Hawaii Pesticide Laws and Regulations

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A STUDY GUIDE
FOR PERSONS SEEKING CERTIFICATION BY
THE STATE OF HAWAI’I 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 Hawai‘i at Mānoa. Please direct any question or comment about this guide to:

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We gratefully acknowledge the comments offered by the staff of the State of Hawaii Department of Agriculture, Pesticides Branch.

Disclaimer

Do not rely on this study guide for legal guidance. It does not explain everything about using a pesticide legally. It discusses only selected information about just two of many sets of laws and regulations, which could have changed by the time you read this.

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

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About This Study Guide

**Purpose**

This study guide is for people who want to prepare for the State of Hawaii Department of Agriculture’s examination to qualify for certification to buy, use, or supervise the use of *restricted use* pesticides in Hawaii.

**Scope**

This study guide summarizes certain parts of a few state and federal laws and regulations intended to govern the behavior of people in Hawaii who own, use, or handle a chemical product classified as a “pesticide” in Hawaii. But it does not discuss county ordinances. Neither does it discuss criminal actions, property rights, contracts, lawsuits, out-of-court agreements, or court-ordered actions.

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**Introduction**

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

**Other study guides**

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

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

Here are some notes about other specific study guides.

- Because a typical pesticide used or handled on the job is classified as a **hazardous chemical**, an employer may be affected by OSHA rules for protecting employees. Learn more by reading the study guide *Pesticides and the HOSHL: Hawaii Occupational Safety and Health Law*.
- Because a typical pesticide in storage or in a spill, leak, or fire contains an ingredient classified as a **hazardous substance** or an **extremely hazardous substance**, a storage facility manager, vehicle driver, or a pesticide application equipment operator may be affected by rules for chemical emergency planning and reporting. Learn more by reading the study guide *Pesticides and the HEPCRA: Hawaii Emergency Planning and Community Right-to-Know Act*.
- Because many **agricultural pesticides** are used for growing plants in a typical forest to be harvested, farm, greenhouse, and nursery, employers of people working at these types of agricultural operations very likely are affected by a federal regulation known as the “Worker Protection Standard” or “WPS.” This nation-wide regulation makes the employer responsible for carrying out the WPS...
rules. (The purpose of the WPS is to protect pesticide applicators or handlers and certain agricultural workers from the harmful effects of pesticides.) Learn more by reading the booklet How To Comply With the Worker Protection Standard for Agricultural Pesticides: What Employers Need To Know.

- Because a typical pesticide and its container intended for disposal is classified as hazardous waste, the pesticide’s owner may be affected by rules for storage, transport, and disposal of waste. Learn more by reading the study guide Pesticides and the RCRA: Resource Conservation and Recovery Act.

Other study guides named by title in this study guide may be downloaded from the webpage specified above or by purchasing one of the study packets which includes them.

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 U.S.

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.
- Bait pests by attracting and poisoning them.
- Attract pests.
- Repel pests.
- Control plant growth, such as development of roots, shoots, flowers, and fruits.
- Preserve wood, paint, and fuels.
- Sanitize or disinfect objects, hard surfaces, and water supplies to control germs.
- Stabilize certain nitrogen fertilizers applied to soil.

Any chemical product is considered a pesticide if its label shows an EPA Registration Number, often abbreviated EPA Reg. No.

Responsibilities of Pesticide Owners, Users, or Handlers

Upon taking possession of a pesticide, the owner, user, or handler takes on two basic responsibilities. One responsibility is to comply with the Hawaii Pesticides Law and the pesticide rules set by the HDOA, including those discussed in this study guide. The second responsibility is to follow the directions on the pesticide’s labeling.

Labeling and Labels

The words “labeling” and a “label” both consist of words and pictures that explain how to use, store, and dispose of pesticides correctly. But there is an important difference when the product’s directions for use are complex and lengthy.
**Labeling** includes all of the following types of documents:

- **Label** for the pesticide product—This kind of labeling is the manufacturer’s set of directions which 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 people who will use or handle the product or its container. It is their primary source of information about doing so safely and legally. Some labels give just basic information and then refer the reader to other kinds of labeling for details.

