



December 12, 2018 MEETING CHECKLIST

MEMBER ATTENDANCE

<input checked="" type="checkbox"/> Anthony Borge, <i>Chair</i>	O'ahu	
<input checked="" type="checkbox"/> Harris Nakamoto, <i>Vice Chair</i>	O'ahu	
<input checked="" type="checkbox"/> Garth Yamanaka, <i>2nd Vice Chair</i>	Big Island	Parking Pass
<input checked="" type="checkbox"/> Mark Ritchie, <i>Director's Ex Officio</i>	O'ahu	
<input checked="" type="checkbox"/> Robert Cundiff	O'ahu	Parking Pass
<input checked="" type="checkbox"/> Nancy Atmospera-Walch	O'ahu	
<input checked="" type="checkbox"/> Mary Albitz	Maui	Parking Pass
<input type="checkbox"/> William Lydgate	Kaua'i	Parking Pass

STAFF

- Jennifer Waihee-Polk
- Dori Palcovich
- Ashleigh Garcia

Pre-Meeting - Dori

- Draft Agenda for Approval
- Send Agenda to Distribution List
- Prepare Discussion Leader Agenda
- Prepare Chair's Agenda

Pre-Meeting - Assistant

- Conference Room Reservation
(Confirm each month)
- Poll Board Attendance
- Prepare TAF's for Director's Approval
- Post Agenda to State Calendar and
Lieutenant Governor's Office
- Upload meeting documents to SBRRB
website + Calendar
- Mail/hand deliver Parking Permits

Post-Meeting

- Draft Minutes
- Draft Rec. Memos for Approval
- Send Chair Minutes for Approval
- Post Minutes to SBRRB website
- Send Signed Rec. Memos

Visitors Sign-in Sheet - Small Business Regulatory Review Board - December 12, 2018

	Name	Title	Organization	Email	Phone
1	Ed Underwood	Admin.	DLNR - DOBOR	Ed.E.Underwood@hawaii.gov	586-9314
2	Meghan Sta Hts	Dist. Mgr	"	meghan.l.statts@hawaii.gov	832-3520
3	Todd Tashima	Legal fellow	DLNR - DOBOR	todd.h.tashima@hawaii.gov	70542
4	Arin Look	Attorney	Hawaii Captive Insurance Council	arlook@goodsill.com	547-5625
5	CATHY GOEGGEL	PRESIDENT	ANIMAL RIGHTS HAWAII	cathy@animalrightshawaii.org	721.4271
6	Inga Gibson	Policy Director	Pono Advocacy / WHHS	ponoadvacy@gmail.com	
7	Rosie Warfield	PM-HIC	HIC	rosie@ehawaii.gov	695-4629
8	Christopher Coover		HIC	ccosnar@ehawaii.gov	
9	MAKANA PARIS		HAWAII WORKERS STABILIZATION FUND	stabfund@gmail.com	677-0375
10	Bart Yucita	Supvr - Bldg	DLIR	bart.k.yucita@hawaii.gov	586-9141
11	Julius Purnany	MGR - BLDG	"	Julius.Purnany@hawaii.gov	586-9141
12	Tyler Riston	citizen	n/a	n/a	359-2982
13	Jacob Herlitz	administrative specialist	DOTAF	jacob.h.herlitz@hawaii.gov	8587-3334
14	Kerth Dane	HI Policy adviser	HSUS	kdane@hsus.org	238-5433
15	Tom Yamachika	Pres	Tax Foundation of HI	tom@tfhawaii.org	536-4587
16	JONATHAN HO	ACTING MANAGER	HDOA - PQB	jonathan.k.ho@hawaii.gov	832-0566
17	TRENDY YASUI	ACTING INSPECTOR & COMPLIANCE OFFICER	↓	TRENDY.T.YASUI@HAWAII.GOV	6
18					

Small Business Regulatory Review Board Meeting

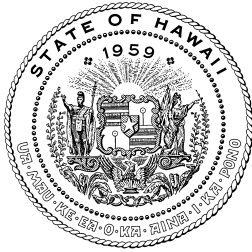
Wednesday, December 12, 2018

10:00 a.m.

Leiopapa A Kamehameha Building

(State Office Tower)

**Conference Room 405 – 235 South Beretania Street,
Honolulu, HI 96813**



SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)
No. 1 Capitol District Building, 250 S. Hotel Street, Fifth Floor, Honolulu, HI 96813
Mailing Address: P.O. Box 2359, Honolulu, HI 96804
Email: dbedt.sbrb.info@hawaii.gov
Website: dbedt.hawaii.gov/sbrb

Tel: 808 586-2594

AGENDA

Wednesday, December 12, 2018 ★ 10:00 a.m.

Leiopapa A Kamehameha Building - State Office Tower

Conference Room 405 - 235 South Beretania Street, Honolulu, HI 96813

David Y. Ige
Governor

Members

Anthony Borge
Chairperson
O'ahu

Robert Cundiff
Vice Chairperson
O'ahu

Garth Yamanaka
2nd Vice Chairperson
Hawai'i

Harris Nakamoto
O'ahu

Nancy Atmospera-Walch
O'ahu

Mary Albitz
Maui

William Lydgate
Kaua'i

Director, DBEDT
Voting Ex Officio

I. Call to Order

II. Approval of October 17, 2018 Meeting Minutes

III. Approval of November 7, 2018 Permitted Interaction with Members, under Section 92-2.5 (d), Hawaii Revised Statutes (HRS)

1. Discussion and Action on Proposed Amendments to Hawaii Administrative Rules (HAR) Title 16 Chapter 17 **Captive Insurance Companies**, promulgated by Department of Commerce and Consumer Affairs – **Discussion Leader: Mark Ritchie / Tony Borge**
2. Discussion and Action on Request Received from this Board's "Regulation Review Card" to Review HAR Title 13 Subtitle 11, Part 1 Small Boat Facilities and Provisions Generally Applicable to All State Navigable Waters, Chapter 231, Operation of Boats, Small Boat Harbors, and Use Permits for All Navigable Waters, Sections 50 through 70 to "Open Up the Permitting Process for Small Businesses to Grow and Thrive and to Put Stricter Policies in Place for Current Permit Holders," promulgated by Department of Land and Natural Resources – **Discussion Leader: Mary Albitz / Tony**

IV. Old Business

AFTER PUBLIC HEARING

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 4 Chapter 186, **Petroleum Products Accounting and Inspection**, promulgated by Department of Agriculture (DOA) – **Discussion Leader: Tony / Rob Cundiff**
- B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed New HAR Title 18 Chapter 237 **General Excise Tax Law**, Section 34-13, **Persons with a Material Interest in a Tax Return**, promulgated by Department of Taxation (DoTax) – **Discussion Leader: Garth Yamanaka**
- C. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 18 Chapter 237D, **Transient Accommodations Tax**, promulgated by DoTax – **Discussion Leader: Garth**
 - a. Section 4-01 **Certificate of Registration**
 - b. Section 4-02 **Display of Registration Certificate**
 - c. Repeal Sections 4-03 through 4-07
 - d. Proposed New Sections 4-08 through 4-35

- D. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 12, promulgated by Department of Labor and Industrial Relations – **Discussion Leader: Mary**
 - a. Chapter 229 **General, Administrative and Legal Provisions**
 - b. Chapter 230.1 **Elevators, Escalators, Dumbwaiters, Moving Walks, and Material Lifts and Dumbwaiters with Automatic Transfer Devices;** and
 - c. Chapter 240 **Elevator Requirements for Individuals with Disabilities**
- E. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 4 Chapter 71, **Plant and Non-Domestic Animal Quarantine Non-Domestic Animal Import Rules**, promulgated by DOA – **Discussion Leader: Rob / Tony**

V. **New Business**

BEFORE PUBLIC HEARING

- A. Discussion and Action on Proposed Amendments to Title 8 Chapter 101, **Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui**, promulgated by Department of Liquor Control, County of Maui – **Discussion Leader: Mary**

VI. **Administrative Matters**

- A. Discussion and Action on the Board’s Draft *2018 201M-7 Periodic Review; Evaluation Report* for Submission to the Hawaii State Legislature under Section 201M-7, HRS
- B. Discussion and Action on the Board’s Draft 2018 Annual Report Summary for Submission to the Hawaii State Legislature, under Section 201M-5(f), HRS
- C. Update on the Board’s Upcoming Advocacy Activities and Programs in accordance with the Board’s Powers under Section 201M-5, HRS
 - a. Review of Board’s Proposed Power Point Presentation for Outreach Purposes
 - b. Update and Discussion on the Board’s Website Proposal
 - c. Review of Board’s 2019 Meeting Schedule

VII. **Legislative Matters**

- A. Update on the Legislative Proposal to Chapter 201M, HRS, for the 2019 Hawaii Legislative Session – Clarify the powers of the Small Business Regulatory Review Board by adding that the Board may consider any request from small business owners for review of a rule that is proposed and amended as well as adopted by a state agency, and to change “ordinance” to “rules” when making recommendations to the county council or the mayor for appropriate action
- B. Discussion and Action on the Delegation of Authority to Board Member(s) and/or Staff to Submit Testimony and/or Testify on behalf of the Board during the 2019 Hawaii State Legislative Session

VIII. **Next Meeting: Thursday, January 17, 2019**, at 10:00 a.m., Conference Room 405, 235 South Beretania Street, Leiopapa A Kamehameha Building (State Office Tower), Honolulu, HI 96813

IX. **Adjournment**

II. Approval of October 17, 2018 Meeting Minutes

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING - Draft

October 17, 2018

Conference Room 436 - No. 1 Capitol District Building, Honolulu, Hawaii

- I. **CALL TO ORDER:** Chair Borge called the meeting to order at 10:00 a.m., with a quorum present.

MEMBERS PRESENT:

- Anthony Borge, Chair
- Robert Cundiff, Vice Chair
- Garth Yamanaka, Second Vice Chair
- Mary Albitz
- William Lydgate
- Mark Ritchie

ABSENT MEMBERS:

- Harris Nakamoto
- Nancy Atmospera-Walch

STAFF: DBEDT

Dori Palcovich
Ashleigh Garcia

Office of the Attorney General

Krishna Jayaram

II. APPROVAL OF SEPTEMBER 19, 2018 MINUTES

Vice Chair Cundiff made a motion to accept the September 19, 2018 minutes, as presented. Ms. Albitz seconded the motion, and the Board members unanimously agreed.

III. NEW BUSINESS

- A. Discussion and Action on the Proposed Amendments to Part VI, Rules and Regulations Governing the Operation of Commercial Food Truck Concessions in County Parks, promulgated by Department of Parks and Recreation, County of Kauai

Mr. Lenny Rapozo, Director at the County of Kauai Department of Parks and Recreation, explained that the proposed new rules will affect all small businesses that operate food trucks. Owners of food trucks will be mandatorily required by law to bid on concessions for permits, to conduct business in county park facilities, which will be granted every two years.

The initial six locations, utilized with food trucks, are Haena Beach Park, Black Pot Beach, Anini Beach, Nawiliwili, Koa Kea Beach and Salt Pond Park; these rules will essentially open the door to providing new venues for these types of food truck activities. Discussion leader Mr. Lydgate stated that the proposed rules are a fantastic initiative and provide a great opportunity to both locals and visitors.

Regarding the bidding process, Mr. Rapozo explained that once the rules are heard at the public hearing, and then adopted, applications for food trucks will proceed with another public hearing that will entail a competitive bid process with the highest bids winning out; items to be served in the food trucks are also part of the vetting and bidding process.

Some of the existing business owners do not want these trucks in their area. However, the public process is still necessary to vet the opinions of the businesses and community. Although Mr. Rapozo was not aware of the percentage of current food truck owners that were not in compliance with the current rules and regulations, a monthly oversight of the permits is performed.

Mr. Lydgate made a motion to move the proposed new rules to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Proposed Amendments to HAR Title 13 Subtitle 11 Ocean Recreation and Coastal Areas, as follows, promulgated by Department of Land and Natural Resources (DLNR)

1. Part I Small Boat Harbors – Chapter 234 Fees and Charges
2. Part III Ocean Waters, Navigable Streams and Beaches – Chapter 253 Catamaran Registration Certificate, Other Registration, and Commercial Use Permit Fees

Mr. Ed Underwood, Administrator at DLNR's DOBOR (Division of Boating and Ocean Recreation) explained that the proposed rules have not been amended since 1994. They will have a definite impact on small business, particularly commercial watersport and commercial ocean tour companies, due to the increase in mooring fees. The increases are intended to align DOBOR's small boat harbors and other boating facilities with current market rates. Because DOBOR has not raised its fees in several years, it is currently not maximizing the revenue-generating potential of its small boat harbors and facilities

Specific examples of the fee increases include the following: commercial use permit fee will increase from the greater of \$200 per month or 3% of gross receipts to the greater of \$300 per month or 3% of gross receipts (increase of the minimum fee amount by \$100). The passenger fee will increase as follows: \$.030 per passenger embarking or disembarking for passenger vessels engaging only in interisland commerce to \$3.00 per passenger embarking or disembarking per day for the Lahaina small boat harbor (increase of \$2.70 applied to Lahaina small boat harbor only and per passenger day).

Also, \$1.00 per passenger per day embarking or disembarking for passenger vessels engaging in international or interstate commerce will increase to \$2.00 per passenger for small boat harbors other than Lahaina small boat harbors. In addition, commercial ramp use fees will increase from the greater of \$75 per month, or 2% of gross receipts, to the greater of \$300 per month or 3% of gross receipts.

Regarding outreach, Mr. Underwood stated that the proposed rules were uploaded onto DLNR's website over a year ago, over 10,000 mailings were sent out to all the tenants, and everyone who receives a permit was informed. Due to these notifications, approximately 35 comments were received by DOBOR with the biggest concern being the electric fee increase

by the boat owners, which is expected to increase to \$50 - \$150 per month. There was also concern over the anchorage fee charge; however, after DOBOR performed an analysis, the fee was lowered from \$1,000 to \$115 per day.

Chair Borge stated that it was his understanding that all the fees collected go back to restoration and upkeep of the small boat harbors. Mr. Underwood concurred, stating there is about a \$2 million loss incurred at the boat harbors which is subsidized by all the other land-based fees that are raised. Increased revenue at maximum moorage for Ala Wai Boat Harbor, for example, is expected to bring in an additional \$1 million per year. It was noted that DOBOR not only maintains the small boat harbors, it is tasked with managing all the launch ramps in the state, regulates all the state's commercial activity, is responsible for vessel registration and many others.

Mr. Ritchie made a motion to move the proposed rule amendments to public hearing. Vice Chair Cundiff seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on Proposed Amendments to HAR Title 18, Chapter 235 Income Tax Law, as follows, promulgated by Department of Taxation (DoTax)

1. Section 235-98 Returns; form, verification and authentication, time of filing

Mr. Jacob Herlitz, Administrative Rules Specialist, explained that the proposed rule changes allow for automatic extensions to file income tax returns. Under the current rule an automatic six-month extension is granted to individuals, but a company must fill out a separate request for an extension.

Thus, the rules will allow that every tax return will get the same automatic six-month extension whether the taxpayer is an individual or a company; fees are not part of the proposal.

2. Section 235-1.14 (d) "Substantial gainful business or occupation", defined

Mr. Herlitz explained that this proposal will benefit blind, deaf or totally disabled persons. The amendments will prevent taxpayers, with substantially large gross business income, from taking large business deductions to reduce annual net income below \$30,000, and receive income and general excise tax benefits designed for persons and businesses incapable of generating substantial income due to disability.

Further, any small business wholly-owned by a disabled person, or persons, with gross earnings of \$60,000 or greater but with net earnings below \$30,000, may be affected by the proposal as the owner(s) of such a business would not qualify as totally or permanently disabled. In addition, a business would be ineligible for the general excise tax exemptions and reduced rates for businesses wholly owned by blind, deaf, or totally disabled persons while an individual will be eligible for income tax benefits on his or her individual income tax returns.

Second Vice Chair Yamanaka made a motion to move the proposed rules to public hearing. Ms. Albitz seconded the motion, and the Board members unanimously agreed.

D. Discussion and Action on Proposed Amendments to HAR Title 4 Chapter 66 Pesticides, promulgated by Department of Agriculture (DoAg)

Mr. John McHugh, Branch Manager at DoAg's Pesticides Branch, reminded the members that this Board reviewed and approved the proposed "Pesticides" rules in May of this year, but since then, Act 45, SLH was passed, which deals with new regulations for pesticide use.

Specifically, the changes are associated with reporting all users of restricted pesticides, which include farmers, parks and recreations, pest control companies, golf courses, companies that work with sanitation of drinking water, and utility pole companies, are impacted.

Another rule change, taken verbatim from the law, relates to buffer zones as it restricts spraying pesticides no closer than within 100 feet of a school's property. This may potentially impact small businesses; i.e., a farm, if its operations are near a school as it restricts applications of pesticides before 7:00 a.m., and after 4:00 p.m., to avoid potential drift of the pesticides.

All users of restricted-use pesticides were provided an email from DoAg's Pesticide Branch. Those businesses with no e-mail accessibility were mailed notifications of the rule changes. Any of the postal letters that came back "undelivered" will be hand-delivered by DoAg.

Mr. Lydgate made a motion to move the proposed rules to public hearing. Ms. Albitz seconded the motion, and the Board members unanimously agreed

E. Discussion and Action on Proposed Amendments to HAR Title 11 Chapter 178, Clean and Sober Homes Registry, promulgated by Department of Health (DOH)

Discussion leader Chair Borge stated that this program is a voluntary service, used by many small businesses. Mr. Eddie Mersereau, Chief at DOH's Alcohol and Drug Abuse Division, explained that the rules establish a voluntary clean and sober homes registry to assist persons recovering from substance abuse to have a safe, clean, and sober environment that supports recovery.

Currently, because many of the clean and sober homes follow a wide range of individual standards as to the processes that are followed and how the homes are operated, the proposed rules were created for the minimum base-line standards that all clean and sober home operators are required to follow.

The website for registering as a clean and sober home operator is already established; so currently anyone in the community can go onto it to see if a home is registered and in good standing. While other states offer these same types of registries, because some have gotten sued due to violations of fair housing laws, DOH is hoping to prevent the same type of violations and lawsuits to occur. Running the website is not expensive for the State as it is run by only one employee; also noted was that there is a standard \$1 million insurance policy required for clean and sober homes.

Ms. Albitz made a motion to move the proposed rule amendments to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

F. Discussion and Action on Proposed New HAR Title 4 Chapter 70, Plant and Non-Domestic Animal Quarantine, Plant Import Rules, Subchapter 15, "Introduction to Myrtaceae" (Myrtle Family Plants and Plant Prats), promulgated by DoAg

Mr. Jonathan Ho, Acting Manager at DoAg's Plant Quarantine Branch, and Mr. Lance Sakaino, Plant Specialist, explained that a new subchapter is being proposed to restrict the importation of any plant in the Myrtaceae family; eucalyptus and guava plants are the most familiar of the Myrtaceae family. There is currently an air-driven rust fungus/disease affecting this plant family, which was the same disease that decimated mountain and rose apple trees. Therefore, DoAg is attempting to restrict other strains and host material that introduces this disease from coming into Hawaii.

The primary small businesses impacted by these rules are florists and other businesses that import the plant material for forestry; however, most of the forestry plant material is not imported as there is enough local stock being produced to utilize. Myrtaceae plants are also used as filler of floral bouquets (silver dollar, cut myrtle, wax flower). For cut flower alternatives, the positive testimonies that were provided to this Board discussed how the industry was looking forward to helping to build-up local plant alternatives to replace the restricted plants.

Mr. Lydgate made a motion to move the proposed new subchapter to public hearing. Second Vice Chair Yamanaka seconded the motion, and the Board members unanimously agreed.

IV. ADMINISTRATIVE MATTERS

A. Discussion and Action on the Board's 2018 Draft 201M-7 Periodic Review; Evaluation Report pursuant to Section 201M-7, HRS

The 201M-7 Report is submitted to the State legislators every two years and is a compilation of the information received from the agencies. Chair Borge noted it is disturbing that some agencies did not respond to repeated requests, which may be viewed as a reflection of this Board; the question of who oversees enforcement was posed.

It was suggested that the Governor, Senate President and House Speaker be informed of the lack of compliance on the part of some of the agencies. In past years, board member/discussion leaders met with agencies' directors and discussed the Board's statutory purview. It was acknowledged that meetings with the directors should be arranged again; letters will be sent out in January 2019 to the agencies introducing the Board's discussion leaders and requesting a meeting with the department heads.

The members discussed giving those agencies that have not responded back to the Board an opportunity to respond. Chair Borge may include a section in the report's "Message from the Chair" indicating that some of the agencies are not in compliance; this report is

essentially a “report card” to the State legislators and because it is posted on the Board’s website, its information is viewed by the business public.

Mr. Lydgate suggested that communication be sent out explaining the statute’s legal obligations with the Board reviewing any follow-up information at the November board meeting. If the agencies do not get back to the Board within a reasonable period, it should be conveyed in the 201M-7 Report.

Deputy Attorney General Jayaram stated that if an agency does not respond to the Board’s request, it may be construed that it does not have rules impacting small business; however, this should be confirmed. He suggested that SBRRB’s deputy attorney general, Jennifer Waihee-Polk, reach out to her counterparts at the Attorney General’s Office to let them know that this statutory requirement has not been met.

Mr. Lydgate made a motion for Deputy Attorney General Waihee-Polk to reach out to her counterparts at the Attorney General’s Office for possible feedback from those agencies that have not complied with Section 201M-7, HRS. Second Vice Chair Yamanaka seconded the motion, and the Board members unanimously agreed.

Chair Borge made a motion to send a “status update” letter to the Senate President and House Speaker listing the agencies that have not complied to Section 201M-7, HRS, with copies submitted to those agencies that are not in compliance. Ms. Albitz seconded the motion, and the Board members unanimously agreed.

B. Update on the Board’s Upcoming Advocacy Activities and Programs in Accordance with the Board’s Powers under Section 201M-5, HRS

1. Discussion of Possible Changes to the Board’s Monthly Meetings

After discussing the possibility of changing the ongoing board meeting times and days, it was decided that the November 2018 board meeting will move from the 21st to the 7th and the December 2018 meeting moved from the 12th to the 5th. The times of the meetings will remain at 10:00 a.m.

Chair Borge made a motion to change the ongoing board meeting times and days to Thursdays at 10:00 a.m., beginning January 2019. Ms. Albitz seconded the motion, and the Board members unanimously agreed.

C. NEXT MEETING – The next meeting is scheduled for Wednesday, November 7, 2018, in Conference Room 405, Leiopapa A Kamehameha, State Office Tower, 235 South Beretania Street, Honolulu, Hawaii at 10:00 a.m.

D. ADJOURNMENT – Second Vice Chair Yamanaka made a motion to adjourn the meeting and Mr. Ritchie seconded the motion; the meeting adjourned at 11:50 a.m.

III. Approval of November 7, 2018 Permitted Interaction with Members, under Section 92-2.5 (d), HRS, pertaining to the following:

1. Discussion and Action on Proposed Amendments to HAR Title 16 Chapter 17 **Captive Insurance Companies**, promulgated by DCCA
2. Discussion and action on Request Received from this Board's "Regulation Review Card" to Review HAR Title 13 Subtitle 11, Part 1 **Small Boat Facilities and Provisions Generally Applicable to All State Navigable Waters, Chapter 231, Operation of Boats, Small Boat Harbors, and Use Permits for All Navigable Waters**, Sections 50 through 70 to "Open Up the Permitting Process for Small Businesses to Grow and Thrive and to Put Stricter Policies in Place for Current Permit Holders"

Small Business Regulatory Review Board

November 7, 2018 - DRAFT
Conference Room 405, Leiopapa A Kamehameha Building (State Office Tower)
Honolulu, Hawaii

- I. The following is in accordance with Section 92-2.5(d), Hawaii Revised Statutes (HRS), “Permitted Interactions of Members.”

MEMBERS PRESENT:

- Anthony Borge, Chair
- Robert Cundiff, Vice Chair
- Garth Yamanaka, Second Vice Chair
- Mary Albitz
- Mark Ritchie

ABSENT MEMBERS:

- Harris Nakamoto
- Nancy Atmospera-Walch
- William Lydgate

STAFF: DBEDT

Dori Palcovich
Ashleigh Garcia

Office of the Attorney General

Jennifer Polk-Waihee

II. APPROVAL OF OCTOBER 17, 2018 MINUTES

Not applicable.

III. NEW BUSINESS

- A. Discussion and Action on Proposed Amendments to HAR Title 16 Chapter 17 Captive Insurance Companies, promulgated by Department of Commerce and Consumer Affairs (DCCA)

Mr. Paul Yuen, Supervising Attorney at DCCA’s Insurance Division, explained the history of captive insurance companies and what a captive insurance company is, which are insurance companies set up by parent companies. An example is where a business owns a fleet of automobiles, and instead of buying multiple policies for each automobile, a captive insurance company owns and oversees all the vehicles; the parent, in turn, determines a percentage of the policies to be reinvested.

Mr. Yuen further explained that to tighten up the parent company’s assets should it become financially distressed, the rule amendments address this issue and ensure that the captive has enough assets to cover its surety (such as bail bonds for construction work projects). While a small business would be affected if it had a claim on a policy and it was issued by the captive insurer, small businesses would not set up a captive insurance company.

Not every state allows captive insurance companies. Hawaii, which is ranked in the top ten of captive insurance companies in the United States in terms of quality and the amount of invested money, has allowed for captive insurance companies since the 1980's. The major benefit of a captive insurance company is the parent's cost-cutting tool as it would no longer need to pay the administrative expenses that private insurance companies pay; Mr. Yuen noted that it is prudent for the captives to buy reinsurance to spread the risk. There are currently 283 captive insurance companies in Hawaii but not all them do surety.

Captives can also loan back profits to the parent, but if the parent runs into financial problems and must close, it would be holding a worthless piece of commercial paper, which DCCA does not want to happen. DCCA has been in touch with the Hawaii Captive Insurance Council regarding the proposed amendments. The council has concurred with the changes as it is within the insurance companies interest that the captive insurance industry remains financially viable.

B. Discussion and Action on Request Received through this Board's "Regulation Review Card" to Review HAR Title 13 Subtitle 11, Part 1 Small Boat Facilities and Provisions Generally Applicable to All State Navigable Waters, Chapter 231, Operation of Boats, Small Boat Harbors, and Use Permits for All Navigable Waters, Sections 50 through 70 to "Open up the Permitting Process for Small Business to Grow and Thrive and to Put Stricter Policies in Place for Current Permit Holders"

Ms. Meghan Statts, DOBOR Oahu District Manager and Mr. Todd Tashima, Legal Fellow, provided background on the permitting process by explaining how the existing rules pertain to permits, issuing of permits, and the length of time it takes to renew permits. Once a permit is issued, which is good up to twelve months, it may be revoked if a violation occurs. To maintain a permit, minimum gross receipts are required; random audits are performed to enforce this requirement.

In September of 2014, Section 13-231-67 was amended to require eleven (11) commercial rent permits. However, prior to going to the Land Board and the Governor for approval of the public hearing, a massive rush of operators requested rent permits. At the time the rule change was made, there were seventeen (17) commercial rent permits available even though the rule allowed for eleven; according to DOBOR's legal counsel, the additional six permits could not be denied. The 17 permits will eventually drop down to the required 11 permits by attrition when permittees do not renew; a business also can buy-out an entity and obtain a permit.

A \$15.00 application fee for a rent permit is paid annually until a permit is offered; the cost of a permit depends on the size of a boat. Per statute, the only types of permits that can be auctioned off are thrillcraft, which pertains only to jet ski operations and parasail permits; every other permit is offered through a "wait list."

Ms. Statts noted that Mr. Wesley Moore from Kona Town Surf Adventures, who submitted a request to this Board to perform surf instructions from the ramp at Keauhou, has a commercial use permit that he pays \$200 per month. Ms. Statts was unclear if Mr. Moore currently has access to a ramp or whether he can bring a boat into the water as some of the areas are restricted as to whether a motorized vessel can be used.

Overall, the rent limitations in Keauhou reduces over-crowding, which has addressed concerns from the community about the excessive commercial activity that was taking place; parking is also extremely limited at the Keauhou boating area. When public hearing was held for Section 13-231, HAR, there were no oppositions against DOBOR's restricted rental numbers. Therefore, if a new business wanted to use a boat ramp it would not legally be possible because it would need to wait for the attrition process of the permits.

Regarding whether DOBOR is planning to consider modifying the existing rules to open the permitting process to be more equitable to all businesses so that a new business may have an opportunity to "get in the door," Ms. Statts stated that can possibly be done. However, the biggest obstacle is the timing, as it must be approved by DLNR's Land Board with the knowledge that there would be heavy opposition to the request, and then proceed to public hearing. In any case, DOBOR will look into this for further consideration.

Mr. Tashima also stated that there is a similar issue currently on Kauai where businesses are requesting that the current four (4) limit permit be increased. While DOBOR is open to increasing the permit count, the stakeholders' and the communities' concerns opposing higher permit limits must be taken into consideration. Reasons for the opposition include parking concerns and the utilization of the ramps. One option for a new business to come in, pursuant to the current rules, is to buy-out another existing company. There have also been a few permits in the past that were opened to the public because the permits were revoked due to violations of the rules.

Ms. Statts and Mr. Tashima were thanked for their input and answering the questions.

IV. ADMINISTRATIVE MATTERS

A. Discussion and Action on the Board's 2018 Draft 201M-7 Periodic Review; Evaluation Report pursuant to Section 201M-7, HRS

DBEDT staff stated that since the last board meeting, there have been several updates: PUC provided updates on every single rule; DOT updated the rules; many of DCCA's rules were updated; and DOH has not responded. Also, Deputy Attorney General Polk-Waihee contacted the deputy AG's that oversee the departments of agriculture and budget & finance.

B. Discussion and Action on the Board's Draft 2018 Annual Report Summary for Submission to the Hawaii State Legislature under Section 201M-5(f)

Not applicable.

C. Update on Changes to the Board's 2019 Meeting Schedule

Due to the lack of a meeting quorum on December 5th, the next board meeting is scheduled for December 12th. DBEDT staff will look to change the meeting venue to conference room 405 at Leiopapa A Kamehameha Building, State Office Tower.

D. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, HRS

a. Review of Board's Proposed Power Point Presentation for Outreach Purposes

DBEDT staff will add more statistics in Slide 2 regarding women, minorities and small businesses.

V. **NEXT MEETING** – Wednesday, December 12, 2018, Conference Room 405 at Leiopapa A Kamehameha Building, State Office Tower at 10:00 a.m.

DRAFT

§92-2.5 Permitted interactions of members. (a) Two members of a board may discuss between themselves matters relating to official board business to enable them to perform their duties faithfully, as long as no commitment to vote is made or sought and the two members do not constitute a quorum of their board.

(b) Two or more members of a board, but less than the number of members which would constitute a quorum for the board, may be assigned to:

(1) Investigate a matter relating to the official business of their board; provided that:

- (A) The scope of the investigation and the scope of each member's authority are defined at a meeting of the board;
- (B) All resulting findings and recommendations are presented to the board at a meeting of the board; and
- (C) Deliberation and decisionmaking on the matter investigated, if any, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings and recommendations of the investigation were presented to the board; or

(2) Present, discuss, or negotiate any position which the board has adopted at a meeting of the board; provided that the assignment is made and the scope of each member's authority is defined at a meeting of the board prior to the presentation, discussion, or negotiation.

(c) Discussions between two or more members of a board, but less than the number of members which would constitute a quorum for the board, concerning the selection of the board's officers may be conducted in private without limitation or subsequent reporting.

(d) Board members present at a meeting that must be canceled for lack of quorum or terminated pursuant to section 92-3.5(c) may nonetheless receive testimony and presentations on items on the agenda and question the testifiers or presenters; provided that:

(1) Deliberation or decisionmaking on any item, for which testimony or presentations are received, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the testimony and presentations were received;

(2) The members present shall create a record of the oral testimony or presentations in the same manner as would be required by section 92-9 for testimony or presentations heard during a meeting of the board; and

(3) Before its deliberation or decisionmaking at a subsequent meeting, the board shall:

- (A) Provide copies of the testimony and presentations received at the canceled meeting to all members of the board; and
- (B) Receive a report by the members who were present at the canceled or terminated meeting about the testimony and presentations received.

(e) Two or more members of a board, but less than the number of members which would constitute a quorum for the board, may attend an informational meeting or presentation on matters relating to official board business, including a meeting of another entity, legislative hearing, convention, seminar, or community meeting; provided that the meeting or presentation is not specifically and exclusively organized for or directed toward members of the board. The board members in attendance may participate in discussions, including discussions among themselves; provided that the discussions occur during and as part of the informational meeting or presentation; and provided further that no commitment relating to a vote on the matter is made or sought.

At the next duly noticed meeting of the board, the board members shall report their attendance and the matters presented and discussed that related to official board business at the informational meeting or presentation.

(f) Discussions between the governor and one or more members of a board may be conducted in private without limitation or subsequent reporting; provided that the discussion does not relate to a matter over which a board is exercising its adjudicatory function.

(g) Discussions between two or more members of a board and the head of a department to which the board is administratively assigned may be conducted in private without limitation; provided that the discussion is limited to matters specified in section 26-35.

(h) Communications, interactions, discussions, investigations, and presentations described in this section are not meetings for purposes of this part. [L 1996, c 267, §2; am L 2005, c 84, §1; am L 2012, c 177, §1]



PRE-PUBLIC HEARING
SMALL BUSINESS IMPACT STATEMENT
TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD
(Hawaii Revised Statutes §201M-2)

Department or Agency: Department of Commerce and Consumer Affairs
Administrative Rule Title and Chapter: Title 16, Chapter 17
Chapter Name: Captive Insurance Companies
Contact Person/Title: Andrew Kurata / Acting Captive Insurance Administrator
Phone Number: 808-586-0979
E-mail Address: akurata@dcca.hawaii.gov Date: 03/23/18

A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.

B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7? Yes No (If Yes, please provide webpage address and when and where rules may be viewed in person ☺)
Rules will be posted to [cca.hawaii.gov/ins/har] and [cca.hawaii.gov/hawaii-administrative-rules] after Gov's approval to proceed to PH is obtained.
(Please keep the proposed rules on this webpage until after the SBRRB meeting.)

I. Rule Description: New Repeal Amendment Compilation

II. Will the proposed rule(s) affect small business? Yes No (If No, no need to submit this form.)

* "Affect small business" is defined as "any potential or actual requirement imposed upon a small business . . . that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business." HRS §201M-1

* "Small business" is defined as a "for-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that: (1) Is domiciled and authorized to do business in Hawaii; (2) Is independently owned and operated; and (3) Employs fewer than one hundred full-time or part-time employees in Hawaii." HRS §201M-1

III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance? Yes No (If Yes, no need to submit this form.)

(e.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives.) HRS §201M-2(d)

IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a)) Yes No (If Yes, no need to submit this form.)

* * *

If the proposed rule affects small business and are not exempt as noted above, please provide a reasonable determination of the following:

1. Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected.

2. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance.

If the proposed rule imposes a new or increased fee or fine:

- a. Amount of the current fee or fine and the last time it was increased.

 - b. Amount of the proposed fee or fine and the percentage increase.

 - c. Reason for the new or increased fee or fine.

 - d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).
3. The probable monetary costs and benefits to the agency or other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used.

4. The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or other mitigating techniques.

5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.

6. Consideration of creative, innovative, or flexible methods of compliance for small businesses. The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules.

7. How the agency involved small business in the development of the proposed rules.
 - a. If there were any recommendations made by small business, were the recommendations incorporated into the proposed rule? If yes, explain. If no, why not.

8. Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

If yes, please provide information comparing the costs and benefits of the proposed rules to the costs and benefits of the comparable federal, state, or county law, including the following:

- a. Description of the public purposes to be served by the proposed rule.

- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.

- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.

- d. A comparison of the monetary costs and benefits of the proposed rule with the costs and benefits of imposing or deferring to the related federal, state, or county law, as well as a description of the manner in which any additional fees from the proposed rule will be used.

- e. A comparison of the adverse effects on small business imposed by the proposed rule with the adverse effects of the related federal, state, or county law.

* * *

Small Business Regulatory Review Board / DBEDT
Phone: (808) 586-2594
Email: DBEDT.sbrrb.info@hawaii.gov

This Statement may be found on the
SBRRB Website at:
<http://dbedt.hawaii.gov/sbrrb/small-business-impact-statements-pre-and-post-public-hearing>



Chapter 16-17, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§16-17-17 Surety insurance. A captive may provide surety insurance under a business plan approved by the commissioner, provided that:

(a) The captive maintains a ratio no greater than ten to one of the total value of outstanding bond obligations to unimpaired capital and surplus. For purposes of this subsection, intercompany or affiliated loans are considered non-admitted assets when determining unimpaired capital and surplus under sections 431:19-104, 431:6-201, and 431:19-110, Hawaii Revised Statutes, unless an irrevocable letter of credit issued by a bank chartered by this State or a member bank of the Federal Reserve System, or other collateral approved by the commissioner, fully secures the loans.

(b) Within forty-five days of the end of each calendar quarter, the approved captive manager pursuant to section 431:19-101.4, Hawaii Revised Statutes, shall submit to the commissioner the following:

- (1) A listing of all outstanding surety obligations, including the purpose of each bond and its respective obligee, bond principal, outstanding bond value, and calculations of unearned premiums based on the bond term. The listing shall also include attestations by an officer of the captive and the captive manager that the listing is complete and accurate;
- (2) Quarterly unaudited financial statements of the captive insurer prepared in accordance with generally accepted accounting principles or other accounting principles prescribed or permitted under law, and attested by the captive manager and an officer of the captive;
- (3) Quarterly unaudited financial statements of the bond principal, and a statement signed

by an officer or other responsible person of the bond principal as to whether there has been any written claim or notice of dispute, or lawsuit received by the bond principal relating to the contract or matter for which a bond underwritten by the captive was issued involving an amount equal to exceeding ten percent (10%) of the face amount of the bond. For construction-related bonds, the principal shall include a construction work-in-progress report for all of the principal's construction projects supported by outstanding bonds issued by the captive;

- (4) Quarterly statutory compliance calculations for minimum required capital and surplus pursuant to sections 431:19-104, 431:6-201, and 431:19-110, Hawaii Revised Statutes; and
- (5) Any additional information required by the commissioner.

(c) In the event a claim is reported against a bond, the captive shall provide written notification to the commissioner within five working days of the claim being reported."

(d) As used in this section, "bond principal" means the entity or affiliate of the entity for whom the bond was issued by the captive.

[Eff and comp] (Auth: HRS §§431:19-104, 431:19-107, 431:19-109, 431:19-110, 431:19-114) (Imp: HRS §§431:19-107, 431:19-109)



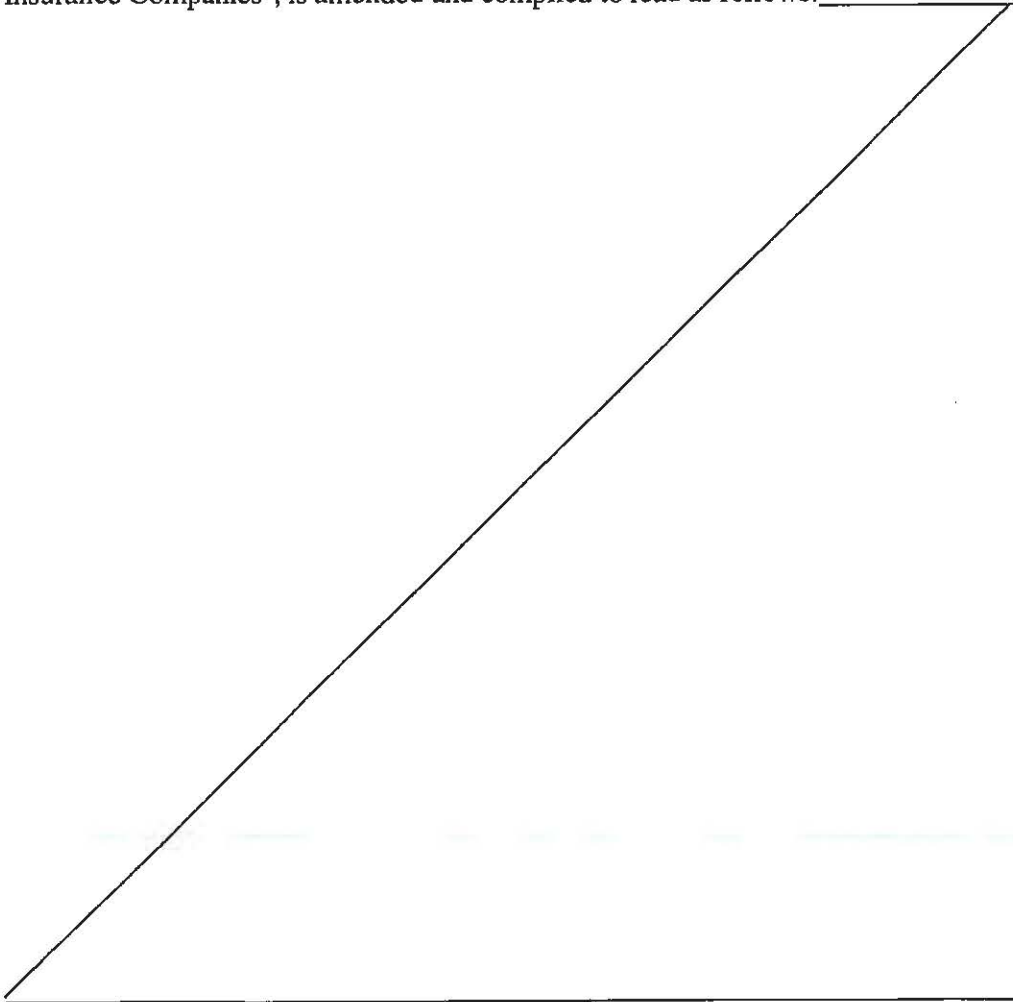
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendments to Chapter 16-17
Hawaii Administrative Rules

Date

SUMMARY

1. Chapter 16-17, Hawaii Administrative Rules, entitled "Captive Insurance Companies", is amended and compiled to read as follows:



"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 17

CAPTIVE INSURANCE COMPANIES

- §16-17-1 Purpose and authority
- §16-17-2 Definitions
- §16-17-5 Repealed
- §16-17-6 Fee schedule
- §16-17-7 Examination, investigation, and financial surveillance expenses
- §16-17-10 Notification of material misstatement of financial condition or adverse financial condition
- §16-17-11 Additional deposit requirement
- §16-17-11.1 Risk-based capital regulatory action guidelines for risk retention captives
- §16-17-12 Availability and retention of work papers of the independent certified public accountant
- §16-17-13 Documentation required to be held by captives in Hawaii
- §16-17-14 Reinsurance
- §16-17-14.1 Reinsurance guidelines for risk retention captives
- §16-17-15 Business plan or plan of operation amendments; changes in ownership, governing body and officers
- §16-17-16 Suspension or revocation of license; fines
- §16-17-17 Surety insurance

§16-17-1 Purpose and authority. The purpose of this chapter is to set forth the financial, reporting, recordkeeping, and other requirements the commissioner deems necessary for the regulation of captive insurance companies, as authorized by the captive insurance code. [Eff 5/13/91; am and comp 3/12/01; am and comp 08/18/16; comp] (Auth: HRS §431:19-114) (Imp: HRS §431:19-114)

§16-17-2 Definitions. For purposes of this chapter:

"Adverse financial condition" means one or more of the following conditions:

- (1) The impairment of capital resulting from an imbalance of liabilities and assets;
- (2) Financial ratios exceeding levels established by the commissioner, if any; or
- (3) The material degradation of financial results envisioned by the designated captive insurance manager or independent certified public accountant through predictive forecasting to the end of the next annual reporting period.

