

New Rule Changes to Hawaii Administrative Rules Chapter 4-66 as Required by Act 45 (Bill 3095)

Hawaii Department of Agriculture

Pesticides Branch

August 2019

New Laws and Rules

- ▶ **ACT 045**, Senate Bill 3095 amends Hawaii Revised Statutes (HRS)

Approved by the Governor
on JUN 13 2018
THE SENATE
TWENTY-NINTH LEGISLATURE, 2018
STATE OF HAWAII

ACT 045
S.B. NO.

3095
S.D. 1
H.D. 1
C.D. 1

A BILL FOR AN ACT

RELATING TO ENVIRONMENTAL PROTECTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

- 1 SECTION 1. Chapter 149A, Hawaii Revised Statutes, is
2 amended by adding a new part to be appropriately designated and
3 to read as follows:

- ▶ Proposed rule changes would amend Hawaii Administrative Rules Chapter 4-66 (**HAR 4-66**)

Amendment and Compilation of Chapter 4-66
Hawaii Administrative Rules

_____, 2018

1. Chapter 4-66, Hawaii Administrative Rules, entitled "Pesticides" is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 4

DEPARTMENT OF AGRICULTURE

SUBTITLE 6

DIVISION OF PLANT INDUSTRY

CHAPTER 66

PESTICIDES

ACT 045, HAR 4-66

Effective January 1, 2019

1. Post-Application reporting of Restricted use pesticide use
2. 100 foot application buffer zones arounds schools for RUPs
3. Can no longer use pesticides that contain Chlorpyrifos after Dec. 31, 2022(apply by permit until then)

ACT 045, HAR 4-66-62

149-B Post-Application Reporting of Pesticide Use

- ▶ Applies to ALL users of Restricted Use Pesticides (RUP's)
- ▶ Must be submitted to Department of Agriculture no later than 30 days at the end of each calendar year.
- ▶ Report will be for an entire year
 - ❖ Ex. January 1 thru December 31
- ▶ First reports will be due by January 30, 2020 for reporting year 2019
 - ❖ Annual reports will be due by January 30 every year after

ACT 045

For each RUP the Report Must Include:

1. Federal and State Registrations or Permit Numbers
 - ❖ Federal registration = EPA Reg. #
 - ❖ State Registration = HI does not have one
 - ❖ Permit Number = Experimental Use Permits, Annual Use Permits
2. Commercial Product Name
3. Active Ingredient (s)
4. Total Quantity Used
5. General Description of the geographic location at a minimum
 - ❖ Tax Map Key (TMK)
6. Date of Application

EXAMPLE:



The image shows a pesticide label for Abamex. At the top left is the State of Hawaii Department of Agriculture logo. To its right, it says "ACCEPTED LICENSE NO. 9805.112". Below this is a box with the text "RESTRICTED USE PESTICIDE TOXIC TO FISH, MAMMALS, AND AQUATIC ORGANISMS 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." To the right of this box is a small table with "GROUP 6" and "INSECTICIDE". The product name "Abamex™" is in a large blue font, with "Miticide/Insecticide" below it. Below the name is a table of ingredients: "ACTIVE INGREDIENT: Abamectin (CAS No.71751-41-2):.....2.0%*" and "OTHER INGREDIENTS:98.0%". The total is "TOTAL:100.0%". Below the table is a note: "*Contains 0.15 pounds Abamectin per gallon. Contains VOC ≤20% EP; qualifies as 'Low VOC' under California regulations". Below the note is a "CAUTION" section with text in Spanish and English: "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 someone to explain it to you in detail.)". Below the caution is "SEE INSIDE LABEL BOOKLET FOR ADDITIONAL FIRST AID AND PRECAUTIONARY STATEMENTS". At the bottom left is "EPA Reg. No. 228-734" and "EPA Est.No. 70815-GA-001". At the bottom center is "Net Contents 1 Gal. (3.78 L)". At the bottom right is "Manufactured for Nufarm Americas Inc. 11901 S. Austin Avenue Alsip, IL 60803".

