in public health programs for the management and control of pests having medical and public health importance;

(9) Category 9, regulatory pest control. For state, federal, or other government employees and contractors using or supervising the use of restricted use pesticides in the control of regulated pests prescribed under the Hawaii

Plant Quarantine Law, chapter 150A, Hawaii Revised Statutes, and the Federal Plant Protection Act, title 7, chapter 104, sections 7701-7786, United States Code (2017);

(10) Category 10, demonstration, research and instructional pest control. For persons who demonstrate to the public the proper use and techniques of application of restricted use pesticides or supervise such demonstration, and persons conducting field research with pesticides, and in doing so, use or supervise the use of restricted use pesticides; and

(11) Category 11, chemigation pest control. For persons using or supervising the use of restricted use pesticides other than by fumigation applied through an irrigation system. Certification in this category requires concurrent certification in category 1(A), 2, 3, or 10.

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

(1) Category 1, general agricultural pest control. For private applicators using or supervising the use of restricted use pesticides in the production of agricultural commodities;

(2) Category 2, agricultural pest control with fumigants. For private applicators using or supervising the use of restricted use pesticides for soil fumigation in the production of an agricultural commodity and the application of restricted use pesticides for fumigation of agricultural products. Certification in this category requires concurrent certification in category 1, general agricultural pest control; and

(3) Category 3, chemigation. For persons conducting agricultural pest control other than by fumigation, with pesticides applied through irrigation systems. Certification in this category requires concurrent

certification in category 1, general agricultural pest control. [Eff 7/13/81; am and comp 12/16/06; am and comp 08/23/19; am and comp] (Auth: HRS §149A-33; 40 CFR §§171.5, 171.101) (Imp: HRS §149A-33; 40 CFR §§171.5, 171.101)

§4-66-57 General standards for certification of applicators. (a) Applicants for certification [~~shall~~] must be at least eighteen years of age and shall possess a history of honesty, truthfulness, financial integrity and fair dealing. Such personal history shall be based on information obtained intra-departmentally, interdepartmentally, and/or through publicly available records;

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

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

(1) Examinations [~~shall~~] must be presented and answered in writing;

(2) Examinations [~~shall~~] must be proctored by an individual designated by the department;

(3) At the time of examination, each person seeking certification [~~shall~~] must present a valid, government-issued photo identification or other similarly reliable form of identification as proof of identity and age;

(4) Each person seeking certification [~~shall~~] must be given instruction on examination procedure before beginning the examination;

(5) Examinations [~~shall~~] must be kept secure before, during, and after the examination period. No portion of the examination or

associated reference materials may be copied or retained by any person other than persons authorized by the department;

(6) There [~~shall~~] must be no verbal or non-verbal communication with anyone other than the proctor during the examination period;

(7) Only reference materials approved by the department may be used during the examination; and

(8) In addition to the written examination the department may employ additional methods for determining applicator competency.

(d) Applicants [~~shall~~] must demonstrate practical knowledge of the principles and practices of pest control. The knowledge [~~shall~~] must include the following areas:

(1) Label and labeling comprehension. Familiarity with pesticide labels and labeling; an understanding of label function, format and terminology; an understanding of instructions, warnings, symbols, and other common labeling requirements; an understanding that it is a violation of federal and State law to use any pesticide in a manner inconsistent with its labeling; an understanding that certification is required in the certification category appropriate to the type and site of the application; an understanding of labeling requirements for supervising non-certified applicators working under the direct supervision of a certified applicator; an understanding of labeling requirements that a certified applicator must be physically present at the site of the application; an understanding of the meaning of product classification as either general or restricted use and that a product may be unclassified; understanding and complying with product-specific notification requirements; and recognizing the difference between mandatory and advisory labeling language;

(2) Safety measures. An understanding of the risks of acute toxicity, chronic toxicity, and long-term effects of pesticides; an

understanding that risk is a function of exposure and pesticide toxicity; recognition of ways in which dermal, inhalation, and oral exposure may occur; knowledge of common types and causes of pesticide mishaps; precautions to prevent injury to applicators and other individuals in or near treated areas; the need for and proper use of personal protective equipment and clothing; symptoms of pesticide poisoning; first aid and other procedures to be followed in case of a pesticide mishap; proper identification, storage, transport, handling, mixing procedures, and disposal methods for pesticides and used pesticide containers; and precautions to be taken to prevent children from having access to pesticides and pesticide containers;

(3) Environment. An understanding of the potential environmental consequences of the use and misuse of restricted use pesticides; an understanding of the influence of weather and other indoor and outdoor climatic conditions; the influence of types of terrain, soil, or other substrate; presence of fish, wildlife, and other non-target organisms; and, drainage patterns;

(4) Pests. An understanding of the importance of correctly identifying target pests and selecting the proper pesticide product for effective pest control; and, verifying that the labeling does not prohibit the use of the product to control the target pest;

(5) Pesticides. Knowledge of the characteristics of various pesticides, including the types of pesticides; types of formulations; compatibility, synergism, persistence, and animal and plant toxicity of the formulations; hazards and residues associated with use; factors that influence effectiveness or lead to problems such as pesticide resistance; and, dilution procedures;

(6) Application equipment. Practical knowledge of type, maintenance, use, and calibration of pesticide application equipment and an

understanding of advantages and limitations of each type of equipment. Additional knowledge of calibration shall be required of applicants using or supervising the use of highly specialized equipment;

(7) Application methods. Practical knowledge and understanding of selecting the appropriate application method; an understanding of methods used to apply various forms and formulations of pesticides; knowledge of which application method to use in a given situation and that use of a fumigant, aerial application, or other special category pesticide requires additional certification; how selection of application method and use of a pesticide may result in proper use, unnecessary or ineffective use, and misuse; a practical understanding of pesticide drift and runoff, and the resulting effect on non-target organisms, such as wildlife, apiaries, humans, human habitation, lakes, rivers, wetlands, coastal waters, surface waters and ground waters; and knowledge of techniques, formulations, and methods to prevent drift and pesticide loss into the environment;

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

(9) Responsibilities of supervisors of non-certified applicators. Practical knowledge of applicable Federal and State supervisory requirements, including any requirements on the product label and labeling, regarding the use of restricted use pesticides by non-certified applicators. Knowledge of the responsibilities of certified applicators supervising non-certified applicators using restricted use pesticides; understanding and complying with title 40, section 171.201, Code of Federal Regulations [~~(2018)~~] (2023); knowledge and understanding of the recordkeeping requirements of pesticide safety training for non-certified applicators who use restricted use pesticides under the direct

supervision of a certified applicator; providing use-specific written instructions to non-certified applicators who use restricted use pesticides under the direct supervision of a certified applicator; and explaining pertinent federal and State laws, rules and regulations to non-certified applicators who use restricted use pesticides under the direct supervision of a certified applicator; and

(10) Professionalism. Knowledge and understanding of the importance of maintaining chemical security for restricted use pesticides; how to effectively communicate information about pesticide exposures and risks; and, appropriate product stewardship for certified applicators. [Eff 7/13/81; am and comp 12/16/06; am and comp 08/23/19; am and comp] (Auth: HRS §149A-33; 40 CFR §§171.5, 171.103) (Imp: HRS §149A-33; 40 CFR §§171.5, 171.103)

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

(a) Commercial applicators

(1) Category 1, agricultural pest control, which includes the following subcategories:

(A) Crop pest control applicators [~~shall~~] must demonstrate practical knowledge of the crops, grasslands, and non-crop agricultural lands and the specific pests on those areas on which the applicator may be using restricted use pesticides. Applicators in this category [~~shall~~] must demonstrate operational knowledge concerning soil and water

problems, pre-harvest intervals, restricted entry intervals, phytotoxicity, potential for environmental contamination, non-target injury and other problems resulting from the use of restricted use pesticides in agricultural areas. The required knowledge includes the potential for phytotoxicity due to a wide variety of plants to be protected, for drift, for persistency beyond the intended period of pest control, and for non-target exposures;

(B) Animal pest control applicators [~~shall~~] must demonstrate practical knowledge of such animals and the animals' associated pests. The required knowledge includes specific pesticide toxicity and residue potential, and the hazards associated with factors such as formulation, application techniques, age of animals, stress and extent of treatment; and

(C) Soil and non-soil fumigant pest control applicators [~~shall~~] must demonstrate practical knowledge of the pest problems and pest control practices associated with performing fumigation applications, including label and labeling comprehension, worker protection measures, restricted entry periods, recordkeeping requirements, and safety measures to minimize adverse health effects. Applicators [~~shall~~] must also demonstrate an understanding of how applicators and bystanders can be exposed to fumigants, signs and symptoms of exposure to fumigants, first aid procedures, emergency preparedness, the ability to

calculate buffer zones, air concentrations of fumigant, and preparation of site-specific fumigant management plans and post-application summaries. Soil and non-soil fumigant pest control applicators must demonstrate practical knowledge of the pest problems and pest control practices associated with performing soil fumigant applications and fumigation applications to sites other than soil as specified in title 40, Code of Federal Regulations section 171.103(d)(13) and (14) (2023);

(D) Seed treatment applicators must demonstrate practical knowledge including recognizing types of seeds to be treated, the effects of carriers and surface active agents on pesticide binding and germination, the hazards associated with handling, sorting and mixing, and misuse of treated seed, the importance of proper application techniques to avoid harm to non-target organisms, and the proper disposal of unused treated seeds.

(2) Category 2, forest pest control applicators [~~shall~~] must demonstrate practical knowledge of the types of forests, forest nurseries, seed production and pest involved. The required knowledge [~~shall~~] must include the cyclic occurrence of certain pests, population dynamics as a basis for programming pesticide applications, the relevant organisms causing harm and the organisms vulnerability to the pesticides to be applied, how to determine when pesticide use is proper, selection of application method, proper use of application equipment to minimize non-target exposures, and appropriate

responses to meteorological factors and adjacent land use. The applicator [~~shall~~] must demonstrate an understanding of the potential for phytotoxicity due to a wide variety of plants to be protected, for drift, for persistence beyond the intended period of pest control, and for non-target exposures. Because forest stands frequently include watersheds, aquatic situations, and harbor wildlife, the applicator [~~shall~~] must demonstrate knowledge of pest control methods that will minimize the possibility of secondary problems such as surface or ground water contamination and unintended effects on wildlife;

(3) Category 3, ornamental and turf pest control applicators [~~shall~~] must demonstrate practical knowledge of pesticide problems associated with the production and maintenance of ornamental trees, shrubs, flowers, groundcover, and turf, including knowledge of potential phytotoxicity due to the wide variety of plants to be protected, for drift, for persistence beyond the intended period of pest control, and for non-target exposures. Because of the frequent proximity of human habitations to application activities, applicators in this category [~~shall~~] must also demonstrate practical knowledge of application methods that will minimize or prevent hazards to humans, pets, and other domestic animals;

(4) Category 4, aerial pest control applicators [~~shall~~] must demonstrate practical knowledge of pest problems and pest control practices associated with performing aerial application of restricted use pesticides as specified in title 40, Code of Federal Regulations section 171,103(d)(15) (2023). Applicators [~~shall~~] must also demonstrate

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

(5) Category 5, aquatic pest control applicators [~~shall~~] must demonstrate practical knowledge of the characteristics of various aquatic use situations, and the potential for adverse effects on non-target plants, fish, birds, beneficial insects and other organisms in the immediate aquatic environment and downstream. Applicators [~~shall~~] must also demonstrate the principles of limited area applications;

(6) Category 6, right-of-way pest control applicators [~~shall~~] must demonstrate practical knowledge of the types of environments (terrestrial and aquatic) traversed by rights-of-way, recognition of target pests, and techniques to minimize non-target exposure, runoff, drift, and excessive foliage destruction. Right-of-way pest control applicators [~~shall~~] must also demonstrate knowledge of the potential for phytotoxicity due to a wide variety of plants and pests to be controlled, and for persistence beyond the intended period of pest control. Applicators doing right-of-way work [~~shall~~] must demonstrate knowledge of application equipment, containment of the pesticide within the right-of-way area, and drift control methods and procedures;

(7) Category 7, industrial, institutional, and structural pest control applicators

[~~shall~~] must demonstrate a practical knowledge of industrial, institutional, and structural pests, including recognizing those pests and signs of the pest's presence, habitats, life cycles, biology, and behavior as it may be relevant to problem identification and control. Applicators [~~shall~~] must demonstrate practical knowledge of types of formulations appropriate for control of industrial, institutional and structural pests, and methods of application that avoid contamination of food, minimize damage to and contamination of areas treated, minimize acute and chronic exposure of people and pets, and minimize environmental impacts of outdoor application. Applicators in this category [~~shall~~] must also demonstrate knowledge of the pesticide labeling of the products typically used in the applicator's operations, including hazards to the environment, emergency procedures, application methods, disposal, and pertinent laws, rules, and regulations. Applicators in subcategories using or supervising the use of fumigant restricted use pesticides must demonstrate practical knowledge of the pest problems and pest control practices associated with performing fumigation applications to sites other than soil as specified in title 40, Code of Federal Regulations section 171.103(d)(14) (2023);

(8) Category 8, public health pest control applicators [~~shall~~] must demonstrate practical knowledge of pests that are important vectors of disease, including recognizing the pests and signs of the pests' presence, habitats, life cycles, biology and behavior as it may be relevant to problem identification and control. The required knowledge also

includes how to minimize damage to and contamination of areas treated, acute and chronic exposure of people and pets, and non-target exposures. Applicators [~~shall~~] must demonstrate competency in nonchemical control methods such as sanitation, waste disposal, and drainage. Applicators [~~shall~~] must also demonstrate knowledge of hazards to the environment, emergency procedures, application methods, disposal, and pertinent laws, rules, and regulations;

(9) Category 9, regulatory pest control applicators [~~shall~~] must demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulation of regulated pests, and the potential impact on the environment of restricted use pesticides used in suppression and eradication programs. Applicators [~~shall~~] must demonstrate knowledge of factors influencing introduction, spread, and population dynamics of regulated pests;

(10) Category 10, demonstration, research, and instructional pest control applicators [~~shall~~] must demonstrate practical knowledge of the potential problems, pests, and population levels reasonable expected to occur in a demonstration situation and the effects of restricted use pesticides on target and non-target organisms. Applicators [~~shall~~] must also demonstrate competency in each pest control category applicable to the applicator's demonstration[~~. For purposes of demonstrating proper use of a particular pesticide product, out-of-state technical Representatives visiting or working in the State for thirty days or less per year need not be certified in this category if certified in an equivalent category by a jurisdiction authorized by~~

~~the EPA to issue certifications. The out-of-state technical representative shall present his or her certification credentials to the head for an equivalency determination prior to applying any restricted use pesticides in the State~~]; and

(11) Category 11, chemigation pest control applicators [~~shall~~] must demonstrate practical knowledge of labeling requirements specific to chemigation, how to choose, operate and maintain application equipment, the use of metering devices, strategies and equipment for backflow prevention, and procedures for irrigation system assessment for the distribution consistency of water, or chemicals, or both.

