

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendment and Compilation of Chapter 16-94
Hawaii Administrative Rules

3 23, 2020

1. Chapter 16-94, Hawaii Administrative Rules,
entitled "Pest Control Operators", is amended and
compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 94

PEST CONTROL OPERATORS

Subchapter 1 General Provisions

§16-94-1	Repealed
§16-94-2	Objective

Subchapter 2 Definitions

§16-94-3	Definitions
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Subchapter 3 Types of Licenses

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§16-94-5	Sole proprietorship and other business entities
§16-94-6	Repealed

Subchapter 4 Application

§16-94-9	Application for license
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§16-94-11 §16-94-11	Repealed
§16-94-12	Business office
§16-94-13	Use of "dba"
§16-94-14	Repealed
§16-94-15	Repealed
§16-94-16	Qualification through [responsible managing employee or operator] <u>RME for pest control operator's license</u>
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§16-94-18	Exhibits required
§16-94-19	Joint venture license
§16-94-20	Power of board to approve other experience
§16-94-21	Power of board to accept equivalent knowledge

Subchapter 5 Responsible Managing Employee

§16-94-23	Repealed
§16-94-24	Repealed
<u>§16-94-24.1</u>	<u>Direct management of the pest control business</u>
§16-94-25	[Responsible managing employee (RME)] <u>Principal and subordinate RME</u>
<u>§16-94-25.001</u>	<u>RME for more than one pest control business</u>
§16-94-25.1	Change of employment
§16-94-25.5	Record keeping
§16-94-26	License nontransferable

§16-94-26.1 Revocation, suspension, and refusal to
renew license of principal RME
§16-94-26.2 Notice due board on death,
dissociation, or disability of RME

Subchapter 6 Pest Control Field Representative

§16-94-27 Repealed
§16-94-28 Repealed
§16-94-29 Repealed
§16-94-30 Repealed
§16-94-31 Repealed
§16-94-32 Pest control field representative

Subchapter 7 Examination for Individual License

§16-94-35 Examination
§16-94-35.1 Examination not required
§16-94-36 Reexamination
§16-94-37 Filing deadline

Subchapter 8 License Renewal

§16-94-40 License renewal

Subchapter 9 Repealed

§16-94-44 Repealed
§16-94-45 Repealed
§16-94-46 Repealed
§16-94-47 Repealed
§16-94-48 Repealed

Subchapter 10 Insurance

§16-94-49 Insurance

Subchapter 11 Repealed

§16-94-53	Repealed
§16-94-54	Repealed
§16-94-55	Repealed
§16-94-56	Repealed
§16-94-57	Repealed
§16-94-58	Repealed
§16-94-59	Repealed
§16-94-60	Repealed

Subchapter 12 General Pest Control Regulations
(Household Pests)

§16-94-64	Repealed
§16-94-65	Repealed
§16-94-66	General pest control

Subchapter 13 Termite Control Regulations

§16-94-70	Termite control
§16-94-71	Recommendation
§16-94-72	Control service agreement
§16-94-73	<u>Termite inspection standards</u>

Subchapter 14 Repealed

§16-94-76	Repealed
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Subchapter 15 Advertisement

§16-94-80	Guaranty; guarantee; guaranteed
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§16-94-82	Free inspection; free inspection report
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§16-94-84	Government approved
§16-94-85	Identification of company vehicles

§16-94-86 Advertising

Subchapter 16 Severability

§16-94-90 Severability

Subchapter 17 Practice and Procedure

§16-94-94 Administrative practice and procedure

§16-94-97 Oral testimony

SUBCHAPTER 1

GENERAL PROVISIONS

§16-94-1 Repealed. [R 9/9/85]

§16-94-2 Objective. This chapter is intended to clarify and implement chapter 460J, [~~Hawaii Revised Statutes~~], HRS, to the end that the provisions thereunder may be best effectuated and the public interest most effectively served. [Eff 10/12/74; am and ren §16-94-2, 6/22/81; am and comp 9/9/85; comp 10/16/95; comp 9/1/05; am and comp]
(Auth: HRS §460J-3) (Imp: HRS §460J-3)

SUBCHAPTER 2

DEFINITIONS

§16-94-3 Definitions. As used in this chapter:

"Board" means the pest control board.

"BREG" means the department's business registration division.

"Department" means the department of commerce and consumer affairs.

"Direct management of the pest control business" means the direct supervision of the pest control project undertaken by the [~~licensee,~~] pest control operator, the control of technical and administrative decisions, personnel management, the review of pest control contracts, and enforcing compliance with all laws and rules affecting the pest control business.

"Person" means an individual, firm, partnership, corporation, joint venture, and any other association of natural persons.

"Pest control field representative" means any individual who is licensed by the board to secure pest control work, identify infestations, make inspections, submit bids, or sign contracts on behalf of a licensed pest control operator.

"Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

"Principal responsible managing employee" or "Principal RME" means the RME through which the business license is maintained.

"Responsible managing employee" or "RME" means the individual responsible for the direct management of the pest control business of the [~~licensee,~~] pest control operator.

"TIR" means a termite inspection report. [Eff 10/12/74; am and ren §16-94-3, 6/22/81; am and comp 9/9/85; am and comp 10/16/95; am and comp 9/1/05; am and comp] (Auth: HRS §460J-3) (Imp: HRS §460J-1)

SUBCHAPTER 3

TYPES OF LICENSES

§16-94-4 Individuals. The board shall issue the following types of licenses:

- (1) Pest control operator, branch 1;
- (2) Pest control operator, branch 2;
- (3) Pest control operator, branch 3;
- (4) RME, branches 1, 2, and 3; and
- (5) Pest control field representative, branches 1, 2, and 3. [Eff 10/12/74; am and ren §16-94-4, 6/22/81; am and comp 9/9/85; am and comp 10/16/95; comp 9/1/05; comp] (Auth: HRS §460J-3)
(Imp: HRS §460J-12)