STATE OF HAWAII
Department of Agriculture
ACCEPTED
LICENSE NO. **9805.112**

RESTRICTED USE PESTICIDE
TOXIC TO FISH, MAMMALS, AND AQUATIC ORGANISMS
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.

GROUP	6	INSECTICIDE
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Abamex™
Miticide/Insecticide

ACTIVE INGREDIENT:	
Abamectin (CAS No.71751-41-2):.....	2.0%*
OTHER INGREDIENTS:	98.0%
TOTAL:	100.0%

*Contains 0.15 pounds Abamectin per gallon.
Contains VOC ≤20% EP; qualifies as "Low VOC" under California regulations

KEEP OUT OF REACH OF CHILDREN
CAUTION

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 someone to explain it to you in detail.)
SEE INSIDE LABEL BOOKLET FOR ADDITIONAL FIRST AID AND PRECAUTIONARY STATEMENTS

For Chemical Spill, Leak, Fire, or Exposure, Call CHEMTREC (800) 424-9300
For Medical Emergencies Only, Call (877) 325-1840

EPA Reg. No. 228-734
EPA Est.No. 70815-GA-001

Net Contents
1 Gal. (3.78 L)

Manufactured for
Nufarm Americas Inc.
11901 S. Austin Avenue
Alsip, IL 60803

In case of an Experimental Use Permit:

EXAMPLE:

OPTIGARD FLEX LIQUID WSG ANT BAIT

EPA Reg. No. 100-1306

FOR EXPERIMENTAL USE ONLY
Under Hawaii State EUP-18-01

Issue Date: October 12, 2018

Expiration Date: December 31, 2018

HAR 4-66-62

For each RUP, the Report Will ALSO Include:

1. Applicator's name, email, and phone
2. Applicator's certification number
3. Reporting Year
4. County
5. Total area covered/Units treated

RUP Use Annual Reporting

- ▶ Reporting forms are available on the HDOA Pesticides website:
<http://hdoa.hawaii.gov/pi/main/act45/>
- ▶ Employers may submit on behalf of an applicator, but the APPLICATOR will ultimately be held responsible for reporting
- ▶ ALL applicators should submit, even if they are not using RUPs
 - ▶ Email stating name, certification number, and that they did not use RUPs from January 1 - December 31, year date

FORM P-45 for Annual RUP Reporting



Annual Restricted Use Pesticide Reporting Form

Name: Applicator #: Reporting Year: Phone: Email: Permit number(s):

Certified Applicators MUST submit this log to the Hawaii Department of Agriculture by January 30 following the Reporting Year! Please submit your report to HDOApestreport@hawaii.gov

Boxes highlighted in GREEN are REQUIRED to be submitted on this form* (please check in early 2019 for updates on amendments to HAR 4-66, as reporting requirements may change)

Product Name	EPA Registration Number	Formulation	Active Ingredient(s) and per cent	Pest	Dilution Rate	Total Used (lbs., oz., pt., qt., gal)	Area Treated (ac., sq ft)	Time Applied	Date Applied	Crop or Site	REI	Oral Notification Required (Y or N)	Tax Map Key(s)	County

Submit Reports to:

❖ Email: hdoa.pestreport@hawaii.gov

❖ **Email forms** strongly preferred

(Reports may be due by Jan. 30 but that doesn't mean you can't submit monthly, quarterly, etc...)