(b) Private applicators

(1) Category 1, general agricultural pest control applicators [~~shall~~] must demonstrate practical knowledge of agricultural commodities grown in the State and the specific pests relevant to these commodities. Applicators in this category [~~shall~~] must demonstrate practical knowledge of how to avoid contamination of ground and surface waters, demonstrate an understanding of preharvest intervals, restricted entry intervals, and entry restricted periods and areas. The applicator [~~shall~~] must also demonstrate a practical understanding of phytotoxicity, specific pesticide toxicity, and residue potential when pesticides are applied to animal or animal product agricultural commodities, and the relative hazards associated with using pesticides on animals or places in which animals are confined based on formulation, application technique, age of animal, stress, and extent of treatment. General agricultural pest

control applicators [~~shall~~] must demonstrate a complete understanding of the Worker Protection Standard, part 170 of title 40, Code of Federal Regulations [~~(2018)~~] (2023);

(2) Category 2, agricultural pest control fumigant applicators [~~shall~~] must demonstrate practical knowledge of pest problems and pest control practices associated with soil and non-soil fumigant applications. Applicators in this category [~~shall~~] must demonstrate knowledge of label and labeling comprehension, safety measures to minimize adverse health effects, characteristics of soil and non-soil fumigants, selecting appropriate application methods and timing, factors that influence fumigant activity, worker protection measures, personal protective equipment and how to use it properly, restricted entry periods, posting requirements, recordkeeping requirements, an understanding of how applicators and bystanders can be exposed to fumigants. Applicators [~~shall~~] must also demonstrate knowledge of signs and symptoms of exposure to fumigants, first aid procedures, emergency preparedness, the ability to calculate buffer zones, air concentrations of fumigant, and preparation of site-specific fumigant management plans and post-application summaries. Agricultural pest control fumigant applicators must demonstrate practical knowledge of the pest problems and pest control practices associated with performing soil fumigant applications and fumigation applications to sites other than soil as specified in title 40, Code of Federal Regulations section 171.105(d) and (e) (2023); and

(3) Category 3, agricultural chemigation pest control applicators [~~shall~~] must

demonstrate practical knowledge of labeling requirements specific to chemigation, how to choose, operate and maintain application equipment, the use of metering devices, strategies and equipment for backflow prevention, and procedures for irrigation system assessment for distribution consistency of water, or chemicals, or both. Applicators in this category [~~shall~~] must also demonstrate a complete understanding of the Worker Protection Standard, title 40, part 170, Code of Federal Regulations [~~(2018)~~](2023).

(c) Any certified commercial pesticide applicator or certified private pesticide applicator who fails to cooperate with an inspection conducted by the department pursuant to section 149A-36, Hawaii Revised Statutes, may be denied issuance or renewal of certification, or may have certification suspended or revoked.

(d) Any certified commercial pesticide applicator or certified private pesticide applicator who misuses a pesticide, is criminally convicted under section 14(b) of FIFRA, or receives a final order imposing a civil penalty under section 14(a) of FIFRA may be denied issuance or renewal of certification, or may have certification suspended or revoked. [Eff 7/13/81; am and comp 12/16/06; am and comp 08/23/19; am and comp] (Auth: HRS §149A-33; 40 CFR §§171.5, 171.103, 171.105) (Imp: HRS §149A-33; 40 CFR §§171.5, 171.103, 171.105)

§4-66-59 Repealed. [R 12/16/06]

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

(1) For initial certification of commercial applicators and renewal of commercial applicator certificates, the applicant [~~shall~~] must be at least eighteen years of age. Application shall be made on forms prescribed by the head. Forms are available at the department or on-line doa.hawaii.gov. The completed form shall be submitted to the department, with the appropriate fee. Once the form is received by the department, and the appropriate fee has been paid, the applicant will be scheduled for examination. To gain entrance to the testing facility, an applicant [~~shall~~] must present a valid, government-issued photo identification or other similarly reliable form of identification as proof of identity and age. The applicant for certification as a commercial applicator shall pass a written examination with a score of seventy per cent or better. The core examination shall cover the general standards and procedures specified in section 4-66-57. Category or subcategory examinations shall cover the specific standards specified in section 4-66-58(a).

(2) To be eligible to take category or subcategory examinations, the applicant shall first obtain a passing score on the core examination. If the applicant fails to pass the core examination, that applicant is eligible to be re-examined no sooner than fourteen calendar days after the date of the failed examination. A passing score on the core examination will be valid for six months after the date of examination.

(3) Certification in a category or subcategory under section 4-66-58 requires a passing score of seventy per cent or better on the category or subcategory examination. If the applicant fails to pass any examination, that applicant

is eligible to be re-examined no sooner than fourteen calendar days after the date of the failed examination. A passing score on the category or subcategory examination will not be valid unless the applicant first obtains a passing score on the core examination. A certificate may be issued if the applicant passes the core examination and any other category and subcategory examinations, meets all other requirements for certification, and complies with all other State and federal requirements.

(4) For renewal of commercial applicator certificates, application for renewal shall be made no sooner than ninety days before and no later than thirty days after expiration of certification. In order for a certified applicator's certification to continue without interruption, the certified applicator shall be recertified before the expiration of his or her current certification. An applicant for recertification shall complete one of the following procedures:

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

the applicator continues to maintain the level of competency required by sections 4-66-57 and 4-66-58.

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

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

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

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

(b) The procedures for certifying private applicators and renewal of private applicator certifications are as follows:

(1) For initial certification of private applicators and renewal of private applicator certificates, the applicant [~~shall~~] must be at least eighteen years of age. Application shall be on forms prescribed by the head. Forms are available at the department or on-line at https://hdoa.hawaii.gov. The completed form shall be submitted to the department, with the appropriate fee. Once the form is received by the department, and the appropriate fee has been paid, the applicant will be scheduled for examination. To gain entrance to the testing facility, an applicant [~~shall~~] must present a valid, government-issued photo identification or other similarly reliable form of identification as proof of identity and age. The applicant for certification as a private applicator shall pass a written examination with a score of seventy per cent or better. The examination shall cover the general standards specified in section 4-66-57 and the specific standards specified in section 4-66-58(b).

(2) The applicant shall pass a written examination for private agricultural pest control applicator with a score of seventy per cent or better to be eligible to take agricultural fumigation applicator or agricultural chemigation pest control applicator examinations. A passing score on the private agricultural pest control applicator examination will be valid for six months after the date of examination. If the applicant fails to pass any examination, that applicant is eligible to be re-examined no sooner than fourteen calendar days after the date of the failed examination. If the applicant passes the examination, meets all of the other requirements for certification, and complies with any other State and federal requirements, a certificate may be issued.

(3) For renewal of private applicator certification, application for renewal shall

be made no sooner than ninety days before expiration of certification. In order for a certified applicator's certification to continue without interruption, the certified applicator shall be recertified before the expiration of his or her current certification. An applicant for recertification shall complete one of the following procedures:

(A) Continuing education. A certified applicator may be found eligible for recertification upon successfully completing a continuing education program by accumulating twenty hours of training credits. Applicators certified in agricultural fumigation, or agricultural chemigation, or both, must accumulate five hours of training specific to each applicable category. Completion of training must be verified by documentation approved by the head. The training must be completed prior to the expiration date shown on the applicator's certificate and the continuing education program shall be of the quality, content, and quantity that will ensure the applicator continues to maintain the level of competency required by sections 4-66-57 and 4-66-58; or

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

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

All testing accommodations shall cover the general standards specified in section 4-66-57 and the specific standards specified in section 4-66-58(b). A finding by the head that the requested accommodation is unreasonable or that public safety may be compromised by providing the requested accommodation shall be in writing. Restrictions may be placed on a private applicator who successfully passes certification testing under special circumstances as deemed necessary by the head for the protection of the public and environment. The head shall be solely responsible for determining what constitutes successful passage of certification testing under special circumstances. Renewal of certificates issued under this section can be granted only through the procedures described in this paragraph.

Any applicant aggrieved by a determination of the head relative to certification of private applicator under special circumstances may request a hearing as provided in section 149A-34, Hawaii Revised Statutes.

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

(1) A training class sponsor or provider shall submit a written application to the head, requesting approval of certification credits for each training class no less than thirty calendar days prior to the scheduled date of each class. A fee for expedited approval of certification credits may be assessed for approval requests received less than thirty calendar days prior to the scheduled date of each class. Appropriate subject matter for training classes is set forth in sections 4-66-57 and 4-66-58.

(2) The written application shall include the name and contact information of the sponsor or provider, instructor credentials, a substantive class description or outline of

sufficient detail so evaluation of the course content can be made, a sample of any materials to be provided to the participants, who may attend the class, if any fee will be charged, class evaluation method, and the dates, times, and location of the class. The head shall approve or deny credits within ten business days following receipt of the written application for certification credit.

(3) Approval of training class credit shall be valid for two years, after which time a new written application requesting approval of certification credit shall be submitted.

(4) The number of credits issued for a training session shall be based on an evaluation of course content, instructor qualifications, and the duration of the course by the head. The number of credits approved by the head may be adjusted if department monitoring of the course demonstrates that content and duration either exceeds or fails to meet course description as approved.

(5) Credits shall be awarded to those applicators whose attendance at the session is documented. The training class sponsor or provider shall maintain a record of attendance at the approved sessions.

(6) The record shall show the name, certification number, arrival and departure time for each attendee desiring credits toward certification renewal. The training class sponsor or provider shall forward the record of attendance to the head within thirty calendar days following the course. Failure to timely forward the training class attendance record to the head may result in denial of future training class or certification credit.

(7) Requests to obtain training credit towards certification renewal from sources other than in-person training class attendance may be approved on a case-by-case basis at the sole discretion of the head.

(d) All certifications and renewals issued under this section shall be valid for five years following date

of issuance, unless revoked. The date of issuance is the date the examination was passed. Application for renewal shall be on forms prescribed by the head. Forms are available at the department or on-line at https://hdoa.hawaii.gov.

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

(f) Should the certification of any commercial applicator or private applicator be suspended or revoked, the certified applicator shall participate in a remedial education program prior to applying for reinstatement of certification. [Eff 7/13/81; am and comp 12/16/06; am and comp 08/23/19; am and comp] (Auth: HRS §149A-33; 40 CFR §§171.105, 171.107) (Imp: HRS §149A-33; 40 CFR §§171.105, 171.107)

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

(1) The person is under the direct supervision of

an applicator certified in each category applicable to the restricted use pesticide being used.

(2) The certified applicator [~~shall~~] must give the non-certified applicator use-specific written instructions in a manner the non-certified applicator can understand. The use-specific instructions [~~shall~~] must include labeling directions, precautions, and requirements applicable to the site, method of application, and pesticide used. The use-specific instructions must also include how the characteristics of the use site (e.g., surface and ground water, endangered species, local population and the conditions of application (e.g., equipment, method of application, formulation) might increase or decrease the risk of adverse effects. The certified applicator must ensure that the non-certified applicator has been instructed within the last twelve months in the safe operation of any equipment the non-certified applicator will use for mixing, loading, transferring, or applying pesticides. The certified applicator [~~shall~~] must ensure that before each day of use equipment used for mixing, loading, transferring, or applying pesticides is in proper operating condition as intended by the manufacturer and can [~~reasonably~~] be used without risk of reasonably foreseeable adverse effects to [~~by~~] the non-certified applicator, other persons, or the environment. The certified applicator [~~shall~~] must ensure that the non-certified applicator has access to the applicable product labeling at all times during use, and if the labeling requires that personal protective equipment be worn, the certified applicator [~~shall~~] must ensure that the non-certified applicator has the appropriate clean personal protective equipment available and the equipment is used correctly for its intended purpose. The certified applicator [~~shall~~] must ensure that

the means to immediately communicate with the certified applicator is available to each non-certified applicator. The certified applicator must be physically present at the site of the use being supervised when required by the product labeling.

(3) The certified applicator shall be responsible for all violations of chapter 149A, Hawaii Revised Statutes and these rules.

(4) The non-certified applicator [~~shall~~] must [~~meet the minimum age requirement to use or apply restricted use pesticides under the supervision of a certified applicator~~] be at least eighteen years of age. The non-certified applicator [~~shall~~] must also meet any other non-certified applicator [~~qualification~~] requirements specified in title 40, [~~part 171,~~] Code of Federal Regulations [~~(2018)~~] section 171.201 (2023).

(5) The label of the pesticide being used must not prohibit its use by a non-certified applicator under the direct supervision of a certified applicator.

(6) Failure to abide by chapter 149A, Hawaii Revised Statutes and these rules may result in certification revocation, or subject the certification holder to additional penalties as provided by law. [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: HRS §149A-33; 40 CFR §171.201) (Imp: HRS §149A-33; 40 CFR §171.201)

§4-66-62 Certified pesticide applicator recordkeeping. (a) Certified pesticide applicators [~~shall~~] must keep records of all restricted use pesticide applications at the applicator's principal place of business.

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

(c) Recordkeeping information [~~shall~~] must

include:

(1) Brand or common name of pesticide product applied;
(2) EPA registration number;
(3) Type of formulation;
(4) Per cent active ingredient;
(5) Scientific or common name of target pest;
(6) Dilution rate;
(7) Total amount of pesticide used;
(8) Total area covered;
(9) Time and date of application;
(10) Address or location of treated site;
(11) Name of certified applicator and his or her certification number;
(12) Crop, commodity, stored product or other site;
(13) Restricted entry interval and whether posting and oral notification are required; [~~and~~]
(14) Records required under 40 Code of Federal Regulations section 171.201(e) (2023); and
(15) Any other information the head deems necessary.

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

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

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

(f) Beginning January 1, 2019, every certified

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

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

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

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

(h) Certified pesticide applicators [~~shall~~] must create or verify the existence of records documenting that each non-certified applicator who mixes, loads, transfers, or applies restricted use pesticides has the qualifications required under section 4-66-61(4). The records must include the information required under 40 Code of Federal Regulations section 171.201(e) (2022).

(i) [~~Failure~~] Falsification of any records required to be maintained by certified pesticide applicators or any other failure to comply with the

recordkeeping requirements may result in certification revocation and subject the certified pesticide applicator to additional penalties as provided by law. [Eff 7/13/81; am and comp 12/16/06; am and comp 08/23/19; am and comp] (Auth: HRS §§149A-33, 149A-26; 40 CFR §171.201) (Imp: HRS §§149A-33, 149A-26, 149A-27; 7 CFR §110, 40 CFR §171.201)

§4-66-63 Repealed. [R 12/16/06]

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

(b) An annual use permit is required for the purchase and use of picloram. Additional pesticides may be designated as requiring an annual use permit as provided in section 4-66-63.1(a). The board, upon designation of any additional pesticide product as requiring an annual use permit, shall maintain a list of such pesticide products at the department Office of the Chairperson. The list of pesticide products that require an annual use permit shall also be posted on the department's website.

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

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

permit conditions necessary to prevent unreasonable adverse effects to humans or the environment.