"Applicant captive" means a captive applying for a certificate of authority under the captive insurance code.

"Captive" or "captive insurance company" shall have the same meaning as provided for "captive insurance company" in section 431:19-101, Hawaii Revised Statutes.

"Captive insurance code" means article 19 of chapter 431, Hawaii Revised Statutes.

"Commissioner" means the insurance commissioner of the State of Hawaii or a duly authorized representative.

"Credit for reinsurance" means taking credit for reserves on risks ceded to a reinsurer by a captive on the captive's financial statements.

"Governing body" shall have the same meaning as provided in section 431:19-101, Hawaii Revised Statutes.

"Organizational documents" shall have the same meaning as provided for [~~"Organizational document"~~] "organizational document" in section 431:19-101, Hawaii Revised Statutes.

"Risk retention captive" shall have the same meaning as provided for "risk retention captive insurance company" [~~as defined~~] in section 431:19-101, Hawaii Revised Statutes. [Eff 5/13/91; am and comp 3/12/01; am and comp 08/18/16; am and comp] (Auth: HRS §431:19-114) (Imp: HRS §431:19-114)

§16-17-5 Repealed. [R 3/12/01]

§16-17-6 Fee schedule. (a) Each applicant captive shall pay to the commissioner a nonrefundable application fee of \$1,000 for examining,

investigating, and processing its license application. Upon approval of the application for a certificate of authority, the applicant captive shall pay to the commissioner a license fee for the certificate of authority in the amount set forth in subsection (b). Thereafter, each captive shall pay to the commissioner a renewal fee in the amount set forth in subsection (b) for each succeeding year on or before April 1.

(b) Depending on its class, a captive shall be subject to the following license and annual renewal fees:

- (1) \$300 for each class 1 or class 2 captive insurance company;
- (2) \$500 for each class 3 captive insurance company; or
- (3) \$1,000 for each class 4 or class 5 captive insurance company.

(c) Each captive shall pay to the commissioner a nonrefundable fee of \$25 for the preparation and issuance of each of the following: certificates of compliance, deposit, application, capital and surplus, transcript of records, annual statements, report of examination, and other certifications as may be necessary, but excluding certificates of authority.

(d) Each captive shall pay to the commissioner a nonrefundable fee of twenty-five cents per side of each page for photocopies of documents.

(e) The rates and fees charged by approved independent advisors and consultants used by the commissioner shall be subject to the review of the commissioner. [Eff 5/13/91; am and comp 3/12/01; am and comp 08/18/16; comp] (Auth: HRS §§431:19-102, 431:19-102.3, 431:19-106, 431:19-114, 431:19-115) (Imp: HRS §431:19-102)

§16-17-7 Examination, investigation, and financial surveillance expenses. (a) Captive insurance companies subject to examination, investigation, or financial surveillance shall be responsible for the payment of [~~the~~]expenses associated with the examination, investigation, or financial surveillance. Examination, investigation, and financial surveillance expenses shall include costs, mileage, and other reasonable and appropriate expenses associated with the examination, investigation, or financial surveillance, as determined by the commissioner.

- (1) If insurance division staff are employed in the examination, investigation, or financial surveillance of a captive insurance company, the captive insurance company shall be liable for the following additional examination fees:
 - (A) Administration at a rate of \$30 per hour or fraction thereof;
 - (B) Examiner I at a rate of \$50 per hour or fraction thereof;
 - (C) Examiner II at a rate of \$55 per hour or fraction thereof; and

- (D) Examiner III at a rate of \$60 per hour or fraction thereof.
- (2) If an independent contractor is employed or retained by the commissioner in the examination, investigation, or financial surveillance of a captive insurance company, the captive insurance company shall be liable for the charges of ~~the~~ services rendered.
- (b) Upon presentation of an invoice incurred from the examination, investigation, or financial surveillance, the captive insurance companies shall pay the commissioner for the expenses incurred from the examination, investigation, or financial surveillance. The payment shall be credited to the captive insurance administrative fund. [Eff and comp 3/12/01; am and comp 08/18/16; am and comp] (Auth: HRS §§431:2-306, 431:19-108, 431:19-114, 431:19-115) (Imp: HRS §§431:2-306, 431:19-108, 431:19-115)

§16-17-10 Notification of material misstatement of financial condition or adverse financial condition. (a) A captive shall require its independent certified public accountant to immediately notify the captive's governing body or audit committee in writing of any determination by the independent certified public accountant that the captive has materially misstated its financial condition in the captive's annual report or is in adverse financial condition. The independent certified public accountant shall provide written notification of material misstatement of financial condition or adverse financial condition to the commissioner within five working days of providing ~~such~~ notice to the captive. The captive manager shall provide a written remediation or corrective action plan to the commissioner within thirty days of the independent certified public accountant providing ~~such~~ notice to the commissioner.

(b) As used in this section, "annual report" means the ~~audited financial statement or~~ National Association of Insurance Commissioners' ~~Annual Statement~~ annual statement and ~~audit~~ the audited financial statement prepared by an independent certified public accountant for a captive and required to be filed with the commissioner pursuant to section 431:19-107, Hawaii Revised Statutes. [Eff 5/13/91; am and comp 3/12/01; am and comp 08/18/16; am and comp] (Auth: HRS §§431:19-114, 431:19-115) (Imp: HRS §§431:19-107, 431:19-108, 431:19-115)

§16-17-11 Additional deposit requirement. (a) Whenever the commissioner deems ~~that~~ the financial condition or change in business plan of a captive warrants additional security, the commissioner may require the captive to

deposit with the commissioner, in trust for the captive, cash, securities approved by the commissioner, or an irrevocable letter of credit issued by a bank chartered by the State of Hawaii or a member bank of the Federal Reserve System.

(b) The commissioner shall return the captive insurance company's deposit or letter of credit ~~[of a captive insurance company]~~ if the captive ceases ~~[to do]~~ doing any business ~~[only after being]~~, provided the commissioner is satisfied that all obligations of the company have been discharged. [Eff 5/13/91; am and comp 3/12/01; am and comp _____] (Auth: HRS §§431:19-114, 431:19-115) (Imp: HRS §§431:19-104, 431:19-105, 431:19-115)

§16-17-11.1 ~~[Risk Based Capital]~~ Risk-based capital regulatory action guidelines for risk retention captives. Risk retention captives subject to the ~~[Risk Based Capital]~~ risk-based capital requirements pursuant to sections [§§ 431:3-401] 431:3-401 to 431:3-408, Hawaii Revised Statutes, may petition the commissioner to waive any ~~[Risk Based Capital]~~ risk-based capital regulatory action requirement if the risk retention captive can demonstrate ~~[to the satisfaction of the commissioner]~~, by filing five years of projected pro forma financial statements of the risk retention captive ~~[and]~~, that any of the following exists:

- ~~[(a)]~~ (1) The financial condition and support of the risk retention captive members or sponsoring organization or both is evidenced by the members or sponsoring organization or both maintaining:
 - ~~[(1)]~~ (A) An investment grade rating from a nationally recognized statistical rating organization, or an A.M. Best rating A- or higher; or
 - ~~[(2)]~~ (B) Equity equal to or greater than \$100 million[;], or equity equal to or greater than twenty times the risk retention captive's largest net retained per occurrence limit[;], as evidenced by the filing of at least the five most recent years of audited financial statements of the members ~~[and/or]~~ or sponsoring organization[-], or both.
- ~~[(b)]~~ (2) The risk retention captive's ~~[Certificate of Authority]~~ certificate of authority is dated prior to January 1, 2011, and based upon review of the risk retention captive's five most recent years of successful operating history, the commissioner issues a written exemption from the mandatory ~~[Risk Based Capital]~~ risk-based capital action requirements. [Eff and comp 08/18/16; am and comp _____] (Auth: HRS §§ 431:19-107, 431:19-114, 431:19-115) (Imp: HRS §431:19-107)

§16-17-12 Availability and retention of work papers of the independent certified public accountant. (a) Each captive shall require its independent certified public accountant to make available for review by the commissioner or appointed agent ~~[the]~~ work papers prepared in the conduct of the annual statement and the audit of the captive. The captive shall require that the independent certified public accountant retain the audit work papers for a period of not less than seven years after the period being reported ~~[upon]~~.

(b) The review conducted in subsection (a) shall be considered ~~[to be]~~ an investigation, and all work papers obtained during the course of that investigation shall be confidential in accordance with the captive insurance code. The captive shall require that the independent certified public accountant provide photocopies of any and all work papers that the commissioner deems relevant. The commissioner may retain these copies.

(c) As used in this section, "work papers" include, but are not limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of company records, or other documents prepared or obtained by the independent certified public accountant in the conduct of the examination of the captive. [Eff 5/13/91; am and comp 3/12/01; am and comp 08/18/16; am and comp] (Auth: HRS §§431:19-114, 431:19-115) (Imp: HRS §§431:19-102.5, 431:19-107, 431:19-108, 431:19-115)

§16-17-13 Documentation required to be held by captives in Hawaii. (a) The captive shall maintain~~[in the form of the original document, photocopy, or electronic document,]~~ accurate, legible, and complete original, photocopied, or electronic records of the captive's operations in its principal office in Hawaii or another Hawaii location designated by the captive and approved by the commissioner. Upon the request of the commissioner to review the captive's records, the captive shall provide the commissioner timely access to the requested documents~~[, which may be in the form of the original document, photocopy, or electronic document]~~. If any document is in a foreign language, a translation under oath of the translator shall accompany the document.

(b) Each captive shall designate in writing one of its service providers to serve as the captive's representative with respect to the maintenance and production of the captive's records. The captive's designated representative shall be:

- (1) Physically present in Hawaii; and
- (2) Able to respond to questions about the captive, including matters related to the captive's operation, management, financial condition, investments, and insurance and reinsurance programs.

(c) All captives licensed by the State ~~[of Hawaii]~~ shall maintain and make ready for inspection, investigation, financial surveillance, and examination by the commissioner or the commissioner's agents~~;~~ any and all documents pertaining to the formation, operation, management, finances, investments, insurance, and reinsurance of each captive. These documents shall include:

- (1) The captive's corporate records, including all organizational documents, resolutions, and minutes of the captive's governing body;
- (2) Verification of the captive's principal place of business;
- (3) Records relative to the captive's capital, surplus, assets, and liabilities, including actuarial opinions, reports of independent certified public accountants, and supporting documentation;
- (4) The captive's business plan and plan of operation, including changes in management, ownership, qualifications of officers and directors, service providers, and strategic investment policy;
- (5) The captive's correspondence and filings with the commissioner and insurance division staff and with other jurisdictions;
- (6) All executed agreements materially affecting the captive's business, including insurance policies and~~;~~ reinsurance bordereau; and
- (7) ~~[Other]~~ Any other information ~~[as]~~ the commissioner deems necessary. [Eff 5/13/91; am and comp 3/12/01; am and comp 08/18/16; am and comp _____] (Auth: HRS §§431:19-114, 431:19-115) (Imp: HRS §§431:19-108, 431:19-115)

§16-17-14 Reinsurance. (a) Reinsurance under this section shall be effected through a written agreement of reinsurance setting forth the terms, provisions, and conditions governing the reinsurance.

- (b) ~~[In the case of a risk retention captive, a]~~ A risk retention captive:
 - (1) Shall qualify for credit for reinsurance on risks ceded to a reinsurer if the reinsurer is in compliance with ~~[article 431:4A]~~ chapter 431, article 4A of the Hawaii Revised Statutes; or
 - (2) May qualify for credit for reinsurance on risks ceded to a reinsurer~~;~~, provided ~~[that]~~ the reinsurer meets the reinsurance guidelines for risk retention captives pursuant to section 16-17-14.1.
- (c) A captive taking credit for reinsurance pursuant to this section shall provide copies of all reinsurance binders, slips, treaties, or agreements to the

commissioner for the commissioner's review and approval. [Eff 5/13/91; am and comp 3/12/01; am and comp 08/18/16; am and comp] (Auth: HRS §§431:19-114, 431:19-115) (Imp: HRS §431:19-111)

§16-17-14.1 Reinsurance guidelines for risk retention captives. (a) A risk retention captive may qualify for credit for reinsurance on risks ceded to a reinsurer if:

- (1) The reinsurer maintains an A- or higher A.M. Best rating~~[;]~~ or other comparable rating from a nationally recognized statistical rating organization, the reinsurer maintains a minimum policyholder surplus in an amount acceptable to the commissioner based upon a review of the reinsurer's most recent audited financial statements, and the reinsurer is licensed and domiciled in a jurisdiction acceptable to the commissioner; or
- (2) The reinsurer satisfies all of the following requirements and any other requirements deemed necessary by the commissioner:
 - (A) The risk retention captive or its captive manager shall file annually, on or before June 30, the reinsurer's audited financial statements, which ~~[shall be analyzed by]~~ the commissioner shall analyze to assess the appropriateness of the reserve credit or the initial and continued financial condition of the reinsurer;
 - (B) The reinsurer shall demonstrate to the satisfaction of the commissioner that it maintains a ratio of net written premium, wherever written, to surplus and capital of not more than ~~[3 to 1;]~~ three to one;
 - (C) If the reinsurer is an affiliate of the risk retention captive, the reinsurer shall not write third-party business without ~~[obtaining]~~ prior written approval from the commissioner;
 - (D) The reinsurer shall not use cell arrangements without ~~[obtaining]~~ prior written approval from the commissioner;
 - (E) The reinsurer shall be licensed and domiciled in a jurisdiction acceptable to the commissioner; and
 - (F) The reinsurer shall submit to the examination authority of the commissioner.

For ~~[the]~~ purposes of this paragraph, a reinsurer is affiliated with a risk retention captive if more than fifty per cent of the equity interests in the reinsurer are owned, directly or indirectly, by one or more ~~[of the]~~ members of the risk retention captive.

(b) A risk retention captive using these reinsurance guidelines shall not receive credit for reinsurance if all of its policies are ceded through:

- (1) One hundred per cent reinsurance arrangements; or
- (2) A lesser percentage ~~[that has been]~~ approved by the commissioner, and the risk retention captive exceeds the approved percentage. While no credit for reinsurance shall be allowed for the amount in excess of the approved percentage, the risk retention captive may qualify for credit for reinsurance for the amount within the approved percentage.

(c) The commissioner shall either require a reinsurer not domiciled in the United States to include language in the reinsurance agreement ~~[that states]~~ stating that in the event of the reinsurer's failure to perform its obligations under the terms of its reinsurance agreement, the reinsurer shall submit to the jurisdiction of any court of competent jurisdiction in the United States or shall require the reinsurer to comply with subsection (d).

(d) For credit for reinsurance and solvency regulatory purposes, the commissioner may require an approved funds-held agreement, letter of credit, trust, or other acceptable collateral based ~~[on]~~ upon unearned premium, loss and loss adjustment expense reserves, and incurred but not reported reserves.

(e) Upon application, the commissioner may waive either of the reinsurance requirements in subsection (a)(2)(B) or ~~[subsection](a)(2)(F)~~ ~~[in circumstances where]~~ if the risk retention captive or reinsurer can demonstrate to ~~[the satisfaction of]~~ the commissioner that the reinsurer is sufficiently capitalized based upon ~~[an annual review of the reinsurer's most recent audited financial statements, the reinsurer is licensed and domiciled in a jurisdiction satisfactory to the commissioner, and the proposed reinsurance agreement adequately protects the risk retention captive and its policyholders.]:~~

- (1) An annual review of the reinsurer's most recent audited financial statements;
- (2) The reinsurer being licensed and domiciled in a jurisdiction satisfactory to the commissioner; and
- (3) The proposed reinsurance agreement adequately protecting the risk retention captive and its policyholders.

Any waiver shall be included in the plan of operation[;] or any of its subsequent ~~[revision or amendment of the plan,]~~ revisions or amendments, pursuant to 15 U.S.C. section 3902(d)(1). ~~[and the]~~ The plan shall be submitted by the risk retention captive to the commissioner of its state of domicile and each state in which the risk retention captive intends to do business or is currently registered. Any waiver of a requirement in subsection (a)(2) shall constitute a change in the risk retention captive's plan of operation in each of those states.

(f) Upon application, the commissioner may waive the requirement in subsection (c) that a reinsurance arrangement must satisfy either subsection (c) or (d) ~~[in circumstances where]~~ if the risk retention captive or reinsurer can demonstrate to the ~~[satisfaction of the]~~ commissioner that the reinsurer is sufficiently capitalized, based upon ~~[an annual review of the reinsurer's most recent audited financial statements, the reinsurer is licensed and domiciled in a jurisdiction satisfactory to the commissioner, and the proposed reinsurance agreement adequately protects the risk retention captive and its policyholders.];~~

- (1) An annual review of the reinsurer's most recent audited financial statements;
- (2) The reinsurer being licensed and domiciled in a jurisdiction satisfactory to commissioner; and
- (3) The proposed reinsurance agreement adequately protecting the risk retention captive and it policyholders.

Any waiver shall be disclosed in Note 1 of the risk retention captive's annual statutory financial statement.

(g) Each risk retention captive or captive manager of a risk retention captive shall assess the reinsurance programs of the risk retention captives under their management, and within ~~[60]~~ sixty days of the effective date of ~~[these guidelines,]~~ this section, shall submit a written report to the commissioner indicating whether ~~[such]~~ the risk retention captives are in compliance with these guidelines. All risk retention captives that fail to submit the report in a timely manner shall be examined~~[-]~~ at the risk retention captive's expense~~[-]~~ to determine compliance with ~~[these guidelines.]~~ this section.

(h) ~~[The guidelines set forth in this]~~ This section shall ~~[be]~~ become effective ~~[the same date as]~~ when ~~[these Administrative Rules become]~~ this chapter becomes effective and shall apply prospectively to risk retention captives. Credit for reinsurance may be granted for a risk retention captive's reinsurers in place as of January 1, 2011, without meeting the requirements ~~[set forth in]~~ of this section. The requirements ~~[set forth in]~~ of this section shall be used for new reinsurers not in place as of January 1, 2011, with which business is placed after January 1, 2011. [Eff and comp 08/18/16; am and comp]
(Auth:HRS §§431:19-114, 431:19-115) (Imp: HRS §431:19-111)

§16-17-15 Business plan or plan of operation amendments; changes in ownership, governing body and officers. (a) The captive shall provide written notice and obtain prior approval from the commissioner for any change in ownership or material change to the captive's business plan or plan of operation that was filed with the commissioner upon application or as otherwise required by statute.

(b) The captive shall provide written notice to the commissioner for any nonmaterial changes to the captive's business plan or plan of operation or as otherwise required by statute.

(c) The captive shall provide written notice to the commissioner within thirty days after any change to its governing body or its officers, including [the] submission of the completed biographical affidavit of any new member of the captive's governing body or officer. The captive shall obtain prior approval from the commissioner for any new appointment who does not already have a biographical affidavit on file with the commissioner. [Eff 5/13/91; am and comp 3/12/01; am and comp 08/18/16; am and comp] (Auth: HRS §§431:19-114, 431:19-115) (Imp: HRS §§431:19-106, 431:19-109, 431:19-115)

§16-17-16 Suspension or revocation of license; fines. (a) The commissioner may by order fine, suspend or revoke the license of a captive[;] or any combination of these actions:

(1) For any reason provided in section 431:19-109, Hawaii Revised Statutes; or

(2) Pursuant to the captive's request.

(b) In case of suspension or revocation, the commissioner shall advise the captive of procedures and requirements for ongoing operations and winding up [of] the captive's business. [Eff 5/13/91; am and comp 3/12/01; am and comp 08/18/16; am and comp] (Auth: HRS §§431:19-114, 431:19-115) (Imp: HRS §§431:19-109, 431:19-115)

§16-17-17 Surety insurance. (a) A captive may provide surety insurance under a business plan approved by the commissioner, provided that the captive maintains a ratio no greater than ten to one of the total value of outstanding bond obligations to unimpaired capital and surplus. For purposes of this subsection, intercompany or affiliated loans are considered nonadmitted assets when determining unimpaired capital and surplus under sections 431:19-104, 431:6-201, and 431:19-110, Hawaii Revised Statutes, unless an irrevocable letter of credit issued by a bank chartered by this State or a member bank of the Federal Reserve System, or other collateral approved by the commissioner, fully secures the loans.

(b) Within forty-five days of the end of each calendar quarter, the approved captive manager pursuant to section 431:19-101.4, Hawaii Revised Statutes, shall submit to the commissioner the following:

- (1) A listing of all outstanding surety obligations, including the purpose of each bond and its respective obligee, bond principal, outstanding bond value, and calculations of unearned premiums based upon the bond term. The listing shall also include attestations by an officer of the captive and the captive manager that the listing is complete and accurate;
 - (2) Quarterly unaudited financial statements of the captive insurer prepared in accordance with generally accepted accounting principles or other accounting principles prescribed or permitted under law, and attested by the captive manager and an officer of the captive;
 - (3) Quarterly unaudited financial statements of the bond principal, and a statement signed by an officer or other responsible person of the bond principal as to whether there has been any written claim or notice of dispute, or lawsuit received by the bond principal relating to the contract or matter for which a bond underwritten by the captive was issued involving an amount equal to exceeding ten percent (10%) of the face amount of the bond. For construction-related bonds, the principal shall include a construction work-in-progress report for all of the principal's construction projects supported by outstanding bonds issued by the captive;
 - (4) Quarterly statutory compliance calculations for minimum required capital and surplus pursuant to sections 431:19-104, 431:6-201, and 431:19-110, Hawaii Revised Statutes; and
 - (5) Any additional information required by the commissioner.
- (c) In the event a claim is reported against a bond, the captive shall provide written notification to the commissioner within five working days of the claim being reported.
- (d) As used in this section, "bond principal" means the entity of affiliate of the entity for whom the bond was issued by the captive. [Eff and comp] (Auth: HRS §§431:19-104, 431:19-107, 431:19-109, 431:19-110, 431:19-114) (Imp: HRS §§431:19-107, 431:19-109)

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

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

4. These amendments to and compilation of chapter 16-17, 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 _____ and filed with the Office of the Lieutenant Governor.

GORDON I. ITO
Insurance Commissioner

APPROVED AS TO FORM

Deputy Attorney General

From: Wesley moore <konatownsurfadventures@gmail.com>
Sent: Tuesday, October 23, 2018 2:20 PM
To: DBEDT SBRRB <dbedt.sbrrb.info@hawaii.gov>
Subject: New submission from Regulation Review Card

Name

Wesley moore

Company Name

Kona Town Surf Adventures

Email Address

konatownsurfadventures@gmail.com

Phone Number

(808) 652-7555

Address

77-6573 Sea View Circle
A
Kailua-Kona, HI 96740
United States
[Map It](#)

What is the title of the rule or regulation negatively impacting your business?

HAR 13-231-50 through 70

How does this rule or regulation affect your business?

As a small business theres no option for potential growth in kailua-kona. We started our business in 2016 as a surf school/surf tour company with the idea to grow into a bigger operation expanding into snorkel trips via boat. Currently there is a cap on commercial permits at the Keauhou boat ramp at 11 with 17 current ramp permites, 10 of which are held by 2 companies. Essentially with this rule in place myself or any other small business cant possibly opperate legally. This isnt just a problem at the Keauhou ramp but all ramp on the westside of the Big Island, Honokahau being the worse with a cap at 35 and 57 current ramp permites.

Suggestions as to how this rule or regulation can lessen the impact on your business

Open up the permitting process so small locsl business can grownand thrive here in hawaii qnd put stricter policies in place for current permit holders so permits arent being sat on untill the price is right to sell .

department, provided that routine maintenance and repairs for safety, security and structural integrity shall be allowed. [Eff 2/24/94; am and comp 9/25/14] (Auth: HRS §§200-1, 200-2, 200-4, 200-9, 200-10) (Imp: HRS §§200-1, 200-2, 200-4, 200-9, 200-10)

§13-231-46 Vessel limitations. Due to the restricted entrance and turning area in Lahaina small boat harbor, no vessel of any size will be allowed to moor on the makai side of the Lahaina loading (fuel) dock from sunset to sunrise. Mooring from sunrise to sunset will be limited to fifteen minutes. [Eff 2/24/94; am and comp 9/25/14] (Auth: HRS §§200-1, 200-2, 200-4) (Imp: HRS §§200-1, 200-2, 200-4)

§§13-231-47 to 13-231-49 (Reserved)

SUBCHAPTER 3

COMMERCIAL ACTIVITIES

§13-231-50 General statement. No regular or extensive use of any state property or facilities for private gain or purposes shall be permitted without corresponding and reasonable benefits and returns to the public. [Eff 2/24/94; comp 9/25/14] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-4)

§13-231-51 Business activities. No person shall engage in any business or commercial activity at any small boat harbor or other small boat facility without:

- (1) Prior written approval of the department; or
- (2) The proper execution of an agreement with the department. [Eff 2/24/94; comp 9/25/14] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)



§13-231-52 Solicitations and advertisements. Without limiting its generality, the words "business or commercial activity" as used in section 13-231-51 includes any solicitations and advertisements, intended for private gain or purposes. [Eff 2/24/94; comp 9/25/14] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-231-53 Signs. No person shall post or display any signs at a small boat harbor without the prior written approval of the department, except that signs strictly pertaining to the sale of vessels and of maximum dimensions of three feet by three feet shall be permitted on the vessel without approval. [Eff 2/24/94; comp 9/25/14] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-231-54 Commercial vessel; definition. "Commercial vessel" as used in this subchapter means a vessel engaged in any trade or business including, but not limited to, carrying passengers for hire, charter fishing, bare boat (demise) or any type of charter maintenance, harvesting coral or similar resources, construction, towing, tow-boating, or other trade or business wherein the vessel is used in any manner to promote the venture, or is registered with the State or documented by the United States Coast Guard for commercial use. [Eff 2/24/94; comp 9/25/14] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-231-55 Berthing commercial vessels at Ala Wai or Keehi small boat harbor. (a) The total number of valid commercial use permits that may be issued for vessels assigned mooring in Ala Wai small boat harbor shall not exceed fifteen per cent of the total number of berths and shall not exceed thirty-five per cent of the total

number of berths at the Keehi small boat harbor; provided that at the Ala Wai small boat harbor, vessels issued commercial use permits shall:

- (1) Not exceed sixty-five feet in length;
- (2) Occupy not more than fifty-six berths located along the row of berths furthest mauka or adjacent to Holomoana Street, with the remainder located throughout the Ala Wai small boat harbor, with priority assigned to row five hundred, row seven hundred, and row eight hundred;
- (3) Be phased-in in a manner that does not displace any existing recreational boater or existing catamaran operator; and
- (4) Include commercial catamarans, for which valid commercial use permits or existing registration certificates have been issued by the department that allow the catamarans to operate upon Waikiki shore waters for hire.

(b) The department may issue a temporary mooring permit authorizing the owner to temporarily moor at Ala Wai or Keehi small boat harbors, provided the vessel is not engaged in commercial activities.

(c) This section is not applicable to a vessel used principally for recreational purposes (more than fifty per cent of its operating time) but licensed to engage in commercial fishing. [Eff 2/24/94; am and comp 9/25/14] (Auth: HRS §§200-2, 200-4, 200-9) (Imp: HRS §§200-2, 200-4, 200-9)

§13-231-56 Definitions, gross receipts. Gross receipts as used in this subchapter means all moneys paid or payable to the account of the vessel owner, for the rendition of services, or resulting from trade, business, commerce, or sales by the vessel owner when the services, trade, business, commerce, or sales have a direct relationship to the vessel. [Eff 2/24/94; am and comp 9/25/14] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-231-57 Berthing or using commercial vessels in state small boat harbors. (a) This section is applicable to all state small boat harbors. This section is applicable to all commercial vessels including commercial fishing vessels engaged in charter fishing or any other trade or business; provided that commercial fishing vessels are exempt from this section if the total income derived from the use of the vessel is generated through the sale of fish or permitted coral.

(b) No commercial vessel shall load or discharge passengers or cargo or engage in any other commercial activity at any small boat harbor unless the owner possesses a regular mooring permit and a valid commercial use permit or valid catamaran registration certificate issued by the department. Inter-island ferry service within Maui County shall be afforded preferential consideration in accordance with section 200-9(d), Hawaii Revised Statutes. The restrictions of this section shall not apply to any commercial vessel operated in connection with the lease of premises at a small boat harbor.

(c) Notwithstanding subsection (b) and except at the Ala Wai and Keehi small boat harbors, the department may authorize the owner of a transient or visiting commercial vessel engaged in a trade or business elsewhere to:

- (1) Carry passengers for hire in the small boat harbors if the vessel will be so engaged as a registered participant in a bona fide fishing tournament;
- (2) While on cruise, off-load and load passengers in the small boat harbors if those passengers are embarked elsewhere or bound for another destination; provided that a reservation for a berth was made in advance and space is available; or
- (3) Embark and disembark passengers occasionally and infrequently, not exceeding twenty-four times in a calendar year on a special

charter when approved not less than seven days in advance of the voyage.

(d) A commercial use permit or catamaran registration certificate shall automatically expire upon the department's notice to vacate, if any vessel granted a temporary mooring permit under section 13-231-57(c) engages in a trade or business contrary to the provisions of the permit or certificate. [Eff 2/24/94; am and comp 9/25/14] (Auth: HRS §§200-2, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-58 Limitations on the number of commercial use permits and catamaran registration certificates for vessels assigned permanent moorings.

(a) The total number of valid commercial use permits which may be issued for vessels assigned permanent mooring in Manele small boat harbor shall not exceed ten percent of the available berths.

(b) Subject to any other limitations on commercial catamarans that may be provided in these rules, the total number of valid commercial use permits or catamaran registration certificates that may be issued for vessels assigned mooring in the Ala Wai small boat harbor shall not exceed fifteen percent of the total number of berths; provided that at the Ala Wai small boat harbor, vessels issued commercial use permits or catamaran registration certificates shall:

- (1) Not exceed sixty-five feet in length;
- (2) Occupy not more than fifty-six berths located along the row of berths furthestmost mauka or adjacent to Holomoana Street, with the remainder located throughout the Ala Wai small boat harbor, with priority assigned to row five hundred, row seven hundred, and row eight hundred;
- (3) Be phased-in in a manner that does not displace any existing recreational boater or existing catamaran operator; and

(4) Include commercial catamarans for which valid commercial use permits or existing registration certificates have been issued by the department, that allow the catamarans to operate upon Waikiki shore waters for hire.

(c) The total number of valid commercial use permits or catamaran registration certificates that may be issued for vessels assigned mooring at the Keehi small boat harbor shall not exceed thirty-five per cent of the total number of berths;

(d) The total number of valid commercial use permits or commercial registration certificates that may be issued for vessels assigned permanent mooring in the following small boat harbors are:

<u>Harbor</u>	<u>Number of commercial use permits</u>
Ala Wai	as provided for in Hawaii Revised Statutes 200-9
Keehi	as provided for in Hawaii Revised Statutes 200-9
(1) <u>Heeia Kea</u>	as provided for in section 13-256-73.1
(2) Haleiwa	20
(3) Waianae	15
(4) Nawiliwili	10
(5) Port Allen	12
(6) Kikiaola	3
(7) Kukuiula	4
(8) Hana	2
(9) Kaunakakai	9
(10) Lahaina	32
(11) Maalaea	29
(12) Honokohau	120
(13) Kawaihae (north)	4
(14) Kawaihae (south)	10
(15) Kailua-Kona Makai	3
(16) Kailua-Kona Offshore	8
(17) Wailoa	10
(18) Reed's Bay	3
(19) Keauhou	6

(e) Notwithstanding the provisions of subsections (a) through (d) limiting the number of commercial use permits and catamaran registration certificates that may be issued, the owner of a commercial vessel holding a regular mooring permit and a valid commercial use permit or valid catamaran registration certificate on the effective date of the rule amendments for the above listed small boat harbors, may retain and apply for reissuance of the commercial use permit or catamaran registration certificate, provided that all other requirements of these rules are met.

(f) Upon the approval by the department, a person or business entity possessing a valid commercial use permit for a vessel moored elsewhere may be issued a regular mooring permit at a state boating facility listed in subsection (d), and retain the commercial use permit, provided that the permittee relinquishes the vessel moored elsewhere permit and that the total number of valid commercial use permits for vessels moored elsewhere shall be reduced accordingly. A regular mooring permittee who possesses a valid commercial use permit may relinquish the regular mooring permit and retain the commercial use permit, provided that the total number of valid commercial use permits for vessels moored in the state boating facility plus the number of commercial use permits for vessels moored elsewhere are not exceeded, and that the category of commercial use permits assigned to vessels moored elsewhere pursuant to section 13-231-59(d) shall not exceed the passenger capacity of the vessel formerly moored in the state boating facility. [Eff 2/24/94; am 6/16/03; am and comp 9/25/14] (Auth: HRS §§200-2, 200-3, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-9, 200-10)

§13-231-59 Limitations on commercial use permits for vessels moored elsewhere. (a) The department recognizes that it may be necessary or desirable to operate a commercial vessel from more than one small

boat harbor, and that lack of mooring facilities in certain areas has required numerous vessels to establish permanent moorings offshore, outside of the small boat harbors of intended use. Therefore, notwithstanding section 13-231-57, the department may issue a limited number of commercial use permits to owners of vessels moored elsewhere for use of small boat harbor facilities. The number and categories of those commercial use permits shall be based on the physical capacity of the small boat harbor facilities to accommodate the additional volume of activity expected to be generated by the additional permits, and shall be determined by the department on a case-by-case basis for each small boat harbor, subject to the limitations listed in subsection (b).

(b) No commercial vessel moored elsewhere shall use any small boat harbor facilities for commercial purposes unless the owner of the commercial vessel moored elsewhere has been issued a commercial use permit for that vessel, or the vessel is exempt from commercial use permit requirements under the provisions of subsection 13-231-57(c) or as otherwise permitted by the department. "Commercial purposes" as used in this subsection includes the staging, loading and discharge of passengers or supplies at a state boating facility for further transport to a vessel's offshore location by means of a water taxi or any other vessel, or provisioning a vessel before or after a voyage involving the carriage of passengers for hire.

(c) The number of commercial use permits for vessels moored elsewhere which may be issued for each small boat harbor shall be as follows:

- (1) Maalaea small boat harbor: twenty;
- (2) Lahaina small boat harbor: sixteen;
- (3) Manele small boat harbor: six; and
- (4) All other small boat harbors except for Heeia Kea small boat harbor, which is subject to section 13-256-73.1: no limit.

(d) Each commercial use permit issued for a vessel moored elsewhere shall be assigned one of the following categories, depending on the passenger-

carrying capacity of the vessel named in the permit:

- (1) Category I - one to twenty-four passengers
- (2) Category II - twenty-five to forty-nine passengers
- (3) Category III - fifty to seventy-four passengers
- (4) Category IV - seventy-five to ninety-nine passengers
- (5) Category V - one hundred to one hundred forty-nine passengers

(e) No commercial use permit for vessels moored elsewhere shall be issued for any vessel with a passenger-carrying capacity in excess of one hundred forty-nine, and no existing commercial use permit issued for a vessel moored elsewhere shall be issued a permit whenever the owner seeks to increase the passenger-carrying capacity above the limit of the category to which the current permit was assigned.

(f) The department reserves the right to impose further restrictions on the operation of commercial vessels moored elsewhere, on a case-by-case basis, as may be necessary to reduce congestion and achieve more efficient use of small boat harbor facilities. Restrictions may include designation of docking times for passenger loading and unloading or fueling, and parking restrictions for patron and delivery vehicles. Additional restrictions shall be implemented by addenda to existing commercial use permits issued by the department. Refusal of a permittee to accept or comply with additional restrictions implemented in this manner shall be cause for immediate termination of the commercial use permit.

(g) Use of any vessel in violation of this section may be cause for termination of all small boat harbor use permits issued to the owner by the department. [Eff 2/24/94; am and comp 9/25/14] (Auth: HRS §§200-2, 200-3, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-9, 200-10)

§13-231-60 Allocation of commercial use permits for vessels and catamaran registration certificates.

(a) Commercial use permits and catamaran registration certificates shall be issued to qualified applicants in the order in which applications are received by the department. Seniority begins on the date an application is received and accepted by the department. The allocation procedures specified in subchapter 5, Allocation of berths, shall also govern the allocation of commercial use permits and catamaran registration certificates under this section; provided that waiting lists for commercial use permits and catamaran registration certificates shall be established and maintained separately from waiting lists for berth assignment.

(b) The sale or transfer of any corporation or other business entity while on the waiting list which results in a change of the majority stockholder or person holding the majority interest in the business shall result in loss of seniority, and the applicant shall be placed at the bottom of the waiting list.

(c) The department may reject an application for a commercial use permit if the type of commercial activity is determined by the department to be inappropriate for the facility or area for which the permit is being requested, in addition to the grounds for rejection of an application for a permit listed in section 13-231-82.

(d) When a commercial use permit becomes available for a vessel moored elsewhere, the permit issued shall be of the same category as the commercial use permit which was previously in effect. [Eff 2/24/94; am and comp 9/25/14] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-10)

§13-231-61 Reissuance of commercial use permits, and catamaran registration certificates.

(a) The department may reissue a commercial use permit or catamaran registration certificate provided that:

(1) The gross receipts during the twelve-month period under the commercial use permit or catamaran registration certificate for which the application for reissuance has been submitted equals or exceeds the following minimums as applicable:

- (A) Vessel used for bare boat (demise) charters and charter sail boats \$7,000
- (B) Vessels registered by the state or documented by the U.S. Coast Guard to carry six passengers or less; including charter fishing boats \$15,000
- (C) Vessels certified by the U.S. Coast Guard to carry seven to twenty-six passengers \$45,000
- (D) Vessels certified by the U.S. Coast Guard to carry twenty-seven to forty-nine passengers \$85,000
- (E) Vessels certified by the U.S. Coast Guard to carry fifty to ninety-nine passengers \$125,000
- (F) Vessels certified by the U.S. Coast Guard to carry more than ninety-nine passengers. \$250,000
- (G) Vessels engaged in another trade or business not delineated and governed by an appropriate paragraph above \$7,000
- (H) Water sports equipment rentals \$7,000;

or

- (2) The permittee applies to the department in writing for reissuance of the permittee's commercial use permit or catamaran registration certificate and concurrently presents evidence that any failure to generate gross receipts from the operation of the permittee's vessel or certificate holder's catamaran as prescribed in this subsection was due to:
 - (A) The sinking, loss, or destruction of the permittee's vessel or certificate holder's catamaran;
 - (B) The permittee's vessel or certificate holder's catamaran being inoperative in excess of sixty days due to disability of the permittee or certificate holder;
 - (C) The permittee's vessel or certificate holder's catamaran was rendered inoperative in excess of sixty days due to damage to the vessel, or due to the necessity of replacing essential parts and gear, provided that reasonable and diligent efforts by the permittee to secure such items necessary to repair the vessel or replacement of parts is demonstrated; or
 - (D) Where conditions and circumstances are demonstrated wherein a reissuance of the permittee's commercial use permit or the catamaran registration certificate would be fair and warranted, and the application for reissuance is approved by the department; and
- (3) All fees and charges due and payable to the department have been paid and no violations are outstanding.

(b) No commercial use permit or catamaran registration certificate shall be issued to any permittee or certificate holder whose commercial use permit or catamaran registration certificate has been terminated for cause, provided that the permittee or

certificate holder may apply for a new commercial use permit or catamaran registration certificate after one year has expired from the date of termination, all fees and charges owing the State have been paid, and the permittee or certificate holder is in compliance with federal and state laws.

(c) A corporation must have been in continuous commercial operation as evidenced by the submission of monthly reports of gross receipts for a minimum of twelve months in order to retain commercial use permits or a catamaran registration certificate upon the transfer of any interest in that corporation. [Eff 2/24/94; am and comp 9/25/14] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-10)

§13-231-62 Transferability of commercial use permits and catamaran registration certificates. (a) Commercial use permits and catamaran registration certificates issued to individuals.

(1) A commercial use permit issued to an individual is non-transferable, so that whenever the permittee parts with possession or transfers the title or interest in the vessel identified in the commercial use permit to another person by any arrangement, the commercial use permit shall expire except as provided herein with respect to the original permittee. The new possessor, transferee, or owner of the vessel shall have no right to use the commercial use permit. However, a sole proprietor holding a commercial use permit or catamaran registration certificate for a commercial catamaran to land on Waikiki beach and operate upon Waikiki shore waters for hire may transfer ownership of the vessel from personal ownership to corporate or other business ownership without terminating the right to operate. The existing permit or registration certificate shall be reissued

in a timely manner in the name of the transferee corporation or other business entity. No commercial use permit or catamaran registration certificate for an existing Waikiki beach catamaran operation shall be denied or revoked without a prior hearing in accordance with chapter 91, Hawaii Revised Statutes;

- (2) An original commercial use permittee or catamaran certificate holder who also holds a regular mooring permit, upon written application and approval by the department may retain the commercial use permit or catamaran registration certificate, provided that within thirty days the permittee moves into the small boat harbor another vessel owned by the mooring permittee pursuant to the provisions of section 13-231-13; and
- (3) An original permittee holding a commercial use permit and moored elsewhere may, upon written application to and approval by the department retain the commercial use permit, provided that within thirty days the permittee resumes operation with another vessel owned by the permittee pursuant to the provisions of sections 13-231-13 and 13-231-61.