§16-94-5 Sole proprietorship and other business entities. The board ~~shall~~ may issue licenses ~~for~~ to a sole proprietorship, partnership, corporation, joint venture, limited liability ~~corporation,~~ company limited liability partnership, and any other business entity duly registered and in good standing with ~~[the business registration division]~~ BREG for categories falling under section 16-94-4(1), (2), and (3). [Eff 10/12/74; am and ren §16-94-5, 6/22/81; am and comp 9/9/85; comp 10/16/95; am and comp 9/1/05; am and comp] (Auth: HRS §460J-3) (Imp: HRS §460J-12)

§16-94-6 Repealed. [R 9/9/85]

SUBCHAPTER 4

APPLICATION

§16-94-9 Application for license. Applications for licenses shall be filed on a form prescribed by the board, accompanied by the fee which shall be nonrefundable. [Eff 10/12/74; am and ren §16-94-9, 6/22/81; am and comp 9/9/85; comp 10/16/95; comp 9/1/05; comp] (Auth: HRS §460J-9) (Imp: HRS §460J-9)

§16-94-10 Repealed. [R 9/9/85]

§16-94-11 Repealed. [R 9/9/85]

§16-94-12 Business office. [~~The~~] A pest control operator's place of business shall be located in a zone approved by the political subdivision for operation of the business and shall be a permanent place of business within the State where the [~~pest control entity,~~] pest control operator, [~~or~~] RME, or pest control field representative may be served notice and legal process. For purposes of this section, "permanent place of business" means a physical address, not a post office box number. [~~The~~] Each place of business shall require approval of the board. [Eff 10/12/74; am and ren §16-94-12, 6/22/81; am and comp 9/9/85; comp 10/16/95; am and comp 9/1/05; am and comp] (Auth: HRS §460J-11) (Imp: HRS §460J-11)

§16-94-13 Use of "dba". Use of a trade name or "dba" by a pest control operator shall have been previously registered with [~~the department's business registration division~~] BREG and shall be filed with and approved by the board. [Eff 10/12/74; am and ren §16-94-13, 6/22/81; am and comp 9/9/85; comp 10/16/95; am and comp 9/1/05; am and comp]
(Auth: HRS §460J-3) (Imp: HRS §460J-3)

§16-94-14 Repealed. [R 9/9/85]

§16-94-15 Repealed. [R 9/9/85]

§16-94-16 Qualification through [~~responsible managing employee or operator.~~] RME for pest control operator. Sole proprietorships, partnerships, corporations, joint ventures, limited liability companies, limited liability partnerships, and any other business entities duly registered and in good standing with [~~the business registration division~~] BREG shall qualify for a pest control operator's license through [~~a responsible managing employee (RME) or operator.~~] an RME in its employ. [Eff 10/12/74; am and ren §16-94-16, 6/22/81; am and comp 9/9/85; comp 10/16/95; am and comp 9/1/05; am and comp] (Auth: HRS §460J-6) (Imp: HRS §460J-8)

§16-94-17 Experience requirement. (a) An applicant for an individual operator license or responsible managing employee license, or both, shall have had the following experience:

- (1) At least one year of specialized field experience as a certified commercial applicator within the past four years immediately preceding the filing of an application in the branch in which the license is sought;
- (2) At least one year of on-site field supervision actively directing pest control projects whether applying for more than one branch;
- (3) At least one hundred jobs as an applicator in the specific branch during the one-year specialized field experience period provided that if restricted use chemicals are used, the applicant shall have been the certified applicator of record and shall verify at minimum, the following:
 - (A) Branch 1: One hundred jobs of chemical application consisting of structural fumigation;
 - (B) Branch 2: One hundred jobs of chemical and non-chemical applications consisting of one or more of the following formulations: liquids, foams, dusts, gels, aerosols, baits, and granules; provided that not more than fifty jobs shall consist of monitoring, baiting, or non-chemical methods;
 - (C) Branch 3: One hundred jobs of chemical and non-chemical applications consisting of one or more of the following formulations: liquids, foams, dusts, gels, aerosols, baits, and granules; provided that not more than fifty jobs shall consist of monitoring, baiting, or non-chemical methods.
- (4) Branch 1 (Fumigation). The purpose of fumigation training is to impart the pest control operator or RME with sufficient theoretical and practical knowledge to

enable the person to recommend and perform fumigations, inspections, pest identifications, and estimations, to diagram sites for the purpose of calculating volume of the structure, and to properly communicate this to consumers. Valid experience for a branch 1 pest control operator and branch 1 RME shall include but not be limited to:

- (A) Inspecting sites and writing inspection reports;
- (B) Identifying pests;
- (C) Understanding labels and applying pesticides;
- (D) Fumigating structures;
- (E) Taking readings using electronic and manual fumigation reading equipment;
- (F) Calculating application rates of the fumigants and the warning agents;
- (G) Diagramming existing structure and calculating volume;
- (H) Preparing fumigation sites; and
- (I) Clearing the structure to insure safe re-entry.

(5) Branch 2 (General Pest). The purpose of general pest control training is to impart the pest control operator or RME with sufficient theoretical and practical knowledge to enable the person to recommend and perform pest control work, inspections, pest identifications, and estimations, to diagram sites as appropriate to make written recommendations for implementing a pest management program for household pests. Valid experience for a branch 2 pest control operator and branch 2 RME shall include but not be limited to:

- (A) Inspecting sites and writing inspection reports;
- (B) Identifying pests;
- (C) Understanding labels and applying pesticides;

- (D) Diagramming sites, and existing structures;
 - (E) Applying pesticides including baits, and using non-chemical methods; and
 - (F) Calibrating equipment.
- (6) Branch 3 (Termite). The purpose of termite training is to impart the pest control operator or RME with sufficient theoretical and practical knowledge to enable the person to recommend and perform termite work, inspections and estimations, and to diagram foundations of structures and areas inspected and to identify conducive conditions to provide written and visual documentation of inspection findings. Valid experience for a branch 3 pest control operator and branch 3 RME shall include but not be limited to:
- (A) Inspecting sites and writing inspection reports;
 - (B) Identifying pests;
 - (C) Understanding labels and applying pesticides;
 - (D) Diagramming foundations of structures and portions of the structure inspected;
 - (E) Applying pesticides including baits, and using non-chemical methods;
 - (F) Calibrating equipment;
 - (G) Performing pre-construction and post-construction treatments using chemical and non-chemical methods; and
 - ~~{4}~~ (H) Performing remedial treatments for the control of subterranean and drywood termites found in Hawaii.
- Fumigation for termites shall not be considered valid experience for branch 3.
- (7) Certification, under the Hawaii pesticides law by the state department of agriculture as a commercial applicator in the branch for which application is made, shall be held for at least one year prior to the submission of

the application. The applicant shall submit proof of a valid, current certification with the application. If an applicant has been certified for less than one year, then the applicant may demonstrate equivalent experience, indicating that the applicant is familiar with the pests and the use of pesticides under the same or similar conditions prevailing in this State.

