Hawaii Pesticide Laws and Regulations

March 2012

FOR PERSONS SEEKING CERTIFICATION BY
THE STATE OF HAWAII DEPARTMENT OF AGRICULTURE
TO BUY, USE, OR SUPERVISE THE USE OF
RESTRICTED USE PESTICIDES

This study guide was developed for the Pesticide Risk Reduction Education program, a program of the College of Tropical Agriculture and Human Resources, University of Hawaii at Manoa. Please direct any question or comment about this guide to:

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DEVELOPMENT OF THIS GUIDE WAS SUPPORTED IN PART BY THE STATE OF HAWAII DEPARTMENT OF AGRICULTURE.
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Acknowledgement
We gratefully acknowledge the comments offered by the staff of the State of Hawaii Department of Agriculture, Pesticides Branch.

Disclaimer
The following pages present only selected information on a few laws and regulations. No one should rely exclusively on this publication for legal guidance.

Where trade names are used, no endorsement is intended nor is criticism implied of similar suitable products not named.

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Hawaii Pesticide Laws and Regulations
Introduction

This study guide explains how two government agencies regulate any user of a chemical product classified by law as a “pesticide” in Hawaii. Different study guides explain how other government agencies can regulate an owner or handler of the same chemical product when any of its ingredients is also classified as a “hazardous chemical”, a “hazardous substance”, an “extremely hazardous substance”, or a “hazardous waste”.

Other study material

This leaflet is just one item of a complete set of study guides, which may be viewed at this webpage:

<http://pestworld.stjohn.hawaii.edu/studypackets/spcatgor.html>

Following are notes about other specific study guides.

- Because a typical pesticide in storage or in a spill, leak, or fire is classified as a **hazardous substance** or **extremely hazardous substance**, a facility manager, vehicle driver, or a pesticide application equipment operator may be affected by rules for chemical emergency planning and reporting. Find details in the study guide *Pesticides and the HEPCRA: Hawaii Emergency Planning and Community Right-to-Know Act*.

- Because a typical pesticide used on the job is classified as a **hazardous chemical**, an employer may be affected by OSHA rules for protecting employees. Find details in the study guide *Pesticides and the HOSHL: Hawaii Occupational Safety and Health Law*.

- Because **agricultural pesticides** are used for growing plants in a typical farm, nursery, greenhouse, and forest, employers of people present at these types of agricultural operations very likely are affected by the federal “Worker Protection Standard”. Often called
Two Pesticide Laws

The Federal Insecticide Fungicide and Rodenticide Act (FIFRA) is the federal law that authorizes the United States Environmental Protection Agency (EPA) to make and enforce pesticide rules for the entire United States.

The Hawaii Pesticides Law is the State of Hawaii’s law that authorizes the Hawaii Department of Agriculture (HDOA) to make and enforce pesticide rules for Hawaii.

What Are Pesticides?

These pesticide laws give complicated definitions for the word “pesticide”. Put simply though, pesticides are chemical products intended to do any of the following:

- Poison or control pests (including weeds).
- Repel or attract pests.
- Bait (attract and poison) pests.
- Control plant growth (development of roots, shoots, flowers, and fruits).
- Preserve wood and paint.
- Sanitize objects, hard surfaces, and water supplies (control germs).
- Stabilize nitrogen fertilizer applied to soil.

The labeling for all but a few such chemical products show an EPA Registration Number which is usually abbreviated EPA Reg. No.

Pesticide User’s Responsibilities

Upon taking possession of a pesticide, the pesticide handler assumes two basic responsibilities for handling the pesticide legally. One responsibility is to follow the directions in the product’s labeling. A second responsibility is to comply with the Hawaii Pesticides Law and the pesticide rules set by the HDOA, especially as discussed in this study guide.

Labeling and Labels

Both labeling and a label consists of words and pictures that explain how to handle pesticide products correctly. To pesticide regulators, however, there is a difference which is important when a pesticide product has complex and lengthy directions for use.

“Labeling” includes all of the following types of documents:

- “Label” for the pesticide product—This is the manu-
facturer’s set of directions that is securely attached to the pesticide’s container. It is usually printed on paper which is then glued to the container. The label transmits important messages from the manufacturer to the person who will handle the pesticide or its container. It is the pesticide applicator’s primary source of information about using the product safely and legally. Some labels just give basic information and then refer the pesticide user to other documents for details.