(b) The following rights, conditions, and restrictions apply to commercial use permits and catamaran registration certificates issued to a corporation or other business entity.

- (1) Notwithstanding section 13-231-13, a corporation or other business entity holding a valid commercial use permit or catamaran registration certificate may transfer any or all stock or interest and retain the commercial use permit or catamaran registration certificate and all other valid small boat harbor use permits in effect on the date of transfer, provided that the corporation or other business entity has been in continuous operation as evidenced by

the submission of monthly reports of gross receipts for a minimum period of one full year and meets all requirements necessary for issuance of a commercial use permit or catamaran registration certificate. The department shall be notified within ten working days of:

- (A) All transactions that amount to a transfer of ten per cent or more of the stock or interest in the firm by owners of record on the date of issuance of the current commercial use permit or catamaran registration certificate;
 - (B) The transfer of any stock or interest which results in a change of the principal stockholder or owner; and
 - (C) The business transfer fee is paid on or before the date of transfer; and
- (2) A commercial use permit or catamaran registration certificate issued to a corporation or other business entity shall automatically expire:
- (A) Upon the voluntary or involuntary dissolution of the corporation or business entity;
 - (B) If the vessel or vessels operated under the commercial use permit or catamaran registration certificate are sold or otherwise transferred and not replaced in accordance with the provisions of section 13-231-13(b); or
 - (C) If the permittee or certificate holder fails to operate the vessel for which the commercial use permit or catamaran registration certificate is issued for a period in excess of sixty days, except as provided in section 13-231-61(a)(2), and except when the permittee or certificate holder provides advance notification to the department in writing that operations will be temporarily suspended for a specific

period not to exceed four months. [Eff 2/24/94; am and comp 9/25/14] (Auth: HRS §§200-2, 200-3, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-9, 200-10)

§13-231-63 Retention of berth upon termination of commercial use permit or catamaran registration certificate. The owner of a vessel moored in any of the above listed small boat harbors whose commercial use permit or catamaran registration certificate has been cancelled at the owner's request, expired, or revoked by the department pursuant to the provisions of these rules may continue to moor the vessel in the small boat harbor in accordance with the owner's regular mooring permit and to utilize the vessel for non-commercial purposes if the vessel and the owner conform to the conditions set forth in these rules to renew or maintain a regular mooring permit. [Eff 2/24/94; am and comp 9/25/14] (Auth: HRS §§200-2, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-64 Fees and charges. Fees and charges for commercial vessels shall be as prescribed in chapter 13-234 and chapter 13-253. (Eff 2/24/94; am and comp 9/25/14] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-231-65 Insurance requirements. A use permittee issued a commercial use permit or catamaran registration certificate shall, concurrently with the execution of the permit or registration certificate, shall tender to the department a copy of either a comprehensive general liability insurance policy or policies or a protection and indemnity insurance policy, or a certificate of insurance in lieu thereof, evidencing that such policy has been and is in force, with a combined single limit of not less than \$500,000

for commercial vessels not authorized to carry passengers and for those authorized to carry not more than six passengers; not less than \$500,000 for vessels authorized to carry more than six passengers, but equal to or less than twenty-seven passengers; and not less than \$750,000 for vessels authorized to carry more than twenty-seven passengers, for bodily injury and damage to property per occurrence. The specification of limits contained herein shall not be construed in any way to be a limitation on the liability of the permittee or certificate holder for any injury or damage proximately caused by it or for purposes of indemnification of the State of Hawaii. This insurance shall:

- (1) Be issued by an insurance company authorized to do business in the State and approved in writing by the department;
- (2) Name the State as an additional insured;
- (3) Provide that the department shall be notified in writing at least thirty days prior to any termination, cancellation, or material change in insurance coverage;
- (4) Cover all injuries, losses, or damages arising from, growing out of, or caused by any acts or omissions of the permittee or certificate holder, its officers, agents, employees, invitees, members, shareholders, subcontractors, or licensees, in connection with the permittee's or certificate holder's activities under the permit or certificate; and
- (5) Be maintained and kept in effect at the permittee's or certificate holder's own expense throughout the life of the permit or certificate. The permittee or certificate holder shall submit evidence to the department of renewals or other actions proving that the insurance policy remains in effect as prescribed herein.

[Eff 2/24/94; am and comp 9/25/14] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22,

200-24) (Imp: HRS §§200-2, 200-4, 200-9,
200-10, 200-22, 200-24)

§13-231-66 Limitation on number of berths held by a commercial permittee. No person shall be issued permits to moor more than two commercial vessels in any of the state's small boat harbors except temporarily pursuant to section 13-231-57(c) or as provided by section 13-231-69; provided further, that any person holding valid commercial use permits on the 1994 effective date of these rules authorizing the mooring of more than two commercial vessels in any of these small boat harbors may continue to moor the person's vessels in the small boat harbor subject to compliance with the conditions of the commercial use permits and this chapter and until the commercial use permits expire or terminate without a proper reissuance. [Eff 2/24/94; am and comp 9/25/14] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-231-67 Limitation on commercial use permits issued for the use of state boat launching ramps. (a) State boat launching ramps were constructed for the primary purpose of providing access to the waters of the State for trailered boats. Therefore, commercial use permits issued for the use of state boat launching facilities shall be restricted to boats that are regularly launched and recovered from boat launching ramps and used in the course of doing business. A commercial use permit shall be required for any trailered vessel which is rented off-site, but launches or recovers from a state boat launching facility. The owner of a trailered vessel shall be required to obtain a commercial use permit and comply with all other rules of the department governing commercial vessel activities. Notwithstanding the limitation of the number of commercial use permits which may be issued for launching ramps in subsections (d)(1) through (d)(23) below, the owner may apply for and may be issued a commercial use permit for the

number of vessels owned and registered in furtherance of its commercial use by the business on the 1994 effective date of these rules. Vessels registered to boat dealers and manufacturers and used for the purpose of conducting sea trials and instruction of prospective owners shall be exempt from commercial use permit requirements.

(b) No commercial use permits for the use of state boat launching ramps shall be issued for the purpose of embarking or disembarking passengers by small craft or lighter from a vessel moored offshore.

(c) A commercial use permit issued for the use of a state boat launching ramp shall also be valid for all other state boat ramps on the same island at which commercial activities are permitted except those listed in subsection (d); provided that the permittee shall indicate which launching ramp is expected to be the location of primary use and the fees derived from three percent of gross revenues shall be paid to that account. No commercial use permit shall be issued for a launching ramp located on an island other than the place of business of the permittee.

(d) The maximum number of commercial use permits which may be issued for the use of the following launching ramps are:

(1) Ala Wai	- 3
(2) Keehi	- 3
(3) Heeia Kea	as provided for in section 13-256-73.1
(4) Maunalua Bay	- 5
(5) Mala	- 15
(6) Kihei	- 15
(7) Manele	- 3
(8) Kaunakakai	- 5
(9) Kukuiula	- 6
(10) Lahaina	- none
(11) Maalaea	- none
(12) Kikiaola	- 10
(13) Nawiliwili	- 5
(14) Port Allen	- 9
(15) Waikaea	- 5
(16) Honokohau	- 35

- (17) Kawaihae (N) - 5
- (18) Kawaihae (S) - 10
- (19) Puako - 4
- (20) Pohoiki - 4
- (21) Wailoa - 10
- (22) Kailua Pier - 6
- (23) Keauhou - 11
- (24) All others - no limit.

(e) The maximum number of commercial use permits that may be issued for the use of any launch ramp is two (2) per business entity or sole proprietor registered to do business in the state.

Notwithstanding this section, all owners of commercial use permits on the effective date of these rules may continue operations and be permitted to apply for and renew their commercial use permits subject to compliance with all other conditions set forth in this chapter until their total number is reduced by attrition or other means to the numbers in subsection (d)." [Eff 2/24/94; am and comp 9/25/14] (Auth: HRS §§200-2, 200-3, 200-4, 200-10, 200-39) (Imp: HRS §§220-2, 200-3, 200-4, 200-10, 200-39)

§13-231-68 Signs and other structures at a state small boat harbor.

(a) No person shall erect or place a sign, ticket booth, or any other structure in a state small boat harbor without the prior written approval of the department. All such structures shall only be erected or placed within a state small boat harbor if they are in conformity with state and county laws and ordinances, and prior approval of all appropriate governing agencies has been obtained.

(b) Signs identifying commercial activities posted or displayed within a state small boat harbor shall be limited to twelve square feet maximum sign area and be designed in accordance with the guide for small boat harbor signs provided by the department. Structures for ticket booths shall be limited to thirty-six square feet maximum and be designed in accordance with the guide for ticket booths provided by the department.

(c) Signs and other structures placed or erected within Lahaina small boat harbor shall also comply with the requirements of the Maui County Cultural Resources Commission.

(d) Fees for signs and ticket booths are set forth in chapter 13-234. [Eff 2/24/94; am and comp 9/25/14] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-10)

§13-231-69 Multiple use of mooring facilities by commercial vessels. (a) Notwithstanding the provisions of section 13-231-4, a permittee holding a valid mooring permit for a commercial vessel may place another commercial vessel of the same size category that is owned by the permittee in the permittee's assigned berth when the commercial vessel for which the mooring permit is issued is temporarily absent from the berth, provided that prior notification is provided to the department.

(b) The mooring permit for the assigned berth shall be issued for the largest commercial vessel to utilize the berth, and mooring fees charged in accordance with the fee schedule shown in section 13-234-25. The vessel name and registration or documentation number of each additional vessel expected to utilize the berth shall be listed as an addendum to the regular mooring permit issued for that berth. [Eff 2/24/94; comp 9/25/14] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10.)

§13-231-70 Water taxi operations. (a) Water taxi operations may be permitted at all small boat harbors provided that the owner of the water taxi operation has been issued a commercial use permit. For the purpose of this section, "water taxi operations" means the shuttling of persons or cargo to or from the small boat harbor facility or a shoreside location authorized for such use under chapter 13-256, Hawaii Administrative Rules, to a destination or vessel located outside the small boat harbor boundary.

(b) No water taxi operations may be permitted to transport passengers and crew from commercial vessels moored offshore, or the shuttling of passengers to and from a commercial vessel moored elsewhere if that vessel has not been issued a commercial use permit for the small boat harbor or other valid commercial use permit issued by the department. There shall be no restriction on the use of water taxi service by recreational vessels, vessels owned by the United States, or commercial vessels which are exempt from commercial use permit requirements under the provisions of section 13-231-57.

(c) The department may furnish a current list of commercial vessels authorized to receive water taxi service as provided in subsection (b) upon request by the owner of the vessel performing water taxi operations at no charge. [Eff 2/24/94; am and comp 9/25/14] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-10)

§13-231-71 (Reserved)

§13-231-72 REPEALED. [R 9/25/14]

§§13-231-73 to 13-231-75 (Reserved)

SUBCHAPTER 4

SPECIAL AREA RULES

§13-231-76 REPEALED [R]

§13-231-77 Ala Wai canal. Operation of vessels in Ala Wai canal shall be accomplished in a manner that will not create a nuisance to area residents. All applicable provisions of these rules shall apply

§13-231-45



that can produce evidence of a valid United States Coast Guard inspection certification for the above condition shall not be required to obtain a separate marine survey. A certificate of protection and indemnity insurance for the vessel, in an amount of not less than \$100,000, naming the State as an additional insured, shall be required in addition to the marine survey.

(m) No modification or alteration to a houseboat moored in Keehi Lagoon which changes the length, beam or size of silhouette area from that which existed at the time of issuance of the initial mooring permit shall be allowed without prior approval of the department, provided that routine maintenance and repairs for safety, security and structural integrity shall be allowed." [Eff 2/24/94; am and comp 9/25/14; am _____] (Auth: HRS §§200-1, 200-2, 200-4, 200-9, 200-10) (Imp: HRS §§200-1, 200-2, 200-4, 200-9, 200-10)

13. Section 13-231-56, Hawaii Administrative Rules, is repealed.

~~"§13-231-56 [Definitions, gross receipts. Gross receipts as used in this subchapter means all moneys paid or payable to the account of the vessel owner, for the rendition of services, or resulting from trade, business, commerce, or sales by the vessel owner when the services, trade, business, commerce, or sales have a direct relationship to the vessel] [Eff 2/24/94; am and comp 9/25/14] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)] REPEALED." [R _____]~~

14. Section 13-231-70, Hawaii Administrative Rules, is amended to read as follows:

"§13-231-70 Water taxi operations. (a) Water taxi operations may be permitted at all small boat harbors provided that the owner of the water taxi operation has been issued a commercial use permit.

~~[For the purpose of this section, "water taxi operations" means the shuttling of persons or cargo to or from the small boat harbor facility or a shoreside location authorized for such use under chapter 13-256, Hawaii Administrative Rules, to a destination or vessel located outside the small boat harbor boundary.]~~

(b) No water taxi operations may be permitted to transport passengers and crew from commercial vessels moored offshore, or the shuttling of passengers to and from a commercial vessel moored elsewhere if that vessel has not been issued a commercial use permit for the small boat harbor or other valid commercial use permit issued by the department. There shall be no restriction on the use of water taxi service by recreational vessels, vessels owned by the United States, or commercial vessels which are exempt from commercial use permit requirements under the provisions of section 13-231-57.

(c) The department may furnish a current list of commercial vessels authorized to receive water taxi service as provided in subsection (b) upon request by the owner of the vessel performing water taxi operations at no charge." [Eff 2/24/94; am and comp 9/25/14; am _____] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-10)

15. Chapter 13-232, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§13-232-57.1 Feeding of colonies, strays, wildlife, or feral animals prohibited. (a) While on any property under the jurisdiction of the division, no person shall feed or deliberately introduce any food material, substance, or attractant directly to, or in the vicinity of, any colony, stray, wildlife, or

IV. Old Business

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 4 Chapter 186, **Petroleum Products Accounting and Inspection**, promulgated by DOA

**SMALL BUSINESS STATEMENT "AFTER" PUBLIC HEARING
TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD**
(Hawaii Revised Statutes (HRS), §201M-3)

Department or Agency: Agriculture

Administrative Rule Title and Chapter: Chapter 4-186

Chapter Name: Petroleum Products Accounting and Inspection

Contact Person/Title: Jeri Kahana

Phone Number: 832-0705

E-mail Address: Jeri.M.Kahana@hawaii.gov

Date: November 7, 2018

A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.

B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7? Yes No

(If "Yes" please provide webpage address and when and where rules may be viewed in person.) <https://hdoa.hawaii.gov/wp-content/uploads/2018/08/Ramseyer-4-186-5.29.18-final.pdf>

(Please keep the proposed rules on this webpage until after the SBRRB meeting.)

I. Rule Description: New Repeal Amendment Compilation

II. Will the proposed rule(s) affect small business? Yes No (If "No" you do not need to submit this form.)

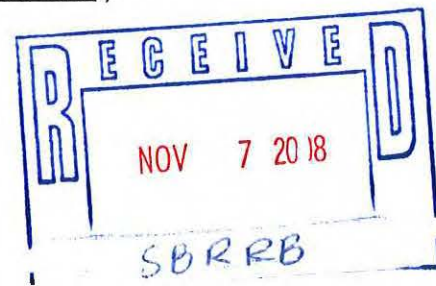
* "Affect small business" is defined as "any potential or actual requirement imposed upon a small business . . . that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business." HRS §201M-1

* "Small business" is defined as a "for-profit enterprise consisting of fewer than one hundred full-time or part-time employees." HRS §201M-1

III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance? Yes No (If "Yes" no need to submit this form.) (e.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives.) HRS §201M-2(d)

IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a)) Yes No (If "Yes" no need to submit this form.)

* * *



I. Please explain how the agency involved small business in the development of the proposed rules.

a. Were there any recommendations incorporated into the proposed rules? If yes, explain. If not, why not?

II. If the proposed rule(s) affect small business, and are not exempt as noted above, please provide the following information:

1. A description of how opinions or comments from affected small businesses were solicited.
2. A summary of the public's and small businesses' comments.
3. A summary of the agency's response to those comments.
4. The number of persons who:
 - (i) Attended the public hearing:
 - (ii) Testified at the hearing:
 - (iii) Submitted written comments:
5. Was a request made at the hearing to change the proposed rule in a way that affected small business?
 - (i) If "Yes" was the change adopted? **Yes** **No**
 - (ii) If No, please explain the reason the change was not adopted and the problems or negative result of the change.

* * *

Small Business Regulatory Review Board / DBEDT
Phone: (808) 586-2594 / Email: sbrrb@dbedt.hawaii.gov

This statement may be found on the SBRRB Website at: <http://dbedt.hawaii.gov/sbrrb-impact-statements-pre-and-post-public-hearing>

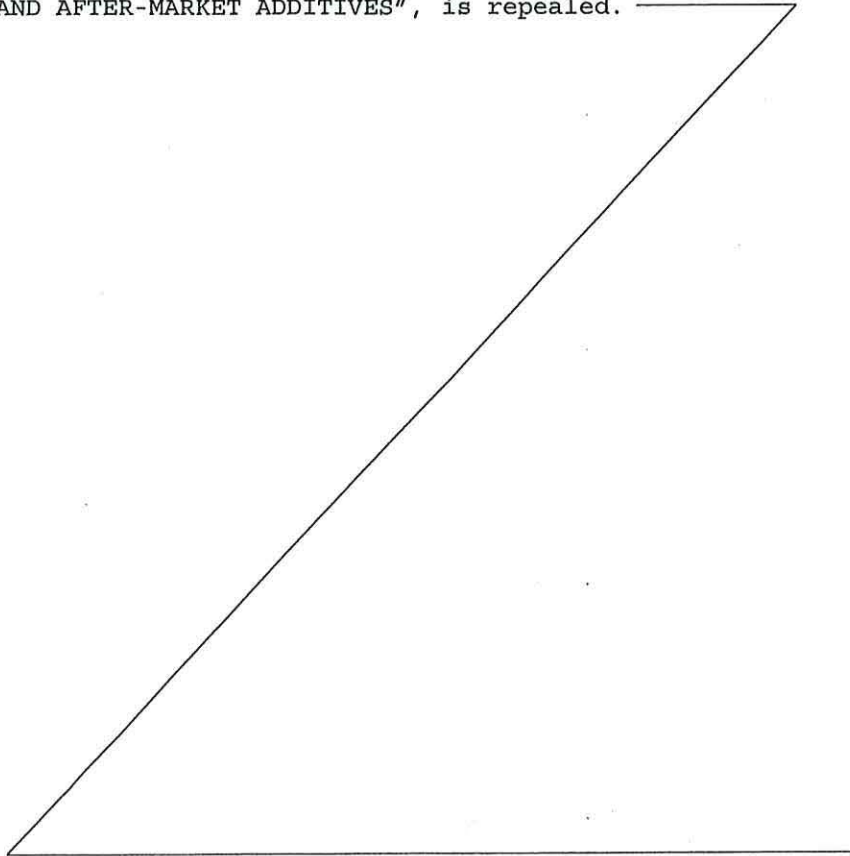


DEPARTMENT OF AGRICULTURE
Repeal of Chapter 4-86
Hawaii Administrative Rules

Month xx, 2017

SUMMARY

1. Chapter 4-86, Hawaii Administrative Rules, entitled "BRAKE FLUIDS, COOLANTS, PETROLEUM PRODUCTS, AND AFTER-MARKET ADDITIVES", is repealed.



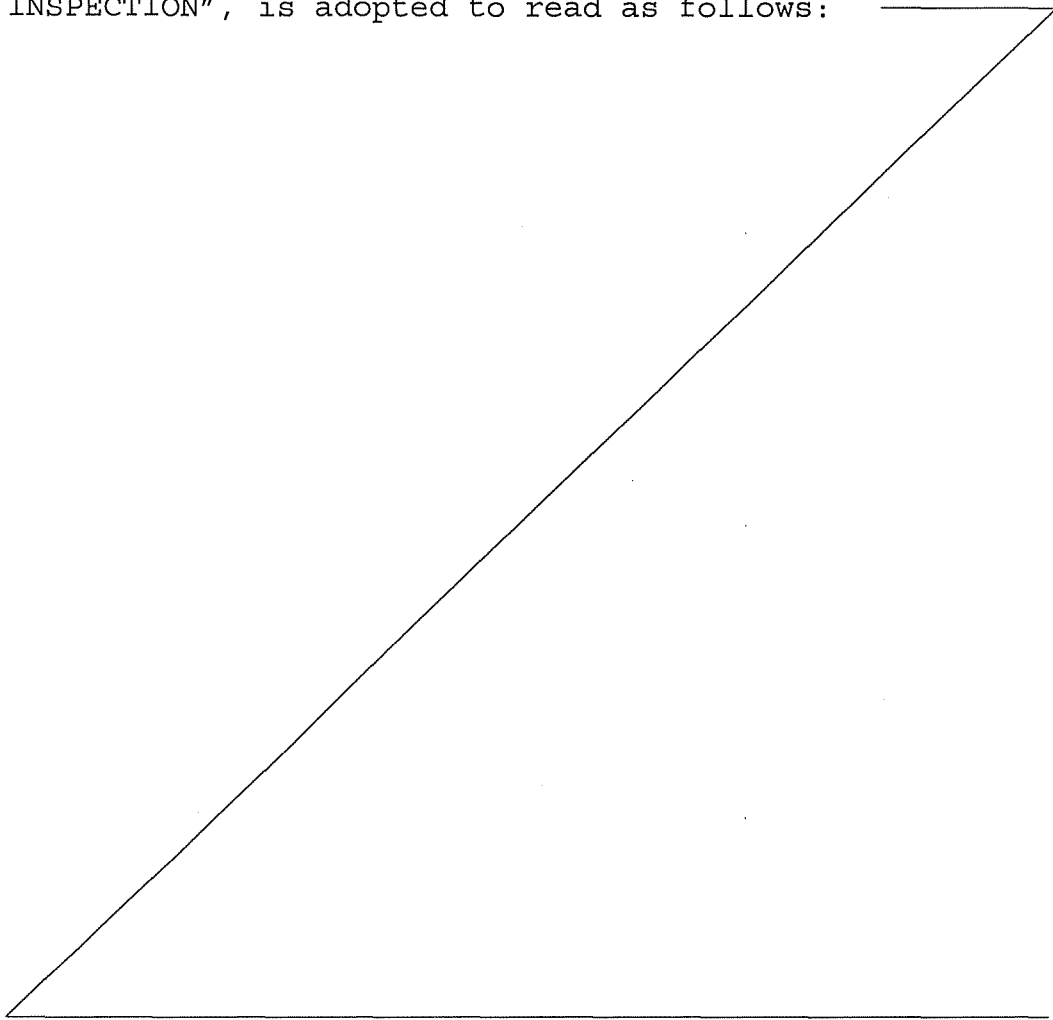
DEPARTMENT OF AGRICULTURE

Adoption of Chapter 4-186
Hawaii Administrative Rules

Month xx, 2017

SUMMARY

2. Chapter 4-186, Hawaii Administrative Rules,
entitled "PETROLEUM PRODUCTS ACCOUNTING AND
INSPECTION", is adopted to read as follows:



"HAWAII ADMINISTRATIVE RULES

TITLE 4

DEPARTMENT OF AGRICULTURE

SUBTITLE 7

QUALITY ASSURANCE DIVISION

CHAPTER 186

PETROLEUM PRODUCTS ACCOUNTING AND INSPECTION

§4-186-1	Severability
§4-186-2	Violation
§4-186-3	Applicability
§4-186-4	Definitions
§4-186-5	Incorporation of federal general code
§4-186-6	Specialty additive claims; substantiation
§4-186-7	Compliance with advertising or labeled claims required
§4-186-8	Disposal of non-complying products
§4-186-9	Misrepresentation prohibited
§4-186-10	Specifications for petroleum products
§4-186-11	Brake fluid
§4-186-12	Automotive antifreeze coolants and coolants
§4-186-13	Lubricants
§4-186-14	Hawaii standard petroleum measurement tables
§4-186-15	Stay or delay or requirements

Historical note: This chapter is based
substantially upon chapter 4-86. [Eff 1/27/71; am
9/6/79; am 12/26/81; R]

§4-186-1 Severability. If any provision of this chapter is held invalid, the invalidity shall not affect the remainder of this chapter and, to this end, any of the provisions of this chapter are severable.
[Eff] (Auth: HRS §§486-7, 486-56)
(Imp: HRS §486-37)

§4-186-2 Violation. Any person omitting the required acts or committing the prescribed acts, or delivering a product not in compliance with specifications, or through a device not in compliance with the requirements of this chapter shall be in violation of this chapter and subject to the provisions of chapter 486, Hawaii Revised Statutes.
[Eff] (Auth: HRS §§486-7, 486-56)
(Imp: HRS §486-53)

§4-186-3 Applicability. This chapter applies to brake fluids, coolants, petroleum products, additives, and their specifications, and to persons or activities involving these products. [Eff]
(Auth: HRS §§486-7, 486-56) (Imp: HRS §486-51)

§4-186-4 Definitions. As used in this chapter:
"Actual density" or "relative density" means the observed density or observed relative density, respectively, determined at a product temperature of sixty degrees Fahrenheit or which has been corrected to sixty degrees Fahrenheit, and is expressed by the relationship: relative density sixty/sixty degrees Fahrenheit equal one hundred and forty-one and five tenths divided by the quantity API gravity at sixty degrees minus one hundred and thirty-one and five tenths (Relative density 60/60°F = 141.5);
"Administrator" means the administering officer of the quality assurance division or any qualified person so designated by the chairperson of the board of agriculture;

"After-market additive" means a commodity marketed for addition, by the consumer or a person other than Require the manufacturer, to a liquid petroleum product for purposes of enhancing the characteristics of the liquid petroleum product or its performance, as in an internal combustion engine;

"API" means American Petroleum Institute;

"API gravity" means the relationship expressed by degrees API equal one hundred and forty-one and five tenths divided by relative density as sixty/sixty degrees Fahrenheit, minus one hundred thirty-one and five tenths, and is abbreviated °API. (°API = Relative Density 60/60°F - 131.5);

"ASTM" means American Society for Testing and Materials International;

"Base-gasoline" means the gasoline component of a gasoline-ethanol blend;

"Degrees API" means API gravity, which is a special density scale adopted in 1921 by the national bureau of standards in lieu of the Baumé scale;

"Density" means the mass per unit volume;

"Ethanol" means nominally anhydrous ethyl alcohol meeting ASTM D4806. Ethanol is intended to be used as a gasoline blend component for use as a fuel in a spark-ignition internal combustion engine. The denatured fuel ethanol is first made unfit for drinking by the addition of a substance approved by the Alcohol and Tobacco Tax and Trade Bureau (ATTB) prior to blending with gasoline;

"Gasoline" means a volatile mixture of liquid hydrocarbons, generally containing small amounts of additives, suitable for use as a fuel in spark-ignition, internal combustion engines, and which may contain ethanol;

"Gravity" means API gravity;

"Inspector: means an employee of official of the department of agriculture authorized to administer and enforce this chapter;

"LPG" means liquefied petroleum gas in the liquid state;

"Market" or "marketing" means the activities and actions leading to the sale or potential sale of a

commodity. It includes all aspects of trade and commerce, labeling, merchandising, mercantiling, and selling the net measure of a commodity;

"Observed density" or "observed relative density" means the value observed on the scale of a hydrometer when the scale indication is read at the point where the principal surface of the liquid would intercept the stem of the immersed hydrometer if there were no meniscus, the principal surface being read as a flat plane rather than an ellipse. It is an incorrect indication of the density of the product unless the liquid temperature is, or is corrected to, sixty degrees Fahrenheit. (See "actual density");

"Petroleum Measurement Tables" means the following tables, ASTM D1250-08(2013)e1, Standard Guide for Petroleum Measurement Tables as published by the ASTM October 2015:

API Manual of Petroleum Measurement Standards (MPMS) Chapter 11.1-2004 Temperature and Pressure Volume Correction Factors for Generalized Crude Oils, Refined Products, and Lubricating Oils (Including Addendum 1-2007); or
ASTM D1250-80 (Annex A1 of D1250-07)

Volume I:

Table 5A--Generalized Crude Oils, Correction of Observed API Gravity to API Gravity at 60°F;
Table 5B--Generalized Products, Correction of Observed API Gravity to API Gravity at 60°F;
Table 6A--Generalized Crude Oils, Correction of Volume to 60°F Against API Gravity at 60°F;

Volume II:

Table 6B--Generalized Products, Correction of Volume to 60°F Against API Gravity at 60°F;

Volume III:

Table 23A--Generalized Crude Oils, Correction of Observed Relative Density to Relative Density 60/60°F;

Table 24A--Generalized Crude Oils, Correction of Volume to 60°F Against Relative Density 60/60°F;

Volume V:

Table 23B--Generalized Products, Correction of Observed Relative Density to Relative Density 60/60°F;

Table 24B--Generalized Products, Correction of Volume to 60°F Against Relative Density 60/60°F; Volume VI:

Table 53A--Generalized Crude Oils, Correction of Observed Density to Density at 15°C;

Table 54A--Generalized Crude Oils, Correction of Volume to 15°C Against Density at 15°C; Volume VIII:

Table 53B--Generalized Products, Correction of Observed Density to Density at 15°C;

Table 54B--Generalized Products, Correction of Volume to 15°C Against Density at 15°C and the following tables, as listed in the petroleum measurement tables D1250-08, as published by the ASTM in the eleventh edition, August 2007;

Table 2--Temperature conversions;

Table 8--Pounds per U. S. gallon at sixty degrees Fahrenheit and U. S. gallons at sixty degrees Fahrenheit;

"Petroleum product" means automotive gasoline, diesel fuels, fuel oils, liquefied petroleum gas both liquid and vapor, residuals, distillates and fractions, kerosene, aviation fuels, turbine fuels, solvent, hydrocarbons or synthetics, crude oil, lubricating oil, or any other oil or distillate or blends of the above, or any other product that may normally be considered a petroleum product, and synthetic natural gas or natural gas and manufactured gas or blends thereof;

"Relative Density 60/60°F" means the ratio of the weight of a given volume of oil at sixty degrees Fahrenheit to the weight of the same volume of water at sixty degrees Fahrenheit, both weights being corrected for the buoyancy of air;

"SAE" means the Society of Automotive Engineers International, or SAE International;

"Sealed" or "in seal" means a measurement standard, licensed for current use, which has been approved as to type by the administrator, and tested

by the administrator, inspector, or a registered service person for correctness and found to be in compliance and to which has been affixed a seal attesting to such correctness and compliance. A device, which has been relocated or exchanged subsequent to sealing and which by design is not considered portable shall, when any such action is undertaken, lose its seal;

"Sixty/sixty °F" is a dimensionless number, expressing the ratio of the weight of a specific volume of petroleum product, the temperature of which is sixty degrees Fahrenheit, to the exact same volume of water, the temperature of which is sixty degrees Fahrenheit. It is abbreviated 60/60°F; and

"Viscosity" is a measure of the resistance of a fluid to flow. [Eff] (Auth: HRS §§486-7, 486-56) (Imp: HRS §§486-1, 486-2, 486-50)

§4-186-5 Incorporation of federal general code.

National Institute of Standards and Technology Handbook 44 and Handbook 130, 2018 Edition are incorporated in and made a part of this chapter.

[Eff] (Auth: HRS §486-7) (Imp: HRS §486-7)

§4-186-6 Specialty additive claims;

substantiation. The making of a general or specific claim on the label of a specialty or after-market additive, marketed in the State, shall be substantiated and documented by the manufacturer or distributor, upon written request of the administrator.

- (1) Failure to support the labeled claim by certified documentation from a recognized testing laboratory may result in the product being ordered "off-sale" until the documentation is received.
- (2) In the absence of any documentation supporting the labeled claims, tests may be conducted by the manufacturer or distributor

in accordance with established procedures of the environmental protection agency to verify the label claims. The results of the tests shall be submitted to the administrator within one hundred and eighty-one days of receipt of the administrator's request. [Eff] (Auth: HRS §§486-56) (Imp: HRS §§486-56)

§4-186-7 Compliance with advertising or labeled claims required. Any product subject to this chapter shall satisfactorily perform as advertised or claimed on its label. If it is the intent of the manufacturer or distributor to limit or otherwise qualify the product's use, its labeling and advertising shall reflect this fact.
[Eff] (Auth: HRS §§486-7, 486-56)
(Imp: HRS §§486-7, 486-56)

§4-186-8 Disposal of noncomplying products. The administrator may dispose of any product subject to this chapter which fails to meet the requirements herein and which, after notification in writing, the manufacturer or distributor has failed to effect remedial action." [Eff] (Auth: HRS §§486-7, 486-56) (Imp: HRS §§486-7, 486-56)

§4-186-9 Misrepresentation prohibited. Misrepresentation in any manner is prohibited.
[Eff] (Auth: HRS §§486-7, 486-56) (Imp: HRS §§486-7, 486-56)

4-186-10 Specifications for petroleum products. The following specifications shall apply to petroleum products intended for consumer use:

- (1) Automotive gasoline shall conform to ASTM D4814-07B, class C volatility only, adopted on December 7, 2007;

- (2) Aviation gasoline shall conform to ASTM D910-17, as published in annual book of ASTM standards, section 5, 2017 edition;
- (3) Diesel fuel oils shall conform to ASTM D396-17, as published in 2017 annual book of ASTM standards, section 5, 2017 edition;
- (4) Fuel oils shall conform to ASTM D396-17, as published in 2017 annual book of ASTM standards, section 5, 2017 edition;
- (5) Hydrocarbon dry-cleaning solvent shall conform to ASTM D235-02, as published in 2012 annual book of ASTM standards, part 23, 2012 edition;
- (6) Kerosene shall conform to ASTM D3699-13, as published in 2013 annual book of ASTM standards section 5, 2013 edition;
- (7) Jet aviation turbine fuel shall conform to ASTM D6615-15a, as published in 2015 annual book of ASTM standards, section 5, 2015 edition;
- (8) Liquefied petroleum gas shall conform to ASTM D1835-16 as published in 2016 annual book of ASTM standards, section 5, 2016 edition;
- (9) Denatured fuel ethanol for blending with gasoline for use in automotive spark-ignition engines shall conform to ASTM D4806-07, as published in 2008 annual book of ASTM standards, section 5 2008 edition;
- (10) Gasoline blended with denatured fuel ethanol shall be blended under any of the following three options:
 - (A) The base gasoline used in such blends shall meet the requirements of ASTM D4814-13b;
 - (B) The blend shall meet the requirements of ASTM D4814-13b; or
 - (C) The base gasoline used in such blends shall meet all the requirements of ASTM D4814-013b except distillation, and the blend shall meet the distillation

requirements of the ASTM 4814-013b specification; and

- (11) Blends of gasoline and ethanol shall not exceed the ASTM D4814-13b vapor pressure standards. [Eff] (Auth: HRS §§486-7, 486-56) (Imp: HRS §§486-1, 486-2, 486-56)

§4-186-11 Brake fluid. The following appropriate specification shall apply to brake fluid, its containerization, labeling, handling, and dispensing:

- (1) Motor vehicle brake fluid shall conform to SAE J1703, as published in SAE handbook, 2016 edition;
- (2) Motor vehicle brake fluid container compatibility shall conform to SAE J75, as published in SAE handbook, 2006 edition; and
- (3) Production, handling, and dispensing of motor vehicle brake fluid shall conform to SAE J1703, as published in SAE handbook, 2017 edition. [Eff] (Auth: HRS §§486-7-486-56) (Imp: HRS §§486-1, 486-2, 486-56)

§4-186-12 Automotive antifreeze coolants and coolants. The following specifications shall apply to automotive antifreeze coolants and automotive coolants:

Automotive antifreeze coolants and automotive coolants shall be of the ethylene-glycol type and shall conform to SAE J1034, as published in SAE handbook, part 1, 2000 edition.

- (1) The minimum concentration of ethylene-glycol permitted in an automotive coolant offered for retail sale in the State shall be at least ninety percent by volume; and
- (2) The label of the container of an automotive antifreeze coolant and automotive coolant shall disclose the minimum ethylene-glycol

content, as a volume percent of the coolant.
[Eff _____] (Auth: HRS §§486-7,
486-56) (Imp: HRS §§486-1, 486-2, 486-56)

§4-186-13 Lubricants. The following specifications shall apply to lubricants:

- (1) Engine oil performance and engine service classification shall conform to SAE J183, as published in SAE handbook, part 1, 2017 edition;
 - (2) Engine oil viscosity classification shall conform to SAE J300, as published in SAE J300, as published in SAE handbook, part 1, 2015 edition;
 - (3) Engine oil tests shall conform to SAE J304, as published in SAE handbook, part 1, 2016 edition;
 - (4) Physical and chemical properties of engine oils shall conform to SAE J357, as published in SAE handbook, part 1, 2016 edition;
 - (5) Automotive lubricating greases shall conform to SAE J310, as published in SAE handbook, part 1, 2005 edition;
 - (6) Automatic transmission fluid shall conform to SAE J311, as published in SAE handbook, part 1, 2000 edition; and
 - (7) Axle and manual transmission lubricants shall conform to SAE J308, as published in SAE handbook, part 1, 2007 edition.
- [Eff _____] (Auth: HRS §§486-7,
486-56) (Imp: HRS §§486-1, 486-2, 486-56)

§4-186-14 Hawaii standard petroleum measurement tables. (a) The density and volume of petroleum products shall be determined, verified, and delivered in accord with the appropriate Hawaii standard petroleum measurement table.

(b) It shall be the responsibility of a petroleum product supplier, as relates to the temperature and density of petroleum products marketed intrastate, to

constantly monitor and display these characteristics and conditions, for inclusion by the measuremaster, on all certificates of measure posted at all rack meter loading facilities. [Eff _____] (Auth: HRS §§486-7, 486-56) (Imp: HRS §§486-1, 486-2, 486-56)

§4-186-15 Stay or delay of requirements. The chairperson may, for reasons of supply, stay, postpone, delay the effective date, or set aside any requirement of this chapter, under emergency controlled conditions, for a period not to exceed one hundred and eighty days." [Eff _____] (Auth: HRS §§487-7) (Imp: HRS §487-7)

3. The repeal of chapter 4-86, Hawaii Administrative Rules, and the adoption of chapter 4-186, 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 Month xx, XXX, and filed with the Office of the Lieutenant Governor.



SCOTT E. ENRIGHT
Chairperson
Board of Agriculture

APPROVED AS TO FORM:



Deputy Attorney General

IV. Old Business

B. Discussion and Action on the Small Business

Statement After Public Hearing and Proposed New
HAR Title 18 Chapter 237 **General Excise Tax**
Law, Section 34-13, Persons with a Material
Interest in a Tax Return, promulgated by DoTax

RECEIVED

By SMALL BUSINESS REGULATORY REVIEW BOARD at 9:29 am, Nov 14, 2018

**SMALL BUSINESS STATEMENT
"AFTER" PUBLIC HEARING TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD**

(Hawaii Revised Statutes (HRS), §201M-3)

Department or Agency: Department of Taxation (Department)

Administrative Rule Title and Chapter: 18-237

Chapter Name: General Excise Tax Law

Contact Person/Title: Jacob Herlitz, Administrative Rules Specialist

Phone Number: (808) 587-5334

E-mail Address: Jacob.L.Herlitz@hawaii.gov

Date: November 14, 2018

Webpage address for draft rules: tax.hawaii.gov/legal/taxlawandrules

General Description of Proposed Rules:

The proposed rules amend chapter 237, Hawaii Administrative Rules (HAR), by adding a new section 18-237-34-13, which defines a person with a material interest in a return to include persons whose tax liability is based on gross income, deductions, exemptions or tax liability reported by the taxpayer.

In certain audit situations where a tax benefit is dependent on the actions of more than one taxpayer, such as a General Excise Tax (GET) deduction for subcontracting, to properly review and assess the appropriate tax, the Department must examine more than one taxpayer's return. In the example of the subcontracting deduction, the Department would examine the returns of both the contractor and the subcontractor, and an assessment made may potentially require the disclosure of one taxpayer's return information to the other.

It is the Department's position that such a disclosure is allowed as a disclosure to a person with a material interest in the return under section 237-34(b), Hawaii Revised Statutes (HRS). The Department believes adopting this proposed administrative rule will formalize its position and add clarity to the GET Law.

I. Rule Description: New Repeal Amendment Compilation

V. Please explain how the agency involved small business in the development of the proposed rules.

The Department invited public comment at the public hearing held October 19, 2018, but did not directly involve small business in the development of the proposed rules.

VI. If the proposed rule(s) affect small business, and are not exempt as noted above, please provide the following information:

1. A description of how opinions or comments from affected small businesses were solicited.

The Department invited the general public, including small businesses, to provide comments on the proposed rules in its notice of public hearing published on the Department's website and in statewide newspapers September 12, 2018.

2. A summary of the public's and small businesses' comments.

The Department received one item of testimony: Comments from the Tax Foundation of Hawaii. The Tax Foundation asking the Department to withdraw the rules immediately.

The Tax Foundation stated that it believes the proposed rules exceed the scope of the underlying statute by expanding the definition of "persons with a material interest in a return" beyond what is allowed by the statute. The Tax Foundation further stated that the rules constitute the Department excusing itself from a felony and that the rules are not needed to determine proper tax treatment.

The Tax Foundation testimony is available on the Department's website.

3. A summary of the agency's response to those comments.

The Department considered the testimony submitted but respectfully disagrees with the concerns raised by the Tax Foundation. The Tax Foundation did not support any of its arguments with any relevant statutory citations or case law.

4. The number of persons who:
 - (i) Attended the public hearings: 1
 - (ii) Testified at the hearing: 1
 - (iii) Submitted written comments: 1

5. Was a request made at the hearing to change the proposed rule in a way that affected small business?

No.

DEPARTMENT OF TAXATION

Amendments to Chapter 18-237
Hawaii Administrative Rules

_____, 2018

1. Chapter 18-237, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237-34-13 Persons with a material interest in a tax return. Persons with a material interest in a tax return or return information of a taxpayer include persons whose tax liability is based on the gross income, deductions, exemptions, or tax liability reported by the taxpayer, including but not limited to persons who make sales at wholesale under section 237-4, HRS, claim the subcontractor's deduction under section 237-13(3), HRS, and divide gross income under section 237-18, HRS; provided that the department will only disclose return information of a taxpayer if the person with a material interest is under audit or examination by the department and the department determines that the return information is directly relevant to the tax liability of the person under audit or examination. If a disclosure is made pursuant to this section, the department shall maintain the confidentiality of information that is not directly relevant by taking appropriate action, including redacting confidential information." [Eff
] (Auth: HRS §231-3(9), 237-8) (Imp:
HRS §237-34)

2. New material is underscored.

3. These amendments to chapter 18-237, 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 Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, and filed with the Office of the Lieutenant Governor.