(b) An applicant for a pest control field representative license shall have at least sixty hours of training and field experience under the supervision of a licensed pest control operator.

(1) The sixty hours of training for each respective branch shall be comprised of any combination of listed training provided the applicant obtains no fewer than the minimum number of hours in each of the following categories:

(A) Branch 1 (Fumigation). The purpose of fumigation training is to impart the pest control field representative with sufficient theoretical and practical knowledge to enable the person to recommend and perform fumigations, inspections, pest identifications, and estimations, to diagram sites for the purpose of calculating volume of the structure, and to properly communicate this to consumers.

- (i) Inspecting sites and writing inspection reports14 hours
- (ii) Identifying pests5 hours
- (iii) Understanding labels5 hours
- (iv) Fumigating structures12 hours
- (v) Taking readings using electronic and manual fumigation reading equipment3 hours
- (vi) Calculating application rates of the fumigants and the warning agents3 hours

- (vii) Diagramming existing structure and calculating volume10 hours
- (viii) Preparing fumigation sites 5 hours
- (ix) Clearing the structure to insure safe re-entry3 hours
- (B) Branch 2 (General Pest). The purpose of general pest control training is to impart the pest control field representative with sufficient theoretical and practical knowledge to enable the person to recommend and perform pest control work, inspections, pest identifications, and estimations, and to diagram sites as appropriate to make written recommendations for implementing a pest management program for household pests.
 - (i) Inspecting sites and writing inspection reports14 hours
 - (ii) Identifying pests24 hours
 - (iii) Understanding labels8 hours
 - (iv) Diagramming sites and existing structures5 hours
 - (v) Applying pesticides including baits, and using non-chemical methods7 hours
 - (vi) Calibrating equipment2 hours
- (C) Branch 3 (Termite). The purpose of termite training is to impart the pest control field representative with sufficient theoretical and practical knowledge to enable the person to recommend and perform termite work, inspections, estimations, and to diagram foundations of structures and areas inspected and to identify conducive conditions to provide written and visual documentation of inspection findings.
 - (i) Inspecting sites and writing inspection reports16 hours
 - (ii) Identifying pests10 hours

- (iii) Understanding labels6 hours
- (iv) Diagramming foundations of structures and portions of the structure inspected4 hours
- (v) Applying pesticides including baits, and using non-chemical methods10 hours
- (vi) Calibrating equipment2 hours
- (vii) Performing pre-construction and post-construction treatment using chemical and non-chemical methods6 hours
- (viii) Performing remedial treatments for the control of subterranean and drywood termites found in Hawaii6 hours

Fumigation for termites shall not be considered valid experience for branch 3.

- (2) The applicant shall have been an applicator in at least twenty-five jobs within the last four years in the specific branch for which application is being made and shall verify, at a minimum, the following:

- (A) Branch 1 (Fumigation):
Twenty-five jobs of chemical application where the applicant was an applicator on structural fumigation jobs;
- (B) Branch 2 (General Pest):
Twenty-five jobs where the applicant was an applicator on chemical and non-chemical application jobs consisting of one or more of the following formulations: liquids, foams, dusts, gels, aerosols, baits, and granules; provided that not more than ten jobs shall consist of monitoring, baiting, or non-chemical methods;
- (C) Branch 3 (Termite):
Twenty-five jobs where the applicant was an applicator on chemical and non-chemical application jobs consisting of

one or more of the following formulations: liquids, foams, dusts, gels, aerosols, baits, and granules; provided that not more than ten jobs shall consist of monitoring, baiting, or non-chemical methods. [Eff 10/12/74; am and ren §16-94-17, 6/22/81; am and comp 9/9/85; am and comp 10/16/95; am and comp 9/1/05; am and comp] (Auth: HRS §460J-3) (Imp: HRS §460J-3)

§16-94-18 Exhibits required. (a) Individual applicants for licenses shall ~~[furnish]~~ provide the board with the following exhibits:

- (1) Two certificates to support experience qualifications on a form prescribed by the board. One certificate shall be completed by ~~[an individual]~~ the pest control operator or RME licensed in the branch for which the application is made [~~+~~] and who provided the supervision; and
- (2) A job list to support the experience qualifications on a form prescribed by the board, which shall include the information listed in section 16-94-17; provided that if, after a good faith effort, the applicant is unable to obtain a verified job list from ~~[an individual]~~ the pest control operator or RME, the board in its sole discretion may accept a job list completed and verified by another person familiar with the applicant's experience.

(b) Applicants for a ~~[business]~~ pest control operator's license shall file:

- (1) A current credit report covering at least the previous five years and issued within six months of the application date of each individual pest control operator applicant, RME, member of a joint venture or limited

- liability company, partner of a partnership, manager of a limited liability company, and each officer of a corporate entity;
- (2) A copy of a current workers' compensation certificate from an insurer authorized to conduct business in this State or an unauthorized insurer in accordance with article 8 of chapter 431, HRS, or a risk retention or risk purchasing group in accordance with chapter 431K, HRS, that indicates that the policy is in force; or proof that the person has been authorized to act as a self-insurer under chapter 386, HRS, or is excluded from the requirements of chapter 386[-], HRS. The board shall be notified of any cancellation, termination, or withdrawal of any policy. Applicants claiming an exclusion under chapter 386, HRS, shall submit and sign a statement claiming such exclusion to the board;
- (3) A copy of a current certificate of general liability insurance from an insurer authorized to conduct business in this State, an unauthorized insurer in accordance with article 8 of chapter 431, HRS, or a risk retention or risk purchasing group in accordance with chapter 431K, HRS, showing full policy coverage of the applicant in the minimum amount of \$100,000 for any one claim and a minimum aggregate of not less than \$300,000 for all claims arising during a policy term of one year. The board shall be notified in writing at least thirty days prior to any cancellation, termination, or withdrawal of any policy by the insurer. ~~[In the event]~~ If such policy cannot be obtained, the applicant may file with the board in lieu thereof a verified statement providing proof satisfactory to the board of financial responsibility equivalent to that provided for by such insurance policy; and

- (4) A tax clearance or proof of compliance with a payment arrangement from the state department of taxation issued within six months of the application date~~[-]~~; and
- (5) Evidence that the entity is properly registered with BREG
 - (A) If the entity has been registered in this State for less than one year, provide a file stamped copy of the document file with BREG; or
 - (B) If the entity has been registered in this State for more than one year, provide a current certificate of good standing from BREG issued not more than one year prior to the application filing date.