- Manufacturer’s booklet, brochure, tag, or material safety data sheet (“MSDS”) accompanying the container of the product—Any one or more of these may be loosely packaged with some pesticide products. They are referred to by a statement on the label, and typically they present an important warning or detailed information that does not fit on the label.
- User’s guide not accompanying the product but referred to by any of the documents described above—These are written for some pesticide products. They provide details that do not fit on the product label. Following is an example of a statement on a label that refers to such guide:

  “Personal protective equipment requirements will vary depending on how the chlorine is being used. Refer to Chlorine Institute Pamphlet # 65 for specific recommendations.”

  (This statement refers to pesticide use instructions published as a pamphlet by The Chlorine Institute, Inc., an organization of manufacturers and distributors.)

  Pesticide regulators enforce the do’s and don’ts on both the label itself and other forms of labeling. So, for a particular pesticide product, a pesticide user should first review the relevant instructions and restrictions on the label; then find and review any additional directions referred to by the label or another form of labeling; and follow those instructions and restrictions that apply to him or her.

### Misuse of Pesticides

Approximately 8,000 chemical products are licensed for sale and use in Hawaii as pesticides. The manufacturers must ensure that a label is attached to every one of their product’s containers. The labels and other forms of labeling show words and pictures that describe how to:

- Store the pesticide
- Transport the pesticide (after opening its container)
- Prepare to apply the pesticide
- Mix, load, or transfer the pesticide
- Set up, operate, or maintain application equipment
- Apply the pesticide
- Follow up after applying the pesticide
- Dispose of the pesticide and its container
- Prevent poisoning and pollution

For the purpose of enforcing pesticide laws and regulations, all of those actions are considered part of the legal “use” of a pesticide.

In determining whether a pesticide handling action or inaction is legal, the labeling becomes the product-specific rules to which a pesticide regulator compares the pesticide user’s actions. Every label gives a reminder of this enforcement standard in the form of a **misuse statement**:

  “It is a violation of Federal law to use this product in a manner inconsistent with its labeling.”

This means that a pesticide user’s action or inaction is a “misuse” of the pesticide if it does not follow the labeling’s instructions and restrictions (except as explained in the sections **NOT A MISUSE** and **SPECIAL LOCAL NEED “LABEL”** in this study guide). The HDOA conducts inspections and investigations to determine if pesticides were applied in accordance with the label directions. A citation or penalty may be issued for each misuse discovered. These types of inspections and investigations are conducted in both
agricultural and non-agricultural settings including house, yard, and garden. In other words, the do’s and don’ts specified by the labeling are requirements, not merely suggestions or recommendations.

Following are some situations which lead to misuses.

**Secure storage**

If a product’s labeling requires storage under lock and key or in a place posted with a pesticide storage sign, not meeting the requirement is a misuse.

**Regulations referenced by labeling**

The labeling of some pesticide products refer the pesticide users to government regulations that specify instructions and restrictions for handling the product or its container. Not following an applicable part of such a regulation is a misuse. Here are two examples of statements on labels that refer the pesticide users to government regulations:

“Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR Part 170.”

“This product may have effects on endangered species. When using this product, you must follow the measures contained in the Endangered Species Protection Bulletin for the county in which you are applying the product. To obtain Bulletins, no more than six months before using this product, consult http://www.epa.gov/espp/ or call 1-800-447-3813. You must use the Bulletin valid for the month in which you will apply the product. New Bulletins will generally be available from the above sources 6 months prior to the effective dates.”

(This paragraph refers to pesticide use instructions published as a bulletin by the EPA in order to meet the requirements of the Endangered Species Act.)

**Clothing and safety equipment**

It is a misuse when a pesticide handler does not wear the items of clothing or the personal protective equipment (“PPE” such as gloves or respirator) required by the labeling. Labeling for some pesticide products specify two lists of items to wear: one list for those who mix and load the undiluted product and a different list for those who apply the diluted product.

**Recommendations**

If a misuse results from applying a pesticide according to a recommendation or a report on pest control research, the pesticide user is responsible, regardless of who gave the recommendation or published the report. So, pesticide users must be sure that they use a pesticide only according to its labeling.

**Combining or tank-mixing pesticides**

It is a misuse to apply two pesticide products together if the directions for either prohibits tank-mixing. Look for labeling statements such as:

“Do not combine this product with any type of sulfur spray.”

If two pesticide products will be applied together, check the directions of both for any after-application waiting periods and heed the longer waiting period. The directions may say how many hours or days to keep people and pets out of the treated site. For products labeled for treating an agricultural site, animal, or plant, the directions usually say how soon grazing, slaughtering, selling (of milk), or harvesting may be allowed after the treatment. It is a misuse to apply two products together and then allow people or pets to enter a treated site or an agricultural operation to take place before the longer waiting period ends.