ACT 045, HAR 4-66-62

HDOA Public Reports

- ▶ The Department shall produce a summary from information submitted...which includes:
 - ❖ FOR EACH COUNTY:
 1. Amount of area each RUP was applied
 - ❖ FOR EACH RUP:
 1. Federal and state registrations/permit numbers
 2. Commercial product names
 3. Active ingredients
 4. Total quantities used
- ▶ Reporting form will be available on HDOA's website for public use
- ▶ The form that is submitted will be for departmental use only and will not be available for public consumption; only the aggregated data will be available

ACT 045, HAR 4-66-64.2

Buffer Zones

- ▶ Effective January 1, 2019 no person shall apply Restricted Use Pesticides on or within 100 feet of school property during normal school hours.
 - ❖ Does not apply to whole structure fumigation
- ▶ School is defined as any public or private preschool, kindergarten, elementary, intermediate, middle, secondary or high school.
 - ❖ Excludes Universities
- ▶ Normal school hours are defined as Monday thru Friday from 7:00 AM - 4:00 PM.
 - ❖ Excludes days when school is not in session
 - Public schools calendar can be found at:
<https://www.hawaiipublicschools.org/DOE%20Forms/2018-19calendar.pdf>

ACT 045, HAR 4-66-64.2

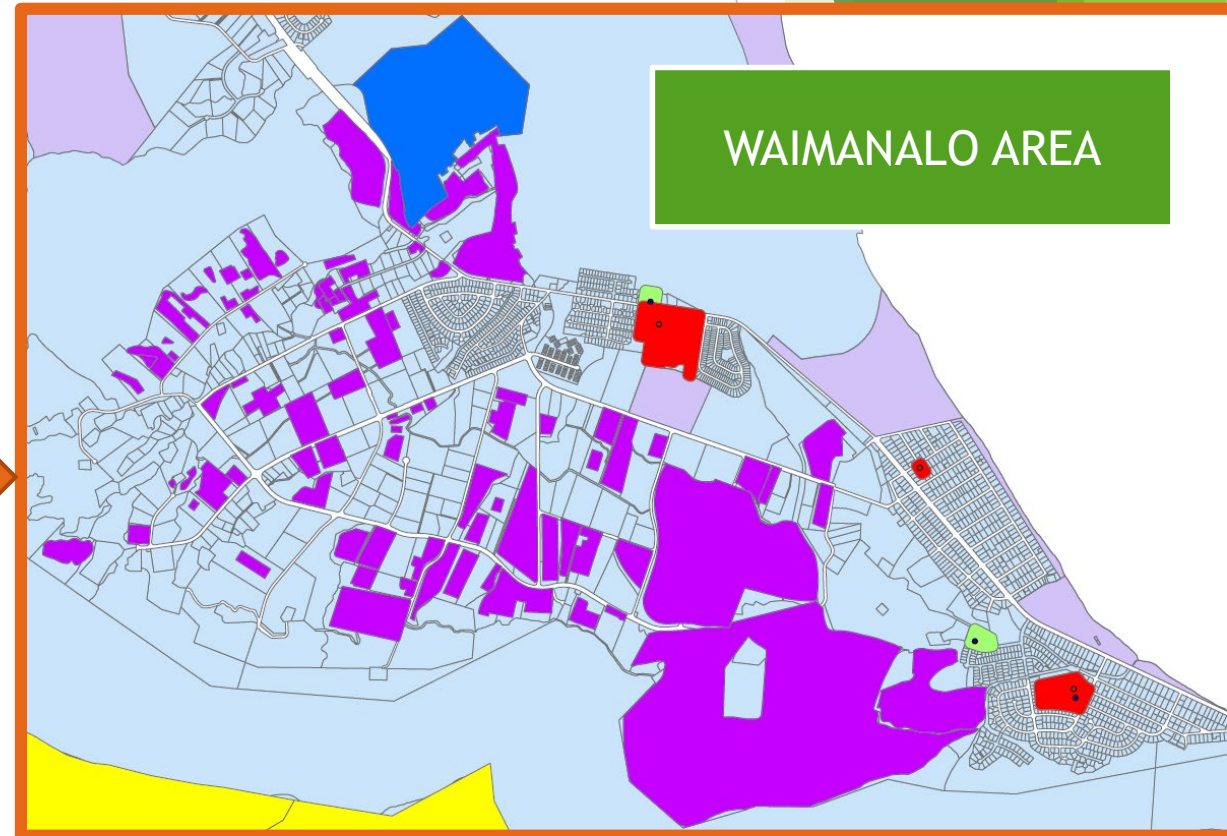
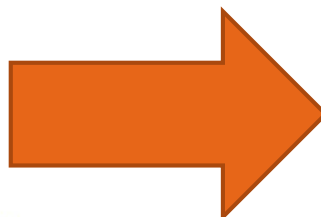
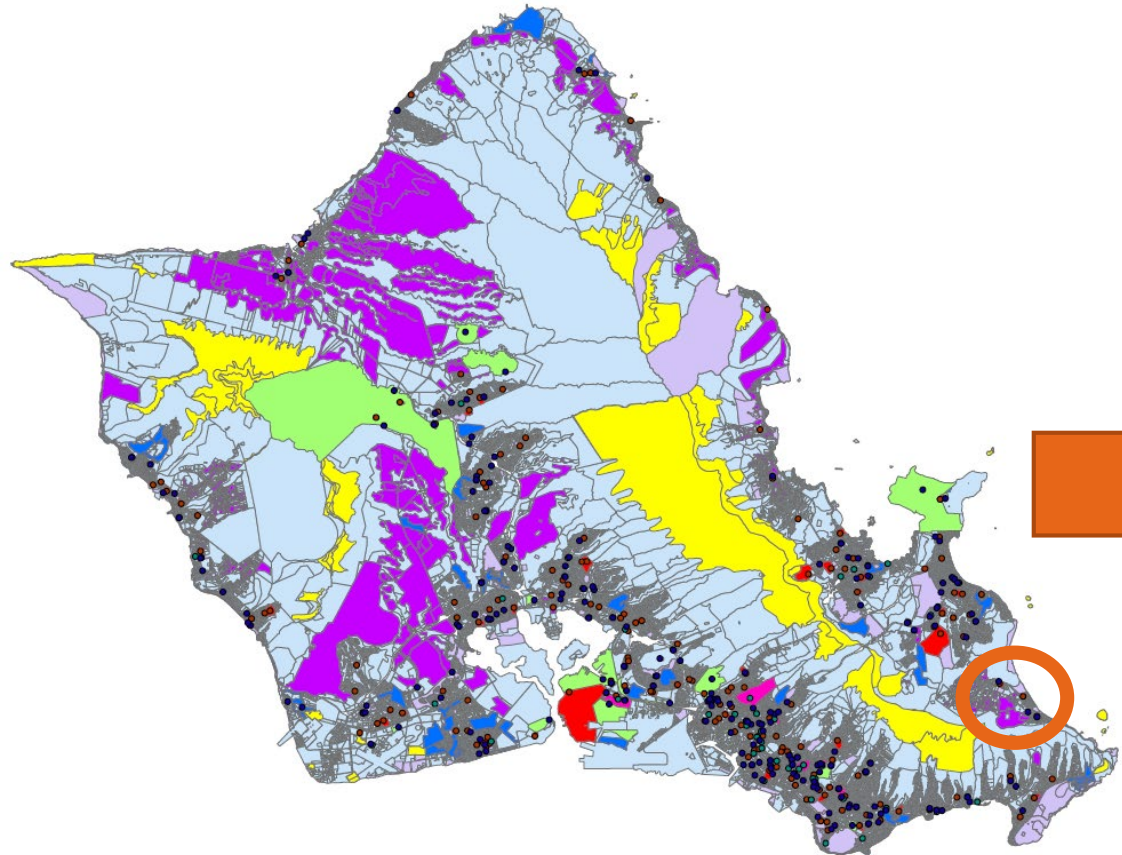
Buffer Zones continued...