(c) Pest [~~Control entities~~] control operators shall submit a letter signed by [~~the officers~~] an authorized officer of the corporation, [~~partners~~] partner of a partnership or limited liability partnership, [~~members~~] member or [~~managers~~] manager of a limited liability company, or [~~members~~] member of a joint venture designating the principal RME or additional RMEs. This letter shall also be countersigned by the RME and shall accompany the application for license. [Eff 10/12/74; am and ren §16-94-18, 6/22/81; am and comp 9/9/85; am and comp 10/16/95; am and comp 9/1/05; am and comp] (Auth: HRS §460J-3) (Imp: HRS §460J-8)

§16-94-19 Joint venture license. (a) A joint venture license shall be issued to those joint venture applicants where at least one party holds an appropriate pest control operator's license~~[-]~~ under chapter 460J, HRS, and this chapter. All unlicensed members in a joint venture or partners in a partnership shall submit current credit reports, a current tax clearance or proof of compliance with a payment arrangement from the [~~State Department of~~

~~Taxation,~~] state department of taxation and any other information requested by the board along with the application for licensure.

(b) Except as otherwise provided by law, all joint ventures and partnerships shall be registered with the department's [~~business registration division~~] BREG prior to engaging in any pest control activity. Joint ventures and partnerships shall provide proof of the registration to the board at the time of application.

(c) [~~Dissolution~~] The dissolution of the joint venture or partnership licensed under this section shall result in the immediate forfeiture of the license of the joint venture or partnership.

(d) The license of a joint venture or partnership shall be automatically forfeited without a hearing if the license of [æ] any member or partner is suspended, revoked, terminated, withdrawn, forfeited, or refused to be renewed.

(e) Upon dissolution or forfeiture, the joint venture or partnership shall be prohibited from engaging in any pest control activity and shall not bid upon or enter into any new contracts. [Eff 10/12/74; am and ren §16-94-19, 6/22/81; am and comp 9/9/85; comp 10/16/95; am and comp 9/1/05; am and comp] (Auth: HRS §460J-3) (Imp: HRS §460J-8)

§16-94-20 Power of board to approve other experience. The board [~~may~~], in its sole discretion, may approve certain technical training or business administration training as acceptable experience, but in no case shall the training count as more than one year of experience. [Eff and comp 9/9/85; am and comp 10/16/95; comp 9/1/05; am and comp] (Auth: HRS §460J-3) (Imp: HRS §460J-3)

§16-94-21 Power of board to accept equivalent knowledge. The board [~~may~~], in its sole discretion, may accept any reasonably equivalent knowledge, training, or experience of the applicant in lieu of a specific experience requirement if upon investigation it makes a detailed finding to that effect. [Eff and comp 9/9/85; comp 10/16/95; comp 9/1/05; am and comp] (Auth: HRS §460J-3) (Imp: HRS §460J-3)

SUBCHAPTER 5

RESPONSIBLE MANAGING EMPLOYEE

§16-94-23 Repealed. [R 9/9/85]

§16-94-24 Repealed. [R 9/9/85]

§16-94-24.1 Direct management of the pest control business. The pest control business of a pest control operator shall be under the direct management of a principal RME who shall be a bona fide employee or who meets the exemptions in chapter 386, HRS. [Eff and comp] (Auth: HRS 460J-3) (Imp: HRS §§460J-6, 460J-8)

§16-94-25 [~~Responsible managing employee (RME).~~
~~A responsible managing employee shall not be deemed to have direct management of the licensee's pest control business unless the individual is:~~

- ~~(1) A bona fide employee, principally employed by the licensee; provided, that an individual may be the responsible managing employee for more than one firm if:~~
- ~~(A) There is a common ownership of at least fifty one per cent of the equity of each firm for which the individual acts as responsible managing employee;~~
 - ~~(B) Each additional firm for which the individual acts as responsible managing employee is a subsidiary of or joint venture with the first;~~
 - ~~(C) There is a direct family relationship between the responsible managing employee and the officers of each additional firm for which an individual acts as the responsible managing employee; or~~
 - ~~(D) The board is satisfied that it is in the public interest and that such individual is competent, able, and qualified to be a responsible managing employee for more than one firm;~~
- ~~(2) In a position to secure full compliance with the pest control law and rules of the board;~~
- ~~(3) Familiar with all contracts the firm enters into and sees that all contract provisions are carried out. To record that familiarity, the responsible managing employee shall sign or initial all contracts;~~
- ~~(4) Familiar with all projects the firm undertakes and sees that records are kept on the projects; and~~
- ~~(5) In residence in the State during the time the RME license is in effect or during the period a project is undertaken.]~~ **Principal and Subordinate RME.** (a) Pest Control operators may have in their employ more than one RME, but shall designate in every case a principal RME who shall be primarily

responsible for the direct management of the pest control business and who shall be:

- (1) In a position to secure full compliance with the pest control laws and rules of board;
- (2) Familiar with all contracts the pest control operator enters into and sees that all contract provisions are carried out. To demonstrate that familiarity, the RME shall sign or initial all contracts;
- (3) Familiar with all projects the pest control undertakes and see that detailed records are kept on the projects;
- (4) In residence in the State during the time the RME license is in effect or during the period a project is undertaken; and
- (5) Held responsible for any violation of Chapter 460J, HRS or this Chapter.