- Manufacturer’s booklet, brochure, tag, safety data sheet (SDS), or material safety data sheet (MSDS) accompanying the container of the pesticide—Any one or more of these kinds of labeling may be loosely packaged with the containers of some pesticides. Typically, they are referred to by a statement on the label and give important warnings or detailed instructions that do not fit on the label.

- User’s guide not accompanying the pesticide but is referred to by another form of labeling—These kinds of labeling are written for some pesticides. They give important warnings or detailed instructions that do not fit on the pesticide’s label. Here is an example of a statement on a label that refers to a user’s guide:

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

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

### Misuse of Pesticides

Around 8,000 chemical products are classified as pesticides and are licensed for sale and use in Hawaii. The manufacturers must ensure that a label is attached to every one of their pesticide containers.

The labels and other kinds of labeling show words and pictures that tell the pesticides’ owners, users, or handlers about any or all of the following actions:

- Storing the pesticide
- Transporting an opened container of pesticide
- Preparing to apply the pesticide
- Mixing or loading the pesticide
- Setting up, operating, cleaning or maintaining application equipment
- Applying the pesticide
- Supervising an application of a pesticide
- Following up after applying the pesticide
- Disposing of the pesticide or its container
- Preventing poisoning and pollution

Pesticide regulators may take into account each of these possible actions when enforcing pesticide laws and regulations. So when determining whether the owner, user, or handler of a specific pesticide product acted correctly, its labeling becomes the productspecific rules to which a pesticide regulator compares their actions or inactions. 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 owner’s, user’s, or handler’s action or inaction is a “misuse” of the pesticide if it does not follow the labeling’s directions (except as explained below in the sections NOT A MISUSE and SPECIAL LOCAL NEEDS “LABEL”).

The HDOA’s pesticides inspectors conduct inspections and investigations to determine if pesticides were misused. A citation or penalty may be
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issued for each misuse they find. The inspections and investigations are conducted in both commercial agricultural and other settings including home yards and gardens. 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 pesticide’s labeling requires storage under lock and key or in a place posted with a pesticide storage sign, not meeting the requirement would be a misuse.

Regulations referred to by labeling

It would be a misuse of a pesticide to not follow any applicable part of a regulation referred to by its labeling. Here’s an example of a statement on a label that refers to a regulation:

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

Here’s another example:

“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.”

Plant, animal, object, or site to be treated

It would be a misuse of a pesticide to treat a plant, animal, object, or site that is not described by its labeling. For example, it would be a misuse to 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.

But even if the labeling does name the plant, animal, object, or site to be treated, the pesticide applicator must heed restrictions elsewhere on the labeling that would prohibit a treatment, like these seven examples:

“For use only in Florida and Louisiana.”

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

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

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

“Do not apply within 28 days of harvest.”

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

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

A careful reading of a pesticide’s entire labeling is necessary for finding those kinds of restrictions.

Safety equipment and protective clothing

It would be a misuse when the pesticide applicator or handler does not wear whatever protective clothing or personal protective equipment is required by the labeling. (Protective clothing includes a long sleeve shirt, long pants, shoes and socks, and a hat. Personal protective equipment includes boots, gloves, safety glasses, goggles, face shield, respirator, or chemical resistant hat, jacket, pants, or coveralls.)

The labeling for some pesticides show two lists of items to wear: one list for people who mix or 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 applicator is responsible, regardless of who gave the recommendation or published the report. So pesticide users must be sure to apply a pesticide only according to its labeling.
Combining or tank-mixing pesticides

It would be a misuse to apply two pesticide products together if the directions for either prohibits tank-mixing, like this example:

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

If two products will be applied together, the user should carefully review the labeling of both for any after-application waiting periods and heed the longer waiting period. These waiting periods are usually the number of hours or days to keep people, pets, or livestock from entering or reentering the treated area. Though on labeling for some pesticides, a reentry period may be less specific, like this:

“Keep children and pets out of the treated area until sprays have dried.”

For pesticides labeled for treating an agricultural plant, animal, or site, the directions may say how long to prevent harvesting, grazing, slaughtering, or selling (of milk) after the treatment. It would be a misuse to apply two products together and then allow reentry or an agricultural operation before the longer waiting period ends.

Method or equipment

It would be a misuse to apply a pesticide by a method or with equipment prohibited by its labeling. Here 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

It would be a misuse to apply a spray mixture made more concentrated than allowed by the labeling. For example, it would be a misuse to apply a spray mixture made of 3 quarts of a pesticide and 100 gallons of water if its labeling allows a maximum of 2 quarts per 100 gallons of water.