Director
Department of Taxation

APPROVED AS TO FORM:

Deputy Attorney General

RECEIVED

By SMALL BUSINESS REGULATORY REVIEW BOARD at 1:27 pm, Nov 14, 2018

DEPARTMENT OF TAXATION

Amendments to Chapter 18-237
Hawaii Administrative Rules

_____, 2018

SUMMARY

1. New §18-237-34-13 is added

§18-237-34-13 Persons with a material interest in a tax return. Persons with a material interest in a tax return or return information of a taxpayer include persons whose tax liability is based on the gross income, deductions, exemptions, or tax liability reported by the taxpayer, including but not limited to persons who make sales at wholesale under section 237-4, HRS, claim the subcontractor's deduction under section 237-13(3), HRS, and divide gross income under section 237-18, HRS; provided that the department will only disclose return information of a taxpayer if the person with a material interest is under audit or examination by the department and the department determines that the return information is directly relevant to the tax liability of the person under audit or examination. If a disclosure is made pursuant to this section, the department shall maintain the confidentiality of information that is not directly relevant by taking appropriate action, including redacting confidential information. [Eff] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-34)

DEPARTMENT OF TAXATION

Chapter 18-237, Hawaii Administrative Rules, on the Summary Page dated _____, was adopted on _____, following public hearing held on October 19, 2018 after public notice was given in the Honolulu Star Advertiser, the Garden Isle, the Maui News, West Hawaii Today, and the Hawaii Tribune-Herald on September 12, 2018.

These amendments to chapter 18-237 shall take effect ten days after filing with the Office of the Lieutenant Governor.

LINDA CHU TAKAYAMA
Director of Taxation

APPROVED:

DAVID Y. IGE
Governor
State of Hawaii

Dated: _____

APPROVED AS TO FORM:

Deputy Attorney General

IV. Old Business

- C. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 18 Chapter 237D **Transient Accommodations Tax**, promulgated by DoTax, as follows:
- a. Section 4-01, Certificate of Registration
 - b. Section 4-02, Display of Registration Certificate
 - c. Repeal Sections 4-03 through 4-07
 - d. Proposed New Sections 4-08 through 4-35

RECEIVED

By SMALL BUSINESS REGULATORY REVIEW BOARD at 9:30 am, Nov 14, 2018

**SMALL BUSINESS STATEMENT
"AFTER" PUBLIC HEARING TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD**

(Hawaii Revised Statutes (HRS), §201M-3)

Department or Agency: Department of Taxation (Department)

Administrative Rule Title and Chapter: 18-237D

Chapter Name: Transient Accommodations Tax

Contact Person/Title: Jacob Herlitz, Administrative Rules Specialist

Phone Number: (808) 587-5334

E-mail Address: Jacob.L.Herlitz@hawaii.gov

Date: November 14, 2018

Webpage address for draft rules: tax.hawaii.gov/legal/taxlawandrules

General Description of Proposed Rules:

The proposed rules amend chapter 237D, Hawaii Administrative Rules (HAR), by amending sections 18-237D-4-01 and 18-237D-4-02, repealing sections 18-237D-4-03 through 18-237D-4-07, and adding new sections 18-237D-4-08 through 18-237D-4-35, HAR.

The proposed rules implement Act 204, Session Laws of Hawaii (SLH) 2015, which requires that operators of transient accommodations designate an on-island local contact and display that contact's name, phone number and email address inside the unit, and provide that information either in online advertisements, or to the guest upon check-in. Act 204 also requires that a unit's Transient Accommodations Tax ("TAT") license number be displayed both inside the unit itself and in all online advertisements, either directly in the advertisement or by a link. These rules provide the procedures by which the Department will enforce these requirements.

Act 204 gives the Department the authority to issue citations and fines to operators of transient accommodations and operators of websites or publications who violate these requirements. Because an appeal of such a citation would be considered a "contested case" under chapter 91, Hawaii Revised Statutes, the Department cannot begin enforcing this law and issuing citations until procedures for such an appeal are published by rule. These proposed rules provide such appeal procedures.

I. Rule Description: New Repeal Amendment Compilation

V. Please explain how the agency involved small business in the development of the proposed rules.

The Department invited public comment at the public hearing held October 19, 2018, but did not directly involve small business in the development of the proposed rules.

VI. If the proposed rule(s) affect small business, and are not exempt as noted above, please provide the following information:

1. A description of how opinions or comments from affected small businesses were solicited.

The Department invited the general public, including small businesses, to provide comments on the proposed rules in its notice of public hearing published on the Department's website and in statewide newspapers September 12, 2018.

2. A summary of the public's and small businesses' comments.

The Department received one item of testimony: Comments from the Tax Foundation of Hawaii. The Tax Foundation proposed two amendments.

First, the Tax Foundation suggested amending language in the rules making reference to postmarks to allow for the use of private delivery services. Second, the Tax Foundation suggested providing additional standards in situations where the Department issues fines in excess of \$5,000.

The Tax Foundation testimony is available on the Department's website.

3. A summary of the agency's response to those comments.

The Department elected to follow the Tax Foundation's first suggestion but not its second. Regarding the Tax Foundation's suggestion to provide additional standards for issuing fines in excess of \$5,000, the Department believes the standards under the proposed rules as currently drafted are sufficient. Act 204 requires fines of *not less than* \$5,000 to third-time violators. Under the proposed

rules, the Department is limited to issuing fines of merely \$5,000, and not more, unless it provides an explanation for higher fines in writing.

4. The number of persons who:
 - (i) Attended the public hearings: 1
 - (ii) Testified at the hearing: 1
 - (iii) Submitted written comments: 1

5. Was a request made at the hearing to change the proposed rule in a way that affected small business?

No.

DEPARTMENT OF TAXATION

Amendments to Chapter 18-237D,
Hawaii Administrative Rules

_____, 2018

1. Section 18-237D-4-01, Hawaii Administrative Rules, is amended to read as follows:

"§18-237D-4-01 Certificate of registration.

~~[(a) In general. Each operator or plan manager, before engaging or continuing in the activity of furnishing transient accommodations or in business as a resort time share vacation plan within the State, shall register the name and address of each place of business within the State subject to this chapter with the director.]~~

~~[The]~~ (a) Each operator or plan manager shall indicate, on its application for registration, the type of ~~[ownership on the registration.]~~ entity it is. If the transient accommodation is ~~[jointly owned or furnished]~~ operated by a [husband and wife,] married couple or civil union partners, the ~~[husband and wife]~~ married couple or civil union partners may jointly file one individual registration.

The registration shall include the name and address of the operator or plan manager and of each place of business subject to this chapter. An operator who acquires an additional transient accommodation or sells, transfers, assigns, or gives away a transient accommodation during the taxable year shall file an amended application for registration containing an updated list of each place of business subject to this chapter before the end of the taxable year or within thirty days of the acquisition or giveaway, whichever is later.

~~[(b) The operator or plan manager shall pay a one time registration fee of \$5 if the operator or plan manager has one to five transient accommodation units, \$15 if the operator or plan manager has six or~~

~~more transient accommodation units, and \$15 for each resort time share vacation plan within the State. The fee shall be paid to any of the taxation district offices where the transient accommodations are located.]~~ (b) There shall be no additional ~~[charge]~~ registration fees due if the operator or plan manager ~~[later]~~ subsequent to its initial registration adds more units to ~~[the operator's or plan manager's]~~ its registration ~~[in accordance with section 18-237D-4-05]~~, nor shall there be a refund if the number of units is reduced. Upon receipt of the required payment, the director shall issue a certificate of registration.

~~[(c) Upon written request by an operator or plan manager, the department shall cancel a registration certificate.—The]~~ (c) Any cancellation of a registration shall be without any refund of the registration fee paid.

~~[(d) Subsections (a) to (c) are illustrated as follows:]~~

Example 1:

Hotel Corporation, engaged in ~~[the activity of]~~ furnishing transient accommodations in Hawaii, owns and operates a hotel ~~[on the island of Oahu]~~. The hotel has six rooms that are rented to transients. Hotel Corporation shall register its name and address and the business name (if any) and address of the hotel with the ~~[Oahu taxation district office.—Hotel Corporation shall]~~ department and shall pay a one-time fee of \$15 for the registration.

~~[Example 2:~~

~~The facts are the same as in Example 1, except that Hotel Corporation also owns and operates hotels on the islands of Maui, Hawaii, and Kauai. Hotel Corporation shall register by providing its name and address and the business name and address of each hotel with the taxation~~

~~district office on Oahu, Maui, Hawaii, or Kauai. Hotel Corporation shall pay a one time fee of \$15 for the registration.]~~

Example [3÷] 2:

Mr. Peters owns a single apartment unit [~~on Kauai that is used in the activity of furnishing~~] he furnishes as a transient [accommodations.] accommodation. Mr. Peters shall register with the [~~Kauai taxation district office~~] department by providing his name and address, and the business name (if any) and address of the apartment. Mr. Peters shall pay a one-time fee of \$5 for the registration.

[Example 4:

~~The facts are the same as in Example 3, except that Mr. Peters also owns five apartment units in another apartment building on Kauai. Those five units are also used in the activity of furnishing transient accommodations. Mr. Peters shall register the business name (if any) and addresses of these five apartment units and the other apartment unit in Example 3 with the Kauai taxation district office and pay a one time fee of \$15 for the registration.~~

Example 5:

~~Ms. Cary owns two apartment units on Kauai, four on Maui, and six on Oahu. All of the units are used in the activity of furnishing transient accommodations. Ms. Cary shall register by providing her name and address, and the names and addresses of the two apartment units on Kauai, the four units on Maui, and the six units on Oahu with the taxation district office on Oahu, Maui, or Kauai. Ms. Cary shall pay a one time fee of \$15 for the registration.]~~

Example [6÷] 3:

Property Corporation, a firm engaged in the property management business, manages a condominium apartment building consisting of [50] fifty apartments. Each of the apartments in the building is owned by a different investor who rents the premises on a short-term basis. Although some of the apartments are occasionally rented on a long-term basis, Property Corporation obtains the consent of all the investors, files, and pays the sum of \$250 for [50] fifty certificates of registration on behalf of the investors. Property Corporation has determined that this procedure greatly facilitates its activity. Within two months of operation, the climate of the rental market suddenly changes to a point that all of the investors request Property Corporation to change the mode of renting the apartments from a short-term rental to a long-term lease basis. Property Corporation in turn requests the department in writing to cancel all the certificates of registration in force. Neither Property Corporation nor any of the investors is entitled to a refund of any part of the \$250 in registration fees paid. Furthermore, Property Corporation shall prepare and submit an annual tax return summarizing the two months of transient accommodations activity for each of the [50] fifty condominium apartments. Although Property Corporation must file [50] fifty annual tax returns, payment of taxes on the [50] fifty units may be made with a single check enclosed in the same envelope with the [50] fifty returns.

Example [7÷] 4:

The individual owners of Tropical Condominium Apartments (consisting of [100] one hundred units) and Renter Corporation enter into a contract. According to the contract, Renter

Corporation leases the entire building [~~situated on Oahu~~] from the owners of Tropical Condominium Apartments to operate the apartments as transient accommodations. In this situation, Renter Corporation is deemed the operator. Renter Corporation shall register its name and address and its business name (if any) and address of the condominium apartments with the [~~Oahu taxation district office.~~] department. Renter Corporation shall pay a \$15 one-time fee for a single registration covering the [~~100-unit~~] one hundred-unit apartment.

As operator of the transient accommodations, Renter Corporation shall be liable for the tax imposed under this chapter and the general excise tax imposed under chapter 237, HRS, on the gross rental and gross income, respectively, derived from the transient accommodations and apartment rental activities, respectively.

The owners of the individual units in Tropical Condominium Apartments are separately liable for the general excise tax imposed under chapter 237, HRS, on the gross income or gross receipts derived from the activity of leasing the apartment units to Renter Corporation. [~~See also section 18-237D-1-03.~~]

~~[Example 8:~~

~~Paradise Hotel operates a hotel on the island of Oahu, the first taxation district. Five of the rooms are rented for periods of less than 180 consecutive days. Paradise does not do business on any of the neighbor islands. Paradise must register with the first taxation district office by giving its name and address and the name and address of its place of business and pay a onetime fee of \$5.]~~

Example [9:] 5:

ABC, Inc. operates several facilities [~~which furnish transient accommodations~~]. On Oahu, ABC operates two hotels in Waikiki; a condominium apartment that is operated as a hotel; and a [~~50-unit~~] fifty-unit apartment facility in Punaluu, of which some of the units are rented for less than [~~180~~] one hundred eighty consecutive days and other units for periods of over [~~180~~] one hundred eighty consecutive days. ABC also operates a hotel on the island of Hawaii, a condominium operated as a hotel on the island of Maui, and three hotels on the island of Kauai. ABC, Inc. shall register with [~~one of the taxation districts in which its transient accommodations are located. To register, ABC is required to~~] the department and shall list the names and addresses of each of the hotels or condominium apartments and identify all of the specific rooms or apartments that are [~~being used to furnish~~] transient accommodations. Regarding the [~~50-unit~~] fifty-unit apartment located in Punaluu, ABC must give the name and address of the apartment building and identify the units that are customarily occupied by and regularly furnished to transients for [~~a~~] consideration. If ABC owns apartment numbers 1 to 25 and 35 to 50, ABC will indicate the numbers 1 to 25 and 35 to 50 on the registration form. ABC does not have to enumerate each apartment number such as 1, 2, 3, etc.

Example 6:

Assume the same facts as Example 5, except that after complying with all requirements for registration, ABC, Inc. begins operating units 30-34 in the Punaluu apartment building as transient accommodations. ABC, Inc. also purchases a hotel on Kauai and begins operating it as a transient accommodation. ABC, Inc. must update its registration with the department to indicate that it is operating apartment numbers 1

to 25 and 30 to 50 of the Punaluu apartment building and also to indicate that it is operating the new hotel on Kauai before the end of the taxable year or within thirty days of the acquisition, whichever is later.

~~[(c) Time for registration. The operator or plan manager shall register as required by this section prior to commencing the activity of furnishing transient accommodations or in business as a resort time share vacation plan.]~~ [Eff 11/25/88; am 7/18/94; am 6/3/05; am] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

2. Section 18-237D-4-02, Hawaii Administrative Rules, is amended to read as follows:

"§18-237D-4-02 Display of the registration certificate. (a) ~~[In general.]~~ Each operator or plan manager shall at all times conspicuously display the certificate of registration or a notice ~~[as set forth in subsection (b)]~~ stating where the registration may be inspected at each place for which it is issued. The registration or notice must be conspicuously displayed:

- (1) Inside each unit of which the transient accommodation consists; or
- (2) At the front desk.

~~[(b) Alternative method of display for more than one transient accommodation or in business as a resort time share vacation plan. Where the operator or plan manager operates more than one transient accommodation or more than one resort time share vacation plan, the director shall issue one certificate of registration. The operator or plan manager may post a notice in each room, apartment, suite, or the like either notifying the tenant or occupant where the certificate may be inspected or referring the tenant or occupant to the department.~~

~~(c) Subsections (a) and (b) are illustrated as follows:~~

Example:

~~Hawaii, Inc. owns a 400-unit condominium apartment that is used to furnish transient accommodations in Waikiki. To register, Hawaii, Inc. must list all of the units and pay a \$15 fee. A master certificate shall be issued. Hawaii, Inc. is not required to post a copy of the certificate in each of the 400 units but may post a notice in each unit stating that the apartment unit has been properly registered as a transient accommodation and either that a true copy of the certificate may be inspected or examined at the resident manager's office or that an inquiry may be made at the department.~~

~~(d) Penalty for failure to register. Any person who engages or continues in the business of furnishing transient accommodations without registering in conformity with this chapter or any director, president, secretary, or treasurer of a corporation who permits, aids, or abets such corporation to engage or continue in business without registering in conformity with this chapter shall be guilty of a misdemeanor and shall be fined not more than \$1,000 or imprisoned not more than one year, or both."]~~

(b) For purposes of this section, "front desk" means a desk, kiosk, or the like at the same property as the transient accommodation unit that handles checking in or out and handles other requests from guests.

Example 1:

Mr. Peters owns a single condominium unit he furnishes as a transient accommodation. The unit is one of fifty units in its condominium building. Mr. Peters conspicuously displays inside the unit a notice stating that the registration may be inspected at the condominium

building's front desk. Mr. Peters is in compliance with section 18-237D-4-02.

Example 2:

ABC, Inc. owns all one hundred units of a condominium building in Waikiki and furnishes them as transient accommodations. ABC, Inc. conspicuously posts its registration at the front desk of the building, but does not post anything inside each unit. ABC, Inc. is in compliance with section 18-237D-4-02 because it has posted the registration or a notice of where it may be inspected at the front desk.

Example 3:

Assume the same facts as Example 2, except that ABC, Inc. conspicuously posts its registration at its headquarters located in an office building in downtown Honolulu, rather than at the front desk of the building in Waikiki. In addition, ABC, Inc. conspicuously posts at the front desk of its Waikiki condominium building a notice stating that the registration may be inspected at its headquarters downtown, including the headquarters' address. ABC, Inc. is in compliance with section 18-237D-4-02 because it has conspicuously posted at the front desk a notice stating where the registration may be inspected.

Example 4:

Property Corporation, a firm engaged in the property management business, manages a condominium apartment building in Kaanapali consisting of fifty apartments. Each of the apartments in the building is owned by a different investor who rents the premises on a short-term basis. The condominium building has a front desk where a notice is conspicuously

displayed stating that the registration for each of the fifty different apartments may be inspected at Property Corporation's Kahului office, including the office's address. All fifty of the building's apartment owners are in compliance with section 18-237D-4-02 because notice of where each of their registrations may be inspected is conspicuously posted at the building's front desk." [Eff 11/25/88; am 7/18/94; am 6/3/05; am] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

3. Section 18-237D-4-03, Hawaii Administrative Rules, is repealed:

~~["§18-237D-4-03 Nontransferability of certificate of registration. The certificate of registration shall not be transferable. The certificate shall be valid only for the operator or plan manager in whose name the certificate has been issued and for the transaction of business only at the place designated."] [Eff 11/25/88; am 6/3/05; R] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)~~

4. Section 18-237D-4-04, Hawaii Administrative Rules, is repealed:

~~["§18-237D-4-04 Cancellation of registration by operator or plan manager ceasing to do business; change of ownership. Any operator or plan manager which goes out of business or otherwise ceases to engage in the conduct of transient accommodations activity or in business as a resort time share vacation plan for which a certificate of registration is issued or which transfers ownership of all of its transient accommodation or resort time share vacation plan shall notify the taxation district office in which the operator or plan manager is registered by canceling the registration on a form prescribed by the~~

~~department not more than ten days after the transfer of ownership or the activity has ceased." [Eff 11/25/88; am 6/3/05; R] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)~~

5. Section 18-237D-4-05, Hawaii Administrative Rules, is repealed:

~~["§18-237D-4-05 Registration of the acquisition, sale, transfer, assignment, or gift of a transient accommodation. (a) An operator who acquires an additional transient accommodation or sells, transfers, assigns, or gives away a transient accommodation during the taxable year shall notify the taxation district office in which the operator is registered by filing a form prescribed by the department not more than ten days after the transaction.~~

~~(b) A buyer, transferee, assignee, or recipient of a gift of a transient accommodation shall register as an operator of the transient accommodation as set forth in section 18-237D-4-01." [Eff 11/25/88; R] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)~~

6. Section 18-237D-4-06, Hawaii Administrative Rules, is repealed:

~~["§18-237D-4-06 Registration upon reorganization; partnership formation. Any operator of a transient accommodation which reorganizes its corporate structure or forms a partnership shall notify the taxation district office in which the operator is registered of the change by canceling the registration on a form prescribed by the department not more than ten days thereafter. The operator shall file a new certificate of registration in accordance with the change in structure." [Eff 11/25/88; R] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)~~

7. Section 18-237D-4-07, Hawaii Administrative Rules, is repealed:

~~["§18-237D-4-07 Corporate name change. Any operator of a transient accommodation which changes its corporate name shall notify the taxation district office in which the transient accommodation is registered of the change not more than ten days after the change of name. Upon notification, the change of name shall be noted in the records of the taxation district office. A new certificate of registration shall not be issued."] [Eff 11/25/88; R]~~
(Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

8. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-08 Display of local contact information. Each operator or plan manager shall at all times conspicuously display the name, phone number, and electronic mail address of the local contact at the same place as the registration or notice stating where the registration may be inspected; provided that the local contact information shall be displayed at the same property as the transient accommodation.

Example 1:

Ms. Flora owns a single condominium unit she furnishes as a transient accommodation. The unit is one of twenty units in its condominium building. Ms. Flora conspicuously displays in the unit a notice stating that the registration may be inspected at the office of the property manager, which is located in a commercial building down the street. The registration and local contact information are available for inspection at the property manager's office. Ms.

Flora is not in compliance with section 18-237D-4-08 because the local contact information is not displayed at the same property as the transient accommodation unit.

Example 2:

Building Managers Inc., a firm engaged in the property management business, manages a condominium apartment building consisting of one hundred apartment units. Each of the apartments in the building is owned by a different investor who rents the premises on a short-term basis. The condominium building has a front desk where a notice is conspicuously displayed stating that the registration and local contact information for each of the one hundred different apartments may be inspected upon request at the front desk. The owners of the apartment units are not in compliance with section 18-237D-4-08 because information for the local contacts are not conspicuously displayed." [Eff 11/25/88; am 7/18/94; am 6/3/05; am] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

9. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-09 Procedures; scope and purpose.

(a) Sections 18-237D-4-09 to 18-237D-4-35 implement section 237D-4, HRS, and apply notwithstanding any contrary provision in title 14, HRS, and the rules adopted thereunder relating to the general enforcement of taxes.

(b) The administrative rules contained herein govern the practice and procedure in all citations for failure to display issued by the department, including the imposition of any monetary fines, and any subsequent rights of review.

(c) An agency appeal of a citation for failure to display under section 237D-4, HRS, shall be

conducted as a contested case under chapter 91, HRS. The procedures for contested cases in chapter 91, HRS (including sections 91-8.5 through 91-15, HRS), shall apply to agency appeals.

(d) The administrative rules contained in sections 18-237D-4-09 through 18-237D-4-35 shall be construed to secure the just and speedy determination of every citation for failure to display issued.

(e) Should any paragraph, sentence, clause, phrase, or application of any portion of sections 18-237D-4-09 through 18-237D-4-35 be declared unconstitutional or invalid for any reason, the remainder of any other application of this chapter shall not be affected thereby. [Eff]
(Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

10. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-10 Definitions. As used in sections 18-237D-4-09 through 18-237D-4-35:

"Agency appeal" means an appeal of a citation for failure to display to the director or the director's designee pursuant to section 237D-4(h), HRS.

"Citation for failure to display" means a citation issued for a failure to display the information required under either section 237D-4(b), HRS, or 237D-4(d), HRS.

"Department" means the department of taxation.

"Director" means the director of taxation.

"Hearing" means a contested case hearing in accordance with chapter 91, HRS, to determine an agency appeal.

"Person" means one or more individuals, a company, a corporation, a partnership, an association, or any other type of legal entity and also includes an officer or employee of a corporation, a partner or employee of a partnership, a trustee of a trust, a fiduciary of an estate, or a member, employee, or principal of any other entity, who as such officer, employee, partner, trustee, fiduciary, member or

principal is under a duty to perform and is principally responsible for performing the act in respect of which the violation occurs.

"Presiding officer" means the director or presiding officer who will be conducting the hearing.

"Respondent" means the person to whom the citation for failure to display is addressed.

"Special enforcement section" means the unit created within the department to carry out the functions set forth in section 231-81, HRS." [Eff] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

11. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-11 Fine for failure to display. (a)
A person required under section 237D-4(b), HRS, to conspicuously display a certificate of registration issued under section 237D-4, HRS, as well as the name, phone number, and electronic mail address of a local contact but who fails to display one or more of those required items shall be in violation of section 237D-4(b), HRS, and shall be fined as follows:

- (1) For a first violation, a fine of \$500 per day per transient accommodation in violation;
- (2) For a second violation, a fine of \$1,000 per day per transient accommodation in violation, excluding days for which a fine was issued for a first violation;
- (3) For third and subsequent violations, a fine of \$5,000 per day per transient accommodation in violation, excluding days for which a fine was issued for first or second violations; provided that the department may issue a fine of greater than \$5,000 per day, but must provide a written explanation of why the fine amount is greater on the citation.

(b) Only one citation under subsection (a) may be issued to the person in any thirty day period for any failure to display per transient accommodation. The same person may be issued additional citations under subsection (a) during the thirty day period for any failure to display in other transient accommodations the person operates. Following the expiration of the thirty day period, a citation may be issued for failure to display in connection with the same transient accommodation if it continues to be in violation. Citations issued for second violations shall not include fines for days of violation for which a fine was issued in the citation for first violation for the same transient accommodation. Citations issued for third violations shall not include fines for days of violation for which fines were issued in the citations for the first and second violations for the same transient accommodation.

Example 1:

ABC, Inc. owns all one hundred units of a condominium building which it furnishes as a transient accommodation. ABC, Inc. conspicuously displays at the building's front desk its certificate of registration as a transient accommodations operator as well as the required local contact information. ABC, Inc. is in compliance with section 18-237D-4-11 because it has conspicuously displayed the local contact information in the same place as the registration or notice stating where the registration may be inspected.

(c) A person required under section 237D-4(c), HRS, to conspicuously provide in any advertisement a registration identification number issued under section 237D-4, HRS, as well as conspicuously provide the name, phone number, and electronic mail address of a local contact, or provide such local contact information upon the furnishing of the transient accommodation, but who fails to provide one or more of

these required items shall be in violation of section 237D-4(d), HRS, and shall be fined as follows:

- (1) For a first violation, a fine of \$500 per day in violation, including the fifteen days for which the person received a written warning under section 18-237D-4-12 for the same transient accommodation if the person is cited for the first violation upon the person's failure to cure the violation during the fifteen-day period;
- (2) For a second violation, a fine of \$1,000 per day in violation, excluding days for which a fine was issued for a first violation for the same transient accommodation; and
- (3) For third and subsequent violations, a fine of \$5,000 per day in violation, excluding days for which a fine was issued for first and second violations for the same transient accommodation; provided that the department may issue a fine of greater than \$5,000 per day, but must provide a written explanation of why the fine amount is greater on the citation.

(d) Only one citation under subsection (c) may be issued to the person in any thirty day period for any failure to display per transient accommodation. The same person may be issued additional citations under subsection (c) during the thirty day period for any failure to display related to other transient accommodations. Following the expiration of the thirty day period, a citation may be issued for failure to display in connection with the same transient accommodation or for any other transient accommodation. Citations issued for second violations shall not include fines for days of violation for which a fine was issued in the citation for first violation for the same transient accommodation. Citations issued for third violations shall not include fines for days of violation for which fines were issued in the citations for first and second violations for the same transient accommodation. Similarly, all citations issued for subsequent

violations shall not include fines for days of violation for which fines were issued in prior citations for the same transient accommodation." [Eff] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

12. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-12 Written warning for first violation under section 237D-4(d), HRS. (a) In lieu of issuing a person a first citation and fine for failure to display under section 18-237D-4-11(c)(1), the department shall issue the violator a written warning if the person has never before received a written warning for any violation for any transient accommodation under section 18-237D-4-11(c)(1).

(b) Only one written warning in lieu of a first violation and fine under subsection (a) may be issued per person. For any subsequent first violations the person may commit under section 18-237D-4-11(c)(1), the department shall issue a citation with a fine.

(c) For purposes of this section, a written warning shall contain:

- (1) The name and address of the violator;
- (2) The specific alleged violation or violations of title 14, HRS, or the administrative rules adopted thereunder;
- (3) The address of the transient accommodation, if possible;
- (4) A description of the advertisement where the transient accommodation is advertised. The advertisement shall be described to the best of the department's ability and may include such information as the name and date of the publication, the website address or any other description sufficient for a reasonable person to locate the advertisement; and

(5) A statement that the violator may be cited under section 18-237D-4-13 beginning fifteen days after the written warning's date of issuance for any violation related to this or any other transient accommodation, including any violations related to other transient accommodations operated by the violator the department subsequently discovers during the fifteen-day period.

(d) The department shall keep a record of all written warnings issued.

(e) A written warning shall be served by:

(1) Personal service on the respondent, respondent's officer or director, or respondent's registered agent for service of process as shown in the records of the department of commerce and consumer affairs;

(2) Certified mail, restricted delivery, sent to the respondent's last known business or residence address or the address of respondent's registered agent for service as shown in the records of the department of commerce and consumer affairs; or

(3) Publication at least once in each of two successive weeks in a newspaper of general circulation if service by certified mail is not made because of refusal to accept service or because the department has been unable to ascertain the address necessary for service under paragraph (2) after reasonable and diligent inquiry.

Publication shall consist solely of the respondent's name and a statement that the respondent is being served its written warning by the publication and has fifteen days from the date of service to cure its violation. No return information or other personal or confidential information shall be disclosed in the publication.

If the written warning is served by certified mail under subsection (e)(2), the date of service of the written warning is the date the written warning

was delivered. If the written warning is served by publication under subsection (e)(3), the date of service of the written warning is the last date of publication in the second successive week.

(f) If, during the fifteen-day period described under subsection (c)(5), the department discovers another transient accommodation operated by the violator for which a citation for a first violation may be issued, the department shall not issue such citation until the fifteen-day period has elapsed; provided that if the violator does not cure all of its violations during the fifteen-day period provided by the written warning, the department shall issue citations for all transient accommodations in violation after the expiration for all days during which they were in violation pursuant to section 18-237D-4-11.

Example 1:

Operator LLC owns one condominium unit which it operates as a transient accommodation. Operator LLC submits its unit to TAbroker.com, a website which displays a searchable database of units for rent. The department discovers that the listing for Operator LLC's unit does not display Operator LLC's registration identification number, nor is there an electronic link leading to the number. The department reviews its records and sees that it has never issued a warning or a citation to Operator LLC. The department shall issue a written warning to Operator LLC under section 18-237D-4-12." [Eff] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

13. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-13 Citation for failure to display; requirements. (a) A citation for failure to display must be issued on the forms prescribed by the department.

(b) A citation for failure to display shall include the following in its contents:

- (1) The name and address of the respondent;
- (2) The specific alleged violation or violations of title 14, HRS, or the administrative rules adopted thereunder which constitute cause for the issuance of the citation for failure to display;
- (3) The location of where the violation occurred or is occurring. If the citation is issued pursuant to section 237D-4(b), HRS, the location shall include the address of the transient accommodation. If the citation is issued under section 237D-4(d), HRS, the location shall include a description of the advertisement and a description of the transient accommodation. The advertisement shall be described to the best of the department's ability and may include such information as the name and date of the publication, the website address or any other description sufficient for a reasonable person to locate the advertisement. The transient accommodation shall also be described to the best of the department's ability, including the address if possible;
- (4) A signature of the special enforcement section employee or other department employee authorized to issue the citation. By signing the citation for failure to display, the issuer certifies that the statements contained in the citation are true and correct, to the best of his or her knowledge. A citation that has not been signed by a duly authorized employee of the department shall be void *ab initio*;

- (5) If applicable, the amount of the monetary fine imposed against the respondent;
- (6) A space for the respondent, or the respondent's agent or representative, to acknowledge receipt of the citation by signature. If the respondent or respondent's agent or representative refuses to sign or if for some other reason the department employee is unable to acquire a signature to acknowledge receipt, the citation may indicate "refused to sign", "unavailable", "no signature for safety reasons", "service by certified mail", "service by publication", or other language explaining the lack of signature by the respondent or the respondent's agent or representative. The lack of the signature of the respondent or the respondent's agent or representative shall not affect the validity of the citation; and
- (7) Information regarding the respondent's appeal rights, including the requirement that the citation must be returned to the department within thirty days from the date the citation was served, respondent's right to a hearing before the director or the director's designee, and contact information for where the respondent may obtain further information.

Example 1:

Operator LLC owns one condominium unit on the island of Kauai which it operates as a transient accommodation. On January 15, Operator LLC's unit is advertised on TAbroker.com, a website which displays a searchable database of units for rent. On January 15, the department discovers that the listing for Operator LLC's unit does not display Operator LLC's registration identification number, nor is there an electronic link leading to the number. The department

reviews its records and sees that it has never issued a warning or a citation to Operator LLC for any transient accommodation. The department issues a written warning to Operator LLC under section 18-237D-4-12, explaining that Operator LLC has fifteen days to cure its violation by ensuring that its registration identification number is displayed in the advertisement. On January 31, the department checks on the advertisement again and sees that Operator LLC's unit has been continuously advertised since January 15 and has never had the registration identification number displayed or linked to. The department shall issue Operator LLC a citation for failure to display and the citation shall include a fine for a first violation of \$500 multiplied by the seventeen days during which this transient accommodation has been in violation for a total fine of \$8,500.

Example 2:

Assume the same facts as Example 1, except that the department checks on the advertisement on January 27 and sees that the registration identification number is now displayed. The department shall not issue a citation because Operator LLC cured its violation within the fifteen-day period granted by the written warning.

Example 3:

Assume the same facts as Example 1, except that in February, Operator LLC purchases a second condominium unit on Oahu and begins operating it as a transient accommodation. On March 1, Operator LLC begins advertising the Oahu unit in "AinaBNB", a monthly print magazine that advertises vacation rentals. On March 5, the department sees the March issue of AinaBNB and discovers that the advertisement does not display

Operator LLC's registration identification number. The department reviews its records and sees that it has already issued Operator LLC a written warning and a citation for a first violation, albeit one for a different transient accommodation. The department shall issue Operator LLC a citation for failure to display and the citation shall include a fine of \$500 multiplied by the one day during which the transient accommodation has been in violation for a total fine of \$500.

Example 4:

Assume the same facts as Example 3, except that AinaBNB is a daily publication and runs Operator LLC's unit advertisement every day from March 1 to March 5. The citation shall include a fine of \$500 multiplied by the five days of violation for a total fine of \$2,500.

Example 5:

On July 1, while inspecting a transient accommodation unit operated by Surf Wax Rentals LLC, the department discovers Surf Wax Rentals LLC has failed to conspicuously display its registration identification number inside the unit or at the front desk. Surf Wax Rentals LLC's agent admits that the unit has been rented out for thirty days and during that time Surf Wax Rentals LLC never conspicuously displayed its registration identification number. The department reviews its records and sees that it has never issued Surf Wax Rentals LLC a citation. The department shall issue Surf Wax Rentals LLC a citation for failure to display and the citation shall contain a fine for a first violation of \$500 multiplied by the thirty days during which the transient accommodation has been in violation for a total fine of \$15,000. Written warnings are not issued for failures to conspicuously

display the information required by section 237D-4(b), HRS.

Example 6:

Assume the same facts as Example 5, except that on July 15, the department goes to TAbroker.com and sees Surfswax Rentals LLC's unit listed in an advertisement that fails to display the registration identification number. The department reviews its records and sees that it previously issued a fine for failure to display under section 237D-4(b), HRS, on July 1, but that it has never issued a warning or citation with a fine for failure to display under section 237D-4(d), HRS. The department shall issue Surfswax Rentals LLC a written warning under section 18-237D-4-12. The department shall not issue a citation with a fine for a second violation because violations under sections 237D-4(b) and (d), HRS, are considered separate violations. Additionally, the fact that the department issued the citation under section 237D-4(b), HRS, fewer than thirty days earlier and for a violation in this same transient accommodation shall not preclude the department from issuing a written warning or a citation under section 237D-4(d), HRS, to the same person and for a violation related to the same transient accommodation. A fine issued under section 237D-4(b), HRS, and a fine issued under section 237D-4(d), HRS, may be issued to the same person during the same thirty-day period because they are considered separate violations.

Example 7:

FacePlus is an online social networking website which allows its users to create a user profile and post status updates for other users to see. Sally Social, an individual user of FacePlus, posts a status update which says she is

offering to rent out the cottage on her property for \$200 per night. The department may issue a warning or citation to Sally Social because she is an operator of a transient accommodations and her status update is an advertisement for a transient accommodation." [Eff]
(Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

14. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-14 Issuance of a citation for failure to display. (a) A citation for failure to display is both a notice of violation and an offer to settle an administrative case involving any violation related to the citation, and may include a monetary fine where permitted under the applicable law and rules.

(b) Any employee of the department who is assigned to the special enforcement section or otherwise duly authorized by the department may issue a citation for failure to display to a person if there is reason to believe the person has violated or is violating section 237D-4, HRS, or any administrative rules adopted thereunder.

(c) A citation for failure to display may be served by:

- (1) Personal service on the respondent, respondent's officer or director, or respondent's registered agent for service of process as shown in the records of the department of commerce and consumer affairs;
- (2) Certified mail, restricted delivery, sent to the respondent's last known business or residence address or the address of respondent's registered agent for service as shown in the records of the department of commerce and consumer affairs; or

(3) Publication at least once in each of two successive weeks in a newspaper of general circulation if service by certified mail is not made because of refusal to accept service or because the department has been unable to ascertain the address necessary for service under paragraph (2) after reasonable and diligent inquiry. Publication shall consist solely of the respondent's name and a statement that the respondent is being served a citation for failure to display under section 237D-4, HRS, by the publication and has thirty days from the date of service to respond. No return information or other personal or confidential information shall be disclosed in the publication.

(d) If the citation is served by publication under subsection (c)(3), the date of service of the citation is the last date of publication in the second successive week." [Eff _____] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

15. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-15 Response to citation for failure to display. (a) A respondent must respond to a citation for failure to display within thirty days from the date of service by:

- (1) Paying to the department the stated amount of the monetary fine, which shall constitute acknowledgment of the violation and a waiver of further rights of review; provided that if the tendered payment is dishonored for any reason not the fault of the department, the respondent will be deemed not to have answered the citation; or
- (2) Appealing the citation by making a written request to the department for a contested

case hearing in accordance with these rules and chapter 91, HRS, including but not limited to section 18-237D-4-18. Written requests for contested case hearings may be indicated on the citation itself.

(b) If the respondent fails to respond to the citation for failure to display within thirty days from the date the citation was served:

(1) The failure is an acknowledgment that the allegations contained in the citation are true and that the relief sought in the citation, including any monetary fines, is appropriate; and

(2) The department may collect any overdue monetary fines and enforce any overdue non-monetary sanctions as set forth in section 18-237D-4-35(b).

(c) The hearing of an agency appeal shall be limited solely to the allegations contained in the citation. No other matter may be considered, including, but not limited to, any disputes relating to any tax liability." [Eff] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

16. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-16 Venue. Venue of the hearing of an agency appeal is proper in the taxation district where the transient accommodation that is the subject of the violation is located, or such other location as the parties to the hearing may mutually agree. Any party may participate in the hearing by telephone; provided that the presiding officer receives written notice of intent to appear by telephone at least five days before the hearing." [Eff] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

17. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"18-237D-4-17 Docket. The director or the director's representative shall maintain a docket of all agency appeals of citations for failure to display and each such agency appeal shall be assigned a number. The docket shall be a list of appeals containing the names of those appealing, the number assigned to their appeals, and a list of records or documents filed for each appeal, including but not limited to all pleadings, motions, intermediate rulings, evidence received or considered, persons who provided oral testimony, exhibits, statements of matters officially noticed, offers of proof and rulings thereon, proposed findings and exceptions, reports of the presiding officer, and staff memoranda. [Eff _____] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

18. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"18-237D-4-18 Hearing; request for and scheduling. (a) Upon the respondent's filing of a completed form prescribed by the department as set forth in subsection (b), the director or the director's designee shall schedule a hearing.
(b) The department shall prepare a form for a written agency appeal request that allows the respondent to provide a concise statement of the basic facts, the issues contested, and the relief sought. The department may prepare such a form in the citation itself. The form written agency appeal request prepared by the department must be used to request an agency appeal, and written requests in any other form shall not constitute a request for agency appeal under this section.

(c) No hearing shall be held until due notice is given to all parties as provided in sections 91-9 and 91-9.5, HRS, or their successor laws." [Eff] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 91-9.5, 237D-4)

19. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"18-237D-4-19 Presiding officer of hearings; duties and powers; substitute presiding officers. (a) The director shall conduct the hearings on an appeal, shall render the decision, and shall issue such orders and take such actions as may be required; provided that the director may designate a representative, who shall be the presiding officer, to conduct the hearings, and make recommendations in writing to the director, which shall include recommendations as to findings of fact and conclusions of law. If the presiding officer's recommendation is adverse to any party other than the department, the recommended decision shall be served on the person contesting the citation. The person contesting the citation shall thereafter have ten days from the date the recommendation is mailed to file exceptions to the recommendation and to present arguments to the director in writing. The director shall then personally consider the whole record or such portion thereof as may be cited by the parties, shall render the decisions as to findings of fact and conclusions of law in writing, and shall issue such orders and take such actions as may be further required.

(b) In all hearings, the presiding officer shall have the power to give notice of the hearing, arrange for the administration of oaths, examine witnesses, certify to official acts, rule on offers of proof, receive relevant evidence, regulate the course and conduct of the hearing, including regulating the manner of any examination of a witness to prevent harassment or intimidation and ordering the removal of

disruptive individuals, and perform such other duties necessary for the proper conduct of the hearings.

(c) The presiding officer may subpoena witnesses and books, papers, documents, other designated objects, or any other record, however maintained, pursuant to section 231-7, HRS.

(d) Any of these rules of practice and procedure may be suspended or waived by stipulation of all the parties.

(e) The presiding officer may engage the services of a stenographer, or someone similarly skilled, to take a verbatim record of and transcribe the evidence presented at any hearing if requested for purposes of rehearing or court review. The party making the request shall be responsible for:

- (1) The fees and costs for the transcript;
- (2) Making the necessary arrangements to have the stenographer, or someone similarly skilled, to notify all the parties in writing when the transcript is available; and
- (3) Filing a certified copy of the transcript as part of the record.