- ▶ Buffer zone = an area in which no restricted use pesticides may be applied
- ▶ Buffer zone may be determined by tax map key
- ▶ If tax map key is not appropriate, buffer zones can be determined by fence lines, landscaping, or other reasonable methods
- ▶ The certified applicator will be responsible for all violations of this rule

Buffer Zones continued...

- ▶ HDOA can provide a map upon request
 - ▶ Email: HDOA.BZ@Hawaii.gov
 - ▶ Based on TMKs from Office of Planning

Red = schools
Green = preschools
Light purple = public parks
Dark purple = Ag land (Farms/nurseries)
Blue = Golf courses
Yellow = Conservation land



ACT 045

No Longer Use Pesticides Containing Chlorpyrifos starting January 1, 2023

- ▶ Requested and approved permits will allow the temporary use or application of a pesticide containing chlorpyrifos until December 31, 2022.
- ▶ Violations with pesticides containing chlorpyrifos will be subject to a penalty as outlined in 149A-41.
- ▶ Chlorpyrifos will be an RUP on the date which the DOA approves addition of Chlorpyrifos to the state RUP list
- ▶ Do NOT BUY unless you have an HDOA permit and you are a HDOA Certified Applicator

ACT 045

Chlorpyrifos Permit

- ▶ Letter sent out to certified applicators 12/26/2018.
- ▶ “HDOA shall grant to any person, upon request, a temporary permit...”
- ▶ Permit applications will be reviewed within 72 hours of emailed receipt
- ▶ 6-month permit and renewals must be requested 30 days in advance of expiration date

Request a permit application form C-45 at:
HDOA.PB@Hawaii.gov

FORM C-45 for Chlorpyrifos

- ▶ If you desire a hardcopy of the PERMIT, you must indicate the request when submitting the application form C-45

State of Hawaii
DEPARTMENT OF AGRICULTURE
Division of Plant Industry
1428 South King Street
Honolulu, HI 96814

FOR HDOA USE ONLY
__ Approved __ Denied: _____
Permit No. _____ Expires on: _____

Submit application for renewal 30 days prior to expiration date.

APPLICATION FOR TEMPORARY PERMIT TO USE OR APPLY ANY PESTICIDE CONTAINING CHLORPYRIFOS

This permit, unless otherwise stated, is valid for six months after issuance.

Effective January 1, 2019, State law prohibits the use or application of pesticide products containing the active ingredient chlorpyrifos unless the applicator applies for and obtains a Temporary Permit from the Hawaii Department of Agriculture. From January 1, 2019 to December 31, 2022, a temporary permit is required before an applicator is authorized to use or apply a pesticide containing chlorpyrifos as an active ingredient.

AFTER DECEMBER 31, 2022 ALL USE OF PESTICIDE PRODUCTS CONTAINING CHLORPYRIFOS ARE PROHIBITED

Applicant Name: _____ Phone: _____

Business Name and Address : _____

City, State, Zip Code : _____

Area/Units to be treated (A, sq ft, tags): _____ Use (check box): AG Non-Ag

Commodities or other site of application: _____

Certified Applicator Number¹: _____

¹Required only if the Chlorpyrifos product(s) are Restricted Use Pesticides

Chlorpyrifos Products to Apply or Use (continue on additional pages if necessary):

