Supervising
NON-CERTIFIED APPLICATORS

INTRODUCTION
If you supervise people who handle restricted-use pesticides, you should be aware of your legal responsibility to carefully train and supervise them. Every pesticide label bears a misuse statement: “It is a violation of Federal law to use this pesticide in a manner inconsistent with its labeling.” You should try to ensure that every pesticide is used in a manner consistent with its labeling. But give special attention to training and supervising non-certified applicators who are assigned tasks involving restricted-use pesticides.

The next 4 paragraphs are selected sections of the Hawaii Pesticides Law¹ and the Administrative Rules² (of the Hawaii Department of Agriculture). They give background information to help you understand the U.S. Environmental Protection Agency’s (EPA) policy described later in this leaflet. It is important to understand EPA’s policy because it is the basis of the Hawaii Department of Agriculture’s enforcement policy.

DIRECT SUPERVISION required
Prohibited acts. No person shall ... use or apply restricted pesticides unless the person is a certified pesticide applicator or under the direct supervision of a certified pesticide applicator with a valid certificate issued [by the Hawaii Department of Agriculture] ...

Hawaii Pesticides Law (Chapter 149A), Part III, Section 31 (3)

“Under the direct supervision of a certified applicator” ... 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 instruction and control of a certified applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied.

Hawaii Pesticides Law (Chapter 149A), Part I, Section 2 (34)

“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;

Administrative Rules, Chapter 66, Section 2

WRITTEN INSTRUCTIONS required
Conditions on the use of restricted pesticides. Any person may apply a restricted use pesticide, provided that:
(1) The person is under the direct supervision of a certified applicator;
(2) The person shall be given specific written instructions by the certified applicator for applying the pesticide, safety measures to be taken (including emergency procedures), and contacting the certified applicator at any time during the application;
(3) The certified applicator shall be responsible for all violations of the Act¹ and the Rule²; and
(4) The label of the pesticide being used does not prohibit its use by a noncertified person under the direct supervision of the certified applicator.

Administrative Rules, Chapter 66, Section 61

¹ The Hawaii Pesticides Law (Chapter 149A of the Hawaii Revised Statutes) is administered by the Hawaii Department of Agriculture.
² The Administrative Rules (Title 4, Subtitle 6, Chapter 66 Pesticides) were promulgated by the Hawaii Department of Agriculture to carry out the Hawaii Pesticides Law.
Summary of U.S. Environmental Protection Agency's Policy on “Direct Supervision”

Both the Hawaii Pesticides Law and the federal law, FEPCA (amended FIFRA), state that restricted-use pesticides may be applied by a certified applicator or persons under the “direct supervision” of a certified applicator. What specifically does “direct supervision” imply?

Since the responsibility for proper use of restricted pesticides lies with the certified applicator, he must oversee the entire application from start to finish, being constantly aware of the hazards involved. EPA has a policy (FIFRA Compliance Program Policy No. 2.3 of April 5, 1985) that more clearly identifies specific areas of responsibility and authority of the certified applicator supervising noncertified applicators of restricted pesticides. [The Hawaii Department of Agriculture’s enforcement policy is based on EPA’s policy.] Here is a summary:

(1) The supervising certified applicator must determine the level of experience and knowledge of the noncertified applicator, assuring that the noncertified applicator understands the pesticide labeling instructions, especially those related to avoiding hazards to people and the environment. The noncertified applicator must know the appropriate procedures to follow in case of poisoning.

(2) The supervising certified applicator must provide verifiable detailed instructions for using restricted pesticides. [Although the EPA policy only suggests written instructions, our Hawaii regulations require written instructions. Hawaii’s regulations can be stricter than the EPA policy.] Written instructions are suggested [required in Hawaii] and must address:
   a. types and amount of pesticide to be used;
   b. maintenance and calibration of equipment to be used;
   c. presence and nature of any environmental or health risks involved.

Instructions should be given at a level and in a language understood by the noncertified applicator. If a noncertified applicator will be applying several different restricted pesticides at different kinds of sites (or crops), the certified applicator is required to accompany the noncertified applicator to at least one site (or crop) for each different type of pesticide used.

(3) It is the responsibility of the supervising certified applicator to make sure the noncertified applicator is capable of applying restricted pesticides. Competency must be judged by the certified applicator who must ask questions of the noncertified applicator to ensure his or her comprehension of the instructions. In cases where the noncertified applicator has not previously used the particular restricted pesticide, or where there is any doubt about the noncertified applicator’s full understanding of instructions, the certified applicator is obligated to provide on-the-job-training and to OBSERVE the performance of the noncertified applicator before leaving the site.

(4) The supervising certified applicator need not be physically present at all times. The Federal Environmental Pesticide Control Act states, “the availability of the certified applicator must be directly related to the hazard of the situation”. EPA’s interpretation of this statement requires the physical presence of the supervising certified applicator when: (1) the use of a restricted pesticide poses a potentially serious hazard to man or the environment, or (2) it is specified on the label. In cases where physical

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3 The Federal Environmental Pesticide Control Act (FEPCA) is also called the “amended FIFRA” or just “FIFRA”. Actually, FIFRA, the Federal Insecticide Fungicide and Rodenticide Act (1947) is an older federal law upon which the newer FEPCA is based.
presence is not required, the supervising certified applicator must be “available if and when needed”. EPA interprets this statement to require, at a minimum, the availability of the certified applicator by telephone or radio immediately before, during, and after the noncertified applicator’s use of restricted pesticides. The supervising certified applicator must also be able to get to the application site within a “reasonable period of time” if the need arises. When determining what is a “reasonable period of time”, the potential or real consequences of a delay in arrival will be considered.

(5) Certified commercial applicators are required by both federal and state laws to maintain records for two years regarding types, amounts, uses, dates and sites of restricted pesticide application. The supervising certified applicator is responsible for keeping these records.

(6) Responsibility for ensuring applicator competency, providing adequate supervision, and for the safe and effective use of any pesticide lies with the supervising certified applicator. It follows then, that the certified applicator is also legally liable for violations committed by the noncertified applicator under his or her direct supervision. Where a restricted pesticide is misused by a noncertified applicator, the EPA will initiate enforcement action against both the noncertified applicator and the supervising certified applicator. [In Hawaii, the Hawaii Department of Agriculture is authorized by the Hawaii Pesticides Laws to take similar enforcement action.]

Finally, here is note from the Hawaii Department of Agriculture’s manager for Pesticide Programs:

(7) The person applying the restricted use pesticide must be instructed and controlled by the certified applicator. The following court case involving Singleton Spray Service is cited as an example: The case involved the application of pesticides by aircraft. The certified applicator worked for the spray service during the prior year, but had since begun work at a bank. The certified applicator was retained as a consultant and was available for consultation by telephone. It was ruled that direct supervision was not provided because the certified applicator did not provide instructions or control. Control was defined as the exercise of a restraint, directing or regulating influence; or supervision which involves careful watching and responsible care. The judge concluded that the retention of a consultant in this capacity was an effort to circumvent statutory and regulatory requirements. A fine of $10,000 was assessed.

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This leaflet was prepared for the Pesticide Risk Reduction Education (PRRE) program’s study packet for the restricted use pesticide certification examinations conducted by the State of Hawaii Department of Agriculture. The PRRE is a one of the educational programs of the UH College of Tropical Agriculture and Human Resources. The PRRE office is located on the Manoa campus of the University of Hawaii. The mailing address is: PEPS Department, 3190 Maile Way Room 307, Honolulu, HI 96822. The telephone number is 808-956-6007.