If a verbatim record is taken and transcribed, any other party may request a copy of the transcript at that party's cost

(f) If a presiding officer is absent from a scheduled hearing or is incapacitated from performance of duty, the director may designate another representative to serve as a substitute presiding officer without abatement of the proceedings." [Eff

] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 91-11, 231-7, 237D-4)

20. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-20 Disqualification of presiding officers. (a) A presiding officer shall be

disqualified from deciding an agency appeal if the presiding officer:

- (1) Has a financial interest, as defined by section 84-3, HRS, in a business or other undertaking that will be directly affected by the decision of the agency appeal;
- (2) Is related within the third degree by blood or marriage to any party to the proceeding or any party's representative or attorney;
- (3) Has participated in the investigation preceding the institution of the agency appeal proceedings or has participated in the development of the evidence to be introduced at the hearing; or
- (4) Has a personal bias or prejudice concerning a party that will prevent a fair and impartial decision involving that party.

(b) A presiding officer shall withdraw from further participation in the proceedings upon discovery of a disqualifying conflict of interest or bias if the factual circumstances are undisputed. If the allegation of a disqualifying conflict of interest or bias is not clearly substantiated, the presiding officer need not voluntarily withdraw and the party seeking the disqualification may file a motion to disqualify the presiding officer. The motion shall be filed and decided before the evidentiary portion of the hearing on the agency appeal. If a presiding officer is disqualified, the director shall designate another representative to serve as the presiding officer. If the disqualified presiding officer is the director, the director shall designate a representative to serve as the presiding officer whose findings of fact, conclusions of law, and decision and order shall be final and binding." [Eff

] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

21. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-21 Communications with the director or presiding officers. (a) No person shall communicate with the director or presiding officer regarding matters to be decided by the director or presiding officer in any agency appeal with the intent, or the appearance of the intent, to influence the decision of the director or presiding officer, unless all of the parties to the proceedings are given notice of communication and an opportunity to also communicate with the director or presiding officer.

(b) If a communication is made privately with the presiding officer in violation of subsection (a), the presiding officer shall disclose the communication to all parties on the record of the proceedings and afford all parties an opportunity to respond to, refute, or otherwise comment on the ex parte communication. [Eff _____] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 91-13, 237D-4)

22. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-22 Computation of time. In computing any time period under sections 18-237D-4-01 through 18-237D-4-35, the day of the act, event, or default from which the period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, state holiday, or state government furlough day. Intermediate Saturdays, Sundays, legal holidays, or government furlough days shall be included. Intermediate Saturdays, Sundays, state holidays, or state government furlough days shall be excluded in the computation when the period of time prescribed or allowed is less than seven days. Except as otherwise provided, whenever an act required to be performed under these rules may be accomplished by mail, the act shall be deemed to have been performed on the date the

items are postmarked. Any reference in sections 18-237D-4-01 through 18-237D-4-35 to the United States mail shall be treated as including a reference to a designated delivery service and any reference to a postmark by the United States Postal Service shall be treated as including a reference to any date recorded or marked by the designated delivery service. As used in this section, "designated delivery service" means any delivery service designated for purposes of section 7502 of the federal Internal Revenue Code."
[Eff] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

23. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-23 Filing of documents; amendment; dismissal; retention. (a) All pleadings, submittals, petitions, applications, charges, reports, maps, exceptions, briefs, memorandums, and other papers required to be filed in any agency appeal shall be filed with the director or as instructed by the director or presiding officer. Such papers may be sent electronically, by facsimile transmission, by United States mail, postage prepaid, or by hand-delivery to the department, within the time limit, if any, as set forth in any statute or rule, for such filing. The date on which the papers are actually received by the department shall be deemed the date of filing.

(b) Filing electronically means emailing the filing in pdf format or other format as instructed by the director or presiding officer to an email address designated by the director or presiding officer. The email shall include a subject line identifying the appeal number, the respondent, and the hearing date and a description of the papers being filed.

(c) All papers filed with the department, other than papers filed electronically or by facsimile, shall be written in ink, typewritten, or printed,

shall be plainly legible, shall be on strong durable paper, not larger than 8-1/2 by 11 inches in size except that tables, maps, charts, and other documents may be larger, but shall be folded to the size of the documents to which they are attached. Papers filed electronically or by facsimile must be transmitted in a form that can be legibly and understandably printed to 8-1/2 by 11 inch paper or 8-1/2 by 17 inch paper.

(d) All papers must be signed in ink by the party or a duly authorized agent or attorney. The presentation to the director (whether by signing, filing, submitting, or later advocating) of any paper shall constitute a certification that the party in interest has read the document; that to the best of the party's knowledge, information, and belief every statement contained in the document is true and no such statements are misleading; and that the document is not interposed for delay.

(e) Unless otherwise specifically provided by a particular rule or order of the department, an original and two copies of all papers shall be filed. Papers sent electronically or by facsimile transmission shall not require any copies. However, the original must be presented to the department upon request.

(f) The initial document filed by any person in any proceeding shall state on the document's first page the name and mailing address of the person or persons who may be served with any documents filed in the proceeding.

(g) All papers filed in an agency appeal shall be served on all other parties to the hearing by the filing party in accordance with any deadlines imposed by the director or presiding officer. Service may be accomplished by:

- (1) Personal service on the party, party's officer or director, or party's registered agent for service of process as shown in the records of the department of commerce and consumer affairs; or
- (2) Mail to the party's last known business or residence address or the address of

respondent's registered agent for service as shown in the records of the department of commerce and consumer affairs.

(h) If any document initiating or filed in an agency appeal is not in substantial conformity with the applicable rules of the department as to the document's contents, or is otherwise insufficient, the presiding officer, on his or her own motion, or on motion of any party, may strike the document, or require its amendment. The document initiating the agency appeal may not be stricken, but may be subject to required amendments. If amendments are required, the document with amendments shall be effective as of the date of the original filing.

(i) All documents filed in an agency appeal shall be retained in the files of the presiding officer, except that the presiding officer may permit the withdrawal of original documents upon submission of properly authenticated copies to replace the original documents." [Eff] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

24. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-24 Filed documents available for public inspection; exceptions. (a) Unless otherwise provided by statute, rule, or order of the presiding officer, all information contained in any document filed in any agency appeal shall be available for inspection by the public after final decision.

(b) Confidential treatment may be requested where authorized by statute. For good cause shown, the presiding officer shall grant such a request.

(c) When permitted or authorized, matters of public record may be inspected in the appropriate offices of the department during regular office hours." [Eff] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

25. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-25 Appearances in agency appeal.

(a) An individual may appear on the individual's own behalf; a member of a partnership may represent a partnership; an officer or authorized employee of a corporation or trust or association may represent the corporation, trust, or association; and an officer or authorized employee of a corporation or trust or association may represent the corporation, trust, or association in the agency appeal.

(b) A person may be represented by an attorney qualified to practice before the supreme court of Hawaii in the agency appeal under these rules.

(c) A person shall not be represented in the agency appeal except as stated in subsections (a) and (b).

(d) Any person appearing on behalf of a respondent shall file a notice of appearance and a power of attorney immediately but no later than seven days prior to the date of the first appearance. A person may not appear on behalf of a respondent without properly filing a notice of appearance and a power of attorney." [Eff] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

26. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-26 Substitution of parties. Upon motion and for good cause shown, the presiding officer may order substitution of parties, except that in the case of a death of a party, substitution may be ordered without the filing of a motion." [Eff

] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

27. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-27 Consolidation; separate hearings.

(a) The presiding officer, upon his or her own initiative or upon motion, may consolidate for hearing or for other purposes or may contemporaneously consider two or more proceedings involving the same parties if the presiding officer finds that the consolidation or contemporaneous hearing will be conducive to the proper dispatch of the business of the department and to the ends of justice and will not unduly delay the proceedings.

(b) The presiding officer, upon his or her own initiative or upon motion, may separate any issue, appeal, or other matter for hearing or for other purposes if the director or presiding officer finds that the separation will be conducive to the proper dispatch of the business of the department and to the ends of justice." [Eff _____] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

28. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-28 Intervention. Applications to intervene in a proceeding shall comply with section 18-237D-4-23 and shall be served on all parties. Applications for intervention will be granted or denied at the discretion of the presiding officer. As a general policy, such applications shall be denied unless the petitioner shows that it has an interest in a question of law or fact involved in the contested matter and the petitioner's intervention will not

result in the potential unauthorized disclosure of a return or return information." [Eff]
(Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

29. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-29 Prehearing conferences; exchange of exhibits; briefs. (a) The presiding officer may hold or cause to be held prehearing conferences with the parties for the purpose of formulating or simplifying the issues, arranging for the exchange of proposed exhibits or proposed written testimony, setting of schedules, exchanging of names of witnesses, limitation of number of witnesses, and such other matters as may expedite orderly conduct and disposition of the proceeding as permitted by law.

(b) The presiding officer may request briefs setting forth the issues, facts, and legal arguments upon which the parties intend to rely and the presiding officer may fix the conditions and time for the filing of briefs and the number of pages. Exhibits may be reproduced in an appendix to the brief. A brief of more than twenty pages shall contain a subject index and table of authorities."
[Eff] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

30. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-30 Motions. (a) All motions other than those made during a hearing shall be made in writing to the presiding officer, shall state the relief sought, and shall be accompanied by an affidavit, memorandum, or both setting forth the grounds upon which they are based. The presiding

officer shall set the time for all motions and opposing affidavits and memorandums, if any.

(b) The moving party shall serve a copy of the motions and all supporting documents on all other parties at least fourteen days prior to the hearing on the motion. Service shall be in accordance with the rules of service of papers under section 18-237D-4-23(g).

(c) A memorandum in opposition or a counter affidavit shall be served on all parties not later than seven days prior to the hearing. Service shall be in accordance with the rules of service of papers under section 18-237D-4-23(g).

(d) Failure to serve or file a memorandum in opposition to a motion or counter affidavit or failure to appear at the hearing shall be deemed a waiver of objection to the granting or denial of the motion."

[Eff] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

31. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-31 Evidence. (a) The presiding officer shall rule on the admissibility of all evidence. The presiding officer may exercise discretion in the admission or rejection of evidence and the exclusion of immaterial, irrelevant, or unduly repetitious evidence with a view to doing substantial justice.

(b) Evidence shall generally consist of the citation for failure to display, any applicable reports, and other written statements submitted by either party, if any.

(c) When objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly. Formal exceptions to rulings are unnecessary and need not be taken.

(d) With the approval of the presiding officer, a witness may read testimony into the record on direct

examination. Before any prepared testimony is read, unless excused by the presiding officer, the witness shall deliver copies thereof to the presiding officer and all parties. If the presiding officer deems that substantial savings in time will result, a copy of the prepared testimony may be received in evidence without reading.

(e) If relevant and material matter is offered in evidence in a document containing other matters, the party offering it shall designate specifically the matter so offered. If the other matter in the document would burden the record, at the discretion of the presiding officer, the relevant and material matter may be read into the record or copies of it received as an exhibit. Other parties shall be afforded opportunity at the time to examine the document, and to offer in evidence other portions believed material and relevant.

(f) If any matter contained in a document on file as a public record with the department is offered in evidence, unless otherwise directed by the presiding officer, the document need not be produced and may be received in evidence by reference.

(g) Official notice may be taken of such matters as may be judicially noticed by the courts of the State of Hawaii.

(h) Exhibits shall be prepared in the same format as that required for the filing of documents under section 18-237D-4-23, unless otherwise directed or permitted by the presiding officer.

(i) At the hearing, the presiding officer may require the production of further evidence upon any issue and further hearings necessary for the consideration of such evidence. The presiding officer may authorize the filing of specific documentary evidence as a part of the record within a fixed time."

[Eff _____] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-10, 237D-4)

32. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-32 Continuances or extensions of time. Whenever a person or agency has a right or is required to take action within the period prescribed or allowed by this chapter for an agency appeal, the presiding officer may:

- (1) Before or after the expiration of the prescribed period, on his own without advance notice, extend such period;
- (2) Upon motion before the expiration of the prescribed period, extend such period by granting a continuance; or
- (3) Upon motion after the expiration of the prescribed period, permit the act to be done after the expiration of a specified period where the failure to act is reasonably shown to be excusable." [Eff]
(Auth: HRS §§91-2, 231-3(9), 237D-16(b))
(Imp: HRS §§91-2, 237D-4)

33. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-33 Service of decisions. All final orders, opinions, or rulings entered in an agency appeal shall be served in accordance with section 91-12, HRS." [Eff] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-12, 237D-4)

34. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-34 Correction of transcript. Motions to correct the transcript shall be made within five days after the receipt of the transcript by the

movant or within fourteen days from the date the stenographer, or someone similarly skilled, gives notice to all the parties that the transcript is available under section 18-237D-4-19(e), whichever is earlier. The motion shall be acted upon by the presiding officer." [Eff _____] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

35. Chapter 18-237D, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237D-4-35 Enforcement and stay. (a) Unless otherwise stated in a final decision, all monetary fines and non-monetary sanctions shall be due and payable within thirty days of the service of the final decision imposing such fines and sanctions, provided that if any party appeals such final decision to the circuit court, such monetary fines and non-monetary sanctions may be stayed by the reviewing court under section 91-14, HRS.

(b) The department is authorized to collect any overdue monetary fines and to enforce any overdue non-monetary sanctions imposed under any final decision, by referral of the matter to the attorney general for such action as it may deem necessary. In the director's discretion, any uncollected monetary fine may be referred to third parties, including a collection agency, or may be offset against any amounts owed by the department to the person. Any third party service fees incurred for the collection of any monetary fine, including collection agency fees, shall be the responsibility of the person against which the monetary fine was assessed." [Eff _____] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-14, 237D-4)

36. Material to be repealed is bracketed and stricken. New material is underscored.

37. These amendments to Chapter 18-237D, 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 Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, and filed with the Office of the Lieutenant Governor.

Director
Department of Taxation

APPROVED AS TO FORM:

Deputy Attorney General

DEPARTMENT OF TAXATION

Amendments to Chapter 18-237D,
Hawaii Administrative Rules

_____, 2018

SUMMARY

1. §§18-237D-4-01 and 18-237D-4-02 are amended.
3. §§18-237D-4-03, 18-237D-4-04, 18-237D-4-05, 18-237D-4-06, and 18-237D-4-07 are repealed.
4. §§18-237D-4-08, 18-237D-4-09, 18-237D-4-10, 18-237D-4-11, 18-237D-4-12, 18-237D-4-13, 18-237D-4-14, 18-237D-4-15, 18-237D-4-16, 18-237D-4-17, 18-237D-4-18, 18-237D-4-19, 18-237D-4-20, 18-237D-4-21, 18-237D-4-22, 18-237D-4-23, 18-237D-4-24, 18-237D-4-25, 18-237D-4-26, 18-237D-4-27, 18-237D-4-28, 18-237D-4-29, 18-237D-4-30, 18-237D-4-31, 18-237D-4-32, 18-237D-4-33, 18-237D-4-34, and 18-237D-4-35 are added.

§18-237D-4-01 Certificate of registration. (a)

Each operator or plan manager shall indicate, on its application for registration, the type of entity it is. If the transient accommodation is operated by a married couple or civil union partners, the married couple or civil union partners may jointly file one individual registration.

The registration shall include the name and address of the operator or plan manager and of each place of business subject to this chapter. An operator who acquires an additional transient accommodation or sells, transfers, assigns, or gives away a transient accommodation during the taxable year shall file an amended application for registration containing an updated list of each place of business subject to this chapter before the end of the taxable year or within thirty days of the acquisition or giveaway, whichever is later.

(b) There shall be no additional registration fees due if the operator or plan manager subsequent to its initial registration adds more units to its registration, nor shall there be a refund if the number of units is reduced. Upon receipt of the required payment, the director shall issue a certificate of registration.

(c) Any cancellation of a registration shall be without any refund of the registration fee paid.

Example 1:

Hotel Corporation, engaged in furnishing transient accommodations in Hawaii, owns and operates a hotel. The hotel has six rooms that are rented to transients. Hotel Corporation shall register its name and address and the business name (if any) and address of the hotel with the department and shall pay a one-time fee of \$15 for the registration.

Example 2:

Mr. Peters owns a single apartment unit he furnishes as a transient accommodation. Mr. Peters shall register with the department by providing his name and address, and the business name (if any) and address of the apartment. Mr. Peters shall pay a one-time fee of \$5 for the registration.

Example 3:

Property Corporation, a firm engaged in the property management business, manages a condominium apartment building consisting of fifty apartments. Each of the apartments in the building is owned by a different investor who rents the premises on a short-term basis. Although some of the apartments are occasionally rented on a long-term basis, Property Corporation obtains the consent of all the investors, files, and pays the sum of \$250 for fifty certificates of registration on behalf of the investors. Property Corporation has determined that this procedure greatly facilitates its activity. Within two months of operation, the climate of the rental market suddenly changes to a point that all of the investors request Property Corporation to change the mode of renting the apartments from a short-term rental to a long-term lease basis. Property Corporation in turn requests the department in writing to cancel all the certificates of registration in force. Neither Property Corporation nor any of the investors is entitled to a refund of any part of the \$250 in registration fees paid. Furthermore, Property Corporation shall prepare and submit an annual tax return summarizing the two months of transient accommodations activity for each of the fifty condominium apartments. Although Property Corporation must file fifty annual tax returns, payment of taxes on the fifty units may be made with a single check enclosed in the same envelope with the fifty returns.

Example 4:

The individual owners of Tropical Condominium Apartments (consisting of one hundred units) and Renter Corporation enter into a contract. According to the contract, Renter Corporation leases the entire building from the owners of Tropical Condominium Apartments to operate the apartments as transient accommodations. In this situation, Renter Corporation is deemed the operator. Renter Corporation shall register its name and address and its business name (if any) and address of the condominium apartments with the department. Renter Corporation shall pay a \$15 one-time fee for a single registration covering the one hundred-unit apartment.

As operator of the transient accommodations, Renter Corporation shall be liable for the tax imposed under this chapter and the general excise tax imposed under chapter 237, HRS, on the gross rental and gross income, respectively, derived from the transient accommodations and apartment rental activities, respectively.

The owners of the individual units in Tropical Condominium Apartments are separately liable for the general excise tax imposed under chapter 237, HRS, on the gross income or gross receipts derived from the activity of leasing the apartment units to Renter Corporation.

Example 5:

ABC, Inc. operates several facilities. On Oahu, ABC operates two hotels in Waikiki; a condominium apartment that is operated as a hotel; and a fifty-unit apartment facility in Punaluu, of which some of the units are rented for less than one hundred eighty consecutive days and other units for periods of over one hundred eighty consecutive days. ABC also operates a

hotel on the island of Hawaii, a condominium operated as a hotel on the island of Maui, and three hotels on the island of Kauai. ABC, Inc. shall register with the department and shall list the names and addresses of each of the hotels or condominium apartments and identify all of the specific rooms or apartments that are transient accommodations. Regarding the fifty-unit apartment located in Punaluu, ABC must give the name and address of the apartment building and identify the units that are customarily occupied by and regularly furnished to transients for consideration. If ABC owns apartment numbers 1 to 25 and 35 to 50, ABC will indicate the numbers 1 to 25 and 35 to 50 on the registration form. ABC does not have to enumerate each apartment number such as 1, 2, 3, etc.

Example 6:

Assume the same facts as Example 5, except that after complying with all requirements for registration, ABC, Inc. begins operating units 30-34 in the Punaluu apartment building as transient accommodations. ABC, Inc. also purchases a hotel on Kauai and begins operating it as a transient accommodation. ABC, Inc. must update its registration with the department to indicate that it is operating apartment numbers 1 to 25 and 30 to 50 of the Punaluu apartment building and also to indicate that it is operating the new hotel on Kauai before the end of the taxable year or within thirty days of the acquisition, whichever is later. [Eff 11/25/88; am 7/18/94; am 6/3/05; am] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

§18-237D-4-02 Display of the registration certificate. (a) Each operator or plan manager shall at all times conspicuously display the certificate of registration or a notice stating where the registration may be inspected at each place for which it is issued. The registration or notice must be conspicuously displayed:

- (1) Inside each unit of which the transient accommodation consists; or
- (2) At the front desk.

(b) For purposes of this section, "front desk" means a desk, kiosk, or the like at the same property as the transient accommodation unit that handles checking in or out and handles other requests from guests.

Example 1:

Mr. Peters owns a single condominium unit he furnishes as a transient accommodation. The unit is one of fifty units in its condominium building. Mr. Peters conspicuously displays inside the unit a notice stating that the registration may be inspected at the condominium building's front desk. Mr. Peters is in compliance with section 18-237D-4-02.

Example 2:

ABC, Inc. owns all one hundred units of a condominium building in Waikiki and furnishes them as transient accommodations. ABC, Inc. conspicuously posts its registration at the front desk of the building, but does not post anything inside each unit. ABC, Inc. is in compliance with section 18-237D-4-02 because it has posted the registration or a notice of where it may be inspected at the front desk.

Example 3:

Assume the same facts as Example 2, except that ABC, Inc. conspicuously posts its registration at its headquarters located in an office building in downtown Honolulu, rather than at the front desk of the building in Waikiki. In addition, ABC, Inc. conspicuously posts at the front desk of its Waikiki condominium building a notice stating that the registration may be inspected at its headquarters downtown, including the headquarters' address. ABC, Inc. is in compliance with section 18-237D-4-02 because it has conspicuously posted at the front desk a notice stating where the registration may be inspected.

Example 4:

Property Corporation, a firm engaged in the property management business, manages a condominium apartment building in Kaanapali consisting of fifty apartments. Each of the apartments in the building is owned by a different investor who rents the premises on a short-term basis. The condominium building has a front desk where a notice is conspicuously displayed stating that the registration for each of the fifty different apartments may be inspected at Property Corporation's Kahului office, including the office's address. All fifty of the building's apartment owners are in compliance with section 18-237D-4-02 because notice of where each of their registrations may be inspected is conspicuously posted at the building's front desk. [Eff 11/25/88; am 7/18/94; am 6/3/05; am] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

§18-237D-4-03 Repealed. [R]

§18-237D-4-04 Repealed. [R]

§18-237D-4-05 Repealed. [R]

§18-237D-4-06 Repealed. [R]

§18-237D-4-07 Repealed. [R]

§18-237D-4-08 Display of local contact information. Each operator or plan manager shall at all times conspicuously display the name, phone number, and electronic mail address of the local contact at the same place as the registration or notice stating where the registration may be inspected; provided that the local contact information shall be displayed at the same property as the transient accommodation.

Example 1:

Ms. Flora owns a single condominium unit she furnishes as a transient accommodation. The unit is one of twenty units in its condominium building. Ms. Flora conspicuously displays in the unit a notice stating that the registration may be inspected at the office of the property manager, which is located in a commercial building down the street. The registration and local contact information are available for inspection at the property manager's office. Ms. Flora is not in compliance with section 18-237D-4-08 because the local contact information is not displayed at the same property as the transient accommodation unit.

Example 2:

Building Managers Inc., a firm engaged in the property management business, manages a condominium apartment building consisting of one hundred apartment units. Each of the apartments in the building is owned by a different investor who rents the premises on a short-term basis. The condominium building has a front desk where a notice is conspicuously displayed stating that the registration and local contact information for each of the one hundred different apartments may be inspected upon request at the front desk. The owners of the apartment units are not in compliance with section 18-237D-4-08 because

information for the local contacts are not
conspicuously displayed. [Eff 11/25/88; am
7/18/94; am 6/3/05; am] (Auth: HRS
§§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

§18-237D-4-09 Procedures; scope and purpose.

(a) Sections 18-237D-4-09 to 18-237D-4-35 implement section 237D-4, HRS, and apply notwithstanding any contrary provision in title 14, HRS, and the rules adopted thereunder relating to the general enforcement of taxes.

(b) The administrative rules contained herein govern the practice and procedure in all citations for failure to display issued by the department, including the imposition of any monetary fines, and any subsequent rights of review.

(c) An agency appeal of a citation for failure to display under section 237D-4, HRS, shall be conducted as a contested case under chapter 91, HRS. The procedures for contested cases in chapter 91, HRS (including sections 91-8.5 through 91-15, HRS), shall apply to agency appeals.

(d) The administrative rules contained in sections 18-237D-4-09 through 18-237D-4-35 shall be construed to secure the just and speedy determination of every citation for failure to display issued.

(e) Should any paragraph, sentence, clause, phrase, or application of any portion of sections 18-237D-4-09 through 18-237D-4-35 be declared unconstitutional or invalid for any reason, the remainder of any other application of this chapter shall not be affected thereby. [Eff]
(Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

§18-237D-4-10 Definitions. As used in sections 18-237D-4-09 through 18-237D-4-35:

"Agency appeal" means an appeal of a citation for failure to display to the director or the director's designee pursuant to section 237D-4(h), HRS.

"Citation for failure to display" means a citation issued for a failure to display the information required under either section 237D-4(b), HRS, or 237D-4(d), HRS.

"Department" means the department of taxation.

"Director" means the director of taxation.

"Hearing" means a contested case hearing in accordance with chapter 91, HRS, to determine an agency appeal.

"Person" means one or more individuals, a company, a corporation, a partnership, an association, or any other type of legal entity and also includes an officer or employee of a corporation, a partner or employee of a partnership, a trustee of a trust, a fiduciary of an estate, or a member, employee, or principal of any other entity, who as such officer, employee, partner, trustee, fiduciary, member or principal is under a duty to perform and is principally responsible for performing the act in respect of which the violation occurs.

"Presiding officer" means the director or presiding officer who will be conducting the hearing.

"Respondent" means the person to whom the citation for failure to display is addressed.

"Special enforcement section" means the unit created within the department to carry out the functions set forth in section 231-81, HRS. [Eff
] (Auth: HRS §§231-3(9), 237D-16(b))
(Imp: HRS §237D-4)

§18-237D-4-11 Fine for failure to display. (a)

A person required under section 237D-4(b), HRS, to conspicuously display a certificate of registration issued under section 237D-4, HRS, as well as the name, phone number, and electronic mail address of a local contact but who fails to display one or more of those required items shall be in violation of section 237D-4(b), HRS, and shall be fined as follows:

- (1) For a first violation, a fine of \$500 per day per transient accommodation in violation;
- (2) For a second violation, a fine of \$1,000 per day per transient accommodation in violation, excluding days for which a fine was issued for a first violation;
- (3) For third and subsequent violations, a fine of \$5,000 per day per transient accommodation in violation, excluding days for which a fine was issued for first or second violations; provided that the department may issue a fine of greater than \$5,000 per day, but must provide a written explanation of why the fine amount is greater on the citation.

(b) Only one citation under subsection (a) may be issued to the person in any thirty day period for any failure to display per transient accommodation. The same person may be issued additional citations under subsection (a) during the thirty day period for any failure to display in other transient accommodations the person operates. Following the expiration of the thirty day period, a citation may be issued for failure to display in connection with the same transient accommodation if it continues to be in violation. Citations issued for second violations shall not include fines for days of violation for which a fine was issued in the citation for first violation for the same transient accommodation. Citations issued for third violations shall not include fines for days of violation for which fines were issued in the citations for the first and second violations for the same transient accommodation.

Example 1:

ABC, Inc. owns all one hundred units of a condominium building which it furnishes as a transient accommodation. ABC, Inc. conspicuously displays at the building's front desk its certificate of registration as a transient accommodations operator as well as the required local contact information. ABC, Inc. is in compliance with section 18-237D-4-11 because it has conspicuously displayed the local contact information in the same place as the registration or notice stating where the registration may be inspected.

(c) A person required under section 237D-4(c), HRS, to conspicuously provide in any advertisement a registration identification number issued under section 237D-4, HRS, as well as conspicuously provide the name, phone number, and electronic mail address of a local contact, or provide such local contact information upon the furnishing of the transient accommodation, but who fails to provide one or more of these required items shall be in violation of section 237D-4(d), HRS, and shall be fined as follows:

- (1) For a first violation, a fine of \$500 per day in violation, including the fifteen days for which the person received a written warning under section 18-237D-4-12 for the same transient accommodation if the person is cited for the first violation upon the person's failure to cure the violation during the fifteen-day period;
- (2) For a second violation, a fine of \$1,000 per day in violation, excluding days for which a fine was issued for a first violation for the same transient accommodation; and
- (3) For third and subsequent violations, a fine of \$5,000 per day in violation, excluding days for which a fine was issued for first and second violations for the same transient

accommodation; provided that the department may issue a fine of greater than \$5,000 per day, but must provide a written explanation of why the fine amount is greater on the citation.

(d) Only one citation under subsection (c) may be issued to the person in any thirty day period for any failure to display per transient accommodation. The same person may be issued additional citations under subsection (c) during the thirty day period for any failure to display related to other transient accommodations. Following the expiration of the thirty day period, a citation may be issued for failure to display in connection with the same transient accommodation or for any other transient accommodation. Citations issued for second violations shall not include fines for days of violation for which a fine was issued in the citation for first violation for the same transient accommodation. Citations issued for third violations shall not include fines for days of violation for which fines were issued in the citations for first and second violations for the same transient accommodation. Similarly, all citations issued for subsequent violations shall not include fines for days of violation for which fines were issued in prior citations for the same transient accommodation. [Eff
] (Auth: HRS §§231-3(9), 237D-16(b))
(Imp: HRS §237D-4)

§18-237D-4-12 Written warning for first violation under section 237D-4(d), HRS. (a) In lieu of issuing a person a first citation and fine for failure to display under section 18-237D-4-11(c)(1), the department shall issue the violator a written warning if the person has never before received a written warning for any violation for any transient accommodation under section 18-237D-4-11(c)(1).

(b) Only one written warning in lieu of a first violation and fine under subsection (a) may be issued per person. For any subsequent first violations the person may commit under section 18-237D-4-11(c)(1), the department shall issue a citation with a fine.

(c) For purposes of this section, a written warning shall contain:

- (1) The name and address of the violator;
- (2) The specific alleged violation or violations of title 14, HRS, or the administrative rules adopted thereunder;
- (3) The address of the transient accommodation, if possible;
- (4) A description of the advertisement where the transient accommodation is advertised. The advertisement shall be described to the best of the department's ability and may include such information as the name and date of the publication, the website address or any other description sufficient for a reasonable person to locate the advertisement; and
- (5) A statement that the violator may be cited under section 18-237D-4-13 beginning fifteen days after the written warning's date of issuance for any violation related to this or any other transient accommodation, including any violations related to other transient accommodations operated by the violator the department subsequently discovers during the fifteen-day period.

(d) The department shall keep a record of all written warnings issued.

(e) A written warning shall be served by:

- (1) Personal service on the respondent, respondent's officer or director, or respondent's registered agent for service of process as shown in the records of the department of commerce and consumer affairs;
- (2) Certified mail, restricted delivery, sent to the respondent's last known business or residence address or the address of respondent's registered agent for service as shown in the records of the department of commerce and consumer affairs; or
- (3) Publication at least once in each of two successive weeks in a newspaper of general circulation if service by certified mail is not made because of refusal to accept service or because the department has been unable to ascertain the address necessary for service under paragraph (2) after reasonable and diligent inquiry. Publication shall consist solely of the respondent's name and a statement that the respondent is being served its written warning by the publication and has fifteen days from the date of service to cure its violation. No return information or other personal or confidential information shall be disclosed in the publication.

If the written warning is served by certified mail under subsection (e)(2), the date of service of the written warning is the date the written warning was delivered. If the written warning is served by publication under subsection (e)(3), the date of service of the written warning is the last date of publication in the second successive week.

(f) If, during the fifteen-day period described under subsection (c)(5), the department discovers another transient accommodation operated by the violator for which a citation for a first violation may be issued, the department shall not issue such citation until the fifteen-day period has elapsed; provided that if the violator does not cure all of its violations during the fifteen-day period provided by

the written warning, the department shall issue citations for all transient accommodations in violation after the expiration for all days during which they were in violation pursuant to section 18-237D-4-11.

Example 1:

Operator LLC owns one condominium unit which it operates as a transient accommodation. Operator LLC submits its unit to TAbroker.com, a website which displays a searchable database of units for rent. The department discovers that the listing for Operator LLC's unit does not display Operator LLC's registration identification number, nor is there an electronic link leading to the number. The department reviews its records and sees that it has never issued a warning or a citation to Operator LLC. The department shall issue a written warning to Operator LLC under section 18-237D-4-12. [Eff] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

§18-237D-4-13 Citation for failure to display; requirements. (a) A citation for failure to display must be issued on the forms prescribed by the department.

(b) A citation for failure to display shall include the following in its contents:

- (1) The name and address of the respondent;
- (2) The specific alleged violation or violations of title 14, HRS, or the administrative rules adopted thereunder which constitute cause for the issuance of the citation for failure to display;
- (3) The location of where the violation occurred or is occurring. If the citation is issued pursuant to section 237D-4(b), HRS, the location shall include the address of the transient accommodation. If the citation is issued under section 237D-4(d), HRS, the location shall include a description of the advertisement and a description of the transient accommodation. The advertisement shall be described to the best of the department's ability and may include such information as the name and date of the publication, the website address or any other description sufficient for a reasonable person to locate the advertisement. The transient accommodation shall also be described to the best of the department's ability, including the address if possible;
- (4) A signature of the special enforcement section employee or other department employee authorized to issue the citation. By signing the citation for failure to display, the issuer certifies that the statements contained in the citation are true and correct, to the best of his or her knowledge. A citation that has not been signed by a duly authorized employee of the department shall be void *ab initio*;

- (5) If applicable, the amount of the monetary fine imposed against the respondent;
- (6) A space for the respondent, or the respondent's agent or representative, to acknowledge receipt of the citation by signature. If the respondent or respondent's agent or representative refuses to sign or if for some other reason the department employee is unable to acquire a signature to acknowledge receipt, the citation may indicate "refused to sign", "unavailable", "no signature for safety reasons", "service by certified mail", "service by publication", or other language explaining the lack of signature by the respondent or the respondent's agent or representative. The lack of the signature of the respondent or the respondent's agent or representative shall not affect the validity of the citation; and
- (7) Information regarding the respondent's appeal rights, including the requirement that the citation must be returned to the department within thirty days from the date the citation was served, respondent's right to a hearing before the director or the director's designee, and contact information for where the respondent may obtain further information.

Example 1:

Operator LLC owns one condominium unit on the island of Kauai which it operates as a transient accommodation. On January 15, Operator LLC's unit is advertised on TAbroker.com, a website which displays a searchable database of units for rent. On January 15, the department discovers that the listing for Operator LLC's unit does not display Operator LLC's registration identification number, nor is there an electronic link leading to the number. The department

reviews its records and sees that it has never issued a warning or a citation to Operator LLC for any transient accommodation. The department issues a written warning to Operator LLC under section 18-237D-4-12, explaining that Operator LLC has fifteen days to cure its violation by ensuring that its registration identification number is displayed in the advertisement. On January 31, the department checks on the advertisement again and sees that Operator LLC's unit has been continuously advertised since January 15 and has never had the registration identification number displayed or linked to. The department shall issue Operator LLC a citation for failure to display and the citation shall include a fine for a first violation of \$500 multiplied by the seventeen days during which this transient accommodation has been in violation for a total fine of \$8,500.

Example 2:

Assume the same facts as Example 1, except that the department checks on the advertisement on January 27 and sees that the registration identification number is now displayed. The department shall not issue a citation because Operator LLC cured its violation within the fifteen-day period granted by the written warning.

Example 3:

Assume the same facts as Example 1, except that in February, Operator LLC purchases a second condominium unit on Oahu and begins operating it as a transient accommodation. On March 1, Operator LLC begins advertising the Oahu unit in "AinaBNB", a monthly print magazine that advertises vacation rentals. On March 5, the department sees the March issue of AinaBNB and discovers that the advertisement does not display

Operator LLC's registration identification number. The department reviews its records and sees that it has already issued Operator LLC a written warning and a citation for a first violation, albeit one for a different transient accommodation. The department shall issue Operator LLC a citation for failure to display and the citation shall include a fine of \$500 multiplied by the one day during which the transient accommodation has been in violation for a total fine of \$500.

Example 4:

Assume the same facts as Example 3, except that AinaBNB is a daily publication and runs Operator LLC's unit advertisement every day from March 1 to March 5. The citation shall include a fine of \$500 multiplied by the five days of violation for a total fine of \$2,500.

Example 5:

On July 1, while inspecting a transient accommodation unit operated by Surf Wax Rentals LLC, the department discovers Surf Wax Rentals LLC has failed to conspicuously display its registration identification number inside the unit or at the front desk. Surf Wax Rentals LLC's agent admits that the unit has been rented out for thirty days and during that time Surf Wax Rentals LLC never conspicuously displayed its registration identification number. The department reviews its records and sees that it has never issued Surf Wax Rentals LLC a citation. The department shall issue Surf Wax Rentals LLC a citation for failure to display and the citation shall contain a fine for a first violation of \$500 multiplied by the thirty days during which the transient accommodation has been in violation for a total fine of \$15,000. Written warnings are not issued for failures to conspicuously

display the information required by section 237D-4(b), HRS.

Example 6:

Assume the same facts as Example 5, except that on July 15, the department goes to TAbroker.com and sees Surfswax Rentals LLC's unit listed in an advertisement that fails to display the registration identification number. The department reviews its records and sees that it previously issued a fine for failure to display under section 237D-4(b), HRS, on July 1, but that it has never issued a warning or citation with a fine for failure to display under section 237D-4(d), HRS. The department shall issue Surfswax Rentals LLC a written warning under section 18-237D-4-12. The department shall not issue a citation with a fine for a second violation because violations under sections 237D-4(b) and (d), HRS, are considered separate violations. Additionally, the fact that the department issued the citation under section 237D-4(b), HRS, fewer than thirty days earlier and for a violation in this same transient accommodation shall not preclude the department from issuing a written warning or a citation under section 237D-4(d), HRS, to the same person and for a violation related to the same transient accommodation. A fine issued under section 237D-4(b), HRS, and a fine issued under section 237D-4(d), HRS, may be issued to the same person during the same thirty-day period because they are considered separate violations.

Example 7:

FacePlus is an online social networking website which allows its users to create a user profile and post status updates for other users to see. Sally Social, an individual user of FacePlus, posts a status update which says she is

offering to rent out the cottage on her property for \$200 per night. The department may issue a warning or citation to Sally Social because she is an operator of a transient accommodations and her status update is an advertisement for a transient accommodation. [Eff]
(Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

§18-237D-4-14 Issuance of a citation for failure to display. (a) A citation for failure to display is both a notice of violation and an offer to settle an administrative case involving any violation related to the citation, and may include a monetary fine where permitted under the applicable law and rules.

(b) Any employee of the department who is assigned to the special enforcement section or otherwise duly authorized by the department may issue a citation for failure to display to a person if there is reason to believe the person has violated or is violating section 237D-4, HRS, or any administrative rules adopted thereunder.

(c) A citation for failure to display may be served by:

- (1) Personal service on the respondent, respondent's officer or director, or respondent's registered agent for service of process as shown in the records of the department of commerce and consumer affairs;
- (2) Certified mail, restricted delivery, sent to the respondent's last known business or residence address or the address of respondent's registered agent for service as shown in the records of the department of commerce and consumer affairs; or
- (3) Publication at least once in each of two successive weeks in a newspaper of general circulation if service by certified mail is not made because of refusal to accept service or because the department has been unable to ascertain the address necessary for service under paragraph (2) after reasonable and diligent inquiry. Publication shall consist solely of the respondent's name and a statement that the respondent is being served a citation for failure to display under section 237D-4, HRS, by the publication and has thirty days from the date of service to respond. No return information or other personal or

§18-237D-4-15 Response to citation for failure to display.

(a) A respondent must respond to a citation for failure to display within thirty days from the date of service by:

- (1) Paying to the department the stated amount of the monetary fine, which shall constitute acknowledgment of the violation and a waiver of further rights of review; provided that if the tendered payment is dishonored for any reason not the fault of the department, the respondent will be deemed not to have answered the citation; or
- (2) Appealing the citation by making a written request to the department for a contested case hearing in accordance with these rules and chapter 91, HRS, including but not limited to section 18-237D-4-18. Written requests for contested case hearings may be indicated on the citation itself.

(b) If the respondent fails to respond to the citation for failure to display within thirty days from the date the citation was served:

- (1) The failure is an acknowledgment that the allegations contained in the citation are true and that the relief sought in the citation, including any monetary fines, is appropriate; and
- (2) The department may collect any overdue monetary fines and enforce any overdue non-monetary sanctions as set forth in section 18-237D-4-35(b).

(c) The hearing of an agency appeal shall be limited solely to the allegations contained in the citation. No other matter may be considered, including, but not limited to, any disputes relating to any tax liability. [Eff _____] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

§18-237D-4-16 Venue. Venue of the hearing of an agency appeal is proper in the taxation district where the transient accommodation that is the subject of the violation is located, or such other location as the parties to the hearing may mutually agree. Any party may participate in the hearing by telephone; provided that the presiding officer receives written notice of intent to appear by telephone at least five days before the hearing. [Eff _____] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

18-237D-4-17 Docket. The director or the director's representative shall maintain a docket of all agency appeals of citations for failure to display and each such agency appeal shall be assigned a number. The docket shall be a list of appeals containing the names of those appealing, the number assigned to their appeals, and a list of records or documents filed for each appeal, including but not limited to all pleadings, motions, intermediate rulings, evidence received or considered, persons who provided oral testimony , exhibits, statements of matters officially noticed, offers of proof and rulings thereon, proposed findings and exceptions, reports of the presiding officer, and staff memoranda. [Eff] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

18-237D-4-18 Hearing; request for and scheduling. (a) Upon the respondent's filing of a completed form prescribed by the department as set forth in subsection (b), the director or the director's designee shall schedule a hearing.

(b) The department shall prepare a form for a written agency appeal request that allows the respondent to provide a concise statement of the basic facts, the issues contested, and the relief sought. The department may prepare such a form in the citation itself. The form written agency appeal request prepared by the department must be used to request an agency appeal, and written requests in any other form shall not constitute a request for agency appeal under this section.

(c) No hearing shall be held until due notice is given to all parties as provided in sections 91-9 and 91-9.5, HRS, or their successor laws. [Eff
] (Auth: HRS §§91-2, 231-3(9), 237D-
16(b)) (Imp: HRS §§91-9, 91-9.5, 237D-4)

18-237D-4-19 Presiding officer of hearings; duties and powers; substitute presiding officers. (a)

The director shall conduct the hearings on an appeal, shall render the decision, and shall issue such orders and take such actions as may be required; provided that the director may designate a representative, who shall be the presiding officer, to conduct the hearings, and make recommendations in writing to the director, which shall include recommendations as to findings of fact and conclusions of law. If the presiding officer's recommendation is adverse to any party other than the department, the recommended decision shall be served on the person contesting the citation. The person contesting the citation shall thereafter have ten days from the date the recommendation is mailed to file exceptions to the recommendation and to present arguments to the director in writing. The director shall then personally consider the whole record or such portion thereof as may be cited by the parties, shall render the decisions as to findings of fact and conclusions of law in writing, and shall issue such orders and take such actions as may be further required.