(b) Other RMEs employed but not designated as the principal RME shall be referred to as subordinate RMEs and shall be responsible for all activities relating to the classifications held by the subordinate RME.

(c) An RME shall not be considered to be a separate pest control operator and shall be considered to be engaging in unlicensed activity, if the RME enters into a contract other than for the pest control operator by whom the RME is employed. [Eff and comp 9/9/85; am and comp 10/16/95; comp 9/1/05; am and comp] (Auth: HRS §460J-3) (Imp: HRS §§460J-3, 460J-12)

§16-94-25.001 RME for more than one pest control business. An individual may be an RME for more than one pest control operator if:

- (1) There is a common ownership of at least fifty-one per cent of the equity of each pest control operator for which the individual acts as the RME;

- (2) A pest control operator is a subsidiary of or joint venture with another pest control operator;
- (3) There is a direct family relationship between the RME and the officers, directors, members, managers, or partners of the other pest control operators for which the individual acts as the RME; or
- (4) There is a direct family relationship between the officers, directors, members, managers, and partners of all pest control operators for which the individual acts as the RME; and
- (5) The board is satisfied that it is in the public's interest and that the individual is competent, able, and qualified to be an RME for more than one pest control operator.
[Eff and comp _____] (Auth: HRS §460J-3) (Imp: HRS §460J-3, §460J-8)

Historical note: The substance of this section is based in part upon section 16-94-25.

§16-94-25.1 Change of employment. The pest control operator shall notify the board of any change in employment status of its [~~designated~~] principal RME or RMEs within ten working days of the change in status. [Eff and comp 10/16/95; comp 9/1/05; am and comp _____] (Auth: HRS §460J-3) (Imp: HRS §460J-3)

§16-94-25.5 Record keeping. [~~The~~] A pest control operator or RME shall keep records on all jobs performed for a period of at least two years. [~~The~~] Each record shall include, but not be limited to, the following information:
(1) Date of job;
(2) Client's name and address;

- (3) Branch of pest control; and
- (4) Chemicals and treatment method(s) used.
[Eff and comp 9/1/05; am and comp
] (Auth: HRS §460J-3)
(Imp: HRS §460J-3)

§16-94-26 License nontransferable. Licenses issued under the provisions of chapter 460J, HRS, and this chapter shall be nontransferable. [Eff and comp 9/9/85; comp 10/16/95; comp 9/1/05; am and comp
] (Auth: HRS §§460J-3, 460J-12)
(Imp: HRS §460J-12)

§16-94-26.1 Revocation, suspension, and refusal to renew license of principal RME. The license of the principal RME may be suspended, revoked, terminated, or refused to be renewed if the license of [~~contracting entity of~~] the pest control operator for which the person is the principal RME is revoked, terminated, suspended, or refused renewal pursuant to section 460J-15, HRS[-], and this chapter. [Eff and comp 9/9/85; comp 10/16/95; comp 9/1/05; am and comp
] (Auth: HRS §§460J-3, 460J-15)
(Imp: HRS §460J-15)

§16-94-26.2 Notice due board on death, dissociation, or disability of RME; (a) A pest control operator who qualified for licensure by employment of an RME shall within thirty calendar days after the death, dissociation, or disability of the RME, notify the board of the death, dissociation, or disability of the RME, submit an application to qualify a new RME, appoint a new RME who already holds a license, or place its pest control operator's license on inactive status. The pest control operator may continue to operate until the board makes a final

determination upon its timely application to qualify a new RME; provided that the pest control operator may not bid upon or enter into new contracts until the board's determination is made or a new licensed RME is appointed.

(b) For purposes of this section, "Disability" includes any situation in which the direct management of the licensed pest control operator's business is no longer under the control of the principal RME or when a subordinate RME is unable to be responsible for all pest control services relating to the classifications of branches held by the subordinate RME.

(c) Failure of the pest control operator to notify the board of the death, dissociation, or disability of the RME within the thirty-calendar day period shall result in the license being automatically forfeited without a hearing. The license may be restored when the pest control operator employs another licensed individual as the RME or the pest control operator files a new application with the board.

(d) Failure of the pest control operator to submit an application for a new principal RME within thirty calendar days of the death, dissociation, or disability, and to qualify a new principal RME within the time period allowed by the board shall result in the automatic forfeiture of the pest control operator's license without a hearing.

(e) Pest control operators shall not bid or enter into contracts without having a principal RME in its employ who has direct management of the pest control business.

(f) An RME who dissociates from the pest control operator shall notify the board within thirty calendar days of the dissociation. The RME shall:

- (1) Apply to become a pest control operator by submitting fees, tax clearance or proof of payment arrangement, credit report, and required insurance;
- (2) Obtain employment with another pest control operator which shall submit a proper application thereof; or

(3) Place the license on an inactive status.
(g) Failure of the RME to complete one of the three actions in subsection (f) within thirty calendar days of the dissociation shall cause the automatic forfeiture of the license without a hearing. [Eff and comp] (Auth: HRS §460J-3) (Imp: §460J-8, §460J-17)

SUBCHAPTER 6

PEST CONTROL FIELD REPRESENTATIVE

§16-94-27 Repealed. [R 9/9/85]

§16-94-28 Repealed. [R 9/9/85]

§16-94-29 Repealed. [R 9/9/85]

§16-94-30 Repealed. [R 9/9/85]

§16-94-31 Repealed. [R 9/9/85]

§16-94-32 Pest control field representative.
[~~The employer~~] Each pest control operator and its principal RME shall be held responsible for the acts, conduct, representations, etc., of [the] a pest control field representative within the scope of pest

control field representative's employment. [~~The employer also~~] Each pest control operator and its principal RME shall also be held responsible along with the pest control field representative[7] for any violation of [~~the pest control law,~~] chapter 460J, HRS, this chapter, or applicable safety rules[7-~~or this chapter~~] by the field representative; and the board may take disciplinary action against the [~~employer as well as the~~] pest control operator, its principal RME, and the pest control field representative. [Eff and comp 9/9/85; comp 10/16/95; comp 9/1/05; am and comp] (Auth: HRS §460J-3) (Imp: HRS §460J-3)

SUBCHAPTER 7

EXAMINATION FOR INDIVIDUAL LICENSE

§16-94-35 Examination. (a) All applicants shall qualify [~~in a written examination by~~] for a license by taking and passing a written examination approved by the board with a score of seventy per cent or better.