**Crop, animal, object, or site to be treated**

It is a misuse to apply a pesticide to a plant, animal, object, or site that is not described by its
labeling. For example, an applicator must not apply a pesticide along the side of a road if the product’s labeling does not name “roadside” or some other site that includes roadsides.

However, even if the labeling specifies the plant, animal, object, or site to be treated, the pesticide applicator must beware of restrictions elsewhere in the labeling that would make the application a misuse, such as these six examples:

“This product must not be mixed/loaded, or used within 50 feet of all wells, including abandoned wells, drainage wells, and sinkholes.”

“For use only in Florida and Louisiana.”

“Do not use on dogs less than 12 weeks old.”

“Do not apply to trees that will bear harvestable fruit within 12 months of application.”

“Not for use or storage in or around the home.”

“Do not apply this product while bees are actively visiting the treatment area.”

A careful reading of a product’s entire labeling is necessary to find restrictions like these.

**Method or equipment**

Applying a pesticide by a method or with equipment prohibited by its labeling is a misuse. Following are three examples of such prohibitive statements:

“Do not use as a space spray indoors.”

“Application with backpack sprayer or hand-held sprayer is prohibited.”

“Apply this product only through the following sprinkler irrigation systems: center pivot, lateral move, end tow, side (wheel) roll, traveler, big gun, solid set, micro sprinkler, or hand move. Do not apply through any other type of irrigation system.”

**Dilution**

Applying a spray mixture made more concentrated than allowed by the labeling is a misuse. For example, applying a spray mixture made of 3 quarts of product and 100 gallons of water is a misuse if its label allows a maximum of 2 quarts per 100 gallons of water.

**Dosage**

Applying a dosage higher than allowed by the labeling is a misuse. For example, applying 3 ounces of product per 1,000 square feet is a misuse if its label allows a maximum of 2 ounces per 1,000 square feet.

**Frequency**

Applying a pesticide more often than allowed by the labeling is a misuse. For example, applying a pesticide 10 days after a previous treatment is a misuse if its label specifies 14 days between treatments. It is also a misuse if the labeling allows only one treatment of the crop, animal, object, or site.

To get help interpreting a pesticide’s labeling, consult the pesticide manufacturer or its local representative, or a Hawaii Department of Agriculture environmental health specialist (not an inspector) at one of these two offices:

Hilo—808-974-4143—for Hawaii, Lanai, and Maui.

Honolulu—808-973-9424 or 973-9409—for Kauai, Molokai, and Oahu.
Not a Misuse

As explained in the section MISUSE OF PESTICIDES, it is illegal to use a pesticide product “in a manner inconsistent with its labeling”. However, the following four actions are exceptions and therefore are allowed, according to the pesticides laws.

(1) Applying a pesticide against any target pest not specified on the labeling if the application is to a crop, animal, or site specified on the labeling; provided that the labeling does not specifically prohibit the use on pests other than those listed on the labeling.

For example, suppose that an insecticide’s labeling gives instructions for treating the perimeter of a house to control three pests: fleas, ticks, and ants. Applying the insecticide on the perimeter of a house to control cockroaches would be allowed provided that its labeling does not prohibit use specifically against cockroaches or generally against target pests not named on the labeling.

(2) Using any method of application not prohibited by the labeling.

For example, suppose that a herbicide’s labeling gives instructions for applying it with a sprayer. Applying the herbicide by brushing it on weeds would be allowed provided that the labeling does not prohibit use of any method of brushing.

CHEMIGATION. The chemigation method is an exception to this rule, however. A product may not be applied through an irrigation system even if its labeling says nothing about chemigation. This means that a pesticide may be applied by chemigation only if its labeling gives instructions for doing so.

(3) Mixing a pesticide or pesticides with a fertilizer when such mixture is not prohibited by the labeling.

(4) Applying a pesticide at any dosage, concentration, or frequency less than that specified on the labeling.

Here are three examples:

**DOSAGE.** Suppose that a pesticide’s labeling says to apply a dosage of 2 ounces of product per 1,000 square feet. Applying 1.5 ounces per 1,000 square feet would be allowed.

**CONCENTRATION.** Suppose that a pesticide’s labeling says to apply a spray mixture diluted to a concentration of 1 pint of product per 100 gallons of water. Applying a spray mixture diluted to a concentration of 0.75 pint per 100 gallons of water would be allowed.

**FREQUENCY.** Suppose that a pesticide’s labeling says to apply the product every 7 days. Applying the pesticide 10 days after the previous application would be allowed.