(e) Failure to comply with the terms or conditions of any annual use permit may result in permit revocation and subject the permittee to additional penalties as provided by law. [Eff and comp 12/16/06; am and comp 8/23/19; comp] (Auth: HRS §149A-19) (Imp: HRS §149A-32.5)

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

(1) Application for a special permit to apply restricted use pesticides by aerial application shall be made on forms prescribed by the head. Forms are available at the department or on-line at https://hdoa.hawaii.gov;

(2) The special permit application shall include date, name, address and certification number of the applicator, purpose of aerial treatment, restricted use pesticide formulation, dosage, method of aerial treatment, the proposed number of treatments to be made, and a sketch or map that indicates general wind directions, proposed site or sites to be treated, homes, roadways, waterways, and crop plantings in the vicinity;

(3) The head may refuse to issue a special permit for aerial application of restricted use pesticides if it is determined that the proposed aerial treatment may cause unreasonable adverse effects to humans or the environment or will create a hazard. All refusals shall be in writing and the reasons for refusal stated;

(4) A special permit for aerial application of restricted use pesticides shall specify the time period for which the special permit is valid. The head may specify and limit a special permit for aerial application of restricted use pesticides to cover a single,

multiple, or continual treatments when conditions are not expected to change or vary during subsequent treatments that are conducted in the same designated area or areas;

(5) Any special permit for aerial application of restricted use pesticides may be canceled or revoked by the head before its stated expiration date for reasonable cause. Such cancellation or revocation shall be in writing and reasons for cancellation or revocation stated;

(6) The head shall be notified no less than twenty-four hours in advance of the aerial treatment unless another time period is specified as a permit condition; and

(7) The issuance of a special permit for aerial application of a restricted use pesticide shall not relieve the permittee from the penalty provisions of the Act or any liability for any damage or contamination of crops or plants, animals, humans, and the environment resulting from the aerial treatment or contamination of crops or plants, animals, humans, and the environment resulting from the aerial application of restricted use pesticides.

(b) The following provisions shall apply to the operating conditions of manned or unmanned aircraft and equipment used for aerial application of restricted use pesticides:

(1) Spray equipment on manned or unmanned aircraft shall be leakproof. Spray nozzles shall be equipped with a device to prevent dribble when spray is turned off;

(2) All aerial pesticide dispersal equipment shall be inspected and maintained in good working order according to the manufacturer's instructions; and

(3) Manned or unmanned aircraft used to apply restricted use pesticides, and manned or unmanned aircraft operators, shall comply with all Federal Aviation Administration Regulations.

(c) The head may add further permit conditions as deemed necessary for the protection of the public, or environment, or both.

(d) Failure to comply with the terms or conditions of any special permit for aerial application of restricted use pesticides may subject the permittee, or person supervising the aerial application, or both, to additional penalties as provided by law. [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; comp] (Auth: HRS §149A-33) (Imp: HRS §149A-33)

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

(1) All pesticide applications shall be made in accordance with the product label;

(2) Spray equipment nozzles shall be equipped with a device to prevent leakage when spray is turned off;

(3) Self-propelled power rigs used for inter-row or broad-cast applications shall be equipped with a pressure control device and a pressure gauge;

(4) Reasonable methods necessary to minimize the risk of off-target pesticide product movement shall be utilized; and

(5) Power rigs, mist blowers, and other equipment used to disperse any pesticide product shall be inspected and maintained in good working order according to the manufacturer's instructions. [Eff and comp 8/23/19; comp] (Auth: HRS §149A-33) (Imp: HRS §149A-33)

§4-66-64.2 Conditions and limitations on restricted use pesticide application within buffer zones. (a) Beginning January 1, 2019, no person shall apply a

restricted use pesticide on or within one hundred feet of a school property during normal school hours.

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

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

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

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

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

As used in this section:

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

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

"School" means any public or private preschool, kindergarten, elementary, intermediate, middle, secondary, or high school. [Eff and comp 8/23/19; comp] (Auth: HRS §§149A-33, 149A-28) (Imp: HRS §149A-28)

§4-66-65 Repealed. [R 12/16/06]

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

(1) A fee of $930 shall be assessed for each

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

(2) A fee of $500 shall be assessed annually for each principal sales outlet permit and a fee of $200 for each branch sales outlet of restricted use pesticide dealers.

(3) A fee of $50 shall be assessed for each examination taken for certification or renewal of certification.

(4) A fee of $50 will be assessed for the issuance of a replacement applicator certificate or replacement of dealer representative permit.

(5) A fee of $100 shall be assessed for the issuance of an initial pesticide applicator certificate or initial restricted use pesticide dealer representative permit, which shall be valid for five years.

(6) A fee of $100 shall be assessed for renewal of a pesticide applicator certificate or renewal of restricted use pesticide dealer representative permit, which shall be valid for five years.

(7) A fee of $50 shall be assessed for each examination taken for pesticide dealer representative permit.

(8) A fee of $.25 per page shall be assessed to copy documents in either paper or electronic format.

(9) A fee of up to $50 per hour may be assessed for educational services, testing, or training provided by the department staff, or independent contractors hired by the department to provide such services.

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

(b) Fees shall be waived, upon approval of the head, for personnel of state agencies, the University of

Hawaii, and other government agencies, who apply restricted use pesticides for quarantine purposes, public health and forestry pest control, utility and roadway maintenance, research, and demonstration. The head may waive or reduce fees based upon demonstrated financial hardship. [Eff 7/13/81; am and comp 12/16/06; am and comp 8/23/19; comp] (Auth: HRS §149A-33) (Imp: HRS §149A-33)

§4-66-66.1 Enforcement action and penalty assessment schedule; collection of penalties. (a) In proposing enforcement actions, the department may use the "Appendix A, enforcement action and penalty assessment schedule" dated_____, which is appended at the end of this chapter and made a part of this section by reference. In selecting an appropriate penalty, the department shall consider the factors in section 149A-41, Hawaii Revised Statutes.

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

(c) For private applicators and other persons referred to in section 149A-41(b)(2), Hawaii Revised Statutes, the penalty assessment shall apply after the written warning or citation requirement of section 149A-41(b)(2) has been satisfied.

(d) In case of inability to collect the administrative penalty or failure to pay all or any portion of the administrative penalty, the head may refer the matter to the department of the attorney general, who shall recover the amount by action in the appropriate court. [Eff 7/13/81; comp 12/16/06; am and comp 8/23/19; am and comp] (Auth: HRS §§149A-20, 149A-33, 149A-41) (Imp: HRS §§149A-20, 149A-41)

§4-66-67 Severability. If any section of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this chapter and applicability thereof to other persons and circumstances shall not be affected. [Eff 7/13/81; comp 12/16/06; comp 8/23/19; comp] (Auth: HRS §149A-52) (Imp: HRS §149A-52)

Amendments to and compilation of chapter 4-66, Hawaii Administrative Rules, on the Summary Page dated June 25, 2019, were adopted on June 25, 2019, following public hearings held on November 1, 2018, November 2, 2018, November 5, 2018, November 7, 2018, and November 8, 2018, after public notice was given in the Honolulu Star Advertiser, the Garden Island, the Maui News, West Hawaii Today, and the Hawaii Tribune Herald on October 1, 2018.

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

SHARON HURD
Chairperson
Board of Agriculture

JOSH GREEN, M.D.
Governor
State of Hawaii

Dated: _____

APPROVED AS TO FORM:

DEPUTY ATTORNEY GENERAL

Filed

APPENDIX A

ENFORCEMENT ACTION AND PENALTY ASSESSMENT SCHEDULE

Section 4-66-66.1 of the
Hawaii Administrative Rules

Adopted: _____, [~~2019~~]2023

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

(a) Warning Notice - First Violation

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

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

(b) Administrative Penalties

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

(A) A licensee or registrant of any pesticide product pursuant to Chapter 149A, Hawaii Revised Statutes;

(B) A certified commercial pesticide applicator;

(C) A licensee or permittee authorized to sell or distribute restricted use pesticides; or

(D) A wholesaler, retailer, or other distributor of any pesticide product,

that person may be assessed an administrative penalty of not more than [~~$5,000.00~~] $10,000.00 per offense.

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

1st Occurrence:
Monetary penalty: Up to [~~$5,000.00~~] $10,000.00;
Certificate suspension: Up to 6 months;

2nd Occurrence:
Monetary penalty: Up to [~~$5,000.00~~] $10,000.00;
Certificate suspension: Up to 12 months;

3rd or more Occurrences:
Monetary penalty [~~$5,000.00~~] $10,000.00;
Certificate suspension: 12 months.

(2) Upon finding of any subsequent violation of any provision of Chapter 149A, Hawaii Revised Statutes, or any rule issued thereunder, by any person who is a certified private pesticide applicator, or any other person not included in paragraph (b)(1)(A)-(D) above, where the subsequent violation is related to the use of pesticides while on property owned or rented by that person, or the person's employer, may be assessed an administrative penalty of not more than [~~$1,000.00~~] $5,000.00 per offense.

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

1st Subsequent Occurrence:
Monetary penalty: Up to [~~$1,000.00~~] $5,000.00;
Certificate suspension: Up to 6 months;

2nd Subsequent Occurrence:
Monetary penalty: Up to [~~$1,000.00~~] $5,000.00;
Certificate suspension: Up to 12 months;

3rd or more Subsequent Occurrences:
Monetary penalty: [~~$1,000.00~~] $5,000.00;
Certificate suspension: 18 months.

(3) Upon finding of any subsequent violation of any provision of Chapter 149A, Hawaii Revised Statutes, or any rule issued thereunder, by any person who is a certified private pesticide applicator, or any other person not included in paragraph (b)(1)(A)-(D) above, where the subsequent violation is related to licensing, transport, sale, distribution, or application of a pesticide for commercial purposes may be assessed an administrative penalty of not more than [~~$5,000.00~~] $10,000.00 per offense.

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

1st Subsequent Occurrence:
Monetary penalty: Up to [~~$5,000.00~~] $10,000.00;
Certificate suspension: Up to 12 months;

2nd Subsequent Occurrence:
Monetary penalty: Up to [~~$5,000.00~~] $10,000.00;
Certificate suspension: Up to 24 months;

3rd or more Subsequent Occurrences:
Monetary penalty: [~~$5,000.00~~] $10,000.00;
Certificate suspension: 36 months.

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

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

(5) Factors to be considered by the department in determining the appropriate amount of an administrative penalty shall include the:
(A) Seriousness of the offense;
(B) Quantity of offenses;
(C) Violation history;

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

(6) In addition to monetary penalties, administrative enforcement actions may include:
(A) Certificate suspension or revocation for not more than thirty-six months;
(B) License suspension or revocation for not more than twelve months;
(C) Permit suspension or revocation for not more than twelve months; and

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

c. Criminal Penalties

(1) Any person who is found to have knowingly violated any provision of Chapter 149A, Hawaii Revised Statutes, or any rule issued thereunder, who:
(A) Has registered or licensed any pesticide product pursuant to Chapter 149A, Hawaii Revised Statutes;
(B) Is a certified commercial pesticide applicator;
(C) Is licensed or permitted to sell or distribute restricted use pesticides; or
(D) Is a wholesaler, retailer, or other distributor of any pesticide product,
shall be guilty of a misdemeanor and upon conviction shall be fined not more than [~~$25,000.00~~] $35,000.00, or imprisoned for not more than one year, or both.

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

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

(A) Is a certified private pesticide applicator; or,

(B) Other person not included in paragraph (1) above,

shall be guilty of a misdemeanor and upon conviction shall be fined not more than [~~$1,000.00~~] $5,000.00, or imprisoned for not more than one year, or both.

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

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

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

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

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

149A-20, 149A-33, 149A-41) (Imp: HRS §§141-7, 149A-20, 149A-33, 149A-41)

APPENDIX B

Part 156 of Title 40, Code of Federal Regulations
(Revised as of July 1, 2022)

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

Adopted: _____, 2023

Subpart A — General Provisions

Section 156.3 Definitions.

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

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

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

[73 FR 64224, Oct. 29, 2008]

Section 156.10 Labeling requirements.

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

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

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

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

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

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

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

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

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

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

(2) *Prominence and legibility*. (i) All words, statements, graphic representations, designs or other information required on the labeling by the Act or the regulations in this part must be clearly legible to a person with normal vision, and must be placed with such conspicuousness (as compared with other words, statements, designs, or graphic matter on the labeling) and expressed in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(ii) All required label text must:

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

(B) Appear on a clear contrasting background; and

(C) Not be obscured or crowded.

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

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

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

(A) *Transportation.* While a pesticide product is in transit, the appropriate provisions of 49 CFR parts 170–189, concerning the transportation of hazardous materials, and specifically those provisions concerning the labeling, marking and placarding of hazardous materials and the vehicles carrying them, define the basic Federal requirements. In addition, when any registered pesticide product is transported in a tank car, tank truck or other mobile or portable bulk container, a copy of the accepted label must be attached to the shipping papers, and left with the consignee at the time of delivery.

(B) *Storage.* When pesticide products are stored in bulk containers, whether mobile or stationary, which remain in the custody of the user, a copy of the label of labeling, including all appropriate directions for use, shall be securely attached to the container in the immediate vicinity of the discharge control valve.

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

statements or representations in the labeling which constitute misbranding include:

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

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

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

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

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

(vi) The name of a pesticide which contains two or more principal active ingredients if the name suggests one or more but not all such principal active ingredients even though the names of the other ingredients are stated elsewhere in the labeling;

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

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

(ix) Claims as to the safety of the pesticide or its ingredients, including statements such as "safe," "nonpoisonous," "noninjurious," "harmless" or "nontoxic to humans and pets" with or without such a qualifying phrase as "when used as directed"; and

(x) Non-numerical and/or comparative statements on the safety of the product, including but not limited to:

(A) "Contains all natural ingredients";

(B) "Among the least toxic chemicals known"

(C) "Pollution approved"

(6) *Final printed labeling.* (i) Except as provided in paragraph (a)(6)(ii) of this section, final printed labeling must be submitted and accepted prior to registration. However, final printed labeling need not be submitted until draft label texts have been provisionally accepted by the Agency.

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

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

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

(i) Is false or misleading, or

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

(c) *Name and address of producer, registrant, or person for whom produced.* An unqualified name and address given on the label shall be considered as the name and address of the producer. If the registrant's name appears on the label and the registrant is not the producer, or if the name of the person for whom the pesticide was produced appears on the label, it must be qualified by appropriate wording such as "Packed for * * *," "Distributed by * * *," or "Sold by * * *" to show that the name is not that of the producer.

(d) *Net weight or measure of contents.* (1) The net weight or measure of content shall be exclusive of wrappers or other materials and shall be the average content unless explicitly stated as a minimum quantity.

(2) If the pesticide is a liquid, the net content statement shall be in terms of liquid measure at 68 °F (20 °C) and shall be expressed in

conventional American units of fluid ounces, pints, quarts, and gallons.