(b) In all hearings, the presiding officer shall have the power to give notice of the hearing, arrange for the administration of oaths, examine witnesses, certify to official acts, rule on offers of proof, receive relevant evidence, regulate the course and conduct of the hearing, including regulating the manner of any examination of a witness to prevent harassment or intimidation and ordering the removal of disruptive individuals, and perform such other duties necessary for the proper conduct of the hearings.

(c) The presiding officer may subpoena witnesses and books, papers, documents, other designated objects, or any other record, however maintained, pursuant to section 231-7, HRS.

(d) Any of these rules of practice and procedure may be suspended or waived by stipulation of all the parties.

(e) The presiding officer may engage the services of a stenographer, or someone similarly

skilled, to take a verbatim record of and transcribe the evidence presented at any hearing if requested for purposes of rehearing or court review. The party making the request shall be responsible for:

- (1) The fees and costs for the transcript;
- (2) Making the necessary arrangements to have the stenographer, or someone similarly skilled, to notify all the parties in writing when the transcript is available; and
- (3) Filing a certified copy of the transcript as part of the record.

If a verbatim record is taken and transcribed, any other party may request a copy of the transcript at that party's cost

(f) If a presiding officer is absent from a scheduled hearing or is incapacitated from performance of duty, the director may designate another representative to serve as a substitute presiding officer without abatement of the proceedings. [Eff

] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 91-11, 231-7, 237D-4)

§18-237D-4-20 Disqualification of presiding officers. (a) A presiding officer shall be disqualified from deciding an agency appeal if the presiding officer:

- (1) Has a financial interest, as defined by section 84-3, HRS, in a business or other undertaking that will be directly affected by the decision of the agency appeal;
- (2) Is related within the third degree by blood or marriage to any party to the proceeding or any party's representative or attorney;
- (3) Has participated in the investigation preceding the institution of the agency appeal proceedings or has participated in the development of the evidence to be introduced at the hearing; or
- (4) Has a personal bias or prejudice concerning a party that will prevent a fair and impartial decision involving that party.

(b) A presiding officer shall withdraw from further participation in the proceedings upon discovery of a disqualifying conflict of interest or bias if the factual circumstances are undisputed. If the allegation of a disqualifying conflict of interest or bias is not clearly substantiated, the presiding officer need not voluntarily withdraw and the party seeking the disqualification may file a motion to disqualify the presiding officer. The motion shall be filed and decided before the evidentiary portion of the hearing on the agency appeal. If a presiding officer is disqualified, the director shall designate another representative to serve as the presiding officer. If the disqualified presiding officer is the director, the director shall designate a representative to serve as the presiding officer whose findings of fact, conclusions of law, and decision and order shall be final and binding. [Eff]
(Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

§18-237D-4-21 Communications with the director or presiding officers. (a) No person shall communicate with the director or presiding officer regarding matters to be decided by the director or presiding officer in any agency appeal with the intent, or the appearance of the intent, to influence the decision of the director or presiding officer, unless all of the parties to the proceedings are given notice of communication and an opportunity to also communicate with the director or presiding officer.

(b) If a communication is made privately with the presiding officer in violation of subsection (a), the presiding officer shall disclose the communication to all parties on the record of the proceedings and afford all parties an opportunity to respond to, refute, or otherwise comment on the ex parte communication. [Eff _____] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 91-13, 237D-4)

§18-237D-4-22 Computation of time. In computing any time period under sections 18-237D-4-01 through 18-237D-4-35, the day of the act, event, or default from which the period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, state holiday, or state government furlough day. Intermediate Saturdays, Sundays, legal holidays, or government furlough days shall be included. Intermediate Saturdays, Sundays, state holidays, or state government furlough days shall be excluded in the computation when the period of time prescribed or allowed is less than seven days. Except as otherwise provided, whenever an act required to be performed under these rules may be accomplished by mail, the act shall be deemed to have been performed on the date the items are postmarked. Any reference in sections 18-237D-4-01 through 18-237D-4-35 to the United States mail shall be treated as including a reference to a designated delivery service and any reference to a postmark by the United States Postal Service shall be treated as including a reference to any date recorded or marked by the designated delivery service. As used in this section, "designated delivery service" means any delivery service designated for purposes of section 7502 of the federal Internal Revenue Code. [Eff] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

§18-237D-4-23 Filing of documents; amendment; dismissal; retention. (a) All pleadings, submittals, petitions, applications, charges, reports, maps, exceptions, briefs, memorandums, and other papers required to be filed in any agency appeal shall be filed with the director or as instructed by the director or presiding officer. Such papers may be sent electronically, by facsimile transmission, by United States mail, postage prepaid, or by hand-delivery to the department, within the time limit, if any, as set forth in any statute or rule, for such filing. The date on which the papers are actually received by the department shall be deemed the date of filing.

(b) Filing electronically means emailing the filing in pdf format or other format as instructed by the director or presiding officer to an email address designated by the director or presiding officer. The email shall include a subject line identifying the appeal number, the respondent, and the hearing date and a description of the papers being filed.

(c) All papers filed with the department, other than papers filed electronically or by facsimile, shall be written in ink, typewritten, or printed, shall be plainly legible, shall be on strong durable paper, not larger than 8-1/2 by 11 inches in size except that tables, maps, charts, and other documents may be larger, but shall be folded to the size of the documents to which they are attached. Papers filed electronically or by facsimile must be transmitted in a form that can be legibly and understandably printed to 8-1/2 by 11 inch paper or 8-1/2 by 17 inch paper.

(d) All papers must be signed in ink by the party or a duly authorized agent or attorney. The presentation to the director (whether by signing, filing, submitting, or later advocating) of any paper shall constitute a certification that the party in interest has read the document; that to the best of the party's knowledge, information, and belief every statement contained in the document is true and no such statements are misleading; and that the document is not interposed for delay.

(e) Unless otherwise specifically provided by a particular rule or order of the department, an original and two copies of all papers shall be filed. Papers sent electronically or by facsimile transmission shall not require any copies. However, the original must be presented to the department upon request.

(f) The initial document filed by any person in any proceeding shall state on the document's first page the name and mailing address of the person or persons who may be served with any documents filed in the proceeding.

(g) All papers filed in an agency appeal shall be served on all other parties to the hearing by the filing party in accordance with any deadlines imposed by the director or presiding officer. Service may be accomplished by:

- (1) Personal service on the party, party's officer or director, or party's registered agent for service of process as shown in the records of the department of commerce and consumer affairs; or
- (2) Mail to the party's last known business or residence address or the address of respondent's registered agent for service as shown in the records of the department of commerce and consumer affairs.

(h) If any document initiating or filed in an agency appeal is not in substantial conformity with the applicable rules of the department as to the document's contents, or is otherwise insufficient, the presiding officer, on his or her own motion, or on motion of any party, may strike the document, or require its amendment. The document initiating the agency appeal may not be stricken, but may be subject to required amendments. If amendments are required, the document with amendments shall be effective as of the date of the original filing.

(i) All documents filed in an agency appeal shall be retained in the files of the presiding officer, except that the presiding officer may permit the withdrawal of original documents upon submission

of properly authenticated copies to replace the original documents. [Eff _____] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

§18-237D-4-24 Filed documents available for public inspection; exceptions. (a) Unless otherwise provided by statute, rule, or order of the presiding officer, all information contained in any document filed in any agency appeal shall be available for inspection by the public after final decision.

(b) Confidential treatment may be requested where authorized by statute. For good cause shown, the presiding officer shall grant such a request.

(c) When permitted or authorized, matters of public record may be inspected in the appropriate offices of the department during regular office hours.

[Eff _____] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

§18-237D-4-25 Appearances in agency appeal. (a)

An individual may appear on the individual's own behalf; a member of a partnership may represent a partnership; an officer or authorized employee of a corporation or trust or association may represent the corporation, trust, or association; and an officer or authorized employee of a corporation or trust or association may represent the corporation, trust, or association in the agency appeal.

(b) A person may be represented by an attorney qualified to practice before the supreme court of Hawaii in the agency appeal under these rules.

(c) A person shall not be represented in the agency appeal except as stated in subsections (a) and (b).

(d) Any person appearing on behalf of a respondent shall file a notice of appearance and a power of attorney immediately but no later than seven days prior to the date of the first appearance. A person may not appear on behalf of a respondent without properly filing a notice of appearance and a power of attorney. [Eff _____] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

§18-237D-4-26 Substitution of parties. Upon motion and for good cause shown, the presiding officer may order substitution of parties, except that in the case of a death of a party, substitution may be ordered without the filing of a motion. [Eff] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

§18-237D-4-27 Consolidation; separate hearings.

(a) The presiding officer, upon his or her own initiative or upon motion, may consolidate for hearing or for other purposes or may contemporaneously consider two or more proceedings involving the same parties if the presiding officer finds that the consolidation or contemporaneous hearing will be conducive to the proper dispatch of the business of the department and to the ends of justice and will not unduly delay the proceedings.

(b) The presiding officer, upon his or her own initiative or upon motion, may separate any issue, appeal, or other matter for hearing or for other purposes if the director or presiding officer finds that the separation will be conducive to the proper dispatch of the business of the department and to the ends of justice. [Eff _____] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

§18-237D-4-28 Intervention. Applications to intervene in a proceeding shall comply with section 18-237D-4-23 and shall be served on all parties. Applications for intervention will be granted or denied at the discretion of the presiding officer. As a general policy, such applications shall be denied unless the petitioner shows that it has an interest in a question of law or fact involved in the contested matter and the petitioner's intervention will not result in the potential unauthorized disclosure of a return or return information. [Eff _____]
(Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

§18-237D-4-29 Prehearing conferences; exchange of exhibits; briefs. (a) The presiding officer may hold or cause to be held prehearing conferences with the parties for the purpose of formulating or simplifying the issues, arranging for the exchange of proposed exhibits or proposed written testimony, setting of schedules, exchanging of names of witnesses, limitation of number of witnesses, and such other matters as may expedite orderly conduct and disposition of the proceeding as permitted by law.

(b) The presiding officer may request briefs setting forth the issues, facts, and legal arguments upon which the parties intend to rely and the presiding officer may fix the conditions and time for the filing of briefs and the number of pages. Exhibits may be reproduced in an appendix to the brief. A brief of more than twenty pages shall contain a subject index and table of authorities. [Eff _____] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

§18-237D-4-30 Motions. (a) All motions other than those made during a hearing shall be made in writing to the presiding officer, shall state the relief sought, and shall be accompanied by an affidavit, memorandum, or both setting forth the grounds upon which they are based. The presiding officer shall set the time for all motions and opposing affidavits and memorandums, if any.

(b) The moving party shall serve a copy of the motions and all supporting documents on all other parties at least fourteen days prior to the hearing on the motion. Service shall be in accordance with the rules of service of papers under section 18-237D-4-23(g).

(c) A memorandum in opposition or a counter affidavit shall be served on all parties not later than seven days prior to the hearing. Service shall be in accordance with the rules of service of papers under section 18-237D-4-23(g).

(d) Failure to serve or file a memorandum in opposition to a motion or counter affidavit or failure to appear at the hearing shall be deemed a waiver of objection to the granting or denial of the motion.
[Eff _____] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

§18-237D-4-31 Evidence. (a) The presiding officer shall rule on the admissibility of all evidence. The presiding officer may exercise discretion in the admission or rejection of evidence and the exclusion of immaterial, irrelevant, or unduly repetitious evidence with a view to doing substantial justice.

(b) Evidence shall generally consist of the citation for failure to display, any applicable reports, and other written statements submitted by either party, if any.

(c) When objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly. Formal exceptions to rulings are unnecessary and need not be taken.

(d) With the approval of the presiding officer, a witness may read testimony into the record on direct examination. Before any prepared testimony is read, unless excused by the presiding officer, the witness shall deliver copies thereof to the presiding officer and all parties. If the presiding officer deems that substantial savings in time will result, a copy of the prepared testimony may be received in evidence without reading.

(e) If relevant and material matter is offered in evidence in a document containing other matters, the party offering it shall designate specifically the matter so offered. If the other matter in the document would burden the record, at the discretion of the presiding officer, the relevant and material matter may be read into the record or copies of it received as an exhibit. Other parties shall be afforded opportunity at the time to examine the document, and to offer in evidence other portions believed material and relevant.

(f) If any matter contained in a document on file as a public record with the department is offered in evidence, unless otherwise directed by the presiding officer, the document need not be produced and may be received in evidence by reference.

(g) Official notice may be taken of such matters as may be judicially noticed by the courts of the State of Hawaii.

(h) Exhibits shall be prepared in the same format as that required for the filing of documents under section 18-237D-4-23, unless otherwise directed or permitted by the presiding officer.

(i) At the hearing, the presiding officer may require the production of further evidence upon any issue and further hearings necessary for the consideration of such evidence. The presiding officer may authorize the filing of specific documentary evidence as a part of the record within a fixed time.

[Eff] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-10, 237D-4)

§18-237D-4-32 Continuances or extensions of time. Whenever a person or agency has a right or is required to take action within the period prescribed or allowed by this chapter for an agency appeal, the presiding officer may:

- (1) Before or after the expiration of the prescribed period, on his own without advance notice, extend such period;
- (2) Upon motion before the expiration of the prescribed period, extend such period by granting a continuance; or
- (3) Upon motion after the expiration of the prescribed period, permit the act to be done after the expiration of a specified period where the failure to act is reasonably shown to be excusable. [Eff _____] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-2, 237D-4)

§18-237D-4-33 Service of decisions. All final orders, opinions, or rulings entered in an agency appeal shall be served in accordance with section 91-12, HRS. [Eff] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-12, 237D-4)

§18-237D-4-34 Correction of transcript. Motions to correct the transcript shall be made within five days after the receipt of the transcript by the movant or within fourteen days from the date the stenographer, or someone similarly skilled, gives notice to all the parties that the transcript is available under section 18-237D-4-19(e), whichever is earlier. The motion shall be acted upon by the presiding officer. [Eff _____] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

§18-237D-4-35 Enforcement and stay. (a) Unless otherwise stated in a final decision, all monetary fines and non-monetary sanctions shall be due and payable within thirty days of the service of the final decision imposing such fines and sanctions, provided that if any party appeals such final decision to the circuit court, such monetary fines and non-monetary sanctions may be stayed by the reviewing court under section 91-14, HRS.

(b) The department is authorized to collect any overdue monetary fines and to enforce any overdue non-monetary sanctions imposed under any final decision, by referral of the matter to the attorney general for such action as it may deem necessary. In the director's discretion, any uncollected monetary fine may be referred to third parties, including a collection agency, or may be offset against any amounts owed by the department to the person. Any third party service fees incurred for the collection of any monetary fine, including collection agency fees, shall be the responsibility of the person against which the monetary fine was assessed. [Eff
] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-14, 237D-4)

DEPARTMENT OF TAXATION

Chapter 18-237D, Hawaii Administrative Rules, on the Summary Page dated _____, was adopted on _____, following public hearing held on October 19, 2018 after public notice was given in the Honolulu Star Advertiser, the Garden Isle, the Maui News, West Hawaii Today, and the Hawaii Tribune-Herald on September 12, 2018.

These amendments to chapter 18-237D shall take effect ten days after filing with the Office of the Lieutenant Governor.

LINDA CHU TAKAYAMA
Director of Taxation

APPROVED:

DAVID Y. IGE
Governor
State of Hawaii

Dated: _____

APPROVED AS TO FORM:

Deputy Attorney General

IV. Old Business

D. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 12, promulgated by DLIR, as follows:

- a. Chapter 229 General, **Administrative and Legal Provisions,**
- b. Chapter 230.1 **Elevators, Escalators, Dumbwaiters, Moving Walks, and Material Lifts and Dumbwaiters with Automatic Transfer Devices;**
- c. Chapter 240 **Elevator Requirements for Individuals with Disabilities**

**SMALL BUSINESS STATEMENT
"AFTER" PUBLIC HEARING TO THE
SMALL BUSINESS REGULATORY
REVIEW BOARD**

(Hawaii Revised Statutes (HRS), §201M-3)

Department or Agency: Department of Labor and Industrial Relations

Administrative Rule Title and Chapter: Title 12 Department of Labor and Industrial Relations, Subtitle 8 Division of Occupational Safety and Health, Part 11 Elevators and Related Systems.

Chapter Name: 12-229 General, Administrative and Legal Provisions, 12-230.1 Elevators, Escalators, Dumbwaiters, Moving Walks, and Material Lifts and Dumbwaiters with Automatic Transfer Devices; 12-240 Elevator Requirements for Individuals with Disabilities

Contact Person/Title: Bill Kunstman, Assistant to the Director

Phone Number: 586-8845

E-mail Address: william.g.kunstman@hawaii.gov **Date:** 11/30/2018

- A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.**

The proposed changes are essentially housekeeping to either match current custom and practice or conform the rules to the statute as well as a modest increase in fees to reflect the increased costs associated with collective bargaining, fringe rate, and increases in the costs of goods and services as reflected in the Consumer Price Index (CPI).

The cumulative increase in collective bargaining costs from FY2012-2019 for Bargaining Units 3 & 4 is 20.6%, the CPI has increased by 10%, and the fringe rate has increased from 41.54% to 60.08%

- B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7?**

Draft rules in Ramseyer format are available at:

<https://labor.hawaii.gov/hiosh/proposed-rules/>

830 Punchbowl Street, Room 423, Honolulu, Hawaii 96813
2:00 – 4:00 p.m., Monday to Friday except State holidays.

- I. **Rule Description:** Amendment and Compilation of Chapters 12-229, 12-230.1, and 12-240

II. Will the proposed rule(s) affect small business?

Yes

III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance?

No

IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a))

No

V. Please explain how the agency involved small business in the development of the proposed rules.

The department held a meeting with stakeholders from the elevator industry and representatives from the Building Owners and Managers Association (BOMA) on September 5, 2018. Most of the elevator industry representatives and many of the BOMA members are small businesses as defined by the SBRRB statute.

DLIR sent the proposed rules with the invitation to attend the meeting to explain the changes. Twenty-one individuals attended the meeting and there were no recommendations to incorporate any changes to the proposed rules.

a. Were there any recommendations incorporated into the proposed rules? If yes, explain. If not, why not?

DLIR has maintained a good, open relationship with the affected stakeholders for a number of years, including during the three processes to revise the administrative rules since 2011 (changes adopted 6/14, 11/16).

When there are problems within the elevator industry that involve the department, either the industry will request a meeting with the Director/Elevator Section or the Director/Elevator Section will invite the industry in.

In summary, DLIR has developed and maintained an excellent relationship with the regulated community. Any potential problems, including in proposed rules, are worked out before the department undertakes the formal rules process.

VI. If the proposed rule(s) affect small business, and are not exempt as noted above, please provide the following information:

1. A description of how opinions or comments from affected small businesses were solicited.

The department held a meeting with stakeholders from the elevator industry and representatives from the Building Owners and Managers

Association (BOMA) on September 5, 2018.

DLIR sent the proposed rules with the invitation to attend the meeting to explain the changes. Twenty-one individuals attended the meeting and there were no recommendations to incorporate any changes to the proposed rules.

2. A summary of the public's and small businesses' comments.

Not applicable.

3. A summary of the agency's response to those comments.

Not applicable.

4. The number of persons who:

(i) Attended the public hearing: 0

(ii) Testified at the public hearing: 0

(iii) Submitted written comments: 0

5. Was a request made at the hearing to change the proposed rule in a way that affected small business?

(i) If "Yes," was the change adopted? No

(ii) If No, please explain the reason the change was not adopted and the problems or negative result of the change.

No requests were made.

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

Amendment and Compilation of Chapters 12-229,12-230.1,
and 12-240

Hawaii Administrative Rules

December 3, 2018

SUMMARY

1. §§12-229-1 to 12-229-8.1 are amended and compiled.
2. §§12-229-1 to 12-229-11.1 are compiled.
3. §12-229-12.1 is amended and compiled.
4. §§12-229-13.1 to 12-229-15.1 are compiled.
5. §12-229-16.1 is amended and compiled.
6. §12-229-17 is compiled.
7. §§12-230.1-1 to 12-230.1-2 are compiled.
8. §§12-230.1-3 to 12-230.1-4 are amended and compiled.
9. §12-240-1 is compiled.
10. §§12-240-2 to 12-240-9 are amended and compiled.
11. §§12-240-10 to 12-240-11 are compiled.
12. §§12-240-12 to 12-240-14 are amended and compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 8

DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

PART 11

ELEVATORS AND RELATED SYSTEMS

CHAPTER 229

GENERAL, ADMINISTRATIVE, AND LEGAL PROVISIONS

§12-229-1	Scope and application
§12-229-2	Definitions
§12-229-3	Repealed
§12-229-3.1	Codes incorporated and adopted by reference
§12-229-4	Repealed
§12-229-4.1	Installation and alteration permits
§12-229-5	Repealed
§12-229-5.1	Permits to operate
§12-229-6	Repealed
§12-229-6.1	Fees
§12-229-7	Repealed
§12-229-7.1	Inspections and tests
§12-229-8	Repealed
§12-229-8.1	Rights and enforcement
§12-229-9	Repealed
§12-229-9.1	Complaints

§12-229-1

§12-229-10	Repealed
§12-229-10.1	Reporting of accidents
§12-229-11	Repealed
§12-229-11.1	Investigations
§12-229-12	Repealed
§12-229-12.1	Violations and penalties
§12-229-13	Repealed
§12-229-13.1	Review and appeal
§12-229-14	Repealed
§12-229-14.1	Trade secrets
§12-229-15	Repealed
§12-229-15.1	Notifications of transfer and location
§12-229-16	Repealed
§12-229-16.1	Variances
§12-229-17	Records

Historical Note: Chapter 12-229 is based substantially on chapter 12-241, Hawaii Administrative Rules. [Eff 7/6/98; R 6/19/00]

§12-229-1 Scope and application. This part contains general and administrative rules and legal provisions which apply to this part. This part applies to all elevators, escalators, moving walks, dumbwaiters, material lifts, lifts for the mobility impaired, personnel hoists, and amusement rides in the State, with the following exceptions:

- (1) Equipment or apparatus installed in private residences provided the equipment or apparatus is not accessible to the public or to other occupants in the building;
- (2) Coin or token operated amusement rides considered or known in the amusement trade as kiddie rides;
- (3) Material hoists used to raise or lower materials during construction, alteration or demolition. (within the scope of ANSI A10.5); and
- (4) Equipment or apparatus installed in buildings or structures wholly owned and operated by the United States government. [Eff 6/19/00; am and comp 6/30/14; comp 11/10/16; am and

comp] (Auth: HRS §394-4)
(Imp: HRS §397-4)

§12-229-2 Definitions. As used in this part:

"Alteration" means any change to equipment, including parts, components, or subsystems other than maintenance, repair, or replacement.

"Amusement ride" means a mechanically or electrically operated device designed to carry passengers in various modes and used for entertainment and amusement.

"ANSI" means the American National Standards Institute.

"ANSI/American Society of Safety Engineers A10.4" means ANSI/ASSE, Personnel Hoists and Employee Elevators on Construction and Demolition Sites, as adopted and incorporated by reference in section 12-229-3.1.

"Appeals board" means the labor and industrial relations appeals board, department of labor and industrial relations.

"Approved" means approved by the department.

"Appurtenance" means a device installed on and used in the normal operation of an elevator, escalator, or kindred equipment.

"ASME" means American Society of Mechanical Engineers.

"ASME A17.1" means ASME A17.1, Safety Code for Elevators and Escalators, as adopted and incorporated by reference in section 12-229-3.1.

"ASME A17.3" means ASME A17.3, Safety Code for Existing Elevators and Escalators, as adopted and incorporated by reference in section 12-229-3.1.

"ASME A17.6" means ASME A17.6, Standard for Elevator Suspension, Compensation and Governor Systems, as adopted and incorporated by reference in section 12-229-3.1.

"ASME A18.1" means ASME A18.1, Safety Standard for Platform Lifts and Stairway Chairlifts, as adopted and incorporated by reference in section 12-229-3.1.

"ASTM" means American Society for Testing and Materials.

"ASTM-F24" means ASTM-F24 1997 standard on amusement rides and devices.

"Attorney general" means the attorney general of the State of Hawaii or any of the attorney general's deputies.

"Authority Having Jurisdiction" or "AHJ", means the director of labor and industrial relations or the director's designee.

"Authorized inspection agency" means the department of labor and industrial relations, elevator inspection section.

"Building code" means the currently adopted, applicable county code in the revised ordinances of the applicable county, or the code adopted by the State of Hawaii for state buildings.

"Certificate of competency" means a certificate issued to a person who has passed the examination prescribed by the director.

"Contractor" means any person, firm, or corporation installing, repairing, or servicing any amusement ride, elevator, or kindred equipment or structure inspected pursuant to chapter 397, HRS.

"Department" means the department of labor and industrial relations, State of Hawaii.

"Director" means the director of the department of labor and industrial relations or the director's designee.

"Discrepancy" means the non-conformance to codes, standards, rules, or regulations required by this part.

"Division" means the Hawaii occupational safety and health, department of labor and industrial relations, State of Hawaii.

"Elevator" means a hoisting and lowering mechanism equipped with a car that moves within guides and serves two or more fixed landings, and is classified by elevator types as described in ASME A17.1, as adopted and incorporated by reference in section 12-229-3.1.

"Elevators and related systems" means elevators and kindred equipment and amusement rides.

"Existing installation" means any device or equipment where the application for the installation was properly filed with the department before the

effective date of this chapter.

"HAW" means the registration number assigned to an elevator and kindred equipment or amusement ride by the AHJ.

"Hawaii Revised Statutes" or "HRS" means laws enacted by the Hawaii state legislature.

"IBC" means the International Building Code, as adopted and incorporated by reference in section 12-229-3.1.

"Installation" means a complete elevator or kindred equipment, including its hoistway, hoistway enclosures and related construction, and all machinery and equipment necessary for its operation.

"Installation or alteration permit" means a document, which may be electronic, issued by the department authorizing the installation or alteration of an elevator or kindred equipment, or the department approval of a new amusement ride.

"Kindred equipment" means escalators, moving walks, dumbwaiters, permanently installed material lifts, platform lifts, inclined lifts, stage lifts, stairway chairlifts, personnel hoists, and any other similar mechanized equipment used to convey people in places other than a public right-of-way, but does not include amusement rides.

"May" means not mandatory.

"New installation" means any device or equipment that is not an existing installation or an existing installation that is being relocated.

"NFPA" means the National Fire Protection Association.

"NFPA 1, UFC" means the NFPA 1, Uniform Fire Code, as adopted and incorporated by reference in section 12-229-3.1.

"NFPA 70" means NFPA 70, National Electrical Code, as adopted and incorporated by reference in section 12-229-3.1.

"Operating permit" means a permit issued by the department authorizing the operation of an elevator, kindred equipment, or amusement ride.

"Order" means a command to perform a mandatory act issued by the department.

"Overtime" means hours outside a regular eight-hour working day.

"Owner" means any person, firm, or corporation with legal title to any amusement ride, and elevator and kindred equipment inspected pursuant to chapter 397, HRS.

"Permit to operate" means a document, which may be electronic, issued by the department authorizing the operation of an elevator, kindred equipment, or an amusement ride.

"Qualified elevator inspector" means an elevator inspector employed by the department holding a valid certificate of competency issued by the department and a Qualified Elevator Inspector certification that meets the criteria of the American Society of Mechanical Engineers and the standards for the qualification of elevator inspectors of the American National Standards Institute. The certificate of competency is valid only while the inspector is employed by the department.

"Regular operating permit" means an operating permit that is not indicated as temporary.

"Shall" means mandatory.

"Unsafe" means potential exposure to a recognized hazard.

"Violation" means the failure to comply with any citation, notice, or order of the department, or rule or standard promulgated under chapter 397, HRS. [Eff 6/19/00; am and comp 6/30/14; am and comp 11/10/16; am and comp] (Auth: HRS §§397-4, 397-6) (Imp: HRS §§397-4, 397-6)

§12-229-3 REPEALED. [R 6/30/14]

§12-229-3.1 Codes incorporated and adopted by reference. The following codes are incorporated and adopted by reference and made a part of this chapter and shall apply to elevators, kindred equipment, and amusement rides in this part, unless otherwise modified by the rules pertaining to elevators, kindred equipment, and amusement rides:

- (1) ANSI/ASSE A10.4-2007, Personnel Hoists and Employee Elevators on Construction and Demolition Sites, as copyrighted and

- published in 2007 by American National Standards Institute, Inc., 25 West 43rd Street, New York, NY 10036;
- (2) ASME A17.1-2010/CSA-B44-10, Safety Code for Elevators and Escalators, as copyrighted and published in 2010 by the American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016-5990;
 - (3) ASME A17.3-2011, Safety Code for Existing Elevators and Escalators, as copyrighted and published in 2011 by the American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016-5990;
 - (4) ASME A17.5-2011, Elevator and Escalator Electrical Equipment, as copyrighted and published in 2011 by the American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016-5990;
 - (5) ASME A17.6-2010, Standard for Elevator Suspension, Compensation and Governor Systems, as copyrighted and published in 2010 by the American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016-5990;
 - (6) ASME A18.1-2011, Safety Standard for Platform Lifts and Stairway Chairlifts, as copyrighted and published in 2011 by the American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016-5990;
 - (7) International Building Code, 2012 edition, as copyrighted and published in 2012 by the International Code Council, Incorporated, 500 New Jersey Avenue, 6th Floor, Washington, DC 20001;
 - (8) ICC A117.1-2009, Accessible and Usable Buildings and Facilities, as copyrighted and published in 2010 by the International Code Council, Incorporated, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001;
 - (9) NFPA 1, Uniform Fire Code, 2009 Edition, as copyrighted and published in 2009 by the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269-7471;
 - (10) NFPA 72, National Fire Alarm and Signaling Code, 2010 edition, as copyrighted and

- published in 2010 by the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269-7471;
- (11) NFPA 13, Standard for the Installation of Sprinkler Systems, 2010 edition, as copyrighted and published in 2010 by the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269-7471; and
 - (12) NFPA 70, National Electrical Code, 2011 edition, as published in 2011 by the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269-7471. [Eff and comp 6/30/14; comp 11/10/16; am and comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-229-4 REPEALED. [R 6/30/14]

§12-229-4.1 Installation and alteration permits.

(a) No person shall install, construct, reconstruct, relocate, or make an alteration to any elevator, kindred equipment, or amusement ride subject to this part without first obtaining an installation or alteration permit from the department.

The owner shall be responsible for contracting the work with a licensed elevator contractor, and shall ensure that the contractor obtains all permits and inspections required by this part. The contractor shall be responsible for the safe operation of equipment during the installation, alteration, or relocation, until a permit to operate has been issued by the department. An amusement ride owner shall register the new apparatus or an alteration by submitting an application for review and registration.

An application on a form provided by the department shall be submitted and approved prior to commencement of work. The application shall include:

- (1) Applicant's name (elevator contractor licensed to perform the work), business address and license number, expiration date of the

license, name and contact information of the licensed mechanic or supervisor in charge of the work;

- (2) Building name and complete address, including island and zip code, of the installation or alteration;
- (3) The name and complete address of the legal owner of the elevator, kindred equipment, or amusement ride;
- (4) The anticipated start date of the installation or alteration and the anticipated completion date;
- (5) The type of equipment to be installed or altered, manufacturer of equipment, maximum rise and number of floors;
- (6) The plans and specifications for installation or alteration of elevators and kindred equipment together with the building details that are pertinent to the installation;
- (7) Copies of engineering data, tests, and laboratory reports, and any other pertinent information deemed necessary by the department;
- (8) For amusement rides, the application to review, approve, and register the new apparatus shall be submitted on a form authorized by the department and shall include manufacturers' drawings, and engineering and test data; and
- (9) Any other information indicated as required by the application.

(b) Applications to install, alter, or register must be accompanied by the payment of the appropriate installation or alteration processing fee for each conveyance subject to this part as per the schedules in Exhibit A, titled "Elevator and Kindred Equipment Installation and Alteration Fees", dated January 1, 2019, which is made a part of this chapter and located at the end of this chapter, and Exhibit B, titled "Elevator and Kindred Equipment Inspection Fees", dated January 1, 2019, which is made a part of this chapter and located at the end of this chapter.

- (1) Refunds of the initial installation or alteration processing fee minus the department's cost to review the application thus far may be refunded upon written or electronic request to the department. A refund of the initial installation or alteration processing fee may be granted upon satisfactory showing that the withdrawal or amendment of the application was due to circumstances beyond the control of the applicant; and
- (2) No refunds will be issued for expired permits.

(c) Only a person who is licensed to engage in the business of installing or repairing elevators and kindred equipment by the contractors license board of the Hawaii department of commerce and consumer affairs may apply for an installation permit or alteration permit, except the application to install a personnel hoist may be made by a licensed construction contractor and the application to register an amusement ride may be made by the owner.

(d) All alteration work on elevators and kindred equipment requires an alteration permit prior to the work being performed. Alteration work includes:

- (1) All alterations to elevators and kindred equipment as described in ASME A17.1, section 8.7;
- (2) Any alteration that requires the equipment or conveyance to be tested by the department prior to being returned to service, including:
 - (A) The replacement or repair of any part or parts that would require recalibration or testing per ASME A17.1, section 8.7; or
 - (B) Work performed on components or equipment affecting or necessary for fire safety (e.g., cab interiors, systems associated with fire recall, etc.); and
- (3) Any alteration, renovation, or change to the original design of the car's interior.

(e) The application shall be deemed approved if not acted on by the department within thirty calendar days following the receipt of the completed application. The maximum period of time for the department to act on an application for installation or alteration established pursuant to this section shall be extended in the event of a national disaster, state emergency, or union strike that would prevent the applicant or the department from fulfilling application review requirements until the time the emergency conditions improve or are reasonably under control.

(f) Installation or alteration permits issued by the department shall be posted in a conspicuous place on the jobsite near the elevator, kindred equipment, or amusement ride prior to the start of any work being done. They shall remain posted until the department has witnessed all acceptance tests and issued an operating permit for the elevator or kindred equipment.

(g) Installation or alteration permits shall expire within one year of the issuance date if the installation or alteration work described on the application has not yet commenced. Otherwise, the permit is valid for a period of three years.

(h) All new elevators and kindred equipment shall have the Hawaii registration number (HAW) assigned by the department painted on or permanently attached to both the car top crosshead and the controller. The owner is responsible for having the HAW number painted on or attached to the device or equipment, and ensuring that the number remains legible. [Eff and comp 6/30/14; am and comp 11/10/16; am and comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-229-5 REPEALED. [R 6/30/14]

§12-229-5.1 Permits to operate. (a) The department shall issue a "permit to operate" for any elevator, kindred equipment, or amusement ride where the inspection and tests required by the department

show that the equipment has been designed and installed in accordance with the requirements of chapter 397, HRS, and its related rules, and are in compliance with this part. It shall be a violation for any person, firm, association, partnership, or corporation to operate an elevator, kindred equipment, or amusement ride regulated by this part unless a permit for the operation has been issued by the department and the permit remains in effect.

(b) A permit to operate an elevator or related systems shall be issued only after a qualified inspector has determined that the equipment, device, or apparatus meets all applicable requirements of this part. A permit to operate elevators or related systems shall be valid per the schedules in Exhibit C, titled "Inspection and Test Intervals (In Months)", dated January 1, 2017, which is made a part of this chapter and located at the end of this chapter, unless revoked sooner, and may be renewed only upon satisfactory completion of an inspection by a qualified inspector. A valid permit may be extended for cause by the department if so requested in writing by the owner or contractor prior to the expiration date.

(c) The owner, or the owner's duly appointed agent, shall be responsible for:

- (1) The safe operation and proper maintenance of elevators and related systems after the installation or alteration has been approved and an initial permit to operate has been issued;
- (2) Conducting all periodic or maintenance tests required by this part;
- (3) Arranging for inspections of closed buildings and not readily accessible elevators and related systems by qualified inspectors. Elevators and kindred equipment not inspected as a result of the owner's failure to provide convenient access shall be considered removed from service and shall comply with section 12-229-7.1(b)(4); and
- (4) Requesting and scheduling with the department all safety tests in accordance with the schedule in Exhibit C, titled "Inspection and Test Intervals (In Months)", dated January 1,

2017, which is made a part of this chapter and located at the end of this chapter.

(d) The permit to operate shall indicate the type of equipment for which it is issued. In the case of elevators and kindred equipment, the permit shall state whether it is passenger or freight, and the rated load and speed for the elevator, dumbwaiter, escalator, or moving walk. For new or altered elevators, after the effective date of these rules, a copy of the permit to operate shall be posted conspicuously in the car of the elevator, and on or near the dumbwaiter, escalator, moving walk, or other kindred equipment.

(e) The department may immediately revoke any permit to operate for any equipment required to be inspected by this chapter that is found to be in an unsafe condition; or when an owner or contractor fails to comply with a department order to correct specific defects or hazards and continues to use or operate the equipment, device, or apparatus without abating the hazards or defects. The department shall reissue a permit to operate when a subsequent inspection by a qualified inspector finds that the hazardous condition has been corrected or when the department receives documentation that the noncompliant item has been abated.

(f) Exhibit C, titled "Inspection and Test Intervals (In Months)", dated January 1, 2017, which is made a part of this chapter and located at the end of this chapter, establishes the required maximum intervals for the periodic reinspection and renewal of the permits to operate. The department may require that specific equipment be re-inspected more frequently if conditions found during an inspection require closer or more frequent monitoring to ensure its safe operation.

(g) The department may provide for the issuance of a temporary permit to operate while any noncomplying elevator or kindred equipment is being brought into full compliance with chapter 397, HRS.

(h) The owner or contractor may petition the department for additional time to correct any discrepancy or violation by submitting a request in writing by no later than the correction due date or the expiration date of the temporary permit, whichever is applicable, and shall include:

- (1) Specific additional time needed;

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- (2) Efforts made to date to effect correction; and
- (3) Any interim steps or actions taken to ensure the safe operation of the equipment, device, or apparatus.

(i) No elevator, kindred equipment, or amusement ride that is required to be inspected pursuant to chapter 397, HRS, shall be operated except as necessary to install, repair, or test the elevator, kindred equipment, or amusement ride unless a permit to operate has been issued by the department and remains valid. [Eff and comp 6/30/14; am and comp 11/10/16; am and comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-229-6 REPEALED. [R 6/30/14]

§12-229-6.1 Fees. (a) Departmental inspection fees. The department shall collect from the owner or contractor, the fee listed in the schedules in Exhibit A, titled "Elevator and Kindred Equipment Installation and Alteration Fees", dated January 1, 2019, which is made a part of this chapter and located at the end of this chapter, and Exhibit B, titled "Elevator and Kindred Equipment Inspection Fees", dated January 1, 2019, which is made a part of this chapter and located at the end of this chapter, for each inspection made by a qualified inspector. The following shall apply to departmental inspection fees:

- (1) The fees for scheduled inspections delayed or canceled by the requester, shall be charged to the requester in accordance with the scheduled fee for the type of inspection scheduled; however, if the notice of cancellation or delay of the scheduled inspection is provided at least forty-eight hours prior to the scheduled date and time, not counting weekends and state holidays, no additional fee will be charged. A delayed inspection includes situations where the equipment is not ready for the inspection or the requester is not

- ready to conduct the required tests within one hour of the scheduled date and time;
- (2) Where an inspection must be re-scheduled due to untimely notification of delay or cancellation, the appropriate inspection fee must be paid prior to the re-scheduling of the inspection;
 - (3) Permit renewal and witness fees are per inspection, which may constitute one day or part of the day. If the inspector is required or requested to return on another day or at another time on the same day, additional fees shall be assessed at the rate of \$325 per day for up to two hours and \$650 per day for more than two hours. Fees for overtime hours shall be \$650 per day for up to two hours and \$1,300 per day for more than two hours;
 - (4) When a special or dedicated inspection is made at the request of the owner, contractor, or vendor, the sum of expenses incurred shall be charged in addition to the inspection fee;
 - (5) Whenever the requester of an inspection fails to pay the fees required pursuant to this section within sixty days after notification, the requester shall pay, in addition to the fees required, a penalty equal to fifty percent of the fee. For the purpose of this section, the date of invoice shall be considered the date of notification. For online inspection requests, fees must be paid at the time of the request, except for additional fees for special, dedicated, return, or overtime inspections for which the amount owed could not be determined in advance. In such cases, the requester shall be invoiced by the department;
 - (6) Departmental reports of inspections for which expenses must be added to the basic fee shall be accompanied by an itemized account of the inspections made and the expenses incurred;
 - (7) For elevators that have considerable rise but few openings, such as observation or deep well elevators, each ten feet of vertical rise shall be considered one floor in determining installation permit fees; and

- (8) The department shall charge and collect the fee listed in Exhibit B, titled "Elevator and Kindred Equipment Inspection Fees", dated January 1, 2019, which is made a part of this chapter and located at the end of this chapter, for each category 3 or 5, or internal escalator inspection, witnessed by qualified inspectors of the department during regular working hours. If the inspector is required or requested to return on another day or at another time on the same day, additional fees shall be assessed at the rate of \$325 per day for up to two hours and \$650 per day for more than two hours. Fees for overtime hours shall be \$650 per day for up to two hours and \$1,300 per day for more than two hours.
- (b) Departmental installation and alteration permit and test fees. The following shall apply to installation, alteration, and test fees:
 - (1) The department, before accepting an application for installing, constructing, reconstructing, or relocating an elevator or a related system, shall charge and collect a fee for each object in accordance with Exhibit A, titled "Elevator and Kindred Equipment Installation and Alteration Fees", dated January 1, 2019, which is made a part of this chapter and located at the end of this chapter;
 - (2) The department, before accepting an application for an alteration, shall charge and collect a fee for each object in accordance with Exhibit A, titled "Elevator and Kindred Equipment Installation and Alteration Fees", dated January 1, 2019, which is made a part of this chapter and located at the end of this chapter. For online applications, fees must be paid electronically at the time of the application. Any transaction failure shall void the application;
 - (3) For each instance requiring an installation or alteration permit fee, the department shall provide the final installation drawing review, inspection and witnessing of the initial

- acceptance test on the installation, any resulting permit to operate, and one additional follow-up inspection per permit, and the follow-up inspection shall be at the convenience of the department;
- (4) Fees in accordance with Exhibit A, titled "Elevator and Kindred Equipment Installation and Alteration Fees", dated January 1, 2019, which is made a part of this chapter and located at the end of this chapter, or the fee in effect on the application submittal date shall be charged and collected for all applications for installation or alteration permits;
 - (5) For each instance requiring a building plan review, the department shall charge a fee in accordance with Exhibit A, titled "Elevator and Kindred Equipment Installation and Alteration Fees", dated January 1, 2019, which is made a part of this chapter and located at the end of this chapter;
 - (6) For additional follow-up inspections for final acceptance, the fee shall be \$325 per day for up to two hours and \$650 per day for more than two hours if during the normal workday. Fees for overtime hours shall be \$650 per day for up to two hours and \$1,300 per day for more than two hours; and
 - (7) For elevators that have considerable rise but few openings, such as observation or deep well elevators, each ten feet of vertical rise shall be considered one floor in determining installation permit fees.
- (c) Amusement rides, fees. The following shall apply to amusement ride fees:
- (1) The fee for an inspection of an amusement ride shall be \$200;
 - (2) Inspections, for which a fee is to be charged, shall include, but are not limited to:
 - (A) A reinspection of a ride at a site to allow it to operate at that site after the ride was found at an earlier inspection to be unsafe;
 - (B) An inspection made at a site after being unable to complete an earlier inspection at

- that site due to delay within the control of the requester;
- (C) A permit to operate; and
 - (D) Scheduled inspections delayed or canceled by the requester where notification was provided to the department less than forty-eight hours prior to the scheduled inspection date and time (not including weekends and state holidays);
- (3) When an unscheduled inspection is made at the request of the owner or contractor, the sum of expenses incurred shall be charged in addition to the inspection fee;
 - (4) For additional follow-up inspections for final acceptance, the fee shall be \$300 per day for up to two hours and \$600 per day for more than two hours if during the normal workday. Fees for overtime hours shall be \$600 per day for up to two hours and \$1,200 per day for more than two hours; and
 - (5) Whenever the requester fails to pay the fees required under this section within sixty days after notification, the requester shall pay, in addition to the fees required, a penalty equal to fifty percent of the fee. For the purpose of this section, the date of invoice shall be considered the date of notification. For online inspection requests, fees must be paid at the time of the request, except for additional fees for unscheduled, return, or overtime inspections, which will be invoiced to the requester. [Eff and comp 6/30/14; am and comp 11/10/16; am and comp]
(Auth: HRS §397-4) (Imp: HRS §397-5)

§12-229-7 REPEALED. [R 6/30/14]

§12-229-7.1 Inspections and tests. (a) The department shall inspect to ensure compliance with chapter 397, HRS, any activity related to the erection, construction, alteration, demolition, or maintenance of

buildings, structures, bridges, highways, roadways, dams, tunnels, sewers, underground buildings or structures, underground pipelines or ducts, and other construction projects or facilities containing elevators or kindred equipment.