(b) Examinations shall be given regularly and partial credit shall not be given for any part of the examination. [Eff 10/12/74; am and ren §16-94-35, 6/22/81; am and comp 9/9/85; am and comp 10/16/95; am and comp 9/1/05; am and comp] (Auth: HRS §460J-13) (Imp: HRS §460J-13)

§16-94-35.1 Examination not required. An examination shall not be required when the applicant, within a period of one year prior to application, has previously qualified by written examination or was licensed in good standing or on an inactive status[7]

i provided that the applicant applies for a license in the same branch in which the applicant previously qualified by examination or was licensed in good standing or on an inactive status. [Eff and comp 9/1/05; am and comp] (Auth: HRS §460J-3) (Imp: §§460J-3, 460J-9, 460J-14)

§16-94-36 Reexamination. An applicant for reexamination shall apply on a form prescribed by the board, accompanied by the nonrefundable application fee. A candidate may be reexamined any number of times [~~7~~] provided that the application fee is [~~filed~~] submitted for each examination. [Eff 10/12/74; am and ren §16-94-36, 6/22/81; am and comp 9/9/85; am and comp 10/16/95; comp 9/1/05; am and comp] (Auth: HRS §460J-9) (Imp: HRS §460J-3)

§16-94-37 Filing deadline. Applications shall be filed no later than [~~forty five~~] sixty days before the date of the examination. [Eff and comp 9/9/85; am and comp 10/16/95; comp 9/1/05; am and comp] (Auth: HRS §460J-3) (Imp: HRS §460J-3)

SUBCHAPTER 8

LICENSE RENEWAL

§16-94-40 License renewal. (a) Each license shall be renewed on or before June 30 of each even numbered [~~years~~] year.

(b) [~~Application for~~] Each renewal application shall be accompanied by the applicable fee.

(c) [~~Pest~~] A licensed pest control [~~business licensees~~] operator shall submit a tax clearance or proof of compliance with a payment arrangement from the [~~State~~] state department of taxation issued within six months of the renewal application date.

(d) [~~Operators, RMEs, and field representatives~~] Each pest control operator and RME shall submit proof of a valid, current certification with the department of agriculture in the appropriate category and subcategories.

(e) [~~Failure,~~] The failure, neglect, or refusal to pay the renewal fee shall constitute grounds for forfeiture of license. A forfeited license may be restored upon written application within one year and upon payment of the applicable fee. If application for restoration is not made within one year from date of forfeiture, the individual shall be considered a new applicant and shall satisfy all of the current requirements for licensure. [Eff 10/12/74; am and ren §16-94-40, 6/22/81; am and comp 9/9/85; am and comp 10/16/95; am and comp 9/1/05; am and comp] (Auth: HRS §§460J-3, 460J-14)
(Imp: HRS §460J-14)

SUBCHAPTER 9 Repealed.

§16-94-44 Repealed. [R 9/9/85]

§16-94-45 Repealed. [R 9/9/85]

§16-94-46 Repealed. [R 9/9/85]

§16-94-47 Repealed. [R 9/9/85]

§16-94-48 Repealed. [R 9/9/85]

SUBCHAPTER 10

INSURANCE

§16-94-49 Insurance. (a) No person shall engage in the business of pest control unless the person has filed with the board a current copy of a certificate of general liability insurance from an insurer authorized to conduct business in this State, an unauthorized insurer in accordance with article 8 of chapter 431, HRS, or a risk retention or risk purchasing group in accordance with chapter 431K, HRS, showing full policy coverage of the applicant in the minimum amount of \$100,000 for any one claim and a minimum aggregate of not less than \$300,000 for all claims arising during a policy term of one year. The insurance shall cover all branches of pest control work performed or subcontracted by the pest control operator. The board shall be notified in writing at least thirty calendar days prior to any cancellation, termination, or withdrawal of any policy by the insurer. [~~In the event~~] If such policy cannot be obtained, the licensee may file with the board in lieu thereof a verified statement providing proof satisfactory to the board of financial responsibility equivalent to that provided for by such insurance policy; provided that no employee of any company need have such policy in effect with respect to work covered by a policy of the company by which the employee is employed. This section shall not apply to vault fumigation.

(b) In addition to subsection (a), no person shall engage in the business of pest control unless the person has filed with the board a current copy of a workers' compensation certificate from an insurer authorized to conduct business in this State or an unauthorized insurer in accordance with article 8 of chapter 431, HRS, or a risk retention or risk purchasing group in accordance with chapter 431K, HRS, that indicates that the policy is in force; or proof that the person has been authorized to act as a self-insurer under chapter 386, HRS, or is excluded from the requirements of chapter 386. Applicants claiming an exclusion under chapter 386, HRS, shall submit and sign a statement claiming such exclusion to the board. The board shall be notified in writing at least thirty calendar days prior to any cancellation, termination, or withdrawal of any policy by the insurer. [Eff 10/12/74; am and ren §16-94-49, 6/22/81; am and comp 9/9/85; am and comp 10/16/95; am and comp 9/1/05; am and comp] (Auth: HRS §§460J-25, 386-121) (Imp: HRS §§460J-25, 386-121)

Historical Note: Emergency Rules amending §16-94-49(b) and (c) [Eff 10/12/74; am and ren §16-94-49, 6/22/81; am 4/25/85' am and comp] (Auth: HRS §§460J-25, 386-121) (Imp: HRS §§460J-25, 386-121)

SUBCHAPTER 11 Repealed.