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

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

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

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

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

(e) *Product registration number.* The registration number assigned to the pesticide product at the time of registration shall appear on the label, preceded by the phrase "EPA Registration No.," or the phrase "EPA Reg. No." The registration number shall be set in type of a size and style similar to other print on that part of the label on which it appears and shall run parallel to it. The registration number and the required identifying phrase shall not appear in such a manner as to suggest or imply recommendation or endorsement of the product by the Agency.

(f) *Producing establishment's registration number.* The producing establishment registration number preceded

by the phrase "EPA Est.", of the final establishment at which the product was produced may appear in any suitable location on the label or immediate container. It must appear on the wrapper or outside container of the package if the EPA establishment registration number on the immediate container cannot be clearly read through such wrapper or container. For a pesticide product packaged in a refillable container, an appropriately sized area on the label may be left blank after the phrase "EPA Est." to allow the EPA establishment registration number to be marked in by the refiller according to 40 CFR 165.65(h) or 165.70(i) prior to distribution or sale of the pesticide.

(g) *Ingredient statement*—(1) *General.* The label of each pesticide product must bear a statement which contains the name and percentage by weight of each active ingredient, the total percentage by weight of all inert ingredients; and if the pesticide contains arsenic in any form, a statement of the percentages of total and water-soluble arsenic calculated as elemental arsenic. The active ingredients must be designated by the term "active ingredients" and the inert ingredients by the term "inert ingredients," or the singular forms of these terms when appropriate. Both terms shall be in the same type size, be aligned to the same margin and be equally prominent. The statement "Inert Ingredients, none" is not required for pesticides which contain 100 percent active ingredients. Unless the ingredient statement is a complete analysis of the pesticide, the term "analysis" shall not be used as a heading for the ingredient statement.

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

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

(3) *Names to be used in ingredient statement.* The name used for each ingredient shall be the accepted common name, if there is one, followed by the chemical name. The common name may be used alone only if it is well known. If no common name has been established, the chemical name alone shall be used. In no case will the use of a trademark or proprietary name be permitted unless such name has been accepted as a common name by the Administrator under the authority of section 25(c)(6).

(4) *Statements of percentages.* The percentages of ingredients shall be stated in terms of weight-to-weight. The sum of percentages of the active and the inert ingredients shall be 100. Percentages shall not be expressed by a range of values such as "22–25%." If the uses of the pesticide product are expressed as weight of active ingredient per unit area, a statement of the weight of active ingredient per unit volume of the pesticide formulation shall also appear in the ingredient statement.

(5) *Accuracy of stated percentages.* The percentages given shall be as precise as possible reflecting good manufacturing practice. If there may be unavoidable variation between manufacturing batches, the value stated for each active ingredient shall be the lowest percentage which may be present.

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

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

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

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

(h) [Reserved]

(i) *Directions for Use*—(1) *General requirements*—(i) *Adequacy and clarity of directions.* Directions for use must be stated in terms which can be easily read and understood by the average person likely to use or to supervise the use of the pesticide. When followed, directions must be adequate to protect the public from fraud and from personal injury and to prevent unreasonable adverse effects on the environment.

(ii) *Placement of directions for use.* Directions may appear on any portion of the label provided that they are conspicuous enough to be easily read by the user of the pesticide product. Directions for use may appear on printed or graphic matter which accompanies the pesticide provided that:

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

(B) The label bears a reference to the directions for use in accompanying leaflets or circulars, such as "See directions in the enclosed circular:" and

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

(iii) *Exceptions to requirement for direction for use.* (A) Detailed directions for use may be omitted from labeling of pesticides which are intended for use only by manufacturers of products other than pesticide products in their regular manufacturing processes, provided that:

(*1*) The label clearly shows that the product is intended for use

only in manufacturing processes and specifies the type(s) of products involved.

(*2*) Adequate information such as technical data sheets or bulletins, is available to the trade specifying the type of product involved and its proper use in manufacturing processes;

(*3*) The product will not come into the hands of the general public except after incorporation into finished products; and

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

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

(*1*) The label clearly states that the product is for use only by physicians or veterinarians;

(*2*) The Administrator determines that such directions are not necessary to prevent unreasonable adverse effects on man or the environment; and

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

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

(*1*) There is information readily available to the formulators on the composition, toxicity, methods of use, applicable

restrictions or limitations, and effectiveness of the product for pesticide purposes;

(*2*) The label clearly states that the product is intended for use only in manufacturing, formulating, mixing, or repacking for use as a pesticide and specifies the type(s) of pesticide products involved;

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

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

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

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

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

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

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

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

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

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

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

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

(x) Any limitations or restrictions on use required to prevent unreasonable adverse effects, such as:

(A) Required intervals between application and harvest of food or feed crops.

(B) Rotational crop restrictions.

(C) Warnings as required against use on certain crops, animals, objects, or in or adjacent to certain areas.

(D) For total release foggers as defined in § 156.78(d)(1), the following statements must be included in the "Directions for Use."

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

(E) For restricted use pesticides, a statement that the pesticide may be applied under the direct supervision of a certified applicator who is not

physically present at the site of application but nonetheless available to the person applying the pesticide, unless the Agency has determined that the pesticide may only be applied under the direct supervision of a certified applicator who is physically present.

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

(j) *Statement of use classification.* Any pesticide product for which some uses are classified for general use and others for restricted use shall be separately labeled according to the labeling standards set forth in this subsection, and shall be marketed as separate products with different registration numbers, one bearing directions only for general use(s) and the other bearing directions for restricted use(s) except that, if a product has both restricted use(s) and general use(s), both of these uses may appear on a product labeled for restricted use. Such products shall be subject to the provisions of paragraph (j)(2) of this section.

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

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

(i) *Front panel statement of restricted use classification.* (A) At the top of the front panel of the label, set in type of the same minimum sizes as required for human

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

(B) Directly below this statement on the front panel, a summary statement of the terms of restriction imposed as a precondition to registration shall appear. If use is restricted to certified applicators, the following statement is required: "For retail sale to and use only by Certified Applicators or persons under their direct supervision and only for those uses covered by the Certified Applicator's certification." If, however, other regulatory restrictions are imposed, the Administrator will define the appropriate wording for the terms of restriction by regulation.

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

Subparts B - C [Reserved]

Subpart D — Human Hazard and Precautionary Statements

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

Section 156.60 General.

Each product label is required to bear hazard and precautionary statements for humans and domestic animals (if applicable) as prescribed in this subpart. Hazard

statements describe the type of hazard that may occur, while precautionary statements will either direct or inform the user of actions to take to avoid the hazard or mitigate its effects.

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

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

(b) *Placement and prominence*—(1) *Front panel statements.* All required front panel warning statements shall be grouped together on the label, and shall appear with sufficient prominence relative to other front panel text and graphic material to make them unlikely to be overlooked under customary conditions of purchase and use. The table below shows the minimum type size requirements for the front panel warning statements for various front panel sizes.

TYPE SIZES FOR FRONT PANEL WARNING STATEMENTS

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

Over 30	18	12

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

Section 156.62 Toxicity Category.

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

ACUTE TOXICITY CATEGORIES FOR PESTICIDE PRODUCTS

Hazard Indicators	I	II	III	IV
Oral LD_{50}	Up to and including 50 mg/kg	>50 thru 500 mg/kg	>500 thru 5,000 mg/kg	>5,000 mg/kg
Dermal LD_{50}	Up to and including 200 mg/kg	>200 thru 2000 mg/kg	>2000 thru 20,000 mg/kg	>20,000 mg/kg
Inhalation LC_{50}	Up to and including 0.2 mg/liter	>0.2 thru 2 mg/liter	>2 thru 20 mg/liter	>20 mg/liter
Eye irritation	Corrosive; corneal opacity not reversible within 7 days	Corneal opacity reversible within 7 days; irritation persisting for 7 days	No corneal opacity; irritation reversible within 7 days	No irritation

Skin irritation	Corrosive	Severe irritation at 72 hours	Moderate irritation at 72 hours	Mild or slight irritation at 72 hours

Section 156.64 Signal word.

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

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

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

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

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

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

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

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

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

Section 156.66 Child hazard warning.

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

(b) In its discretion, EPA may waive the requirement, or require or permit an alternative child hazard warning, if:

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

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

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

Section 156.68 First aid statement.

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

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

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

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

Section 156.70 Precautionary statements for human hazards.

(a) *Requirement.* Human hazard and precautionary statements as required must appear together on the label or labeling under the general heading "Precautionary Statements" and under appropriate subheadings similar to "Humans and Domestic Animals," "Environmental Hazards" (see subpart E of this part) and "Physical or Chemical Hazards." The phrase "and Domestic Animals" may be

omitted from the heading if domestic animals will not be exposed to the product.

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

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

TYPICAL HUMAN HAZARD AND PRECAUTIONARY STATEMENTS

Toxicity Category	Systemic effects (oral, dermal, inhalation toxicity)	Irritation effects (skin and eye)	Sensitizer (There are no categories of sensitization.)
I	Fatal (poisonous) if swallowed [inhaled or absorbed through skin]. Do not breathe vapor [dust or spray mist]. Do not get in eyes, on skin, or on clothing. [Front panel first aid statement required.]	Corrosive, causes eye and skin damage [or skin irritation]. Do not get in eyes on skin, or on clothing. Wear goggles or face shield and rubber gloves when handling. Harmful or fatal if swallowed. [Front panel first aid statement required.]	If product is a sensitizer: Prolonged or frequently repeated skin contact may cause allergic reactions in some individuals.
II	May be fatal if swallowed, [inhaled or absorbed through the skin]. Do not breathe vapors [dust or spray mist]. Do not get in eyes, on skin, or on	Causes eye [and skin] irritation. Do not get in eyes, on skin, or on clothing. Harmful if swallowed. [Appropriate first aid statement required.]	

	clothing. [Appropriate first aid statement required.]		
III	Harmful if swallowed [inhaled or absorbed through the skin]. Avoid breathing vapors [dust or spray mist]. Avoid contact with skin [eyes or clothing]. [Appropriate first aid statement required.]	Avoid contact with skin, eyes or clothing.	
IV	No precautionary statements required	No precautionary statements required.	

Section 156.78 Precautionary statements for physical or chemical hazards.

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

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

FLAMMABILITY STATEMENTS FOR PRESSURIZED PRODUCTS

Flash point/flame extension of product	Required labeling statement
—Flash point at or below 20 °F OR	*Extremely flammable.* Contents under pressure. Keep away from fire, sparks, and heated surfaces. Do not puncture or incinerate container. Exposure to temperatures above 130 °F may cause bursting.

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

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

FLAMMABILITY STATEMENTS FOR NON-PRESSURIZED PRODUCTS

Flash point	Required labeling statement
At or below 20 °F	*Extremely flammable.* Keep away from fire, sparks and heated surfaces.
Greater than 20 °F to 80 °F	*Flammable.* Keep away from heat and open flame.
Greater than 80 °F to 150 °F	*Combustible.* Do not use or store near heat or open flame.

(d) *Total release fogger products.* (1) A *total release fogger* is defined as a pesticide product in a pressurized container designed to automatically release the total contents in one operation, for the purpose of creating a permeating fog within a confined space to deliver the pesticide throughout the space.

(2) If a pesticide product is a total release fogger containing a propellant with a flash point at or below 20 °F, then the following special

instructions must be added to the "Physical and Chemical Hazards" warning statement, in addition to any flammability statement required by paragraph (b) of this section:

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

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



Highly Flammable Ingredient
Ingrediente Altamente Inflamable

Subpart E — Environmental Hazard and Precautionary Statements

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

Section 156.80 General.

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

(b) *Location of statements.* Environmental hazard and precautionary statements may appear on any panel of the label and may be required also in supplemental labeling. The environmental hazard statements must appear together under the heading "Environmental Hazards." Typically the

statements are grouped as a sub-category within the "Precautionary Statements" section of the labeling.

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

Section 156.85 Non-target organisms.

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

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

(1) If a pesticide intended for outdoor use contains an active ingredient with a mammalian acute oral LD_{50} of 100 mg/kg or less, the statement, "This pesticide is toxic to wildlife" is required.

(2) If a pesticide intended for outdoor use contains an active ingredient with a fish acute LC_{50} of 1 ppm or less, the statement, "This pesticide is toxic to fish" is required.

(3) If a pesticide intended for outdoor use contains an active ingredient with an avian acute oral LD_{50} of 100 mg/kg or less, or a subacute dietary LC_{50} of 500 ppm or less, the statement, "This pesticide is toxic to wildlife" is required.

(4) If either accident history or field studies demonstrate that the use of the pesticide may result in fatality to birds, fish or mammals, the statement, "This pesticide is extremely toxic to wildlife (fish)" is required.

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

(6) If a product is intended for outdoor use other than aquatic applications, the label must bear

the caution, "Keep out of lakes, ponds or streams. Do not contaminate water by cleaning of equipment or disposal of wastes."

Subparts F - G [Reserved]

Subpart H — Container Labeling

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

Section 156.140 Identification of container types.

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

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

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

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

statement in paragraph (a)(2)(i), (a)(2)(ii), or (a)(2)(iii) of this section.

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

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

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

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

(i) "Offer for recycling if available."

(ii) "Once cleaned, some agricultural plastic pesticide containers can be taken to a container collection site or picked up for recycling. To find the nearest site, contact your chemical dealer or manufacturer or contact [a pesticide container recycling organization] at [phone number] or [web site]." For example, this statement could be "Once cleaned, some agricultural plastic pesticide containers can be taken to a container collection site or picked up for recycling. To find the nearest site, contact your chemical dealer or manufacturer or contact the Ag Container Recycling Council (ACRC) at 1-877-952-2272 (toll-free) or *www.acrecycle.org*."

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

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

(v) "Offer for reconditioning if appropriate."

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

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

(i) Aerosol cans.

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

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

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

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

(vi) One-time use bait stations.

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

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

(ix) One-time use semiochemical dispersion devices.

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

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

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

container." must be placed under the heading "Storage and Disposal."

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

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

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

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

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

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

Section 156.144 Residue removal instructions—general.

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

(b) *Placement of residue removal statements.* All residue removal instructions must be placed under the heading "Storage and Disposal."

(c) *Exemption for residential/household use products.* Residential/household use pesticide products

are exempt from the residue removal instruction requirements in this section through § 156.156.

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

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

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

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

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

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

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

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

(1) "Clean container promptly after emptying."

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

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

(b) *Triple rinse instructions.* The label of each dilutable pesticide product packaged in rigid nonrefillable containers must include one of the following sets of instructions.

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

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

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

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

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

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

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

(2) The registrant must indicate why a non-water diluent is necessary for efficient residue removal, and must propose residue removal instructions and disposal instructions that are appropriate for the characteristics and formulation of the pesticide product and non-water diluent. The

proposed residue removal instructions must identify the diluent. If the Directions for Use permit the application of a mixture of the pesticide and the non-water diluent, the instructions may allow the rinsate to be added to the application equipment or mix tank. If the Directions for Use do not identify the nonwatery diluent as an allowable addition to the pesticide, the instructions must require collection and storage of the rinsate in a rinsate collection system.