Pesticide Product Name	EPA Registration Number

Please submit completed forms to hdoa.pb@hawaii.gov

FORM C-45

HDOA Approval: _____ Date: _____

State Registered Pesticides Containing Chlorpyrifos as of August 2019

- ▶ NuFarm Chlorpyrifos SPC 4 Insecticide [228-624](#)
- ▶ Stallion Brand Insecticide [279-9545](#)
- ▶ Duraguard ME MicroEncapsulated Insecticide [499-367](#)
- ▶ Duraplex TR Total Release Insecticide [499-405](#)
- ▶ Durashield CS Controlled Release Insecticide [499-419](#)
- ▶ Andersons Gold Products Insecticide III [9198-167](#)
- ▶ Hot Shot MaxAttrax Roach Bait [9688-67-8845](#)
- ▶ Rainbow Fire Ant & Insect Killer [13283-14](#)
- ▶ Warhawk [34704-857](#)
- ▶ Warhawk Clearform [34707-1077](#)
- ▶ Y-Tex Warrior Insecticide Cattle Ear Tag [39039-6](#)
- ▶ Lorsban 15G [62719-34](#)
- ▶ Dursban 50W in water soluble packets [62719-72](#)
- ▶ Lorsban 4E [62719-220](#)
- ▶ Lorsban 50W Insecticide in water soluble packets [62719-221](#)
- ▶ Lorsban 75 WG [62719-301](#)
- ▶ Lorsban Advanced [62719-591](#)
- ▶ Cobalt Advanced [62719-615](#)
- ▶ Chlorpyrifos 4E AG [66222-19](#)
- ▶ Vulcan [66222-233](#)
- ▶ Eliminator Roach Bait [9688-67-8845](#)

HAR 4-66-32

State 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));
 - ▶ (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.

HAR 4-66-32

State Restricted Use Pesticides (Cont.)

- ▶ (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.

HAR 4-66-32

State Restricted Use Pesticides (Cont.)

- ▶ (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.

HAR 4-66-66

Fee Increases

- ▶ Pesticide product licensing and renewals: \$330 -> **\$930**
- ▶ Dealer permits
 - ▶ Principal sales outlets: \$250 -> **\$500**
 - ▶ Branch sales outlets: \$100 -> **\$200**
- ▶ Exam fee per category: \$25 -> **\$50**
- ▶ Card fees (dealer reps and applicators):
 - ▶ New or Renewal card: \$50 -> **\$100**
 - ▶ Duplicate: \$25 -> **\$50**
 - ▶ Change company: \$25 -> **\$50**
 - ▶ Add category to existing card: \$25 -> **\$50**

REMEMBER!

- ▶ These are all currently PROPOSED RULE changes to **HAR 4-66**
- ▶ **ACT 045** is already LAW
- ▶ The rules will not go into effect until the Governor signs his approval
- ▶ The Department will send out a notice to all certified applicators and dealers of the changes after they are approved

For Questions or Additional Assistance Contact:

▶ Big Island

❖ Cal Westergard @ 974-4143 cal.j.westergard@hawaii.gov

▶ Maui

❖ Mitchell MacCluer @ 873-3078 mitchell.s.maccluer@hawaii.gov

▶ Oahu

❖ Greg Takeshima @ 973-9411 greg.y.takeshima@hawaii.gov

❖ Esther Medrano @ 973-9424 esther.medrano@hawaii.gov

❖ Adam Yamamoto @ 973-9409 adam.y.yamamoto@hawaii.gov

▶ Kauai

❖ Emilee Wedekind-Balualua @ 241-7140 emilee.j.wedekind-balualua@hawaii.gov

References

- ▶ “Amendment and Compilation of Chapter 4-66 Hawaii Administrative Rules.”

<https://hdoa.hawaii.gov/wp-content/uploads/2018/10/HAR-Title-4-Chap-66-RAMSEYER-revised-10-26-2018-003.pdf>

- ▶ Act 045.

<https://hdoa.hawaii.gov/wp-content/uploads/2018/09/Act-045-Legislative-Session-2018.pdf>

- ▶ 40 CFR 171.201

<https://www.gpo.gov/fdsys/granule/CFR-2017-title40-vol26/CFR-2017-title40-vol26-sec171-201>

- ▶ Hawaii Department of Agriculture Website at hdoa.hawaii.gov

Licensed Pesticides: <http://hdoa.hawaii.gov/pi/pest/licensed-pesticides/>

Proposed Rule Changes: <http://hdoa.hawaii.gov/meetings-reports/proposedar/>

Presentation on website: <http://hdoa.hawaii.gov/pi/main/act45/>