§16-94-53 Repealed. [R 9/9/85]

§16-94-54 Repealed. [R 9/9/85]

§16-94-55 Repealed. [R 9/9/85]

§16-94-56 Repealed. [R 9/9/85]

§16-94-57 Repealed. [R 9/9/85]

§16-94-58 Repealed. [R 9/9/85]

§16-94-59 Repealed. [R 9/9/85]

§16-94-60 Repealed. [R 9/9/85]

SUBCHAPTER 12

GENERAL PEST CONTROL REGULATIONS (HOUSEHOLD PESTS)

§16-94-64 Repealed. [R 9/9/85]

§16-94-65 Repealed. [R 9/9/85]

§16-94-66 General pest control. [~~Possession~~]
The possession and use of pesticides shall [~~conform to~~
~~the~~] comply with all requirements of federal and state
pesticides, and other applicable laws. [Eff 10/12/74;
am and ren §16-94-66, 6/22/81; am and comp 9/9/85;
comp 10/16/95; comp 9/1/05; am and comp
] (Auth: HRS §460J-3) (Imp: HRS
§460J-3)

SUBCHAPTER 13

TERMITE CONTROL REGULATIONS

§16-94-70 Termite control. [~~Possession~~] The
possession and use of termiticides shall [~~conform to~~
~~the~~] comply with all requirements of federal and state
pesticides, and other applicable laws. An inspection
report shall be prepared on a form prescribed by the
board which shall contain, in addition to the
requirements contained in section 460J-19(b), HRS, the
following:

- (1) A foundation diagram or sketch of the structure or structures or portions of the structure or structures inspected. The diagram shall indicate the approximate location of any damage by termites; and
- (2) A statement describing inaccessible areas [~~which~~] that were not inspected. These areas may include [~~7~~] but not be limited to [~~7~~] inaccessible subareas, attics, areas with insufficient clearance, areas which require defacing finished surfaces for entry, furnished interiors, interior of hollow walls, spaces between a floor or porch deck and the ceiling or soffit below, and areas where storage conditions or locks make inspection impractical. The licensee

shall explain the reason or reasons why any accessible area [~~is~~] was not inspected. [Eff 10/12/74; am and ren §16-94-70, 6/22/81; am and comp 9/9/85; am and comp 10/16/95; comp 9/1/05; am and comp] (Auth: HRS §460J-3)
(Imp: HRS §460J-19)

§16-94-71 Recommendation. Each inspection report shall contain recommendations for the treatment of termites. [Eff 10/12/74; am and ren §16-94-71, 6/22/81; am and comp 9/9/85; am and comp 10/16/95; comp 9/1/05; am and comp] (Auth: HRS §460J-20) (Imp: HRS §460J-20)

§16-94-72 Control service agreement. (a) A control service agreement if [~~contracted,~~] entered into, shall be in writing and signed by the licensee, or the licensee's representative, and the client [~~+~~] and shall include, in addition to requirements as set forth in section 460J-19(c), HRS, the following:

- (1) The frequency of the inspection service to be provided, the fee to be charged for each inspection service performed, and the expiration date of agreement;
- (2) The type and manner of treatment of any infestation or reinfestation;
- (3) Whether control service inspection fee includes repairs; and
- (4) Whether the treatment of any infestation or reinfestation covered under a control service agreement may be performed at the time of inspection and whether there will be an additional charge for the treatment at that time [~~and~~].

~~+(5)+~~ (b) The pest control operator shall keep the original inspection report and any subsequent control service reports for a period of not less than

two years after completion of the control service agreement. The records shall be made available to [the] a representative of the board during normal state business hours. [Eff 10/12/74; am and ren §16-94-72, 6/22/81; am and comp 9/9/85; comp 10/16/95; am and comp 9/1/05; am and comp] (Auth: HRS §460J-19) (Imp: HRS §460J-19)

§16-94-73 Termite inspection standards. (a)

The following represents the minimum standards for conducting a termite inspection and completing a TIR. The board's PC-9 form along with a diagram(s) showing locations of termite evidence and damage, if any, and descriptions of inaccessible areas shall be provided to document the findings of the inspection.

(b) A termite inspection shall be performed by a pest control operator or RME licensed in a BR-1 (Fumigation) or BR-3 (Termite) category. The licensee shall be responsible for the inspection, identified as the responsible party, and who shall sign the TIR. A pest control field representative licensed in BR-1 (Fumigation) and BR-3 (Termite) category may conduct an inspection; provided that the pest control field representative is under supervision of the licensed pest control operator or RME and the TIR is signed by the license pest control operator or RME.

(c) While individual inspectors may utilize various equipment and tools to conduct an inspection, the following shall at a minimum be required:

- (1) Flashlight or lighting device;
- (2) Probe to confirm evidence of termites in termite damaged wood where access allows (e.g., ice pick, pointer, etc.); and
- (3) Supplies for diagramming (e.g., paper, graph paper, pens, pencils, rulers, computers, etc.).

(d) Each licensee shall, at a minimum, conduct the termite inspection as follows:

- (1) Request any and all information related to any prior termite history or treatment from

the owner. For real estate transactions, the licensee shall obtain the "Seller Disclosure Statement," (item 9 of the PC-9 form);

- (2) Diagram the structure being inspected to indicate the areas that were inspected and where termite evidence was found. A licensee shall inspect accessible areas and describe the areas that were inaccessible on the diagram or list the inaccessible areas on the TIR (item 19 of the PC-9 form). A licensee shall at a minimum:
- (A) Check the exterior of the structure for visible evidence and conducive conditions (items 12 and 21(b) of the PC-9 form);
 - (B) Check the crawl space, if accessible, for visible evidence and conducive conditions (items 12 and 21(b) of the PC-9 form);
 - (C) Check the interior of the structure for visible evidence of termites and conducive conditions (e.g. baseboards, door frames, window frames, etc.) (item 21(b) of the PC-9 form); and
 - (D) Check the attic space, if accessible, for visible evidence and conducive conditions (items 19 and 21(b) of the PC-9 form); and
- (3) Conduct a visual inspection looking for evidence of termite in structures that are accessible which shall include, but not limited to, wooden areas of the structure which may warrant further investigation by the licensee using evidence includes methods such as "tapping and probing" (Item 20 of the PC-9).
- (A) Fecal droppings;
 - (B) Patching or cosmetic repair to wood surfaces;
 - (C) Kick-out holes; and
 - (D) Mud tubing

(e) For purposes of this section a termite inspector is a licensed pest control operator, RME or pest control field representative holding BR-1 (Fumigation) or BR-3 (Termite). A pest control field representative must be under the supervision of the pest control operator or RME who shall sign and be responsible for the TIR. [Eff and comp] (Auth: HRS §460J-3) (Imp: HRS §§460J-19, 460J-20)

SUBCHAPTER 14 Repealed.