But for a few pesticide products, it is actually a misuse to apply a spray mixture made less concentrated than specified by the labeling. Here is an example of a statement on the label of an insecticide used for controlling ground or subterranean termites:

“Do not apply at a lower dosage and/or concentration than specified on this label for applications prior to the installation of the finished grade.”

Dosage

It would be a misuse to apply a dosage that is higher than allowed by the labeling. For example, it would be a misuse to apply 3 ounces of a pesticide per 1,000 square feet if its labeling allows a maximum of 2 ounces per 1,000 square feet.

But for a few products, it is actually a misuse to apply a dosage that is lower than specified by the labeling. Refer to the example given above under “Dilution.”

Frequency

It would be a misuse to apply a pesticide more often than allowed by its labeling. For example, it would be a misuse to apply a pesticide 10 days after a previous treatment if its labeling specifies 14 days between treatments. It would also be a misuse if the labeling allows only one treatment of the plant, animal, object, or site.

Not a Misuse

As explained above in the section MISUSE OF PESTICIDES, it is illegal to use a pesticide in a manner inconsistent with its labeling. But, the following four actions are allowed because they are exceptions.

(1) It is not a misuse to apply 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 an insecticide’s labeling gives instructions for treating a site such as the perimeter of a house and it specifies only fleas, ticks, and ants as target pests. Applying the insecticide on the perimeter of a house to control cockroaches would be not be a misuse, provided that its labeling does not prohibit use specifically against cockroaches or generally against target pests not named on the labeling.

For comparison, here is an example of a situation that would be a misuse: Suppose the labeling for a rodenticide give instructions for treating buildings to control only the house mouse (*Mus musculus*), and its labeling also says:

“Do not apply to any pest not specified on this label.”

Then it would be a misuse to use that rodenticide to treat a building to control a different rodent such as the black rat (*Rattus rattus*).

**(2) It is not a misuse to use any method of application not prohibited by the labeling.**

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

But this exception does not apply to chemigation, which is a method of applying a chemical with water through an irrigation system. It actually would be a misuse to apply a pesticide by chemigation if the labeling either prohibits chemigation or says nothing about it. This means that a pesticide may be applied by chemigation only if its labeling gives instructions for doing so.

**(3) It is not a misuse to mix a pesticide or pesticides with a fertilizer when such mixture is not prohibited by the labeling.**

**(4) It is not a misuse to apply a pesticide at any dosage, concentration, or frequency less than that specified on the labeling.**

Here are three examples:

**DOSAGE.** Suppose 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 not be a misuse.

**CONCENTRATION.** Suppose 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 not be a misuse.

**FREQUENCY.** Suppose a pesticide’s labeling says to apply the product every 7 days. Applying the pesticide 10 days after the previous application would not be a misuse.

People who are certified by the HDOA in any of Hawaii’s commercial applicator categories should be aware of two conditions concerning a treatment at a dosage, concentration or frequency less than that specified on 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”.
Special Local Needs “Label”

Each plant, animal, object, or site that may be legally treated with a pesticide will be named on its labeling, and each represents a “use” registered for that product by the EPA, a federal agency. Some pesticides have an additional use registered specifically for Hawaii by the HDOA, a state agency. Such a state-registered use for a pesticide is described only by a specific type of document called a special local needs label or SLN label. Using a pesticide according to an SLN label is allowed provided that the document is up-to-date and the pesticide applicator has a copy of it at the time of application. For such uses, a pesticide regulator would enforce the regulatory standard represented by the misuse statement and the four exceptions explained above in the two sections MISUSE OF PESTICIDES and NOT A MISUSE. Also, if the pesticide is classified as a “restricted use” pesticide, the regulator would enforce the appropriate rules explained below in the section RESTRICTED USE PESTICIDES.

For details, read another study guide titled Special Local Needs Labels for Pesticides in Hawaii.

Restricted Use Pesticides

A restricted use pesticide (RUP) is a pesticide that requires regulatory controls in addition to the rules for controlling the misuse of pesticides. The additional controls are needed to ensure that only people with special knowledge, skills, equipment, and supplies are allowed to buy, use, or supervise the use of RUPs. Others could cause potentially serious problems for themselves, for other people, or for domestic animals or wildlife if they use, handle, 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, use, or supervise the use of RUPs.