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

Section 156.156 Residue removal instructions for refillable containers.

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

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

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

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

(b) *Residue removal instructions prior to container disposal.* (1) Instructions for cleaning each refillable container prior to disposal are required. The residue removal instructions must be appropriate for the characteristics and formulation of the pesticide product

and must be adequate to protect human health and the environment.

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

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

(ii) Standard industry practices for cleaning refillable containers.

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

(iv) Any other statement the registrant considers appropriate.

Section 156.159 Compliance date.

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

[75 FR 62326, Oct. 8, 2010]

Subparts I - J [Reserved]

Subpart K — Worker Protection Statements

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

Section 156.200 Scope and applicability.

(a) *Scope.* (1) This subpart prescribes statements that must be placed on the pesticide label and in pesticide labeling. These statements incorporate by reference the Worker Protection Standard, part 170 of this chapter. The requirements addressed in these statements are designed to reduce the risk of illness or injury resulting from workers' and pesticide handlers' occupational exposures to pesticides used in the production of agricultural plants on agricultural establishments as defined in § 170.3 of this chapter. These statements refer to specific workplace practices designed to reduce or eliminate exposure and to respond to emergencies that may arise from the exposures that may occur.

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

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

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

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

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

Section 156.203 Definitions.

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

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

Restricted-entry interval or REI means the time after the end of a pesticide application during which entry to the treated area is restricted.

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

Section 156.204 Modification and waiver of requirements.

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

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

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

Section 156.206 General statements.

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

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

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

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

REQUIREMENTS in the DIRECTIONS FOR USE section of the labeling for information about this standard."

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

(c) *Product-type identification.* (1) If the product contains an organophosphate (*i.e.*, an organophosphorus ester that inhibits cholinesterase) or an *N*-methyl carbamate (*i.e.*, an *N*-methyl carbamic acid ester that inhibits cholinesterase), the label shall so state. The statement shall be associated with the product name or product-type identification or shall be in the STATEMENT OF PRACTICAL TREATMENT or FIRST AID section of the label.

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

(i) As part of the product name; or

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

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

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

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

Section 156.208 Restricted-entry statements.

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

(b) *Location of specific restricted-entry interval statements.* (1) If a product has one specific restricted-entry interval applicable to all registered uses of the product on agricultural plants, the restricted-entry interval for the product shall appear as a continuation of the statement required in paragraph (a) of this section and shall appear as follows: "of X hours" or "of X days" or "until the acceptable exposure level of X ppm or mg/m^3 is reached."

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

(c) *Restricted-entry interval based on toxicity of active ingredient*—(1) *Determination of toxicity category.* A restricted-entry interval shall be established based on the acute toxicity of the active ingredients in the product. For the purpose of setting the restricted-entry interval, the toxicity category of each active ingredient in the product shall be determined by comparing the obtainable data on the acute dermal toxicity, eye irritation effects, and skin irritation effects of the ingredient to the criteria of § 156.62. The most toxic of the applicable toxicity categories that are obtainable for each active ingredient shall be used to determine the restricted-entry interval for that product. If no acute

dermal toxicity data are obtainable, data on acute oral toxicity also shall be considered in this comparison. If no applicable acute toxicity data are obtainable on the active ingredient, the toxicity category corresponding to the signal word of any registered manufacturing use product that is the source of the active ingredient in the end-use product shall be used. If no acute toxicity data are obtainable on the active ingredients and no toxicity category of a registered manufacturing-use product is obtainable, the toxicity category of the end-use product (corresponding to the signal word on its labeling) shall be used.

(2) *Restricted-entry interval for sole active ingredient products.* (i) If the product contains only one active ingredient and it is in toxicity category I by the criteria in paragraph (c)(1) of this section, the restricted-entry interval shall be 48 hours. If, in addition, the active ingredient is an organophosphorus ester that inhibits cholinesterase and that may be applied outdoors in an area where the average annual rainfall for the application site is less than 25 inches per year, the following statement shall be added to the restricted-entry interval statement: "(72 hours in outdoor areas where average annual rainfall is less than 25 inches a year)."

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

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

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

restricted-entry interval as determined by the criteria in this section.

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

(e) *Existing product-specific restricted-entry intervals.* (1) A product-specific restricted-entry interval, based on data collected in accordance with § 158.1070 or § 161.390 of this chapter and Subdivision K of the Pesticide Assessment Guidelines, shall supersede any restricted-entry interval applicable to the product under paragraph (c) of this section.

(2) Product-specific restricted-entry intervals established for pesticide products or pesticide uses that are not covered by part 170 of this chapter shall remain in effect and shall not be placed under the heading AGRICULTURAL USE REQUIREMENTS in the labeling.

(f) *Existing interim restricted-entry intervals.* (1) An interim restricted-entry interval established by the Agency before the effective date of this subpart will continue to apply unless a longer restricted-entry interval is required by paragraph (c) of this section.

(2) Existing interim restricted-entry intervals established by the Agency for pesticide products or pesticide uses not covered by part 170 of this chapter shall remain in effect and shall not be placed under the heading AGRICULTURAL USE REQUIREMENTS in the labeling.

[57 FR 38146, Aug. 21, 1992, as amended at 58 FR 34203, June 23, 1993; 72 FR 61028, Oct. 26, 2007; 73 FR 75596, Dec. 12, 2008]

Section 156.210 Notification-to-workers statements.

(a) *Requirement.* Each product that meets the requirements of paragraph (b) of this section shall bear the posting and oral notification statements prescribed below. The statements shall be in the DIRECTIONS FOR USE section of the labeling under the heading AGRICULTURAL USE REQUIREMENTS.

(b) *Notification to workers of pesticide application.* (1) Each product that contains any active ingredient classified as toxicity category I for either acute dermal toxicity or skin irritation potential under the criteria in § 156.62 shall bear the statement: "Notify workers of the application by warning them orally and by posting warning signs at entrances to treated areas." If no acute dermal toxicity data are obtainable, data on acute oral toxicity of the active ingredient shall be considered instead. If no data on acute dermal toxicity, skin irritation potential, or acute oral toxicity are obtainable on the active ingredient, the toxicity category corresponding to the signal word of any registered manufacturing-use product that is the source of the active ingredient in the end-use product shall be used. If none of the applicable acute toxicity data are obtainable on the active ingredient and no toxicity category of the registered manufacturing-use product is obtainable, the toxicity category of the end-use product corresponding to the product's signal word shall be used.

(2) Each product that is a fumigant and is registered for use in a greenhouse (or whose labeling allows use in a greenhouse) shall bear the statement: "For greenhouse applications, notify workers of the application by warning them orally and by posting warning signs outside all entrances to the greenhouse."

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

Section 156.212 Personal protective equipment statements.

(a) *Requirement.* Each product shall bear the personal protective equipment statements prescribed in paragraphs (d) through (j) of this section.

(b) *Exceptions.* (1) If personal protective equipment were required for a product before the effective date of this subpart, the existing requirements shall be retained on the labeling wherever they are more specific or more protective (as specified in EPA guidance materials) than the requirements in the table in paragraph (e) of this section.

(2) Any existing labeling statement that prohibits the use of gloves or boots overrides the corresponding requirement in paragraph (e) of this section and must be retained on the labeling.

(3) If the product labeling contains uses that are not covered by part 170 of this chapter, the registrant may adopt the personal protective equipment required in this section for those uses. However, if the personal protective equipment required in this section would not be sufficiently protective or would be onerously overprotective for uses not covered by part 170 of this chapter, the registrant must continue to apply the existing personal protective equipment requirements to those uses. The labeling must indicate which personal protective equipment requirements apply to uses covered by part 170 of this chapter and which personal protective equipment requirements apply to other uses.

(c) *Location of personal protective equipment statements*—(1) *Personal protective equipment statements for pesticide handlers.* Personal protective equipment statements for pesticide handlers shall be in the HAZARDS TO HUMANS (AND DOMESTIC ANIMALS) section of the labeling. The required statements may be combined to avoid redundancy as long as the requirements and conditions under which they apply are identified.

(2) Personal protective equipment statements for early-entry workers. Personal protective equipment statements for early-entry workers shall be placed in the DIRECTIONS FOR USE section of the labeling under the heading AGRICULTURAL USE

REQUIREMENTS and immediately after the restricted-entry statement required in § 156.208(a).

(d) *Personal protective equipment statements for pesticide handlers.* (1) The table in paragraph (e) of this section specifies minimum requirements for personal protective equipment (as defined in § 170.240 of this chapter) and work clothing for pesticide handlers. This personal protective equipment requirement applies to any product that presents a hazard through any route of exposure identified in the table (acute dermal toxicity, skin irritation potential, acute inhalation toxicity, and eye irritation potential).

(2) The requirement for personal protective equipment is based on the acute toxicity category of the end-use product for each route of exposure as defined by § 156.62. If data to determine the acute dermal toxicity or the acute inhalation toxicity are not obtainable, the acute oral toxicity shall be used as a surrogate to determine the personal protective equipment requirements for that route of exposure. If data to determine the acute toxicity of the product by a specific route of exposure (including acute oral toxicity in lieu of acute dermal or acute inhalation toxicity) are not obtainable, the toxicity category corresponding to the signal word of the end-use product shall be used to determine personal protective equipment requirements for that route of exposure. If the signal word is "CAUTION," toxicity category III will be used.

(3) The minimum personal protective equipment and work clothing requirements specified in this section shall be included in a statement such as the following: "Applicators and other handlers must wear: (body protection statement); (glove statement, if applicable); (footwear statement, if applicable); (protective eyewear statement, if applicable); (respirator statement, if applicable)." The format of statements given in this paragraph is optional, but it is recommended for clarity.

(e) *Summary of personal protective equipment requirements.* The following table 1 summarizes the

personal protective equipment requirements by route of exposure and toxicity category:

TABLE 1—MINIMUM PERSONAL PROTECTIVE EQUIPMENT (PPE) AND WORK CLOTHING FOR HANDLING ACTIVITIES

Route of Exposure	Toxicity Category of End-Use Product			
	I	II	III	IV
Dermal Toxicity or Skin Irritation Potential[1]	Coveralls worn over long-sleeved shirt and long pants	Coveralls worn over short-sleeved shirt and short pants	Long-sleeved shirt and long pants	Long-sleeved shirt and long pants
	Socks	Socks	Socks	Socks
	Chemical-resistant footwear	Chemical-resistant footwear	Shoes	Shoes
	Chemical-resistant gloves[2]	Chemical-resistant gloves[2]	Chemical-resistant gloves[2]	No minimum[4]
Inhalation Toxicity	Respiratory protection device[3]	Respiratory protection device[3]	No minimum[4]	No minimum[4]
Eye Irritation Potential	Protective eyewear	Protective eyewear	No minimum[4]	No minimum[4]

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

[2] For labeling language for chemical-resistant gloves, see paragraph (f) of this section.

[3] For labeling language for respiratory protection device, see paragraphs (g) and (h) of this section.

[4] Although no minimum PPE is required by this section for this toxicity category and route of exposure, the Agency may require PPE on a product-specific basis.

(f) *Chemical-resistant gloves labeling statements for pesticide handlers.* If the table in paragraph (e) of this section indicates that chemical-resistant gloves are required, the glove statement shall be as specified in paragraph (f)(2), (3), (4), or (5) of this section.

(1) *Exception.* The registrant shall specify a glove type other than that selected through the criteria in paragraphs (f)(2) through (5) of this section if information available to the registrant indicates that such a glove type is more appropriate

or more protective than the glove type specified in this section. The statement must specify the particular types of chemical-resistant glove (such as nitrile, butyl, neoprene, and/or barrier-laminate).

(2) *Solid formulations.* For products formulated and applied as solids or formulated as solids and diluted solely with water for application, the glove statement shall specify: "waterproof gloves."

(3) *Aqueous-based formulations.* For products formulated and applied as a water-based liquid or formulated as a water-based liquid and diluted solely with water for application, the glove statement may specify: "waterproof gloves" instead of the statement in paragraph (f)(4) of this section.

(4) *Other liquid formulations.* For products formulated or diluted with liquids other than water, the glove statement shall specify: "chemical-resistant (such as nitrile or butyl) gloves."

(5) *Gaseous formulations and applications.* For products formulated or applied as gases, any existing glove statement established before the effective date of this subpart, including any glove prohibition statement, will continue to apply. If no glove statement or glove prohibition now exists, the glove statement shall specify "chemical-resistant (such as nitrile or butyl) gloves."

(g) *Existing respirator requirement for pesticide handlers on product labeling*—(1) *General requirement.* If a statement placed on a product's labeling before the effective date of this subpart indicates that respiratory protection is required, that requirement for protection shall be retained. The statement must specify, or be amended to specify, one of the following respirator types and the appropriate MSHA/NIOSH approval number prefix:

(i) Dust/mist filtering respirator with MSHA/NIOSH/ approval number prefix TC-21C; or

(ii) Respirator with an organic-vapor-removing cartridge and a prefilter approved for pesticides with MSHA/NIOSH approval number prefix TC-23C or with a canister approved for

pesticides with MSHA/NIOSH approval number prefix TC-14G; or

(iii) Supplied-air respirator with MSHA/NIOSH approval number prefix TC-19C or self-contained breathing apparatus (SCBA) with MSHA/NIOSH approval number TC-13F.

(2) *Respirator type already specified on labeling.* If the existing respiratory protection requirement specifies a respirator type, it shall be retained. The respirator statement must be revised, if necessary, to conform to the wording in paragraph (g)(1) of this section.

(3) *Respirator type not already specified on labeling.* If the existing respiratory protection requirement on product labeling does not specify a respirator type as listed in paragraph (g)(1) of this section, the specific respirator type shall be that required in the criteria in paragraphs (g)(3)(ii) through (vi) of this section.

(i) *Exception.* The registrant shall specify a different type of respiratory protection device if information, such as vapor pressure value, is available to the registrant to indicate that the type of respiratory protection device selected through the criteria in paragraphs (g)(3)(ii) through (vi) of this section would not be adequately protective, or might increase risks to the user unnecessarily.

(ii) *Gases applied outdoors.* For products that are formulated or applied as a gas (space and soil fumigants) and that may be used outdoors, the respiratory protection statement shall be: "For handling activities outdoors, use either a respirator with an organic-vapor-removing cartridge with a prefilter approved for pesticides (MSHA/NIOSH approval number prefix TC-23C), or a canister approved for pesticides (MSHA/NIOSH approval number prefix TC-14G)."

(iii) *Gases used in enclosed areas.* For products that are formulated or applied as a gas (space and soil fumigants) and that may be used in greenhouses or other enclosed areas,

the respiratory protection statement shall specify: "For handling activities in enclosed areas, use either a supplied-air respirator with MSHA/NIOSH approval number prefix TC-19C, or a self-contained breathing apparatus (SCBA) with MSHA/NIOSH approval number TC-13F."

(iv) *Solids.* For products that are formulated and applied as solids, the respiratory protection statement shall specify: "dust/mist filtering respirator (MSHA/NIOSH approval number prefix TC-21C)."