(b) Elevators and kindred equipment. The following shall apply to inspections and tests:

- (1) All permit renewal inspections and witnessing of tests of elevators or kindred equipment as required under this chapter shall be performed by qualified inspectors employed by the department;
- (2) Where notations of discrepancies, recommendations, or requirements are made, these notations shall refer to the applicable code, rule, or standard;
- (3) Elevator or kindred equipment regulated under this part shall be inspected and tested in accordance with the schedule in Exhibit C, titled "Inspection and Test Intervals (In Months)", dated January 1, 2017, which is made a part of this chapter and located at the end of this chapter;
 - (A) Internal inspections of escalators and moving walks shall be performed at intervals of thirty-six months;
 - (B) Personnel hoists shall be load tested at intervals of three months;
 - (C) The category 3 test shall be performed on all holed and holeless hydraulic elevator systems. The interval may be extended at the discretion of the department for those hydraulic elevator installations such as holeless hydraulic elevators in which all components are readily accessible for visual inspection; and
 - (D) The period between inspections may be extended by the department for cause. A written application by the owner must be received by the department prior to the expiration date for review;
- (4) Any elevator or kindred equipment that is out of service and not continuously maintained for a period exceeding one year or has not

been inspected in accordance with paragraph (3) shall be taken out of service by the owner by complying with the following:

- (A) Car and counterweight (if any) shall be landed at the bottom of the hoistway and hoisting ropes shall be disconnected at both ends. For hydraulic driven elevators and hydraulic driven kindred equipment, the car shall be lowered to the bottom of the hoistway, oil line disconnected with partial or total oil supply line removal, and oil removed from the tank reservoir;
 - (B) All electric power shall be removed by disconnecting and removing the power feeders; and
 - (C) All hoistway entrances or escalator entrances and exits shall be permanently blocked or barricaded to prevent inadvertent entry. The owner or the owner's agent shall submit a certification that the unit has been properly taken out of service as indicated in this paragraph, on a form provided by the department. Prior to placing the elevator or kindred equipment back in service, the department shall be notified and an inspection made; and
- (5) While conducting tests and inspections required by section 12-229-5.1 for acceptance of new elevators for load testing of elevators, a positive means of communication, such as a walkie-talkie system, between the various testing and witnessing personnel shall be furnished by the elevator maintenance company performing the test or inspection.
- (c) Amusement rides. The following shall apply to amusement rides:
- (1) The department shall inspect and witness load tests, in accordance with ASTM-F24 and chapter 12-250 at least semi-annually, for all amusement rides at a carnival, circus, fair, amusement park, or other public venue, for protecting the safety of the public;
 - (2) After the initial inspection, each amusement ride shall be inspected as often as necessary

- to ensure safe operation but not less than twice annually at intervals of not less than five months nor greater than seven months;
- (3) If the department finds, upon inspection, that an amusement ride is in a safe operating condition and meets with the requirements of this chapter and chapter 12-250, the department shall affix to the ride in a prominent location a permit to operate bearing upon its face the date of the inspection and the permit expiration date; and
 - (4) No ride shall be operated unless it has affixed to it a current permit to operate. [Eff and comp 6/30/14; am and comp 11/10/16; am and comp _____] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-229-8 REPEALED. [R 6/30/14]

§12-229-8.1 Rights and enforcement. (a) Rights.

- (1) Authorized representatives of the director may enter without delay during regular working hours and at other reasonable times, any place, establishment, or premises in which are located amusement rides, or elevators and kindred equipment requiring inspection pursuant to chapter 397, HRS;
 - (2) The department may question any employer, owner, operator, agent, or employee in investigation, enforcement, and inspection activities covered by this chapter; and
 - (3) Any employee of the State acting within the scope of the employee's office, employment, or authority under this chapter shall not be liable for or made a party to any civil action growing out of administration and enforcement of chapter 397, HRS.
- (b) Enforcement.
- (1) Whenever the right of entry to a place to inspect an amusement ride, elevator, or kindred equipment required by this chapter to

be inspected is refused to an authorized representative of the director, the department may apply to the circuit court where the equipment is located for a search warrant providing on its face that the wilful interference with its lawful execution may be punished as a contempt of court;

- (2) Whenever the department finds that the construction of or the operation of any amusement ride, or elevator and kindred equipment required to be inspected under this part is not safe, or that any practice, means, method, operation, or process employed or used is unsafe or is not in conformance with the standards and codes adopted pursuant to chapter 91, HRS, the department shall issue an order to render the construction or operation safe or in conformance with chapter 397, HRS, or its standards and codes and deliver the same to the contractor or owner. Each order shall be in writing and may be delivered by mail, electronically, or in person. The department may in the order direct that, in the manner and within a time specified, such additions, repairs, improvements, or changes be made and such safety devices and safeguards be furnished, provided, and used as are reasonably required to ensure compliance with the purposes and provisions of chapter 397, HRS. An order to bring the operation of elevator or kindred equipment into compliance may require the owner to submit a plan of compliance that addresses interim corrective plans to ensure public and worker safety as well as the schedule for the correction of the non-conforming element. A plan of compliance shall not exceed five years for residential buildings or three years for all other buildings. The owner or contractor shall obey and observe all orders issued by the department or be subject to appropriate civil penalties;
- (3) Whenever, in the opinion of the department, the condition of or the operation of amusement rides, or elevators and kindred equipment

required to be inspected by chapter 397, HRS, or any practice, means, method, operation, or process employed or used, is unsafe, or is not properly guarded, or is dangerously placed, its use may be prohibited by the department. An order to that effect shall be posted prominently on the equipment or near the place or condition referred to in the order. The order shall be removed when a determination has been made by an authorized representative of the department that the amusement rides, or elevators and kindred equipment are safe and the required safeguards or safety devices are provided;

- (4) Pursuant to section 397-4(d)(4), HRS, when an imminent hazard exists, the department may apply for a restraining order from a circuit court to effect enforcement restraining the use or operation until the use or operation is made safe;
- (5) Pursuant to section 397-4(d)(5), HRS, the director, or an authorized representative, shall have the same powers as are possessed by the court respecting administering of oaths, compelling attendance of witnesses, producing documentary evidence, and examining witnesses or causing them to be examined, and may take depositions and certify to official acts;
- (6) Where a condition or practice involving any amusement ride, or elevator and kindred equipment required to be inspected by chapter 397, HRS, could reasonably be expected to cause death or serious physical harm, the department shall have the right, independent of any other enforcement powers under this chapter, to:
 - (A) Immediately take steps to obtain abatement by informing the owner, contractor, and all persons in harm's way of the hazard by meeting, posted notice, or otherwise;
 - (B) Take steps to immediately obtain abatement through direct control or elimination of the hazard if, after

- reasonable search, the owner, contractor, or their representative is not available;
- (C) Take steps to obtain immediate abatement when the nature and imminence of the danger or hazard does not permit a search for the owner or contractor; and
 - (D) Where appropriate, initiate necessary legal proceedings to require abatement by the owner or contractor; and
- (7) The department may prosecute, defend, and maintain actions in the name of the department for the enforcement of the provisions of chapter 397, HRS, including the enforcement of any order issued by it, the appeal of an administrative or court decision, and other actions necessary to enforce chapter 397, HRS. [Eff and comp 6/30/14; comp 11/10/16; am and comp] (Auth: HRS §397-4) (Imp: HRS §§397-4, 397-6, 397-8)

§12-229-9 REPEALED. [R 6/30/14]

§12-229-9.1 Complaints. (a) Complaints may be made to the department and where reasonable grounds exist for the department to believe there may be a hazard, there shall be an inspection in response to the complaint.

(b) Names of all complainants and witnesses shall be held in confidence by the department, unless prior permission has been given by the complainants or witnesses to release his or her names, or unless it has been determined by the state attorney general that disclosure is necessary for the enforcement and review under this chapter. [Eff and comp 6/30/14; comp 11/10/16; comp] (Auth: HRS §397-4) (Imp: HRS §397-7)

§12-229-10 REPEALED. [R 6/30/14]

§12-229-10.1 Reporting of accidents. (a)

Whenever an accident occurs involving either an amusement ride, or an elevator and kindred equipment, the owner shall promptly notify the division within eight hours by telephone at (808)586-9141. For reporting purposes, "accident" is defined as an occurrence resulting in significant damage to an elevator and kindred equipment and amusement device, including when it is rendered inoperative or any occurrence resulting in physical injury to a person or persons.

An accident report shall be submitted to the department within two calendar days after the owner has completed the accident investigation, and shall include the following information:

- (1) The date and time of the accident;
- (2) Hawaii registration number (HAW number) of the amusement ride, elevator, or kindred equipment involved;
- (3) Name and address of the victim or victims;
- (4) A brief description of the accident, including the nature and scope of the injuries;
- (5) Whether the amusement ride, elevator, or kindred equipment sustained any damage rendering it inoperative for any period of time;
- (6) Names and contact information of any witnesses interviewed;
- (7) A brief description of any inspections or tests conducted of the equipment to determine probable causation and who conducted them;
- (8) The investigators' conclusions as to the cause of the accident; and
- (9) The name and contact information of the investigator. For purposes of this section, the owner may contract another to perform the actual accident investigation, however, the owner is responsible for the report and its timely submittal to the department. If the accident investigation cannot be completed within three months of the date of the incident, the owner shall submit the incomplete report to the department with information as to when the investigation is expected to be completed. The final report

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shall be submitted as soon as the investigation is completed.

(b) Whenever an accident occurs which results in loss of life, the owner shall promptly notify the division by telephone at (808)586-9141, or messenger, within eight hours, and neither the amusement ride, or elevator and kindred equipment, or any of their parts, shall be removed or disturbed before permission has been given by the department except for the purpose of saving human life or limiting consequential damage.

(c) Additional reports, in writing or otherwise, may be required by the director. [Eff and comp 6/30/14; am and comp 11/10/16; comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-229-11 REPEALED. [R 6/30/14]

§12-229-11.1 Investigations. The department may investigate accidents reported under section 12-229-10.1 involving amusement rides, and elevators and kindred equipment inspected under this chapter and may issue orders and recommendations with respect to the elimination and control of the causal factors. [Eff and comp 6/30/14; comp 11/10/16; comp] (Auth: HRS §397-4) (Imp: HRS §§397-4, 397-6)

§12-229-12 REPEALED. [R 6/30/14]

§12-229-12.1 Violations and penalties. (a) The director may assess all civil penalties provided in this section, giving due consideration to the gravity of the violation, the good faith of the owner or contractor, and the history of previous violations.

(b) Violations. The following shall apply to violations:

- (1) Any owner or contractor who violates chapter 397, HRS, or any safety standards and codes

adopted pursuant to chapter 91, HRS, or who violates or fails to comply with any order made under or by virtue of chapter 397, HRS, or who defaces, displaces, destroys, damages, or removes without the authority of the department any safety device, safeguard, notice, order, or warning required by chapter 397, HRS, its standards, or codes, shall be assessed a civil penalty of not more than \$10,000 for each such violation;

- (2) Any owner who allows the installation, construction, reconstruction, relocation, or alteration of any elevator or kindred equipment prior to obtaining an installation or alteration permit as required by section 12-229-5.1 shall be assessed a civil penalty of not more than \$10,000. The penalty may be reduced by a maximum of ten percent for history of past violations;
 - (3) Owners who fail to report an accident as required by section 12-229-10.1 shall be assessed a civil penalty of not more than \$5,000 per instance. Consideration may be given for good faith and history of violations;
 - (4) Owners who fail to maintain or provide records or reports to the department as required by this part shall be assessed a civil penalty of not more than \$5,000 per record not maintained or provided;
 - (5) Repeated violations shall be assessed a civil penalty of not more than \$10,000. Consideration may be given for gravity only;
 - (6) Owners who fail to take an elevator or kindred equipment out of service as specified in section 12-229-7.1(b)(4) shall be assessed a civil penalty of not more than \$10,000; and
 - (7) Each day a violation continues shall constitute a separate violation except during an abatement period.
- (c) Discrepancies and penalties. The following shall apply to discrepancies and penalties:
- (1) Any conditions found not in conformance with applicable standards or codes adopted pursuant to chapter 397, HRS, shall be regarded as

discrepancies and shall be made known to the owner or contractor by letter or written order to correct or both. All discrepancies shall be satisfactorily resolved as soon as possible. When, in the opinion of the department, a discrepancy constitutes a potentially serious hazard, the department may prohibit the use of the equipment until the condition is abated. Failure to abate unsafe conditions or failure to correct discrepancies within the time prescribed shall be a violation subject to the civil penalties prescribed in this section;

- (2) Assessing penalties.
- (A) Consideration shall be given to the gravity of the violation. For a violative condition that could not or probably would not result in serious harm to life the penalty may be reduced by forty percent;
 - (B) Consideration shall be given to the good faith of the owner or contractor. For immediate correction or for attempts to make corrections or abate hazards that have been thwarted by conditions beyond the control of the owner or contractor, the penalty may be reduced by forty percent; and
 - (C) Consideration shall be given for the history of previous violations. For no previous violations by the owner or contractor, the penalty may be reduced by ten percent.

(d) Anyone who knowingly makes a false statement on any document required by chapter 397, HRS, upon conviction, shall be punished by a fine of not more than \$10,000 or imprisonment or both. Any evidence suggesting that a false statement may have been made shall be immediately referred to the director, who shall consult with the state attorney general for purposes of initiating appropriate action. [Eff and comp 6/30/14; am and comp 11/10/16; am and comp]
(Auth: HRS §397-4) (Imp: HRS §397-8)

§12-229-13 REPEALED. [Eff 6/19/00; R 6/30/14]

§12-229-13.1 Review and appeal. (a) Any order or citation of the director shall be final and conclusive against an owner or contractor, unless an appeal is made in writing, clearly stating what items are being contested. The notice of contest must be addressed to the director and received or, if mailed, postmarked by no later than the twentieth calendar day following receipt of the order or citation.

(b) The director or the director's designee may hold a formal hearing, which shall result in a decision and order by the director. Any party who disagrees with the director's decision may appeal in writing to the director within twenty calendar days of receipt of the decision and order. The director shall promptly notify the labor and industrial relations appeals board of the notice of contest. Where a prior formal hearing is held at the department level, the labor and industrial relations appeals board shall conduct a case review using only the record.

(c) An owner or contractor may petition the director for modification of the abatement requirements in an order, as provided in section 397-9, HRS. [Eff and comp 6/30/14; comp 11/10/16; comp] (Auth: HRS §397-4) (Imp: HRS §397-9)

§12-229-14 REPEALED. [R 6/30/14]

§12-229-14.1 Trade secrets. Information obtained by the department containing or revealing a trade secret shall be held confidential and access shall be limited to authorized representatives of the director for purposes of carrying out chapter 397, HRS. [Eff and comp 6/30/14; comp 11/10/16; comp] (Auth: HRS §397-4) (Imp: HRS §397-11)

§12-229-15 REPEALED. [R 6/30/14]

§12-229-15.1 Notifications of transfer and location. (a) The seller of any elevator or kindred equipment regulated by this part shall notify the department in writing using a form provided by the department within thirty calendar days of the sale giving the HAW number, location name, location address of the equipment, and the name and address of the purchaser.

(b) The owner of any elevator or kindred equipment who gives, scraps, demolishes, or removes the device shall report the transaction and the name and address of the new owner, if any, within thirty calendar days of the transaction to the department using the form provided by the department. [Eff and comp 6/30/14; am and comp 11/10/16; comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-229-16 REPEALED. [R 6/30/14]

§12-229-16.1 Variances. (a) In cases of practical difficulties, undue hardships, or new developments, an owner may apply for a variance from any elevator safety standard. The application must be in writing, clearly stating the standard from which a variance is sought, the conditions, means, practices, methods, operations, or processes proposed to be used, together with drawings, specifications, and other supporting data. The director may issue an order for a variance if what is proposed will provide a substantially equivalent level of safety to that provided by the standard.

(b) All variances granted pursuant to this chapter shall have only a future effect. The director may decline to entertain an application for variance on a subject or issue for which a discrepancy letter or citation has been issued to the owner or contractor involved and the discrepancy or violation has not yet been satisfactorily corrected or resolved.

(c) Before granting the variance, the director shall publish a notice in a paper of general

circulation or post notice on the department's website notifying all potentially affected parties of the director's intent to grant the variance. The notice shall provide a period of thirty calendar days to object to the granting of the variance, after which time the variance shall become final if no objections are filed or a hearing is requested. The cost of the publication shall be borne by the petitioning party. Every notice shall specify the alternative to the safety standard being considered.

(d) Any party objecting to the granting of the variance must notify the director in writing within the thirty-day period, stating the reasons why the variance should not be granted and the resultant specific impact on public safety. The objecting party's reasons for objection may also be based on grounds other than impact on public safety such as feasibility of compliance or lack of undue hardship to the petitioner. The objecting party may also elect to provide the reasons for the objection at a hearing.

(e) The hearing requested by the objecting party shall be held no later than forty-five days after the thirty-day period stated in the public notice as follows:

- (1) The objecting party or parties and the variance applicant shall be provided notice of the date, time, and place of the hearing at least fourteen calendar days before the scheduled hearing;
- (2) Each party shall be prepared to provide evidence supporting the party's case, including a brief oral statement summarizing such evidence;
- (3) The director shall provide a written determination to all parties;
- (4) If the director determines that the evidence does not support denial of the variance request, no further notice is required; and
- (5) If the director determines that the evidence supports a denial of the variance request, a notice shall be published in a newspaper of general circulation stating the reasons why the variance is not granted.

(f) If the variance application does not include all relevant information as indicated in subsection (a),

the director may deny the application. The denial shall be submitted in writing to the applicant within thirty calendar days. A notice of denial shall include a brief statement of the grounds for the denial. A denial of an application shall be without prejudice to the filing of another application.

(g) Requests for reconsideration on denied variance requests. The variance applicant whose variance request was denied may file a petition for reconsideration of the denial with the director. The petition must be filed in writing within twenty calendar days of the denial notice and should include all pertinent facts regarding why the variance should be granted.

- (1) The director may review the record on the case along with any additional information provided by the applicant or conduct further inquiries on the matter; and
- (2) Any party objecting to the director's decision shall use the review and appeal process as provided for in section 12-229-13.1. [Eff and comp 6/30/14; am and comp 11/10/16; am and comp] (Auth: HRS §397-4)
(Imp: HRS §397-4)

§12-229-17 Records. Records shall be maintained by the elevator inspection branch of the department of labor and industrial relations for the purpose of preserving reports of inspections, witnessing of test and accident investigations, correspondence, prints, and memoranda for all objects inspected pursuant to this chapter. These records shall be maintained for a period of not less than five years for amusement rides, elevators, and kindred equipment. [Eff and comp 6/30/14; comp 11/10/16; comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

EXHIBIT A
ELEVATOR AND KINDRED EQUIPMENT INSTALLATION AND
ALTERATION FEES

January 1, 2019

Alterations¹:

Involving only the replacement of a single (1) major component (such as a car door operator, valve, a jack or a cylinder)	\$200
Involving only cosmetic changes (such as car interior modernizations)	\$350
Involving two or more major components and/or subsystems:	
1-3 floors	\$630
4-9 floors	\$680
10-19 floors	\$740
20-29 floors	\$790
30-39 floors	\$850
40 or more floors	\$950

New Installations²

Dumbwaiter or material lift	\$525
Escalator, moving walk, or moving ramp	\$525
Platform lifts or stairway chairlifts	\$525
Elevator:	
1-3 floors	\$630
4-9 floors	\$680
10-19 floors	\$740
20-29 floors	\$790
30-39 floors	\$850
40 or more floors	\$950
Personnel hoists	\$450
Temporary use permits (construction car)	\$450

Additional inspections:

Normal workday, up to two hours	\$325/day
Normal workday, more than two hours	\$650/day
Overtime hours, up to two hours	\$650/day
Overtime hours, more than two hours	\$1,300/day

Building plan reviews \$200

¹ Where alterations to four or more units at the same location are identical, the fee for each additional alteration permit (beyond the initial four) shall be reduced by fifty percent. The applications shall be submitted at the same time to qualify for the fee reduction.

² For elevators which have considerable rise but few openings, such as observation or deep-well elevators, each ten feet of vertical rise shall be considered one floor for the purpose of determining installation or alteration permit fees.

EXHIBIT B

ELEVATOR AND KINDRED EQUIPMENT INSPECTION FEES

January 1, 2019

Permit and Renewal Inspection Fees¹:

Dumbwaiter or material lift	\$150
Escalator, moving walk, or moving ramp	\$225
Platform Lift or Stairway Chairlift	\$225
Hydraulic elevator - holed	\$275
Hydraulic elevator - holeless	\$275
Hydraulic elevator - roped holeless	\$325
Traction elevators:	
1-3 floors	\$250
4-9 floors	\$275
10-19 floors	\$300
20-29 floors	\$350
30-39 floors	\$425
40 or more floors	\$500
Personnel hoist	\$300
Temporary Use Permit (construction car)	\$300

Safety, load or internal test (witness fees):

Category 3 test	\$325
Category 3 test with safety overspeed valve	\$375
Category 3/5 test for roped hydraulic	\$425
Category 5 test	\$425
Category 5 with counterweight test	\$525
Escalator, internal	\$425

¹ For elevators which have considerable rise but few openings, such as observation or deep-well elevators, each ten feet of vertical rise shall be considered one floor for the purpose of determining permit renewal inspection fees.

Permit renewal and witness fees are per inspection, which may constitute one day or part of the day. If the inspector is required to return on another day or at another time on the same day, additional fees shall be assessed at the rate of \$325 per day for up to two hours and \$650 per day for more than two hours. Fees for overtime hours shall be \$650 per day for up to two hours and \$1,300 per day for more than two hours.

EXHIBIT C

INSPECTION AND TEST INTERVALS (IN MONTHS)

January 1, 2017

Equipment Type	Permit Renewal	Category 3	Category 5
Electric elevators	12	N/A	60
Hydraulic elevators	12	36	N/A
Escalators and moving walks ^[1]	12	36	N/A
Dumbwaiters	12	36	60
Material lifts	12	36	60
Platform lifts and stairway chairlifts	12	N/A	N/A
Inclined elevators	12	36	60
Screw-column elevators	12	36	60
Roof-top elevators	12	36	60
Limited-use/limited- application elevators	3	36	60
Construction cars	3	36	60
Personnel hoists ^[2]	3	N/A	N/A
Amusement rides	6	N/A	N/A

¹ Internal inspections of escalators and moving walks shall be performed at intervals of 36 months.

² Personnel hoists shall be load tested at intervals of 3 months.

Where an equipment is listed under both Category 3 of 36 months and Category 5 of 60 months, the appropriate testing interval is dependent on whether the lifting mechanism is rope or hydraulic or a combination of rope and hydraulic."

HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 8

DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

PART 11

ELEVATORS AND RELATED SYSTEMS

CHAPTER 230.1

ELEVATORS, ESCALATORS, DUMBWAITERS, MOVING WALKS, AND
MATERIAL LIFTS AND DUMBWAITERS WITH
AUTOMATIC TRANSFER DEVICES

§12-230.1-1	Applicability
§12-230.1-2	General requirements
§12-230.1-3	Requirements for the installation of new elevators and kindred equipment or the relocation of existing equipment
§12-230.1-4	Requirements for existing elevators, escalators, dumbwaiters, moving walks, and material lifts and dumbwaiters with automatic transfer devices

Historical Note: Chapter 230.1 is based on chapter 230 of title 12 of the Hawaii Occupational Safety and Health Standards, Rules and Regulations. [Eff 7/12/82; am 12/19/83; am 12/8/86; am, ren, and comp 12/6/90; am 11/5/93; am 7/6/98; R 6/30/14]

§12-230.1-1 Applicability. The requirements of this chapter shall be applicable to the design, construction, installation, plans review, testing, inspection, certification, operation, use, maintenance, repair, alteration and relocation of, and investigation of accidents involving elevators and kindred equipment subject to chapter 397, Hawaii Revised Statutes, including elevators, escalators, dumbwaiters, moving walks, and material lifts and dumbwaiters with automatic transfer devices. [Eff 6/30/14; comp 11/10/16; comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-230.1-2 General requirements. (a) All new and existing installations of elevators and kindred equipment shall be reasonably safe to persons and property and in conformity with the provisions of this chapter.

(b) Conditions found not in conformity with the provisions of this chapter for which the director had not previously issued a discrepancy letter may be regarded as discrepancies. All discrepancies shall be satisfactorily resolved as soon as possible or within the time specified by the director. Failure to correct discrepancies or failure to abate an unsafe condition within the time specified shall be deemed a violation.

(c) All passenger elevators shall have a clearly legible "Smoking Prohibited by Law" or "No Smoking" sign installed inside of the cab. The letters on the sign shall not be less than one inch in height. The sign shall be posted in elevators in buildings open to the public, including elevators in apartments and other multi-unit residential buildings. The international no-smoking symbol

may be posted in lieu of the sign provided that the diameter of the circle is not less than four inches. [Eff 6/30/14; comp 11/10/16; comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-230.1-3 Requirements for the installation of new elevators and kindred equipment or the relocation of existing equipment. (a) The design, construction, installation, operation, inspection, testing, maintenance, alteration, and repair of elevators, escalators, dumbwaiters, moving walks, and material lifts and dumbwaiters with automatic transfer devices, and its associated parts, shall conform to this chapter and the American Society of Mechanical Engineers A17.1-2010, which is adopted by reference and made a part of this chapter with the following amendments:

- (1) Section 5.2 of the American Society of Mechanical Engineers A17.1, Limited-Use/Limited-Application Elevators, is amended to read:
"Limited-use/limited-application elevators (see 1.3) are not permitted to be installed or used, unless:
 - (A) The building is required to be accessible in accordance with the Department of Justice's ADA Standards for Accessible Design (2010), or in accordance with section 103-50, Hawaii Revised Statutes;
 - (B) The building is also on the National or Hawaii Register of Historic Places; and
 - (C) Accessibility cannot otherwise be achieved without adversely altering the historically protected features of the structure.";
- (2) Section 8.6.1.2.1(c) of the American Society of Mechanical Engineers A17.1 is amended to read:
"A written Maintenance Control Program in electronic or paper form created for the equipment is the property of the equipment owner, and shall be made available to the department and be located on site."; and Section 8.9.2 of the American Society of Mechanical

Engineers A17.1 is amended to read: "The data plate shall be in plain view and securely attached to the controller door. An additional data plate shall be installed in the vicinity of the top key operated starting switch on the exterior of escalators and moving walks."

(b) A stairway or ladder shall be provided at all personnel points of access where there is a break in elevation of eight (8) inches (200 millimeters) or more and when no ramp or runway is provided.

(c) International Building Code, 2012 edition, chapter 30, Elevators and Conveying Systems, is adopted by reference and made a part of this chapter, and shall apply to all new elevators and kindred equipment.

(d) International Code Council A117.1-2009, Accessible and Usable Buildings and Facilities, sections 407, 410, and related portions of sections 106, 302, 308, 309, 703, and 705 are adopted by reference and made a part of this chapter, and shall apply to all new installations.

(e) Chapter 21 of the National Fire Protection Association 72 National Fire Alarm and Signaling Code, 2010 edition, and its related annexes and provisions are adopted by reference and made a part of this chapter, and shall apply to all new elevators.

(f) Article 620 of the National Fire Protection Association 70, National Electric Code, 2011 edition, and its related provisions are adopted by reference and made a part of this chapter, and shall apply to all new elevators.

(g) Paragraph 8.15.5, of National Fire Protection Association 13, Standard for the Installation of Sprinkler Systems, 2010 edition, is adopted by reference and made a part of this chapter, and shall apply to all new elevators and escalators. The annexes A.8.15.5.1 to A.8.15.5.4, D.1.1.9.2, D.1.1.10.2, D.2.23.2.2, and D.2.24.2.2, are explanatory and informational only.

(h) In each machine room, control room, machinery space, control space, and hoistway pit, there shall be provided at least one 125-volt, single phase, 15- or 20-ampere ground fault circuit interrupter (GFCI) duplex receptacle.

(i) All lamps utilized for illumination in machine room/space, control room/space, hoistway and pit, shall be externally guarded to prevent accidental breakage.

(j) Section 2.27.8 (switch keys) of American Society of Mechanical Engineers A17.1 is amended to read: "The key switches required by 2.27.2 through 2.27.5 for all elevators in a building shall be operable by the "FEO-K1" key. The keys shall be Group 3 Security (see 8.1). A separate key shall be provided for each switch. These keys shall be kept inside the firefighter's lockbox. The firefighter's lockbox shall be located immediately adjacent to the firefighter's emergency recall key switch, at an approximate height of six (6) feet above the floor. Access to the firefighter's lockbox shall only be the standardized key (#25460) for Hawaii, as required by the Authority Having Jurisdiction (AHJ). The firefighter's emergency recall key switch shall be located six (6) feet above the floor on the left-hand side of the elevator wall when facing the elevator and six (6) feet above the floor on the left-hand side of the left elevator when facing the elevators for a group of elevators. The key for the firefighter's emergency recall switch shall be of a tubular, 7-pin, style 137 construction and shall have a bitting code of 6143521 starting at the tab sequenced clockwise as viewed from the barrel end of the key. The key shall be coded "FEO-K1". The possession of the "FEO-K1" key shall be limited to elevator personnel, emergency personnel, elevator equipment manufacturers, and authorized personnel during checking of the Firefighter's Emergency Operation (see 8.1 and 8.6.11.1)". [Eff 6/30/14; am and comp 11/10/16, am and comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-230.1-4 Requirements for existing elevators, escalators, dumbwaiters, moving walks, and material lifts and dumbwaiters with automatic transfer devices. (a) All existing elevators, escalators, moving walks, and dumbwaiters and material lifts without automatic transfer devices shall comply with the code in effect at the time

of installation or alteration as illustrated in Exhibit A, titled "Existing Elevator and Kindred Equipment Code Application Dates", dated January 1, 2017, which is made a part of this chapter and located at the end of this chapter, provided that for those years where the Hawaii Registration number (HAW) did not specify code year, the code version of the American Society of Mechanical Engineers A17.1 in effect at the time of installation or alteration shall apply. The director shall have the discretion to apply a specific code to any elevator and related system if the applicable code cannot be readily ascertained. If the installation or alteration permit was issued after 1997, then the elevator or kindred equipment shall comply with American Society of Mechanical Engineers A17.3-2011, which is adopted by reference and made a part of this chapter.

(b) The following provisions of American Society of Mechanical Engineers A17.1-2010 are adopted by reference and shall apply to existing elevators and kindred equipment as stated:

- (1) Part 1, General, shall apply to all existing elevators, escalators, moving walks, and dumbwaiters, and material lifts;
- (2) Section 5.10, Elevators Used for Construction, shall apply to all existing elevators used for construction;
- (3) Section 8.1, Security, shall apply to all existing elevators, escalators, and moving walks;
- (4) Section 8.6, Maintenance, Repair, Replacement and Testing, shall apply to all existing elevators, escalators and moving walks, and dumbwaiters and material lifts with automatic transfer devices with the following amendment: Section 8.6.1.2.1(c) of the American Society of Mechanical Engineers A17.1 shall not apply;
- (5) Section 8.7, Alterations, shall apply to all existing elevators, escalators, moving walks, and material lifts and dumbwaiters with automatic transfer devices;
- (6) Section 8.8, Welding, shall apply to all existing elevators, escalators, moving walks,

and material lifts and dumbwaiters with automatic transfer devices;

- (7) Section 8.9, Code Data Plate, shall apply to all existing elevators, escalators, moving walks, and material lifts and dumbwaiters with automatic transfer devices, except section 8.9.2 is amended to read: "The data plate shall be in plain view and securely attached to the controller door. An additional data plate shall be installed in the vicinity of the top key operated starting switch on the exterior of escalators and moving walks.";
- (8) Section 8.10, Acceptance Inspections and Tests, shall apply to all existing elevators, escalators, moving walks, and material lifts and dumbwaiters with automatic transfer devices; and
- (9) Section 8.11, Flood Resistances, shall apply to all existing elevators, escalators, moving walks, and material lifts and dumbwaiters with automatic transfer devices.

(c) Chapter 12-240 shall apply to all elevators where the installation or alteration application was received by the department after December 6, 1990.

(d) American Society of Mechanical Engineers 17.6-2010 shall apply to existing elevators with other types of suspension means and steel cables less than three-eighths of an inch in diameter. [Eff 6/30/14; am and comp 11/10/16; am and comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

**EXHIBIT A
EXISTING ELEVATOR AND KINDRED EQUIPMENT
CODE APPLICATION DATES**

January 1, 2017

YEAR Implemented	CODE/RULE	A17.1 REFERENCE YEAR
1958	HAR Chapter 22	No year specified, Applicable ANSI Edition 1955
1964	HAR Chapter 22	1960
1969	HAR Chapter 22	1965
1982	HAR Chapter 230	1981
1990	HAR Chapter 230	1987
1993	HAR Chapter 230	1990
1998	HAR Chapter 230	1996
2000	HAR Chapter 230	1996
2014	HAR Chapter 230.1	2010

HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 8

DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

CHAPTER 240

ELEVATOR REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES

§12-240-1	General
§12-240-2	Automatic operation
§12-240-3	Hall call buttons
§12-240-4	Hall lanterns
§12-240-5	Raised characters on hoistway entrances
§12-240-6	Door protective and reopening device
§12-240-7	Door and signal timing for hall calls
§12-240-8	Door delay for car calls
§12-240-9	Floor plan of elevator cars
§12-240-10	Floor surfaces
§12-240-11	Illumination levels
§12-240-12	Car controls
§12-240-13	Car position indicators
§12-240-14	Emergency communications

§12-240-1 General. Passenger elevators which have had their architectural plans reviewed for installation permit after December 6, 1990, shall have accessible elevators on an accessible route and shall comply with American National Standards Institute specifications for making buildings and facilities accessible to and usable

by persons with disabilities (ANSI A117.1-1986) and with the American National Standard Safety Code for Elevators, Dumbwaiters, Escalators, and Moving Walks, ASME A17.1 1996. This standard does not preclude the use of residential or fully enclosed wheelchair lifts when appropriate and approved by administrative authorities. Freight elevators shall not be considered as meeting the requirements of this section, unless the only elevators provided are used as combination passenger and freight elevators for the public and employees. [Eff 12/6/90; am 11/5/93; am 7/6/98; am 6/30/14; comp]
(Auth: HRS §397-4) (Imp: HRS §397-4)

§12-240-2 Automatic operation. Elevator operation shall be automatic. Each car shall be equipped with a self-leveling feature that will automatically bring the car to floor landings within a tolerance of one-half (1/2) inch or thirteen (13) millimeters under rated loading to zero loading conditions. This self-leveling feature shall be automatic and independent of the operating device and shall correct the overtravel or undertravel. [Eff 12/6/90; am and comp]
(Auth: HRS §397-4) (Imp: HRS §397-4)

§12-240-3 Hall call buttons. Call buttons in elevator lobbies and halls shall be centered at approximately forty-two (42) inches (1065 millimeters) above the floor. When situations prohibit mounting at forty-two (42) inches, in conjunction with ICC A117.1-2009, hall buttons maybe be mounted between fifteen (15) inches and forty-eight (48) inches for unobstructed forward reach, and between twenty-five (25) inches and forty-eight (48) inches for obstructed forward reach. Such call buttons shall have visual signals to indicate when each call is registered and when each call is answered. Call buttons shall be a minimum of three-fourths (3/4) inch or nineteen (19) millimeters in the smallest dimension. The button designating the up direction shall be on top as shown in Figure 240-1, titled, "Hoistway and

Elevator Entrances", dated December 6, 1990, which is made a part of this chapter, and located at the end of this chapter. Buttons shall be raised or flush. Objects mounted or placed beneath hall call buttons shall not project into the elevator lobby more than four (4) inches or 100 millimeters. [Eff 12/6/90; am and comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-240-4 Hall lanterns. A visible and audible signal shall be provided at each hoistway entrance to indicate which car is answering a call. Audible signals shall sound once for the up direction and twice for the down direction or shall have verbal annunciators that say "up" or "down." Visible signals shall have the following features:

- (1) Hall lantern fixtures shall be mounted so that their centerline is at least seventy-two (72) inches or 1830 millimeters above the lobby floor;
- (2) Visual elements shall be at least two and a half (2.5) inches or sixty-four (64) millimeters in the smallest dimension; and
- (3) Signals shall be visible from the vicinity of the hall call button. In-car lanterns located in cars, visible from the vicinity of hall call buttons, and confirming to the above requirements, shall be acceptable as shown in Figure 240-1, titled, "Hoistway and Elevator Entrances," dated December 6, 1990, which is made a part of this chapter, and located at the end of this chapter. [Eff 12/6/90; am and comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-240-5 Raised characters on hoistway entrances. All elevator hoistway entrances shall have raised floor

designations provided on both jambs. The centerline of the characters shall be sixty (60) inches (1525 millimeters) from the floor. Such characters shall be two (2) inches or fifty (50) millimeters high and shall comply with ANSI A17.1-1986 Rule 1.30. Permanently applied plates are acceptable if they are permanently fixed to the jambs as shown in Figure 240-1, titled, "Hoistway and Elevator Entrances", dated December 6, 1990, which is made a part of this chapter, and located at the end of this chapter. [Eff 12/6/90; am and comp]
(Auth: HRS §397-4) (Imp: HRS §397-4)

§12-240-6 Door protective and reopening device.

Elevator doors shall open and close automatically. They shall be provided with a reopening device that will stop and reopen a car door and hoistway door automatically if the door becomes obstructed by an object or person. The device shall be capable of completing these operations without requiring contact for an obstruction passing through the opening at heights of five (5) inches and twenty-nine (29) inches or 125 and 735 millimeters, respectively, from the floor as shown in Figure 240-1, titled, "Hoistway and Elevator Entrances", dated December 6, 1990, which is made a part of this chapter, and located at the end of this chapter. Door reopening devices shall remain effective for at least twenty (20) seconds. After such an interval, doors may close in accordance with the requirements of ANSI A17.1b-1989. [Eff 12/6/90; am and comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-240-7 Door and signal timing for hall calls.