Without this additional system of controls, pesticide regulators would not allow distribution or use of such pesticides.

Here are brief descriptions of the five major features of this system.

Classifying pesticides

Both the EPA and the HDOA have classified certain pesticides 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 this:

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.

The EPA classified each of these products as an RUP because of its chemical properties, toxicity to humans
or wildlife, history of use and accidents, complexity of using it correctly, or some combination of these factors. The EPA’s reason for classifying a product as an RUP is stated in the same box directly beneath the phrase “RESTRICTED USE PESTICIDE”. These products are considered RUPs throughout the U.S.

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 considered RUPs in Hawaii.

**Dealer licensing**

Any pesticide product classified as an 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 anyone, including pesticide owners, users, or handlers, 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, HDOA staff 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 an RUP in Hawaii. To do so, the person must be certified by the HDOA in either a “private applicator” or a “commercial applicator” category.

People certified in a *private applicator* category use or supervise the use of an RUP for producing agricultural commodities on property which he or she owns or rents, or on property which his or her employer owns or rents. This certification category covers agricultural operations such as a ranch, forest to be harvested, farm, nursery, greenhouse, or mushroom or seed sprouts production. A certified private applicator may also use or supervise the use of an RUP in Hawaii for another producer of agricultural commodities if applied without compensation other than the trading of personal services between themselves.

People certified in a *commercial applicator* category use or supervise the use of an RUP on public lands. Or, they use or supervise the use of an RUP for any purpose or on any property that is not covered by the explanation of “private applicator.”

It may be necessary for an individual to be certified in more than one category if he or she wants to buy, use, or supervise the use of RUPs in two different occupations such as farming on private property and doing wildlife conservation work on public land.

To qualify for certification in either a private or commercial applicator category, 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 violating the certification rules or any law or regulation concerning the use of an RUP. Once his or her certification has been revoked or while a suspension is in effect, the applicator may not buy, use, or supervise the use of any RUP in Hawaii.

**Recordkeeping by certified applicators**

Both 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. For details, read another study guide titled *Recordkeeping for Restricted Use Pesticide Applications in Hawaii.*
Supervising noncertified applicators

A certified applicator may allow his or her RUP to be applied by someone who is not certified, but only under certain conditions. 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 the RUP. For details, read another study guide titled Supervising Noncertified Applicators.

Limits and Requirements in Hawaii

The following three limits and requirements are specified in the Hawaii Pesticides Law and the HDOA’s pesticide rules.

Pesticides applied in agricultural operations

There is a requirement for certified commercial applicators who apply any pesticide in an agricultural operation, whether or not the product is a restricted use pesticide. Such a commercial applicator must provide a record of the application to the agricultural employer and they must do it before applying the pesticide. The record must be in writing and it must contain these six items of information: (1) the specific location and description of the area to be treated for the agricultural operation; (2) the time and date of the up-coming treatment; (3) the name, EPA registration number, and active ingredient(s) of the pesticide to be used for the up-coming treatment; (4) the restricted entry interval for the up-coming treatment; (5) whether both posting and oral notification are required for the up-coming treatment; and (6) any other product-specific requirements on the pesticide’s labeling concerning protection of workers or other persons during or after the treatment. This Hawaii requirement is like the one in a federal regulation called the “Worker Protection Standard” or the “WPS.” The same six information items are also listed in the booklet, How to Comply with The Worker Protection Standard for Agricultural Pesticides. (See the list on page 26 of that booklet under the heading, “SPECIFIC DUTIES,” and the subheading, “Information for Establishment Operators.”

Dosage, concentration, or frequency less than specified on labeling

In the above 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 throughout the U.S. Though in Hawaii, two requirements must be met: (1) The pesticide must maintain its effectiveness, and (2) when a certified commercial applicator makes the treatment, he or she must have the consent of the purchaser of the pesticide application service to deviate from the labeling.

Aerial application of RUPs

For any application of an RUP by aircraft in Hawaii, the certified applicator must get a special permit from the HDOA prior to the application. Also, the HDOA must be notified at least 24 hours before the application.

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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 State of Hawaii Department of Agriculture and the US Department of Agriculture. 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 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

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