(v) *Liquids in toxicity category I.* For products that are formulated or applied as liquids, and, as formulated, have an acute inhalation toxicity (or its surrogate as specified in paragraph (d)(2) of this section) in category I, the respiratory protection statement shall specify: "either a respirator with an organic-vapor-removing cartridge with a prefilter approved for pesticides (MSHA/NIOSH approval number prefix TC-23C), or a canister approved for pesticides (MSHA/NIOSH approval number prefix 14G)."

(vi) *Liquids in toxicity category II.* For products that are formulated or applied as liquids, and, as formulated, have an acute inhalation toxicity (or its surrogate as specified in paragraph (d)(2) of this section) in category II, the respiratory protection statement shall specify: "For handling activities during (select uses applicable to the product: airblast, mistblower, pressure greater than 40 p.s.i. with fine droplets, smoke, mist, fog, aerosol or direct overhead) exposures, wear either a respirator with an organic-vapor-removing cartridge with a prefilter approved for pesticides (MSHA/NIOSH approval number prefix TC-23C), or a canister approved for pesticides (MSHA/NIOSH approval number prefix 14G). For all other exposures, wear a dust/mist filtering respirator (MSHA/NIOSH approval number prefix TC-21C)."

(h) *New respirator requirement established for pesticide handlers in this part*—(1) *General requirement.* If the table in paragraph (e) of this section indicates a respiratory protection device is required, and existing product labeling has no respiratory protection requirement, the registrant shall add a respiratory protection statement that specifies a: "dust/mist filtering respirator (MSHA/NIOSH approval number prefix TC-21C)."

(2) *Exception.* The registrant shall specify a different type of respiratory protection device if information, such as vapor pressure value, is available to the registrant to indicate that the type of respiratory protection device required in paragraph (h)(1) of this section would not be adequately protective or might increase risks to the user unnecessarily.

(i) *Additional personal protective equipment requirements for pesticide handlers.* In addition to the minimum personal protective equipment and work clothing requirements given in the table in paragraph (e) of this section, the labeling statement for any product in toxicity category I or II on the basis of dermal toxicity or skin irritation potential (or their surrogate as specified in paragraph (d)(2) of this section), shall include the following personal protective equipment instructions, additions, or substitutions as applicable:

(1) If the product is not ready-to-use and there is no existing requirement for a chemical-resistant suit, the following statement shall be included: "Mixers/Loaders: add a chemical-resistant apron."

(2) If the application of the product may result in overhead exposure to any handler (for example, applicator exposure during airblast spraying of orchards or flagger exposure during aerial application), the following statement shall be included: "Overhead Exposure: wear chemical-resistant headgear."

(3) If any type of equipment other than the product container may be used to mix, load, or apply the product, and there is no requirement for a chemical-resistant protective suit, the following

statement shall be included: "For Cleaning Equipment: add a chemical-resistant apron."

(j) *Personal protective equipment for early-entry workers.* This paragraph specifies minimum requirements for personal protective equipment (as defined in § 170.240 of this chapter) and work clothing for early-entry workers.

(1) For all pesticide products, add the statement: "For early entry to treated areas that is permitted under the Worker Protection Standard and that involves contact with anything that has been treated, such as plants, soil, or water, wear: (list the body protection, glove, footwear, protective eyewear, and protective headgear, if applicable, statements specified for applicators and other handlers, but omit any respiratory protection statement)."

(2) If the body protection statement in the personal protective equipment requirement for handlers specifies a long-sleeved shirt and long pants, "coveralls" must be specified in the statement of personal protective equipment for early-entry workers.

(3) If there is no statement requiring gloves and no prohibition against gloves for applicators and other handlers under the heading HAZARDS TO HUMANS (AND DOMESTIC ANIMALS) in the labeling, add a requirement for "waterproof gloves" in the statement of personal protective equipment for early-entry workers.

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

APPENDIX C

Specific sections of Parts 170 and 171 of Title 40, Code of Federal Regulations (Revised as of July 1, 2022)

Incorporation by reference into Sections 4-66-2, 4-66-57, 4-66-61, 4-66-62 of the Hawaii Administrative Rules

Adopted: _____, 2023

40 CFR Section 170.507:

40 CFR Section 170.507 Personal protective equipment.

(a) *Handler responsibilities.* Any person who performs handler activities involving a pesticide product must use the clothing and personal protective equipment specified on the pesticide product labeling for use of the product, except as provided in § 170.607 of this part.

(b) *Employer responsibilities for providing personal protective equipment.* The handler employer must provide to the handler the personal protective equipment required by the pesticide product labeling in accordance with this section. The handler employer must ensure that the personal protective equipment is clean and in proper operating condition. For the purposes of this section, long-sleeved shirts, short-sleeved shirts, long pants, short pants, shoes, and socks are not considered personal protective equipment, although such work clothing must be worn if required by the pesticide product labeling.

(1) If the pesticide product labeling requires that "chemical-resistant" personal protective equipment be worn, it must be made of material that allows no measurable movement of the pesticide being used through the material during use.

(2) If the pesticide product labeling requires that "waterproof" personal protective equipment be worn, it must be made of material that allows no

measurable movement of water or aqueous solutions through the material during use.

(3) If the pesticide product labeling requires that a "chemical-resistant suit" be worn, it must be a loose-fitting, one- or two-piece chemical-resistant garment that covers, at a minimum, the entire body except head, hands, and feet.

(4) If the pesticide product labeling requires that "coveralls" be worn, they must be loose-fitting, one- or two-piece garments that cover, at a minimum, the entire body except head, hands, and feet.

(5) Gloves must be the type specified on the pesticide product labeling.

(i) Gloves made of leather, cotton, or other absorbent materials may not be worn while performing handler activities unless gloves made of these materials are listed as acceptable for such use on the pesticide product labeling.

(ii) Separable glove liners may be worn beneath chemical-resistant gloves, unless the pesticide product labeling specifically prohibits their use. Separable glove liners are defined as separate glove-like hand coverings, made of lightweight material, with or without fingers. Work gloves made from lightweight cotton or poly-type material are considered to be glove liners if worn beneath chemical-resistant gloves. Separable glove liners may not extend outside the chemical-resistant gloves under which they are worn. Chemical-resistant gloves with non-separable absorbent lining materials are prohibited.

(iii) If used, separable glove liners must be discarded immediately after a total of no more than 10 hours of use or within 24 hours of when first put on, whichever comes first. The liners must be replaced immediately if directly contacted by pesticide. Used glove liners must not be reused. Contaminated liners must be disposed of in accordance with any Federal, State, or local regulations.

(6) If the pesticide product labeling requires that "chemical-resistant footwear" be worn, one of the following types of footwear must be worn:

(i) Chemical-resistant shoes.

(ii) Chemical-resistant boots.

(iii) Chemical-resistant shoe coverings worn over shoes or boots.

(7) If the pesticide product labeling requires that "protective eyewear" be worn, one of the following types of eyewear must be worn:

(i) Goggles.

(ii) Face shield.

(iii) Safety glasses with front, brow, and temple protection.

(iv) Full-face respirator.

(8) If the pesticide product labeling requires that a "chemical-resistant apron" be worn, a chemical-resistant apron that covers the front of the body from mid-chest to the knees must be worn.

(9) If the pesticide product labeling requires that "chemical-resistant headgear" be worn, it must be either a chemical-resistant hood or a chemical-resistant hat with a wide brim.

(10) The respirator specified by the pesticide product labeling must be used. Whenever a respirator is required by the pesticide product labeling, the handler employer must ensure that the requirements of paragraphs (b)(10)(i) through (iii) of this section are met before the handler performs any handler activity where the respirator is required to be worn. The handler employer must maintain for two years, on the establishment, records documenting the completion of the requirements of paragraphs (b)(10)(i) through (iii) of this section.

(i) Handler employers must provide handlers with fit testing using the respirator specified on the pesticide product labeling in a manner that conforms to the provisions of 29 CFR 1910.134.

(ii) Handler employers must provide handlers with training in the use of the respirator specified on the pesticide product labeling in a manner that conforms to the provisions of 29 CFR 1910.134(k)(1)(i) through (vi).

(iii) Handler employers must provide handlers with a medical evaluation by a physician or other licensed health care professional that conforms to the provisions of 29 CFR 1910.134 to ensure the handler's physical ability to safely wear the respirator specified on the pesticide product labeling.

(c) *Use of personal protective equipment.* (1) The handler employer must ensure that personal protective equipment is used correctly for its intended purpose and is used according to the manufacturer's instructions.

(2) The handler employer must ensure that, before each day of use, all personal protective equipment is inspected for leaks, holes, tears, or worn places, and any damaged equipment is repaired or discarded.

(d) *Cleaning and maintenance.* (1) The handler employer must ensure that all personal protective equipment is cleaned according to the manufacturer's instructions or pesticide product labeling instructions before each day of reuse. In the absence of any such instructions, it must be washed thoroughly in detergent and hot water.

(2) If any personal protective equipment cannot or will not be cleaned properly, the handler employer must ensure the contaminated personal protective equipment is made unusable as apparel or is made unavailable for further use by employees or third parties. The contaminated personal protective equipment must be disposed of in accordance with any applicable laws or regulations. Coveralls or other absorbent materials that have been drenched or heavily contaminated with a pesticide that has the signal word "DANGER" or "WARNING" on the label must not be reused and must be disposed of as specified in this paragraph. Handler employers must ensure that any person who handles contaminated personal protective equipment described in this paragraph wears the gloves specified on the pesticide product labeling for mixing and loading the product(s) comprising the contaminant(s) on the equipment. If two or more pesticides are included in the

contaminants, the gloves worn must meet the requirements for mixing and loading all of the pesticide products.

(3) The handler employer must ensure that contaminated personal protective equipment is kept separate from non-contaminated personal protective equipment, other clothing or laundry and washed separately from any other clothing or laundry.

(4) The handler employer must ensure that all washed personal protective equipment is dried thoroughly before being stored or reused.

(5) The handler employer must ensure that all clean personal protective equipment is stored separately from personal clothing and apart from pesticide-contaminated areas.

(6) The handler employer must ensure that when filtering facepiece respirators are used, they are replaced when one of the following conditions is met:

(i) When breathing resistance becomes excessive.

(ii) When the filter element has physical damage or tears.

(iii) According to manufacturer's recommendations or pesticide product labeling, whichever is more frequent.

(iv) In the absence of any other instructions or indications of service life, at the end of eight hours of cumulative use.

(7) The handler employer must ensure that when gas- or vapor-removing respirators are used, the gas- or vapor-removing canisters or cartridges are replaced before further respirator use when one of the following conditions is met:

(i) At the first indication of odor, taste, or irritation.

(ii) When the maximum use time is reached as determined by a change schedule conforming to the provisions of 29 CFR 1910.134(d)(3)(iii)(B)(2).

(iii) When breathing resistance becomes excessive.

(iv) When required according to manufacturer's recommendations or pesticide

product labeling instructions, whichever is more frequent.

(v) In the absence of any other instructions or indications of service life, at the end of eight hours of cumulative use.

(8) The handler employer must inform any person who cleans or launders personal protective equipment of all the following:

(i) That such equipment may be contaminated with pesticides and there are potentially harmful effects from exposure to pesticides.

(ii) The correct way(s) to clean personal protective equipment and how to protect themselves when handling such equipment.

(iii) Proper decontamination procedures that should be followed after handling contaminated personal protective equipment.

(9) The handler employer must ensure that handlers have a place(s) away from pesticide storage and pesticide use areas where they may do all of the following:

(i) Store personal clothing not worn during handling activities.

(ii) Put on personal protective equipment at the start of any exposure period.

(iii) Remove personal protective equipment at the end of any exposure period.

(10) The handler employer must not allow or direct any handler to wear home or to take home employer-provided personal protective equipment contaminated with pesticides.

(e) *Heat-related illness.* Where a pesticide's labeling requires the use of personal protective equipment for a handler activity, the handler employer must take appropriate measures to prevent heat-related illness.

[80 FR 67567, Nov. 2, 2015]

40 CFR section 171.103(d)(13), (14), and (15):

40 CFR section 171.103 Standards for certification of

commercial applicators.

* * *

(d) *Specific standards of competency for each category of commercial applicators.* In addition to satisfying the requirements of paragraph (c) of this section, to be certified as commercial applicators, persons must demonstrate through written examinations practical knowledge of the principles and practices of pest control and proper and effective use of restricted use pesticides for each category for which they intend to apply restricted use pesticides, except as provided at §§ 171.303(a)(4) and 171.305(a)(5). The minimum competency standards for each category are listed in paragraphs (d)(1) through (15) of this section. Examinations for each category of certification listed in § 171.101 must be based on the standards of competency specified in paragraphs (d)(1) through (15) of this section and examples of problems and situations appropriate to the particular category in which the applicator is seeking certification.

* * *

(13) *Soil fumigation.* Applicators must demonstrate practical knowledge of the pest problems and pest control practices associated with performing soil fumigation applications, including all the following:

(i) *Label and labeling comprehension.* Familiarity with the pesticide labels and labeling for products used to perform soil fumigation, including all of the following:

(A) Labeling requirements specific to soil fumigants.

(B) Requirements for certified applicators of fumigants, fumigant handlers and permitted fumigant handler activities, and the safety information that certified applicators must provide to noncertified applicators using fumigants under their direct supervision.

(C) Entry-restricted periods for tarped and untarped field application scenarios.

(D) Recordkeeping requirements.

(E) Labeling provisions unique to fumigant products containing certain active ingredients.

(ii) *Safety.* Measures to minimize adverse health effects, including all of the following:

(A) Understanding how certified applicators, noncertified applicators using fumigants under direct supervision of certified applicators, field workers, and bystanders can become exposed to fumigants.

(B) Common problems and mistakes that can result in direct exposure to fumigants.

(C) Signs and symptoms of human exposure to fumigants.

(D) Air concentrations of a fumigant that require that applicators wear respirators or exit the work area entirely.

(E) Steps to take if a fumigant applicator experiences sensory irritation.

(F) Understanding air monitoring, when it is required, and where and when to take samples.

(G) Buffer zones, including procedures for buffer zone monitoring and who is permitted to be in a buffer zone.

(H) First aid measures to take in the event of exposure to a soil fumigant.

(I) Labeling requirements for transportation, storage, spill clean up, and emergency response for soil fumigants, including safe disposal of containers and contaminated soil, and management of empty containers.

(iii) *Soil fumigant chemical characteristics.* Characteristics of soil fumigants, including all of the following:

(A) Chemical characteristics of soil fumigants.

(B) Specific human exposure concerns for soil fumigants.

(C) How soil fumigants change from a liquid or solid to a gas.

(D) How soil fumigants disperse in the application zone.

(E) Compatibility concerns for tanks, hoses, tubing, and other equipment.

(iv) *Application.* Selecting appropriate application methods and timing, including all of the following:

(A) Application methods, including but not limited to water-run and non-water-run applications, and equipment commonly used for each soil fumigant.

(B) Site characteristics that influence fumigant exposure.