But this exception does not apply to disinfectants and sanitizers because pesticide regulatory agencies require the labeled dosage, concentration, and frequency to kill the bacteria or viruses listed on their labeling. Thus, it is a misuse to apply a disinfectant or sanitizer at a dosage, concentration or frequency less than that specified by its labeling.

Pesticide users certified in any of Hawaii’s commercial applicator categories should be aware that two conditions apply when they make a treatment at a dosage, concentration or frequency less than that specified by its labeling. Details are in this study guide on page 11 in the section LIMITS AND REQUIREMENTS IN HAWAII, under “Dosage, concentration, or frequency less than specified on labeling”.

Hawaii Pesticide Laws and Regulations
Special Local Need “Label”

Each plant, animal, object, or site that may be legally treated with a pesticide product will be named in its labeling and each represents a “use” registered for that product by the EPA. Some pesticides have an additional use registered by the HDOA specifically for Hawaii. Such a state registered use for a pesticide is described only by a specific type of document that is neither a label nor any other form of labeling. Still, it is commonly called a “label”, specifically a “special local need label” or “SLN label”. Titles of such documents vary and include:

- Special Local Need Registration
- SLN Label
- 24(c) Labeling
- Supplemental Labeling
- Product Bulletin

A SLN label is available separately from the product’s packaging. It is not on or attached to or shipped with the container and it is not usually referred to by the pesticide’s label.

Using a pesticide according to a SLN label is allowed provided that the document is up-to-date and the pesticide user has a copy of it at the time of application. For such uses, a pesticide regulator would apply the enforcement standards represented by the misuse statement and the four exceptions (as described in the sections MISUSE OF PESTICIDES and NOT A MISUSE in this study guide). Also, if the pesticide is classified as a “restricted use” pesticide, the regulator would apply the appropriate rules (as described in the section RESTRICTED USE PESTICIDES in this study guide).

Details are provided in another study guide titled Special Local Need Labels for Pesticides in Hawaii.

Restricted Use Pesticides

A restricted use pesticide (RUP) is a chemical product that requires regulatory controls in addition to the rules for controlling the misuse of pesticides. The additional controls are needed to ensure that RUPs are handled only by applicators with special knowledge, skills, equipment, and supplies. Other applicators could cause potentially serious problems for themselves, for other people, or for wildlife if they use, store, or dispose of an RUP incorrectly. So pesticide regulators set up a system for controlling both the pesticide dealers who want to distribute RUPs and the pesticide users who want to buy and apply RUPs. (Without this additional system of controls, pesticide regulators would not allow such pesticides to be sold and used.) Following are brief descriptions of the five major features of this system.

Use classification

Both the EPA and the HDOA have classified certain pesticide products as RUPs.

Labels of pesticides classified for restricted use by the EPA show the phrase “RESTRICTED USE PESTICIDE” in a box near the top of the label’s front panel, like the following example:

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RESTRICTED USE PESTICIDE
Due to High Acute Toxicity to Humans.
For retail sale and use only by Certified Applicators or persons under their direct supervision and only for those uses covered by the Certified Applicator’s certification.
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The EPA classified each of these products as a RUP because of its chemical properties, toxicity to humans or wildlife, history of use and accidents, complexity of applying it correctly, or some combination of these factors. The EPA’s reason for classifying a product as a RUP is stated in the same box directly beneath the phrase “RESTRICTED USE PESTICIDE”. These
products are regulated as RUPs throughout the United States.

The HDOA evaluated the other (unclassified) pesticides that distributors wished to sell in Hawaii and classified some of them for restricted use within the State of Hawaii. Labels of these RUPs lack the “RESTRICTED USE PESTICIDE” phrase. Even so, they are also regulated as RUPs in Hawaii. (The formulations of these state restricted use pesticides are listed in HDOA’s Administrative Rules, Chapter 66, section 4-66-32(e).)

**Dealer licensing**

Any pesticide product classified as a RUP by either the EPA or the HDOA may be distributed in Hawaii only by a pesticide dealer who has a license from the HDOA to do so. This rule means that it is illegal for pesticide applicators to either sell or give away their RUP unless they have a dealer’s license. (Anyone in Hawaii who needs advice about transferring ownership of his or her unwanted RUP to another certified applicator should consult the HDOA.)

Hawaii’s licensed pesticide dealers must record sales of their RUPs and send a copy of their records to the HDOA. By reviewing these records, pesticide regulators can determine who could be storing or using RUPs.

**Applicator certification**

In addition to pesticide dealer licensing, the HDOA set up a “certification” requirement for any person wishing to buy, use, or supervise the use of any RUP in Hawaii. To do so, the person must be certified by the HDOA as either a “private applicator” or a “commercial applicator”.