§16-94-76 Repealed. [R 10/16/95]

SUBCHAPTER 15

ADVERTISEMENT

§16-94-80 Guaranty; guarantee; guaranteed. (a)
The terms "guaranty," "guarantee," or "guaranteed" shall not be used in any advertising without a specific statement describing the limitations and conditions of the "guaranty[~~r~~]" "," "guarantee[~~r~~]" "," or "guaranteed[~~r~~]" "."

(b) The statement shall include a clear description of the work to be performed under the "guaranty[~~r~~]" "," "guarantee[~~r~~]" "," or "guaranteed[~~r~~]" "." [Eff 10/12/74; am and ren §16-94-80, 6/22/81; am and comp 9/9/85; comp 10/16/95; comp 9/1/05; am and comp] (Auth: HRS §460J-3) (Imp: HRS §460J-3)

§16-94-81 Termite proof. ~~[This]~~ The term "termite proof" or other similar terms shall not be used~~[-]~~ in any advertisement. [Eff 10/12/74; am and ren §16-94-81, 6/22/81; am and comp 9/9/85; comp 10/16/95; comp 9/1/05; am and comp]
(Auth: HRS §460J-3) (Imp: HRS §460J-3)

§16-94-82 Free inspection; free inspection report. The terms "free inspection" or "free inspection report" shall not be used in advertisements unless a written report of the "free inspection" or "free inspection report" is given to the person requesting the service. The report shall be on a form which conforms to the minimum requirements of chapter 460J, HRS and this chapter. [Eff 10/12/74; am and ren §16-94-82, 6/22/81; am and comp 9/9/85; comp 10/16/95; comp 9/1/05; am and comp] (Auth: HRS §460J-3) (Imp: HRS §460J-3)

§16-94-83 Bond; bonded. The terms "bond" or "bonded" shall only be used when the conditions and circumstances under which the bond is issued are clearly stated. The payee of the bond shall be clearly identified in the written statement. [Eff 10/12/74; am and ren §16-94-83, 6/22/81; am and comp 9/9/85; comp 10/16/95; comp 9/1/05; am and comp] (Auth: HRS §460J-3) (Imp: HRS §460J-3)

§16-94-84 Government approved. ~~[Such claims]~~ Statements such as "Method Approved by the Government" or "U.S. Government Approved" shall not be used~~[-]~~ in any advertisement. [Eff 10/12/74; am and ren 16 94 84, 6/22/81; am and comp 9/9/85; comp 10/16/95; comp

9/1/05; am and comp] (Auth: HRS
§460J-3) (Imp: HRS §460J-3)

§16-94-85 Identification of company vehicles.

All company-operated service vehicles shall be properly identified with the company's name and pest control operator's license number. [Eff 10/12/74; am and ren §16-94-85, 6/22/81; am and comp 9/9/85; comp 10/16/95; comp 9/1/05; comp] (Auth: HRS §460J-3) (Imp: HRS §460J-3)

§16-94-86 Advertising.

The company's name and pest control operator's number shall appear in all advertisements on TV, radio, newspapers, telephone directories, handbills, or other media. [Eff 10/12/74; am and ren §16-94-86, 6/22/81; am and comp 9/9/85; comp 10/16/95; comp 9/1/05; comp] (Auth: HRS §460J-3) (Imp: HRS §460J-3)

SUBCHAPTER 16

SEVERABILITY

§16-94-90 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 and comp 9/9/85; comp 10/16/95; comp 9/1/05; comp] (Auth: HRS §460J-3) (Imp: HRS §460J-3)

SUBCHAPTER 17

PRACTICE AND PROCEDURE

§16-94-94 Administrative practice and procedure.

The rules of practice and procedure for pest control operators shall be as provided in chapter 16-201, the rules of practice and procedure of the department of commerce and consumer affairs, which are incorporated by reference and made a part of this chapter. [Eff and comp 9/9/85; am and comp 10/16/95; comp 9/1/05; comp] (Auth: HRS §§99-2, 460J-3) (Imp: HRS §§99-2, 460J-3, 460J-16)

§16-94-97 Oral testimony. (a) The board shall accept oral testimony on any item which is on the board's agenda, provided that the testimony shall be subject to the following conditions:

- (1) Each person seeking to present oral testimony shall so notify the board not later than forty-eight hours before the meeting, and at that time shall state the item on which testimony is to be presented;
- (2) The board may request that any person providing oral testimony submit the remarks, or a summary of the remarks, in writing to the board;
- (3) The board may rearrange the items on the agenda for the purpose of providing for the most efficient and convenient presentation of oral testimony;
- (4) Persons presenting oral testimony shall, at the beginning of the testimony, identify

themselves and the organization, if any, that they represent;

- (5) The board may limit oral testimony to a specified time period, but in no case shall the period be less than five minutes, and the person testifying shall be informed prior to the commencement of the testimony of the time constraints to be imposed; and
- (6) The board may refuse to hear any testimony which is irrelevant or immaterial to the agenda item on which it is presented.

(b) Nothing in this section shall require the board to hear or receive any oral or documentary evidence from a person on any matter which is the subject of another pending proceeding subject to hearings relief, declaratory relief, or rule relief [ef] under chapter 16-201.

(c) Nothing in this section shall prevent the board from soliciting oral remarks from persons present at the meeting or from inviting persons to make presentations to the board on any particular matter on the board's agenda." [Eff and comp 9/1/05; am and comp] (Auth: HRS §460J-3)
(Imp: HRS §92-3)

2. Material, except source notes and other notes, to be repealed is bracketed and stricken. New material is underscored

3. Additions to update source notes and other notes to reflect these amendments and compilation are not underscored.

4. These amendments to and compilation of chapter 16-94, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised

Statutes, which were adopted on M DD, YYYY, and filed with the Office of the Lieutenant Governor.

CATHERINE P. AWAKUNI COLÓN
Director
Department of Commerce and
Consumer Affairs

APPROVED AS TO FORM:

Deputy Attorney General