(C) Understanding temperature inversions and their impact on soil fumigant application.

(D) Weather conditions that could impact timing of soil fumigant application, such as air stability, air temperature, humidity, and wind currents, and labeling statements limiting applications during specific weather conditions.

(E) Conducting pre-application inspection of application equipment.

(F) Understanding the purpose and methods of soil sealing, including the factors that determine which soil sealing method to use.

(G) Understanding the use of tarps, including the range of tarps available, how to seal tarps, and labeling requirements for tarp removal, perforation, and repair.

(H) Calculating the amount of product required for a specific treatment area.

(I) Understanding the basic techniques for calibrating soil fumigant application equipment.

(v) *Soil and pest factors.* Soil and pest factors that influence fumigant activity, including all of the following:

(A) Influence of soil factors on fumigant volatility and movement within the soil profile.

(B) Factors that influence gaseous movement through the soil profile and into the air.

(C) Soil characteristics, including how soil characteristics affect the success of a soil fumigant application, assessing soil moisture, and correcting for soil characteristics that could hinder a successful soil fumigant application.

(D) Identifying pests causing the damage and verifying they can be controlled with soil fumigation.

(E) Understanding the relationship between pest density and application rate.

(F) The importance of proper application depth and timing.

(vi) *Personal protective equipment.* Understanding what personal protective equipment is necessary and how to use it properly, including all of the following:

(A) Following labeling directions for required personal protective equipment.

(B) Selecting, inspecting, using, caring for, replacing, and disposing of personal protective equipment.

(C) Understanding the types of respirators required when using specific soil fumigants and how to use them properly, including medical evaluation,

fit testing, and required replacement of cartridges and canisters.

(D) Labeling requirements and other laws applicable to medical evaluation for respirator use, fit tests, training, and recordkeeping.

(vii) *Fumigant management plans and post-application summaries.* Information about fumigant management plans, including all of the following:

(A) When a fumigant management plan must be in effect, how long it must be kept on file, where it must be kept during the application, and who must have access to it.

(B) The elements of a fumigant management plan and resources available to assist the applicator in preparing a fumigant management plan.

(C) The person responsible for verifying that a fumigant management plan is accurate.

(D) The elements, purpose and content of a post-application summary, who must prepare it, and when it must be completed.

(viii) *Buffer zones and posting requirements.* Understanding buffer zones and posting requirements, including all of the following:

(A) Buffer zones and the buffer zone period.

(B) Identifying who is allowed in a buffer zone during the buffer zone period and who is prohibited from being in a buffer zone during the buffer zone period.

(C) Using the buffer zone table from the labeling to determine the size of the buffer zone.

(D) Factors that determine the buffer zone credits for application scenarios and calculating buffer zones using credits.

(E) Distinguishing buffer zone posting and treated area posting, including the pre-application and post-application posting timeframes for each.

(F) Proper choice and placement of warning signs.

(14) *Non-soil fumigation.* Applicators must demonstrate practical knowledge of the pest problems and pest control practices associated with performing fumigation applications of restricted use pesticides to sites other than soil, including all the following:

(i) *Label & labeling comprehension.* Familiarity with the pesticide labels and labeling for products used to perform non-soil fumigation, including labeling requirements specific to non-soil fumigants.

(ii) *Safety.* Measures to minimize adverse health effects, including all of the following:

(A) Understanding how certified applicators, noncertified applicators using fumigants under direct supervision of certified applicators, and bystanders can become exposed to fumigants.

(B) Common problems and mistakes that can result in direct exposure to fumigants.

(C) Signs and symptoms of human exposure to fumigants.

(D) Air concentrations of a fumigant that require applicators to wear respirators or to exit the work area entirely.

(E) Steps to take if a fumigant applicator experiences sensory irritation.

(F) Understanding air monitoring, when it is required, and where and when to take samples.

(G) Buffer zones, including procedures for buffer zone monitoring and who is permitted to be in a buffer zone.

(H) First aid measures to take in the event of exposure to a fumigant.

(I) Labeling requirements for transportation, storage, spill clean up, and emergency response for non-soil fumigants, including safe disposal of containers and contaminated materials, and management of empty containers.

(iii) *Non-soil fumigant chemical characteristics.* Characteristics of non-soil fumigants, including all of the following:

(A) Chemical characteristics of non-soil fumigants.

(B) Specific human exposure concerns for non-soil fumigants.

(C) How fumigants change from a liquid or solid to a gas.

(D) How fumigants disperse in the application zone.

(E) Compatibility concerns for tanks, hoses, tubing, and other equipment.

(iv) *Application.* Selecting appropriate application methods and timing, including all of the following:

(A) Application methods and equipment commonly used for non-soil fumigation.

(B) Site characteristics that influence fumigant exposure.

(C) Conditions that could impact timing of non-soil fumigant application, such as air stability, air temperature, humidity, and wind currents, and labeling statements limiting applications under specific conditions.

(D) Conducting pre-application inspection of application equipment and the site to be fumigated.

(E) Understanding the purpose and methods of sealing the area to be fumigated, including the factors that determine which sealing method to use.

(F) Calculating the amount of product required for a specific treatment area.

(G) Understanding the basic techniques for calibrating non-soil fumigant application equipment.

(H) Understanding when and how to conduct air monitoring and when it is required.

(v) *Pest factors.* Pest factors that influence fumigant activity, including all of the following:

(A) Influence of pest factors on fumigant volatility.

(B) Factors that influence gaseous movement through the area being fumigated and into the air.

(C) Identifying pests causing the damage and verifying they can be controlled with fumigation.

(D) Understanding the relationship between pest density and application rate.

(E) The importance of proper application rate and timing.

(vi) *Personal protective equipment.* Understanding what personal protective equipment is necessary and how to use it properly, including all of the following:

(A) Following labeling directions for required personal protective equipment.

(B) Selecting, inspecting, using, caring for, replacing, and disposing of personal protective equipment.

(C) Understanding the types of respirators required when using specific non-soil fumigants and how to use them properly, including medical evaluation, fit testing, and required replacement of cartridges and canisters.

(D) Labeling requirements and other laws applicable to medical evaluation for

respirator use, fit tests, training, and recordkeeping.

(vii) *Fumigant management plans and post-application summaries.* Information about fumigant management plans and when they are required, including all of the following:

(A) When a fumigant management plan must be in effect, how long it must be kept on file, where it must be kept during the application, and who must have access to it.

(B) The elements of a fumigant management plan and resources available to assist the applicator in preparing a fumigant management plan.

(C) The person responsible for verifying that a fumigant management plan is accurate.

(D) The elements, purpose and content of a post-application summary, who must prepare it, and when it must be completed.

(viii) *Posting requirements.* Understanding posting requirements, including all of the following:

(A) Understanding who is allowed in an area being fumigated or after fumigation and who is prohibited from being in such areas.

(B) Distinguishing fumigant labeling-required posting and treated area posting, including the pre-application and post-application posting timeframes for each.

(C) Proper choice and placement of warning signs.

(15) *Aerial pest control.* Applicators must demonstrate practical knowledge of the pest problems and pest control practices associated with performing aerial application of restricted use pesticides, including all the following:

(i) *Labeling.* Labeling requirements and restrictions specific to aerial application of pesticides including:

(A) Spray volumes.

(B) Buffers and no-spray zones.

(C) Weather conditions specific to wind and inversions.

(ii) *Application equipment.* Understand how to choose and maintain aerial application equipment, including all of the following:

(A) The importance of inspecting application equipment to ensure it is in proper operating condition prior to beginning an application.

(B) Selecting proper nozzles to ensure appropriate pesticide dispersal and to minimize drift.

(C) Knowledge of the components of an aerial pesticide application system, including pesticide hoppers, tanks, pumps, and types of nozzles.

(D) Interpreting a nozzle flow rate chart.

(E) Determining the number of nozzles for intended pesticide output using nozzle flow rate chart, aircraft speed, and swath width.

(F) How to ensure nozzles are placed to compensate for uneven dispersal due to uneven airflow from wingtip vortices, helicopter rotor turbulence, and aircraft propeller turbulence.

(G) Where to place nozzles to produce the appropriate droplet size.

(H) How to maintain the application system in good repair, including pressure gauge accuracy, filter cleaning according to schedule, and checking nozzles for excessive wear.

(I) How to calculate required and actual flow rates.

(J) How to verify flow rate using fixed timing, open timing, known distance, or a flow meter.

(K) When to adjust and calibrate application equipment.

(iii) *Application considerations.* The applicator must demonstrate knowledge of factors to consider before and during application, including all of the following:

(A) Weather conditions that could impact application by affecting aircraft engine power, take-off distance, and climb rate, or by promoting spray droplet evaporation.

(B) How to determine wind velocity, direction, and air density at the application site.

(C) The potential impact of thermals and temperature inversions on aerial pesticide application.

(iv) *Minimizing drift.* The applicator must demonstrate knowledge of methods to minimize off-target pesticide movement, including all of the following:

(A) How to determine drift potential of a product using a smoke generator.

(B) How to evaluate vertical and horizontal smoke plumes to assess wind direction, speed, and concentration.

(C) Selecting techniques that minimize pesticide movement out of the area to be treated.

(D) Documenting special equipment configurations or flight patterns used to reduce off-target pesticide drift.

(v) *Performing aerial application.* The applicator must demonstrate competency in performing an aerial pesticide application, including all of the following:

(A) Selecting a flight altitude that minimizes streaking and off-target pesticide drift.

(B) Choosing a flight pattern that ensures applicator and bystander safety and proper application.

(C) The importance of engaging and disengaging spray precisely when entering and exiting a predetermined swath pattern.

(D) Tools available to mark swaths, such as global positioning systems and flags.

(E) Recordkeeping requirements for aerial pesticide applications including application conditions if applicable.

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[82 FR 1029, Jan. 4, 2017]

40 CFR section 171.105(d) and (e):

40 CFR section 171.105 Standards for certification of private applicators.

* * *

(d) *Soil fumigation.* In addition to satisfying the requirements in paragraph (a) of this section, private applicators that use or supervise the use of a restricted use pesticide to fumigate soil must demonstrate practical knowledge of the pest problems and pest control practices associated with performing soil fumigant applications, including all the following:

(1) *Label and labeling comprehension.* Familiarity with the pesticide labels and labeling for products used to perform soil fumigation, including all of the following:

(i) Labeling requirements specific to soil fumigants.

(ii) Requirements for certified applicators of fumigants, fumigant handlers and permitted fumigant handler activities, and the safety information that certified applicators must provide to noncertified applicators using fumigants under the direct supervision of certified applicators.

(iii) Entry-restricted period for different tarped and untarped field application scenarios.

(iv) Recordkeeping requirements imposed by product labels and labeling.

(v) Labeling provisions unique to products containing certain active ingredients.

(vi) Labeling requirements for fumigant management plans, such as when a fumigant management plan must be in effect, how long it must be kept on file, where it must be kept during the application, and who must have access to it; the elements of a fumigant management plan and resources available to assist the applicator in preparing a fumigant management plan; the person responsible for verifying that a fumigant management plan is accurate; and the elements, purpose and content of a post-application summary, who must prepare it, and when it must be completed.

(2) *Safety.* Measures to minimize adverse health effects, including all of the following:

(i) Understanding how certified applicators, noncertified applicators using fumigants under the direct supervision of certified applicators, field workers, and bystanders can become exposed to fumigants.

(ii) Common problems and mistakes that can result in direct exposure to fumigants.

(iii) Signs and symptoms of human exposure to fumigants.

(iv) Air concentrations of a fumigant that require applicators to wear respirators or to exit the work area entirely.

(v) Steps to take if a fumigant applicator experiences sensory irritation.

(vi) Understanding air monitoring, when it is required, and where and when to take samples.

(vii) Buffer zones, including procedures for buffer zone monitoring and who is permitted to be in a buffer zone.

(viii) First aid measures to take in the event of exposure to a soil fumigant.

(ix) Labeling requirements for transportation, storage, spill cleanup, and emergency response for soil fumigants,

including safe disposal of containers and contaminated soil, and management of empty containers.

(3) *Soil fumigant chemical characteristics.* Characteristics of soil fumigants, including all of the following:

(i) Chemical characteristics of soil fumigants.

(ii) Specific human exposure concerns for soil fumigants.

(iii) How soil fumigants change from a liquid or solid to a gas.

(iv) How soil fumigants disperse in the application zone.

(v) Compatibility concerns for tanks, hoses, tubing, and other equipment.

(4) *Application.* Selecting appropriate application methods and timing, including all of the following:

(i) Application methods, including but not limited to water-run and non-water-run applications, and equipment commonly used for each soil fumigant.

(ii) Site characteristics that influence fumigant exposure.

(iii) Understanding temperature inversions and their impact on soil fumigant application.

(iv) Weather conditions that could impact timing of soil fumigant application, such as air stability, air temperature, humidity, and wind currents, and labeling statements limiting applications during specific weather conditions.

(v) Conducting pre-application inspection of application equipment.

(vi) Understanding the purpose and methods of soil sealing, including the factors that determine which soil sealing method to use.

(vii) Understanding the use of tarps, including the range of tarps available, how to seal tarps, and labeling requirements for tarp removal, perforation, and repair.

(viii) Calculating the amount of product required for a specific treatment area.

(ix) Understanding the basic techniques for calibrating soil fumigant application equipment.

(5) *Soil and pest factors.* Soil and pest factors that influence fumigant activity, including all of the following:

(i) Influence of soil factors on fumigant volatility and movement within the soil profile.

(ii) Factors that influence gaseous movement through the soil profile and into the air.

(iii) Soil characteristics, including how soil characteristics affect the success of a soil fumigant application, assessing soil moisture, and correcting for soil characteristics that could hinder a successful soil fumigant application.

(iv) Identifying pests causing the damage and verifying they can be controlled with soil fumigation.

(v) Understanding the relationship between pest density and application rate.

(vi) The importance of proper application depth and timing.

(6) *Personal protective equipment.* Understanding what personal protective equipment is necessary and how to use it properly, including all of the following:

(i) Following labeling directions for required personal protective equipment.

(ii) Selecting, inspecting, using, caring for, replacing, and disposing of personal protective equipment.

(iii) Understanding the types of respirators required when using specific soil fumigants and how to use them properly, including medical evaluation, fit testing, and required replacement of cartridges and canisters.

(iv) Labeling requirements and other laws applicable to medical evaluation for

respirator use, fit tests, training, and recordkeeping.

(7) *Fumigant management plans and post-application summaries.* Information about fumigant management plans, including all of the following:

(i) When a fumigant management plan must be in effect, how long it must be kept on file, where it must be kept during the application, and who must have access to it.

(ii) The elements of a fumigant management plan and resources available to assist the applicator in preparing a fumigant management plan.

(iii) The person responsible for verifying that a fumigant management plan is accurate.

(iv) The elements, purpose and content of a post-application summary, who must prepare it, and when it must be completed.

(8) *Buffer zones and posting requirements.* Understanding buffer zones and posting requirements, including all of the following:

(i) Buffer zones and the buffer zone period.