A private applicator uses or supervises the use of RUPs for producing agricultural commodities on property owned or rented by him or her or by his or her employer for operations such as a ranch, farm, forest (to be harvested), nursery, or greenhouse (including mushroom culture). A private applicator may also use or supervise the use of RUPs in Hawaii for another producer’s agricultural operations if applied without compensation other than the trading of personal services between themselves. (The three private applicator categories are described in the HDOA’s Administrative Rules, Chapter 66, section 4-66-56(c).)

A commercial applicator applies RUPs on public lands or property other than that which he or she owns or rents. (The 11 commercial applicator categories are described in HDOA’s Administrative Rules, Chapter 66, section 4-66-56(b).)

A certified applicator may only buy, use, or supervise the use of those RUP products covered by his or her certification category. Thus, becoming certified in more than one category may be necessary for people who use RUPs in more than one job.

To qualify for certification as either a private or commercial applicator, one must be at least 18 years old and pass the appropriate written examination.

The period of certification is five years. During this period, the HDOA may suspend or revoke an applicator’s certification for a violation of the certification rules or any law or regulation concerning the use of a RUP. Such an applicator may not buy, use, or supervise the use of any RUP during a period of suspension or after his or her certification has been revoked.

An applicator who wishes to continue being certified for an additional five years may take the examination again near the end of the certification period. To avoid retaking the examination, the certified applicator must earn a minimum number of recertification credits during his or her five-year certification period and then apply for recertification near the end of the period. (The numbers of recertification credits required for the private and
commercial applicator categories are listed in the HDOA’s Administrative Rules, Chapter 66, section 4-66-60(a)(4)(A).

**Recordkeeping by certified applicators**

Private and commercial applicators are responsible for keeping a record of each application of their RUPs. Each record must contain 13 specific items of information; it must be kept for two years; and it must be made available for inspection during reasonable working hours. Details are provided in another study guide titled *Records of Pesticide Applications in Hawaii*.

**Supervising noncertified applicators**

Certified applicators may, under certain conditions, allow their RUPs to be applied by someone who is not certified. These conditions include choosing a “competent person” to apply the RUP, providing “written instructions” to and “direct supervision” of that person, and being “available if and when needed”. However, meeting these conditions does not relieve the certified applicator of the responsibility for recordkeeping or for a misuse of his or her RUP. Details are provided in another study guide titled *Supervising Noncertified Applicators*.

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**Limits and Requirements in Hawaii**

The following additional limits and requirements apply in Hawaii, according to the Hawaii Pesticides Law and the HDOA’s pesticide rules:

**Pesticides used in agricultural operations**

Any certified *commercial* applicator planning to apply any pesticide in an *agricultural* operation must furnish a written record of the up-coming application to the operation’s employer(s) before the pesticide is applied. Details are provided in another study guide titled *Records of Pesticide Applications in Hawaii*.

**Dosage, concentration, or frequency less than specified on labeling**

In this study guide, in the section NOT A MISUSE, there are three examples of applying a pesticide at a dosage, concentration, or frequency less than that specified on the labeling. These types of treatments are generally allowed (not considered to be misuses) throughout the United States, though, in Hawaii, two requirements apply: (a) the pesticide must maintain its effectiveness, and (b) when a certified *commercial* applicator makes the treatment, he or she must have the consent of the purchaser of the pesticide application service. (The exact wording is in the Hawaii Revised Statutes, chapter 149A, Hawaii Pesticides Law, in section 149A-31(1)(A).)

**Aerial application of RUPs**

For any application of a RUP by aircraft in Hawaii, the certified applicator must obtain a special permit from the HDOA prior to the application. Also, the HDOA must be notified at least 24 hours before the application. Details are provided in the study guide titled *Aerial Pesticide Application* (included in the study packet for the commercial 4 aerial pest control category).

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Pesticide Risk Reduction Education is a program of the College of Tropical Agriculture and Human Resources of the University of Hawaii at Manoa. It receives funding from the U.S. Environmental Protection Agency via the U.S. Department of Agriculture’s Pesticide Safety Education Program. Its staff provides study guides, short courses, and a newsletter for Hawaii’s applicators of restricted use pesticides. These education and training activities support the State of Hawaii Department of Agriculture’s program for certification of applicators of restricted use pesticides.

Pesticide Risk Reduction Education
http://pestworld.stjohn.hawaii.edu/epp/pat.html

Certification of Restricted Use Pesticide Applicators
http://hawaii.gov/hdoa/pi/pest/pesticide-applicator-certification-recertification