(ii) Identifying who may be in a buffer zone during the buffer zone period and who is prohibited from being in a buffer zone during the buffer zone period.

(iii) Using the buffer zone table from the labeling to determine the size of the buffer zone.

(iv) Factors that determine the buffer zone credits for application scenarios and calculating buffer zones using credits.

(v) Distinguishing buffer zone posting and treated area posting, including the pre-application and post-application posting timeframes for each.

(vi) Proper choice and placement of warning signs.

(e) *Non-soil fumigation.* In addition to satisfying the requirements in paragraph (a) of this section, private applicators that use or supervise the use of a restricted use pesticide to fumigate anything other than

soil must demonstrate practical knowledge of the pest problems and pest control practices associated with performing fumigation applications to sites other than soil, including all the following:

(1) *Label and labeling comprehension.* Familiarity with the pesticide labels and labeling for products used to perform non-soil fumigation, including labeling requirements specific to non-soil fumigants.

(2) *Safety.* Measures to minimize adverse health effects, including all of the following:

(i) Understanding how certified applicators, handlers, and bystanders can become exposed to fumigants.

(ii) Common problems and mistakes that can result in direct exposure to fumigants.

(iii) Signs and symptoms of human exposure to fumigants.

(iv) When air concentrations of a fumigant triggers handlers to wear respirators or to exit the work area entirely.

(v) Steps to take if a person using a fumigant experiences sensory irritation.

(vi) Understanding air monitoring, when it is required, and where and when to take samples.

(vii) Buffer zones, including procedures for buffer zone monitoring and who is permitted to be in a buffer zone.

(viii) First aid measures to take in the event of exposure to a fumigant.

(ix) Labeling requirements for transportation, storage, spill clean up, and emergency response for non-soil fumigants, including safe disposal of containers and contaminated materials, and management of empty containers.

(3) *Non-soil fumigant chemical characteristics.* Characteristics of non-soil fumigants, including all of the following:

(i) Chemical characteristics of non-soil fumigants.

(ii) Specific human exposure concerns for non-soil fumigants.

(iii) How fumigants change from a liquid or solid to a gas.

(iv) How fumigants disperse in the application zone.

(v) Compatibility concerns for tanks, hoses, tubing, and other equipment.

(4) *Application.* Selecting appropriate application methods and timing, including all of the following:

(i) Application methods and equipment commonly used for non-soil fumigation.

(ii) Site characteristics that influence fumigant exposure.

(iii) Conditions that could impact timing of non-soil fumigant application, such as air stability, air temperature, humidity, and wind currents, and labeling statements limiting applications when specific conditions are present.

(iv) Conducting pre-application inspection of application equipment and the site to be fumigated.

(v) Understanding the purpose and methods of sealing the area to be fumigated, including the factors that determine which sealing method to use.

(vi) Calculating the amount of product required for a specific treatment area.

(vii) Understanding the basic techniques for calibrating non-soil fumigant application equipment.

(viii) Understanding when and how to conduct air monitoring and when it is required.

(5) *Pest factors.* Pest factors that influence fumigant activity, including all of the following:

(i) Influence of pest factors on fumigant volatility.

(ii) Factors that influence gaseous movement through the area being fumigated and into the air.

(iii) Identifying pests causing the damage and verifying they can be controlled with fumigation.

(iv) Understanding the relationship between pest density and application rate.

(v) The importance of proper application rate and timing.

(6) *Personal protective equipment.* Understanding what personal protective equipment is necessary and how to use it properly, including all of the following:

(i) Following labeling directions for required personal protective equipment.

(ii) Selecting, inspecting, using, caring for, replacing, and disposing of personal protective equipment.

(iii) Understanding the types of respirators required when using specific soil fumigants and how to use them properly, including medical evaluation, fit testing, and required replacement of cartridges and canisters.

(iv) Labeling requirements and other laws applicable to medical evaluation for respirator use, fit tests, training, and recordkeeping.

(7) *Fumigant management plans and post-application summaries.* Information about fumigant management plans and when they are required, including all of the following:

(i) When a fumigant management plan must be in effect, how long it must be kept on file, where it must be kept during the application, and who must have access to it.

(ii) The elements of a fumigant management plan and resources available to assist the applicator in preparing a fumigant management plan.

(iii) The person responsible for verifying that a fumigant management plan is accurate.

(iv) The elements, purpose and content of a post-application summary, who must prepare it, and when it must be completed.

(8) *Posting requirements.* Understanding posting requirements, including all of the following:

(i) Understanding who is allowed in an area being fumigated or after fumigation and who is prohibited from being in such areas.

(ii) Distinguishing fumigant labeling-required posting and treated area posting, including the pre-application and post-application posting timeframes for each.

(iii) Proper choice and placement of warning signs.

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[82 FR 1029, Jan. 4, 2017]

40 CFR section 171.201:

40 CFR section 171.201 Requirements for direct supervision of noncertified applicators by certified applicators.

(a) *Applicability.* This section applies to any certified applicator who allows or relies on a noncertified applicator to use a restricted use pesticide under the certified applicator's direct supervision.

(b) *General requirements.* (1) Requirements for the certified applicator.

(i) The certified applicator must have a practical knowledge of applicable Federal, State and Tribal supervisory requirements, including any requirements on the product label and labeling, regarding the use of restricted use pesticides by noncertified applicators.

(ii) The certified applicator must be certified in each category as set forth in §§ 171.101 and 171.105(a) through (f) applicable to the supervised pesticide use.

(2) Requirements for the noncertified applicator. The certified applicator must ensure that each noncertified applicator using a restricted use pesticide under his or her direct supervision meets all of the following requirements before using a restricted use pesticide:

(i) The noncertified applicator has satisfied the qualification requirements under paragraph (c) of this section.

(ii) The noncertified applicator has been instructed within the last 12 months in the safe operation of any equipment he or she will use for mixing, loading, transferring, or applying pesticides.

(iii) The noncertified applicator has met the minimum age required to use restricted use pesticides under the supervision of a certified applicator. A noncertified applicator must be at least 18 years old, except that a noncertified applicator must be at least 16 years old if all of the following requirements are met:

(A) The noncertified applicator is using the restricted use pesticide under the direct supervision of a private applicator who is an immediate family member.

(B) The restricted use pesticide is not a fumigant, sodium cyanide, or sodium fluoroacetate.

(C) The noncertified applicator is not applying the restricted use pesticide aerially.

(3) Use-specific conditions that must be met in order for a noncertified applicator to use a restricted use pesticide. The certified applicator must ensure that all of the following requirements are met before allowing a noncertified applicator to use a restricted use pesticide under his or her direct supervision:

(i) The certified applicator must ensure that the noncertified applicator has access to the applicable product labeling at all times during its use.

(ii) Where the labeling of a pesticide product requires that personal protective equipment be worn for mixing, loading, application, or any other use activities, the certified applicator must ensure that any noncertified applicator has clean, labeling-

required personal protective equipment in proper operating condition and that the personal protective equipment is worn and used correctly for its intended purpose.

(iii) The certified applicator must provide to each noncertified applicator before use of a restricted use pesticide instructions specific to the site and pesticide used. These instructions must include labeling directions, precautions, and requirements applicable to the specific use and site, and how the characteristics of the use site (e.g., surface and ground water, endangered species, local population) and the conditions of application (e.g., equipment, method of application, formulation) might increase or decrease the risk of adverse effects. The certified applicator must provide this information in a manner that the noncertified applicator can understand.

(iv) The certified applicator must ensure that before each day of use equipment used for mixing, loading, transferring, or applying pesticides is in proper operating condition as intended by the manufacturer, and can be used without risk of reasonably foreseeable adverse effects to the noncertified applicator, other persons, or the environment.

(v) The certified applicator must ensure that a means to immediately communicate with the certified applicator is available to each noncertified applicator using restricted use pesticides under his or her direct supervision.

(vi) The certified applicator must be physically present at the site of the use being supervised when required by the product labeling.

(vii) If the certified applicator is a commercial applicator, the certified applicator must create or verify the existence of the records required by paragraph (e) of this section.

(c) *Noncertified applicator qualifications.* Before any noncertified applicator uses a restricted use pesticide under the direct supervision of the certified applicator, the supervising certified applicator must ensure that the noncertified applicator has met at least one of the following qualifications:

(1) The noncertified applicator has been trained in accordance with paragraph (d) of this section within the last 12 months.

(2) The noncertified applicator has met the training requirements for an agricultural handler under 40 CFR 170.501 of this title within the last 12 months.

(3) The noncertified applicator has met the requirements established by a certifying authority that meet or exceed the standards in § 171.201(c)(1).

(4) The noncertified applicator is currently a certified applicator but is not certified to perform the type of application being conducted or is not certified in the jurisdiction where the use will take place.

(d) *Noncertified applicator training program.* (1) General noncertified applicator training must be presented to noncertified applicators either orally from written materials or audiovisually. The information must be presented in a manner that the noncertified applicators can understand, such as through a translator. The person conducting the training must be present during the entire training program and must respond to the noncertified applicators' questions.

(2) The person who conducts the training must meet one of the following criteria:

(i) Be currently certified as an applicator of restricted use pesticides under this part.

(ii) Be currently designated as a trainer of certified applicators or pesticide handlers by EPA, the certifying authority, or a State, Tribal, or Federal agency having jurisdiction.

(iii) Have completed an EPA-approved pesticide safety train-the-trainer program for trainers of handlers under 40 CFR part 170.

(3) The noncertified applicator training materials must include the information that noncertified applicators need in order to protect themselves, other people, and the environment before, during, and after making a restricted use pesticide application. The noncertified applicator training materials must include, at a minimum, the following:

(i) Potential hazards from toxicity and exposure that pesticides present to noncertified applicators and their families, including acute and chronic effects, delayed effects, and sensitization.

(ii) Routes through which pesticides can enter the body.

(iii) Signs and symptoms of common types of pesticide poisoning.

(iv) Emergency first aid for pesticide injuries or poisonings.

(v) Routine and emergency decontamination procedures, including emergency eye flushing techniques. Noncertified applicators must be instructed that if pesticides are spilled or sprayed on the body, to immediately wash or to rinse off in the nearest clean water. Noncertified applicators must also be instructed to wash or shower with soap and water, shampoo hair, and change into clean clothes as soon as possible.

(vi) How and when to obtain emergency medical care.

(vii) After working with pesticides, wash hands before eating, drinking, using chewing gum or tobacco, or using the toilet.

(viii) Wash or shower with soap and water, shampoo hair and change into clean clothes as soon as possible after working with pesticides.

(ix) Potential hazards from pesticide residues on clothing.

(x) Wash work clothes before wearing them again and wash them separately from other clothes.

(xi) Do not take pesticides or pesticide containers used at work to your home.

(xii) Potential hazards to children and pregnant women from pesticide exposure.

(xiii) After working with pesticides, remove work boots or shoes before entering your home, and remove work clothes and wash or shower before physical contact with children or family members.

(xiv) How to report suspected pesticide use violations to the appropriate State or Tribal agency responsible for pesticide enforcement.

(xv) Format and meaning of information contained on pesticide labels and in labeling applicable to the safe use of the pesticide, including the location and meaning of the restricted use product statement, how to identify when the labeling requires the certified applicator to be physically present during the use of the pesticide, and information on personal protective equipment.

(xvi) Need for, and appropriate use and removal of, personal protective equipment.

(xvii) How to recognize, prevent, and provide first aid treatment for heat-related illness.

(xviii) Safety requirements for handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup.

(xix) Environmental concerns such as drift, runoff, and wildlife hazards.

(xx) Restricted use pesticides may be used only by a certified applicator or by a noncertified applicator working under the direct supervision of a certified applicator.

(xxi) The certified applicator's responsibility to provide to each noncertified applicator instructions specific to the site and pesticide used. These instructions must include labeling directions, precautions, and requirements applicable to the specific use and site, and how the characteristics of the

use site (e.g., surface and ground water, endangered species, local population, and risks) and the conditions of application (e.g., equipment, method of application, formulation, and risks) might increase or decrease the risk of adverse effects. The certified applicator must provide these instructions in a manner the noncertified applicator can understand.

(xxii) The certified applicator's responsibility to ensure that each noncertified applicator has access to the applicable product labeling at all times during its use.

(xxiii) The certified applicator's responsibility to ensure that where the labeling of a pesticide product requires that personal protective equipment be worn for mixing, loading, application, or any other use activities, each noncertified applicator has clean, labeling-required personal protective equipment in proper operating condition and that the personal protective equipment is worn and use correctly for its intended purpose.

(xxiv) The certified applicator's responsibility to ensure that before each day of use equipment used for mixing, loading, transferring, or applying pesticides is in proper operating condition as intended by the manufacturer, and can be used without risk of reasonably foreseeable adverse effects to the noncertified applicator, other persons, or the environment.

(xxv) The certified applicator's responsibility to ensure that a means to immediately communicate with the certified applicator is available to each noncertified applicator using restricted use pesticides under his or her direct supervision.

(e) *Recordkeeping.* (1) Commercial applicators must create or verify the existence of records documenting that each noncertified applicator has the qualifications required in paragraph (c) of this section. For each noncertified applicator, the records must contain the

information appropriate to the method of qualification as provided in paragraphs (e)(1)(i) through (e)(1)(iv).

(i) If the noncertified applicator was trained in accordance with paragraph (c)(1) of this section, the record must contain all of the following information:

(A) The noncertified applicator's printed name and signature.

(B) The date the training requirement in paragraph (c) of this section was met.

(C) The name of the person who provided the training.

(D) The title or a description of the training provided.

(ii) If the noncertified applicator was trained as an agricultural handler under 40 CFR 170.501 in accordance with paragraph (c)(2) of this section, the record must contain all of the information required at 40 CFR 170.501(d)(1).

(iii) If the noncertified applicator qualified by satisfying the requirements established by the certifying authority, as described in paragraph (c)(3) of this section, the record must contain the information required by the certifying authority.

(iv) If the noncertified applicator is a certified applicator who is not certified to perform the type of application being conducted or not certified in the jurisdiction where the use will take place, as described in paragraph (c)(4) of this section, the record must include all of the following information:

(A) The noncertified applicator's name.

(B) The noncertified applicator's certification number.

(C) The expiration date of the noncertified applicator's certification.

(D) The certifying authority that issued the certification.

(2) The commercial applicator must create or verify the existence of the record containing the

information in paragraph (e)(1) of this section before allowing the noncertified applicator to use restricted use pesticides under his or her direct supervision.

(3) The commercial applicator supervising any noncertified applicator must have access to records documenting the information required in paragraph (e)(1) of this section at the commercial applicator's principal place of business for two years from the date the noncertified applicator used the restricted use pesticide.

(f) *Exceptions.* The requirements in § 171.201(a) through (e) of this part do not apply to the following persons:

(1) Persons conducting laboratory research involving restricted use pesticides.

(2) Doctors of Medicine and Doctors of Veterinary Medicine applying restricted use pesticides to patients during the course of the ordinary practice of those professions.

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