The minimum acceptable time from notification that a car is answering a call until the doors of that car start to close shall be calculated from the following equation:

$$T = \frac{D}{1.5 \text{ ft./s}} \quad \text{or} \quad T = \frac{D}{455 \text{ mm/s}}$$

where T = total time in seconds and D = distance (in feet or millimeters) from a point in the lobby or corridor sixty (60) inches or 1525 millimeters directly in front of the farthest call button controlling that car to the centerline of its hoistway door as shown in Figure 240-2, titled "Graph of Timing Equation", dated December 6, 1990, which is made a part of this chapter, and located at the end of this chapter. For cars with in-car lanterns, T begins when the lantern is visible from the vicinity of hall call buttons and an audible signal is sounded. The minimum acceptable notification time shall be five (5) seconds. [Eff 12/6/90; am and comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-240-8 Door delay for car calls. The minimum time for elevator doors to remain fully open in response to a car call shall be three (3) seconds. [Eff 12/6/90; am and comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-240-9 Floor plan of elevator cars. The floor area of elevator cars shall provide space for wheelchair users to enter the car, maneuver within reach of controls, and exit from the car. Acceptable door opening and inside dimensions shall be as shown in Figure 240-3, titled "Minimum Dimensions of Elevator Cars", dated December 6, 1990, which is made a part of this chapter, and located at the end of this chapter. The clearance between the car platform sill and the edge of any hoistway landing shall be no greater than one and one-fourth inch or thirty-two (32) millimeters. [Eff 12/6/90; am 7/6/98; am and comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-240-10 Floor surfaces. Floor surfaces shall comply with ANSI A117.1-1980 Rule 4.5. [Eff 12/6/90;

comp] (Auth: HRS §397-4) (Imp: HRS
§397-4)

§12-240-11 Illumination levels. The level of illumination at the car controls, platform, and car threshold and landing sill shall be at least five (5) footcandles (53.8 lux). [Eff 12/6/90; am and comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-240-12 Car controls. Elevator control panels shall have the following features:

- (1) Buttons. All control buttons shall be at least three fourths (3/4) inch or nineteen (19) millimeters in their smallest dimension. They may be raised or flush;
- (2) Tactile and visual control indicators. All control buttons shall be designated by raised standard alphabet characters for letters, Arabic characters for numerals, or standard symbols as shown in Figure 240-4(a), titled "Car Controls", dated December 6, 1990, which is made a part of this chapter, and located at the end of this chapter, and as required in ANSI A17.1-1989. Raised characters and symbols shall comply with ANSI A17.1-1986 Rule 4.30. The call button for the main entry floor shall be designated by a raised star at the left of the floor designation as shown in Figure 240-4(a), titled "Car Controls", dated December 6, 1990, which is made a part of this chapter, and located at the end of this chapter. All raised designations for control buttons shall be placed immediately to the left of the button to which they apply. Applied plates, permanently attached, are an acceptable means to provide raised control designations. Floor

buttons shall be provided with visual indicators to show when each call is registered. The visual indicators shall be extinguished when each call is answered;

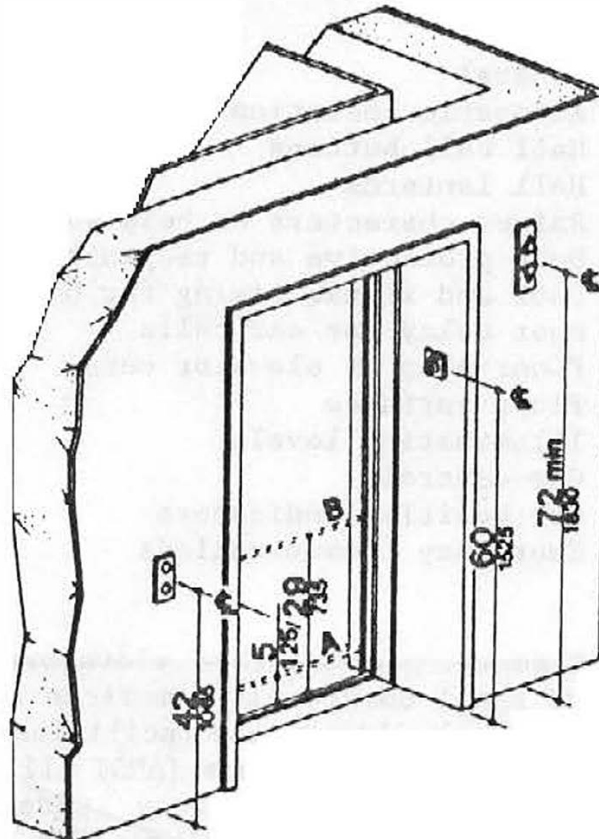
- (3) Height. All floor buttons shall be no higher than fifty-four (54) inches or 1220 millimeters, above the finish floor for side approach and forty-eight (48) inches for front approach. Emergency controls, including the emergency alarm and emergency stop, shall be grouped at the bottom of the panel and shall have their centerlines no less than thirty-five (35) inches or 890 millimeters above the floor as shown in Figures 240-4(a) and (b), entitled "Car Controls", dated December 6, 1990, which is made a part of this chapter, and located at the end of this chapter. The emergency alarm bell shall be operable under normal power as well as for a minimum of one (1) hour on auxiliary power in the event of the loss of normal power; and
- (4) Location. Controls shall be located on a front wall if cars have center opening doors, and at the side wall or at the front wall next to the door if cars have side opening doors as shown in Figures 240-4(c) and (d), entitled "Car Controls", dated December 6, 1990, which is made a part of this chapter, and located at the end of this chapter. [Eff 12/6/90; am 11/5/93; am and comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-240-13 Car position indicators. In elevator cars, a visual car position indicator shall be provided above the car control panel or over the door to show the position of the elevator in the hoistway. As the car passes or stops at a floor served by the elevators, the corresponding numerals shall illuminate, and an audible signal shall sound. Numerals shall be a minimum of one-half (1/2) inch or thirteen (13) millimeters high. The

audible signal shall be no less than twenty (20) decibels with a frequency no higher than 1500 Hertz. An automatic verbal announcement of the floor number at which a car stops or which a car passes may be substituted for the audible signal. [Eff. 12/6/90; am and comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-240-14 Emergency communications. If provided, emergency two-way communication systems between the elevator and a point outside the hoistway shall comply with ANSI A17.1-1989. The highest operable part of a two-way communication system shall be a maximum of forty-eight (48) inches or 1220 millimeters from the floor of the car. It shall be identified by a raised or recessed symbol and lettering complying with ANSI A117-1986 Rule 4.30 and located adjacent to the device. If the system uses a handset, then the length of the cord from the panel to the handset shall be at least twenty-nine (29) inches or 735 millimeters. If the system is located in a closed compartment, the compartment door hardware shall conform to ANSI A117.1-1980 Rule 4.27, Controls and Operating Mechanisms. The emergency intercommunication system shall not require voice communication. [Eff. 12/6/90; am and comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

Figure 240-1
Holstway and Elevator Entrances
December 6, 1990



NOTE: The automatic door reopening device is activated if an object passes through either line A or line B. Line A and Line B represent the vertical locations of the door reopening device not requiring contact.

Figure 240-2
Graph of Timing Equation
December 6, 1990

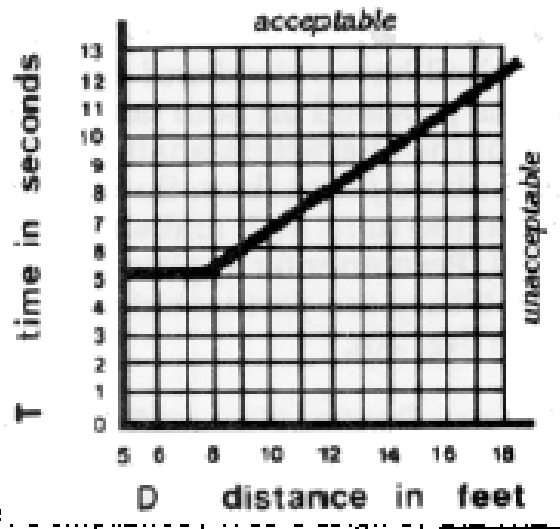


Figure 240-3
Minimum Dimensions of
Elevator Cars
December 6, 1990

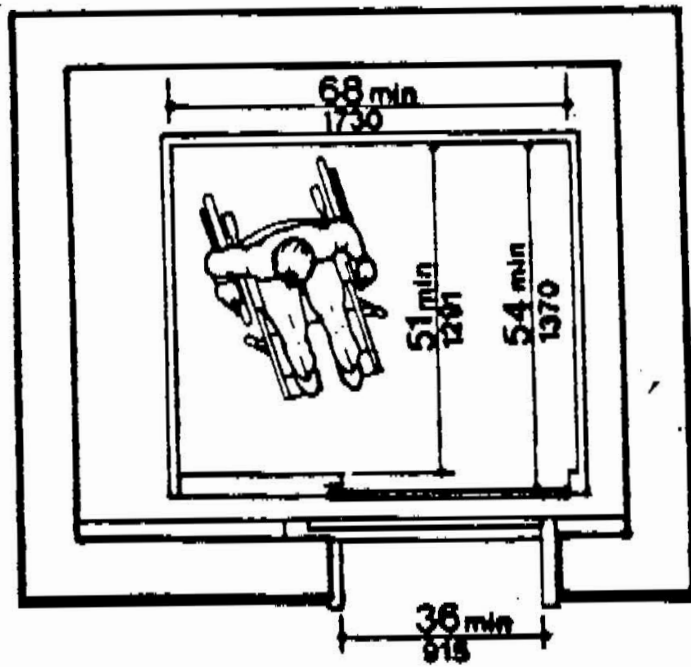
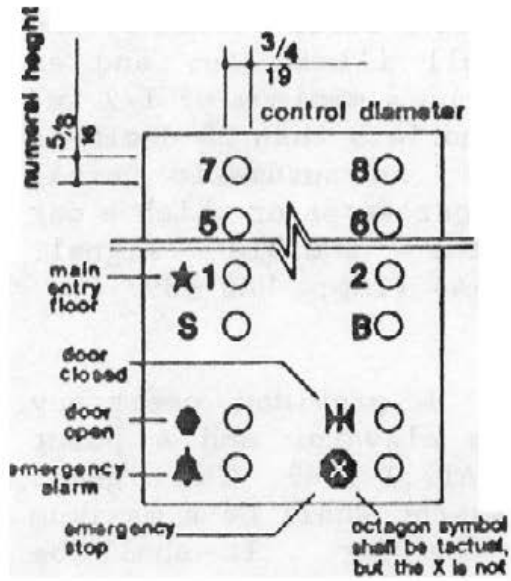
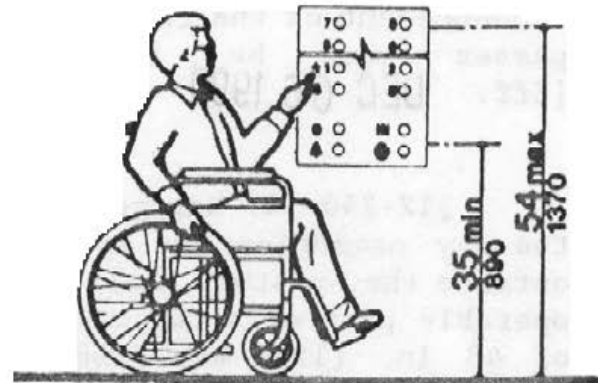


Figure 240-3
Minimum Dimensions of Elevator Cars

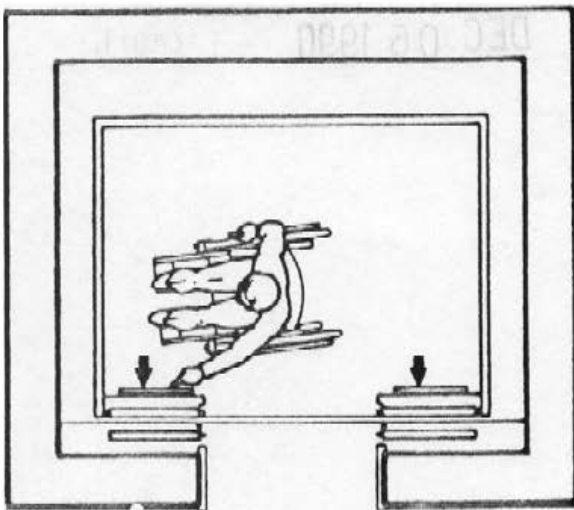
Figure 240-4
 Car Controls
 December 6, 1990



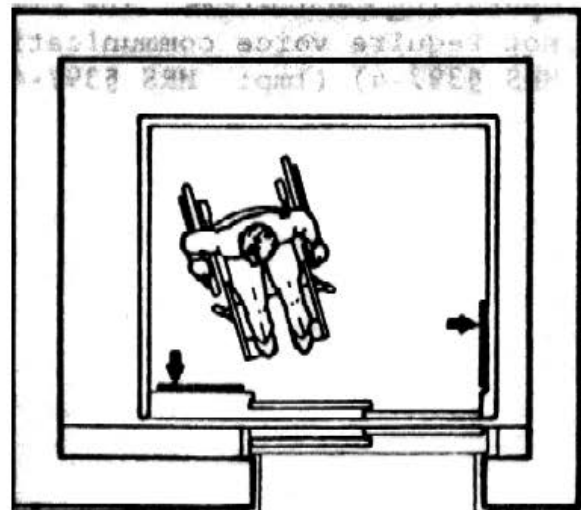
(a)
 Panel Detail



(b)
 Control Height



(c)
 Alternate Locations of Panel
 with Center Opening Door



(d)
 Alternate Locations of Panel
 with Side Opening Door

Figure 240-4
 Car Controls

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

Amendments to and compilation of chapters 12-229, 12-230.1, and 12-240, Hawaii Administrative Rules, on the Summary Page dated December 3, 2018 were adopted December 3, 2018, following a public hearing held on November 26, 2018, after public notice was given in the Honolulu Star-Advertiser (published October 26, 2018).

The adoption of chapters 12-229, 12-230.1, and 12-240 shall take effect ten days after filing with the Office of the Lieutenant Governor.

Leonard Hoshijo
Director of Labor and
Industrial
Relations

APPROVED:

David Y. Ige
Governor
State of Hawaii

Dated: _____

APPROVED AS TO FORM:

Deputy Attorney General

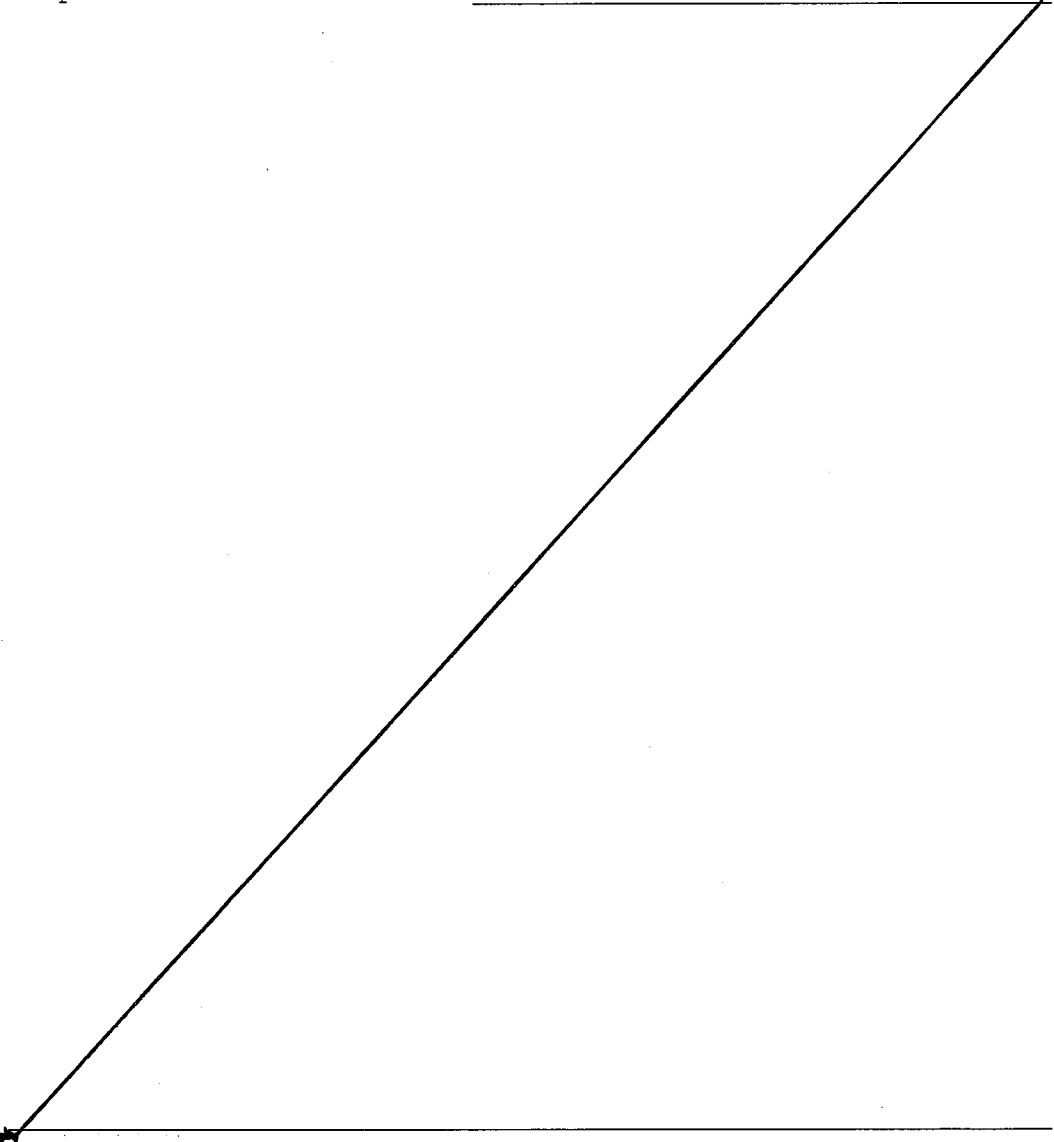
Filed

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

Amendment and Compilation of Chapters 12-229, 12-230.1,
and 12-240 Hawaii Administrative Rules

(Effective Date)

1. Chapter 12-229, Hawaii Administrative Rules, entitled
"General, Administrative, and Legal Provisions", is amended and
compiled to read as follows: _____



"HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 8

DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

PART 11

ELEVATORS AND RELATED SYSTEMS

CHAPTER 229

GENERAL, ADMINISTRATIVE, AND LEGAL PROVISIONS

§12-229-1	Scope and application
§12-229-2	Definitions
§12-229-3	Repealed
§12-229-3.1	Codes incorporated and adopted by reference
§12-229-4	Repealed
§12-229-4.1	Installation and alteration permits
§12-229-5	Repealed
§12-229-5.1	Permits to operate
§12-229-6	Repealed
§12-229-6.1	Fees
§12-229-7	Repealed
§12-229-7.1	Inspections and tests
§12-229-8	Repealed
§12-229-8.1	Rights and enforcement
§12-229-9	Repealed
§12-229-9.1	Complaints
§12-229-10	Repealed

§12-229-10.1	Reporting of accidents
§12-229-11	Repealed
§12-229-11.1	Investigations
§12-229-12	Repealed
§12-229-12.1	Violations and penalties
§12-229-13	Repealed
§12-229-13.1	Review and appeal
§12-229-14	Repealed
§12-229-14.1	Trade secrets
§12-229-15	Repealed
§12-229-15.1	Notifications of transfer and location
§12-229-16	Repealed
§12-229-16.1	Variances
§12-229-17	Records

Historical Note: Chapter 12-229 is based substantially on chapter 12-241, Hawaii Administrative Rules. [Eff 7/6/98; R 6/19/00]

§12-229-1 Scope and application. This part contains general and administrative rules and legal provisions which apply to this part. This part applies to all elevators, escalators, moving walks, dumbwaiters, material lifts, lifts for the mobility impaired, personnel hoists, and amusement rides in the State, with the following exceptions:

- (1) Equipment or apparatus installed in private residences provided the equipment or apparatus is not accessible to the ~~[general]~~ public or to other occupants in the building;
- (2) Coin or token operated amusement rides considered or known in the amusement trade as kiddie rides;
- (3) Material hoists used to raise or lower materials during construction, alteration or demolition. (within the scope of ANSI A10.5); and
- (4) Equipment or apparatus installed in buildings or structures wholly owned and operated by the United States government.

[Eff 6/19/00; am and comp 6/30/14; comp
11/10/2016; am and
comp] (Auth: HRS §394-4)
(Imp: HRS §397-4)

§12-229-2 Definitions. As used in this part:

"Alteration" means any change to equipment, including parts, components, or subsystems other than maintenance, repair, or replacement.

"Amusement ride" means a mechanically or electrically operated device designed to carry passengers in various modes and used for entertainment and amusement.

"ANSI" means the American National Standards Institute.

"ANSI/American Society of Safety Engineers A10.4" means ANSI/ASSE, Personnel Hoists and Employee Elevators on Construction and Demolition Sites, as adopted and incorporated by reference in section 12-229-3.1.

"Appeals board" means the labor and industrial relations appeals board, department of labor and industrial relations.

"Approved" means approved by the department.

"Appurtenance" means a device installed on and used in the normal operation of an elevator, escalator, or kindred equipment.

"ASME" means American Society of Mechanical Engineers.

"ASME A17.1" means ASME A17.1, Safety Code for Elevators and Escalators, as adopted and incorporated by reference in section 12-229-3.1.

"ASME A17.3" means ASME A17.3, Safety Code for Existing Elevators and Escalators, as adopted and incorporated by reference in section 12-229-3.1.

"ASME A17.6" means ASME A17.6, Standard for Elevator Suspension, Compensation and Governor Systems, as adopted and incorporated by reference in section 12-229-3.1.

"ASME A18.1" means ASME A18.1, Safety Standard for Platform Lifts and Stairway

Chairlifts, as adopted and incorporated by reference in section 12-229-3.1.

"ASTM" means American Society for Testing and Materials.

"ASTM-F24" means ASTM-F24 1997 standard on amusement rides and devices.

"Attorney general" means the attorney general of the State of Hawaii or any of the attorney general's deputies.

"Authority Having Jurisdiction" or "AHJ", means the director of labor and industrial relations or the director's designee.

"Authorized inspection agency" means the department of labor and industrial relations, elevator inspection section.

"Building code" means the currently adopted, applicable county code in the revised ordinances of the applicable county, or the code adopted by the State of Hawaii for state buildings.

"Certificate of competency" means a certificate issued to a person who has passed the examination prescribed by the director.

"Contractor" means any person, firm, or corporation installing, repairing, or servicing any amusement ride, elevator, or kindred equipment or structure inspected pursuant to chapter 397, HRS.

"Department" means the department of labor and industrial relations, State of Hawaii.

"Director" means the director of the department of labor and industrial relations or the director's designee.

"Discrepancy" means the non-conformance to codes, standards, rules, or regulations required by this part.

"Division" means the Hawaii occupational safety [~~&~~] and health, department of labor and industrial relations, State of Hawaii.

"Elevator" means a hoisting and lowering mechanism equipped with a car that moves within guides and serves two or more fixed landings, and is classified by elevator types as described in ASME A17.1, as adopted and incorporated by reference in section 12-229-3.1.

"Elevators and related systems" means elevators and kindred equipment and amusement rides.

"Existing installation" means any device or equipment where the application for the installation was properly filed with the department before the effective date of this chapter.

"HAW" means the registration number assigned to an elevator and kindred equipment or amusement ride by the AHJ.

"Hawaii Revised Statutes" or "HRS" means laws enacted by the Hawaii state legislature.

"IBC" means the International Building Code, as adopted and incorporated by reference in section 12-229-3.1.

"Installation" means a complete elevator or kindred equipment, including its hoistway, hoistway enclosures and related construction, and all machinery and equipment necessary for its operation.

"Installation or alteration permit" means a document, which may be electronic, issued by the department authorizing the installation or alteration of an elevator or kindred equipment, or the department approval of a new amusement ride.

"Kindred equipment" means escalators, moving walks, dumbwaiters, permanently installed material lifts, platform lifts, inclined lifts, stage lifts, stairway chairlifts, personnel hoists, and any other similar mechanized equipment used to convey people in places other than a public right-of-way, but does not include amusement rides.

"May" means not mandatory.

"New installation" means any device or equipment that is not an existing installation or an existing installation that is being relocated.

"NFPA" means the National Fire Protection Association.

"NFPA 1, UFC" means the NFPA 1, Uniform Fire Code, as adopted and incorporated by reference in section 12-229-3.1.

"NFPA 70" means NFPA 70, National Electrical Code, as adopted and incorporated by reference in section 12-229-3.1.

"Operating permit" means a permit issued by the department authorizing the operation of an elevator, kindred equipment, or amusement ride.

"Order" means a command to perform a mandatory act issued by the department.

"Overtime" means hours outside a regular eight-hour working day.

"Owner" means any person, firm, or corporation with legal title to any amusement ride, and elevator and kindred equipment inspected pursuant to chapter 397, HRS.

"Permit to operate" means a document, which may be electronic, issued by the department authorizing the operation of an elevator, kindred equipment, or an amusement ride.

"Qualified elevator inspector" means an elevator inspector employed by the department holding a valid certificate of competency issued by the department and a Qualified Elevator Inspector certification that meets the criteria of the American Society of Mechanical Engineers and the standards for the qualification of elevator inspectors of the American National Standards Institute. The certificate of competency is valid only while the inspector is employed by the department.

"Regular operating permit" means an operating permit that is not indicated as temporary.

"Shall" means mandatory.

"Unsafe" means potential exposure to a recognized hazard.

"Violation" means the failure to comply with any citation, notice, or order of the department, or rule or standard promulgated under chapter 397, HRS. [Eff 6/19/00; am and comp 6/30/14; am and comp 11/10/16; am and comp]
(Auth: HRS §§397-4, 397-6) (Imp: HRS §§397-4, 397-6)

§12-229-3 REPEALED. [R 6/30/14]

§12-229-3.1 Codes incorporated and adopted by reference. The following codes are incorporated and adopted by reference and made a part of this chapter and shall apply to elevators, kindred equipment, and amusement rides in this part, unless otherwise modified by the rules pertaining

to elevators, kindred equipment, and amusement rides[-]:

- (1) ANSI/ASSE A10.4-2007, Personnel Hoists and Employee Elevators on Construction and Demolition Sites, as copyrighted and published in 2007 by American National Standards Institute, Inc., 25 West 43rd Street, New York, NY 10036[-];
- (2) ASME A17.1-2010/CSA-B44-10, Safety Code for Elevators and Escalators, as copyrighted and published in 2010 by the American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016-5990[-];
- (3) ASME A17.3-2011, Safety Code for Existing Elevators and Escalators, as copyrighted and published in 2011 by the American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016-5990[-];
- (4) ASME A17.5-2011, Elevator and Escalator Electrical Equipment, as copyrighted and published in 2011 by the American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016-5990[-];
- (5) ASME A17.6-2010, Standard for Elevator Suspension, Compensation and Governor Systems, as copyrighted and published in 2010 by the American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016-5990[-];
- (6) ASME A18.1-2011, Safety Standard for Platform Lifts and Stairway Chairlifts, as copyrighted and published in 2011 by the American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016-5990[-];
- (7) International Building Code, 2012 edition, as copyrighted and published in 2012 by the International Code Council, Incorporated, 500 New Jersey Avenue, 6th Floor, Washington, DC 20001[-];
- (8) ICC A117.1-2009, Accessible and Usable Buildings and Facilities, as copyrighted and published in 2010 by the International Code Council,

- Incorporated, 500 New Jersey Avenue, NW,
6th Floor, Washington, DC 20001[-];
- (9) NFPA 1, Uniform Fire Code, 2009 Edition,
as copyrighted and published in 2009 by
the National Fire Protection
Association, 1 Batterymarch Park,
Quincy, MA 02269-7471[-];
 - (10) NFPA 72, National Fire Alarm and
Signaling Code, 2010 edition, as
copyrighted and published in 2010 by the
National Fire Protection Association, 1
Batterymarch Park, Quincy, MA 02269-
7471[-];
 - (11) NFPA 13, Standard for the Installation
of
Sprinkler Systems, 2010 edition, as
copyrighted and published in 2010 by the
National Fire Protection Association, 1
Batterymarch Park, Quincy, MA 02269-
7471[-]; and
 - (12) NFPA 70, National Electrical Code, 2011
edition, as published in 2011 by the
National Fire Protection Association, 1
Batterymarch Park, Quincy, MA 02269-
7471. [Eff and comp 6/30/14; comp
11/10/16; am and comp]
(Auth: HRS §397-4) (Imp: HRS §397-4)

§12-229-4 REPEALED. [R 6/30/14]

§12-229-4.1 Installation and alteration permits.

(a) No person shall install, construct, reconstruct, relocate, or make an alteration to any elevator, kindred equipment, or amusement ride subject to this part without first obtaining an installation or alteration permit from the department.

The owner shall be responsible for contracting the work with a licensed elevator contractor, and shall ensure that the contractor obtains all permits and inspections required by this part. The contractor shall be responsible for the safe

operation of equipment during the installation, alteration, or relocation, until a permit to operate has been issued by the department.

An amusement ride owner shall register the new apparatus or an alteration by submitting an application for review and registration.

An application on a form provided by the department shall be submitted and approved prior to commencement of work. The application shall include:

- (1) Applicant's name (elevator contractor licensed to perform the work), business address and license number, expiration date of the license, name and contact information of the licensed mechanic or supervisor in charge of the work;
- (2) Building name and complete address, including island and zip code, of the installation or alteration;
- (3) The name and complete address of the legal owner of the elevator, kindred equipment, or amusement ride;
- (4) The anticipated start date of the installation or alteration and the anticipated completion date;
- (5) The type of equipment to be installed or altered, manufacturer of equipment, maximum rise and number of floors;
- (6) The plans and specifications for installation or alteration of elevators and kindred equipment together with the building details that are pertinent to the installation;
- (7) Copies of engineering data, tests, and laboratory reports, and any other pertinent information deemed necessary by the department;
- (8) For amusement rides, the application to review, approve, and register the new apparatus shall be submitted on a form authorized by the department and shall include manufacturers' drawings, and engineering and test data; and

(9) Any other information indicated as required by the application.

(b) Applications to install, alter, or register must be accompanied by the payment of the appropriate installation or alteration processing fee for each conveyance subject to this part as per the schedules in Exhibit A, titled "Elevator and Kindred Equipment Installation and Alteration Fees", dated [~~January 1, 2017,~~] January 1, 2019, which is made a part of this chapter and located at the end of this chapter, and Exhibit B, titled "Elevator and Kindred Equipment Inspection Fees", dated [~~January 1, 2017,~~] January 1, 2019, which is made a part of this chapter and located at the end of this chapter.

(1) Refunds of the initial installation or alteration processing fee minus the department's cost to review the application thus far may be refunded upon written or electronic request to the department. A refund of the initial installation or alteration processing fee may be granted upon satisfactory showing that the withdrawal or amendment of the application was due to circumstances beyond the control of the applicant~~[-]~~; and

(2) No refunds will be issued for expired permits.

(c) Only a person who is licensed to engage in the business of installing or repairing elevators and kindred equipment by the contractors license board of the Hawaii department of commerce and consumer affairs may apply for an installation permit or alteration permit, except the application to install a personnel hoist may be made by a licensed construction contractor and the application to register an amusement ride may be made by the owner.

(d) All alteration work on elevators and kindred equipment requires an alteration permit prior to the work being performed. Alteration work includes:

- (1) All alterations to elevators and kindred equipment as described in ASME A17.1, section 8.7; [~~and~~]
- (2) Any alteration that requires the equipment or conveyance to be tested by the department prior to being returned to service, including:
 - (A) The replacement or repair of any part or parts that would require recalibration or testing per ASME A17.1, section 8.7; or
 - (B) Work performed on components or equipment affecting or necessary for fire safety (e.g., cab interiors, systems associated with fire recall, etc.); and
- (3) Any alteration, renovation, or change to the original design of the car's interior.

(e) The application shall be deemed approved if not acted on by the department within thirty calendar days following the receipt of the completed application. The maximum period of time for the department to act on an application for installation or alteration established pursuant to this section shall be extended in the event of a national disaster, state emergency, or union strike that would prevent the applicant or the department from fulfilling application review requirements until the time the emergency conditions improve or are reasonably under control.

(f) Installation or alteration permits issued by the department shall be posted in a conspicuous place on the jobsite near the elevator, kindred equipment, or amusement ride prior to the start of any work being done. They shall remain posted until the department has witnessed all acceptance tests and issued an operating permit for the elevator or kindred equipment.

(g) Installation or alteration permits shall expire within one year of the issuance date if the installation or alteration work described on the application has not yet commenced. Otherwise, the permit is valid for a period of three years.

(h) All new elevators and kindred equipment shall have the Hawaii registration number (HAW) assigned by the department painted on or permanently attached to both the car top crosshead and the controller. The owner is responsible for having the HAW number painted on or attached to the device or equipment, and ensuring that the number remains legible. [Eff and comp 6/30/14; am and comp 11/10/16; am and comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-229-5 REPEALED. [R 6/30/14]

§12-229-5.1 Permits to operate. (a) The department shall issue a "permit to operate" for any elevator, kindred equipment, or amusement ride where the inspection and tests required by the department show that the equipment has been designed and installed in accordance with the requirements of chapter 397, HRS, and its related rules, and are in compliance with this part. It shall be a violation for any person, firm, association, partnership, or corporation to operate an elevator, kindred equipment, or amusement ride regulated by this part unless a permit for the operation has been issued by the department and the permit remains in effect.

(b) A permit to operate an elevator or related systems shall be issued only after a qualified inspector has determined that the equipment, device, or apparatus meets all applicable requirements of this part. A permit to operate elevators or related systems shall be valid per the schedules in Exhibit C, titled "Inspection and Test Intervals (In Months)", dated January 1, 2017, which is made a part of this chapter and located at the end of this chapter, unless revoked sooner, and may be renewed only upon satisfactory completion of an inspection by a qualified inspector. A valid permit may be extended for cause by the department if so requested in writing by the owner or contractor prior to the expiration date.

(c) The owner, or the owner's duly appointed agent, shall be responsible for:

- (1) The safe operation and proper maintenance of elevators and related systems after the installation or alteration has been approved and an initial permit to operate has been issued;
- (2) Conducting all periodic or maintenance tests required by this part;
- (3) Arranging for inspections of closed buildings and not readily accessible elevators and related systems by qualified inspectors. Elevators and kindred equipment not inspected as a result of the owner's failure to provide convenient access shall be considered removed from service and shall comply with section 12-229-7.1(b) (4); and
- (4) Requesting and scheduling with the department all safety tests in accordance with the schedule in Exhibit C, titled "Inspection and Test Intervals (In Months)", dated January 1, 2017, which is made a part of this chapter and located at the end of this chapter.

(d) The permit to operate shall indicate the type of equipment for which it is issued. In the case of elevators and kindred equipment, the permit shall state whether it is passenger or freight, and the rated load and speed for the elevator, dumbwaiter, escalator, or moving walk. For new or altered elevators, after the effective date of these rules, a copy of the permit to operate shall be posted conspicuously in the car of the elevator, and on or near the dumbwaiter, escalator, moving walk, or other kindred equipment.

(e) The department may immediately revoke any permit to operate for any equipment required to be inspected by this chapter that is found to be in an unsafe condition; or when an owner or contractor fails to comply with a department order to correct specific defects or hazards and continues to use or operate the equipment, device, or apparatus without abating the hazards or defects. The department shall reissue a permit to operate when a subsequent inspection by a qualified inspector finds that the

hazardous condition has been corrected or when the department receives documentation that the noncompliant item has been abated.

(f) Exhibit C, titled "Inspection and Test Intervals (In Months)", dated January 1, 2017, which is made a part of this chapter and located at the end of this chapter, establishes the required maximum intervals for the periodic reinspection and renewal of the permits to operate. The department may require that specific equipment be re-inspected more frequently if conditions found during an inspection require closer or more frequent monitoring to ensure its safe operation.

(g) The department may provide for the issuance of a temporary permit to operate while any noncomplying elevator or kindred equipment is being brought into full compliance with chapter 397, HRS.

(h) The owner or contractor may petition the department for additional time to correct any discrepancy or violation by submitting a request in writing by no later than the correction due date or the expiration date of the temporary permit, whichever is applicable, and shall include:

- (1) Specific additional time needed;
- (2) Efforts made to date to effect correction; and
- (3) Any interim steps or actions taken to ensure the safe operation of the equipment, device, or apparatus.

(i) No elevator, kindred equipment, or amusement ride that is required to be inspected pursuant to chapter 397, HRS, shall be operated except as necessary to install, repair, or test the elevator, kindred equipment, or amusement ride unless a permit to operate has been issued by the department and remains valid. [Eff and comp 6/30/14; am and comp 11/10/16; am and comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-229-6 REPEALED. [R 6/30/14]

§12-229-6.1 Fees. (a) Departmental inspection fees. The department shall collect from the owner or contractor, the fee listed in the schedules in Exhibit A, titled "Elevator and Kindred Equipment Installation and Alteration Fees", dated [~~January 1, 2017,~~] January 1, 2019, which is made a part of this chapter and located at the end of this chapter, and Exhibit B, titled "Elevator and Kindred Equipment Inspection Fees", dated [~~January 1, 2017,~~] January 1, 2019, which is made a part of this chapter and located at the end of this chapter, for each inspection made by a qualified inspector. The following shall apply to departmental inspection fees:

- (1) The fees for scheduled inspections delayed or canceled by the requester, shall be charged to the requester in accordance with the scheduled fee for the type of inspection scheduled; however, if the notice of cancellation or delay of the scheduled inspection is provided at least forty-eight hours prior to the scheduled date and time, not counting weekends and state holidays, no additional fee will be charged. A delayed inspection includes situations where the equipment is not ready for the inspection or the requester is not ready to conduct the required tests within one hour of the scheduled date and time~~[-]~~;
- (2) Where an inspection must be re-scheduled due to untimely notification of delay or cancellation, the appropriate inspection fee must be paid prior to the re-scheduling of the inspection~~[-]~~;
- (3) Permit renewal and witness fees are per inspection, which may constitute one day or part of the day. If the inspector is required or requested to return on another day or at another time on the same day, additional fees shall be assessed at the rate of [~~\$300~~] \$325 per day for up to two hours and [~~\$600~~] \$650 per day for more than two hours. Fees for overtime hours shall be [~~\$600~~] \$650 per day for up to two

hours and [~~\$1,200~~] \$1,300 per day for more than two hours.

- (4) When a special or dedicated inspection is made at the request of the owner, contractor, or vendor, the sum of expenses incurred shall be charged in addition to the inspection fee[~~-~~];
- (5) Whenever the requester of an inspection fails to pay the fees required pursuant to this section within sixty days after notification, the requester shall pay, in addition to the fees required, a penalty equal to fifty [~~per cent~~] percent of the fee. For the purpose of this section, the date of invoice shall be considered the date of notification. For online inspection requests, fees must be paid at the time of the request, except for additional fees for special, dedicated, return, or overtime inspections for which the amount owed could not be determined in advance. In such cases, the requester shall be invoiced by the department[~~-~~];
- (6) Departmental reports of inspections for which expenses must be added to the basic fee shall be accompanied by an itemized account of the inspections made and the expenses incurred[~~-~~];
- (7) For elevators that have considerable rise but few openings, such as observation or deep well elevators, each ten feet of vertical rise shall be considered one floor in determining installation permit fees[~~-~~]; and
- (8) The department shall charge and collect the fee listed in Exhibit B, titled "Elevator and Kindred Equipment Inspection Fees", dated [~~January 1, 2017,~~] January 1, 2019, which is made a part of this chapter and located at the end of this chapter, for each category 3 or 5, or internal escalator inspection, witnessed by qualified inspectors of the department during regular working hours. If the inspector is required or requested to return on another day or at another time

on the same day, additional fees shall be assessed at the rate of [~~\$300~~] \$325 per day for up to two hours and [~~\$600~~] \$650 per day for more than two hours. Fees for overtime hours shall be [~~\$600~~] \$650 per day for up to two hours and [~~\$1,200~~] \$1,300 per day for more than two hours.

(b) Departmental installation and alteration permit and test fees. The following shall apply to installation, alteration, and test fees:

- (1) The department, before accepting an application for installing, constructing, re-constructing, or relocating an elevator or a related system, shall charge and collect a fee for each object in accordance with Exhibit A, titled "Elevator and Kindred Equipment Installation and Alteration Fees", dated [~~January 1, 2017,~~] January 1, 2019, which is made a part of this chapter and located at the end of this chapter[~~-~~];
- (2) The department, before accepting an application for an alteration, shall charge and collect a fee for each object in accordance with Exhibit A, titled "Elevator and Kindred Equipment Installation and Alteration Fees", dated [~~January 1, 2017,~~] January 1, 2019, which is made a part of this chapter and located at the end of this chapter. For online applications, fees must be paid electronically at the time of the application. Any transaction failure shall void the application[~~-~~];
- (3) For each instance requiring an installation or alteration permit fee, the department shall provide the final installation drawing review, inspection and witnessing of the initial acceptance test on the installation, any resulting permit to operate, and one additional follow-up inspection per permit, and the follow-up inspection shall be at the convenience of the department[~~-~~];
- (4) Fees in accordance with Exhibit A, titled "Elevator and Kindred Equipment

- Installation and Alteration Fees", dated ~~[January 1, 2017]~~ January 1, 2019, which is made a part of this chapter and located at the end of this chapter, or the fee in effect on the application submittal date shall be charged and collected for all applications for installation or alteration permits~~[-]~~;
- (5) For each instance requiring a building plan review, the department shall charge a fee in accordance with Exhibit A, titled "Elevator and Kindred Equipment Installation and Alteration Fees", dated ~~[January 1, 2017,]~~ January 1, 2019, which is made a part of this chapter and located at the end of this chapter.
- (6) For additional follow-up inspections for final acceptance, the fee shall be ~~[\$300]~~ \$325 per day for up to two hours and ~~[\$600]~~ \$650 per day for more than two hours if during the normal workday. Fees for overtime hours shall be ~~[\$600]~~ \$650 per day for up to two hours and ~~[\$1,200]~~ \$1,300 per day for more than two hours~~[-]~~; and
- (7) For elevators that have considerable rise but few openings, such as observation or deep well elevators, each ten feet of vertical rise shall be considered one floor in determining installation permit fees.
- (c) Amusement rides, fees. The following shall apply to amusement ride fees:
- (1) The fee for an inspection of an amusement ride shall be \$200~~[-]~~;
- (2) Inspections, for which a fee is to be charged, shall include, but are not limited to:
- (A) A reinspection of a ride at a site to allow it to operate at that site after the ride was found at an earlier inspection to be unsafe;
- (B) An inspection made at a site after being unable to complete an earlier inspection at that site due to delay within the control of the requester;

- (C) A permit to operate; and
 - (D) Scheduled inspections delayed or canceled by the requester where notification was provided to the department less than forty-eight hours prior to the scheduled inspection date and time (not including weekends and state holidays) ~~[]~~;
- (3) When an unscheduled inspection is made at the request of the owner or contractor, the sum of expenses incurred shall be charged in addition to the inspection fee ~~[]~~;
- (4) For additional follow-up inspections for final acceptance, the fee shall be \$300 per day for up to two hours and \$600 per day for more than two hours if during the normal workday. Fees for overtime hours shall be \$600 per day for up to two hours and \$1,200 per day for more than two hours ~~[]~~; and
- (5) Whenever the requester fails to pay the fees required under this section within sixty days after notification, the requester shall pay, in addition to the fees required, a penalty equal to fifty ~~[per-cent]~~ percent of the fee. For the purpose of this section, the date of invoice shall be considered the date of notification. For online inspection requests, fees must be paid at the time of the request, except for additional fees for unscheduled, return, or overtime inspections, which will be invoiced to the requester. [Eff and comp 6/30/14; am and comp 11/10/16; am and comp] (Auth: HRS \$397-4) (Imp: HRS \$397-5)

§12-229-7 REPEALED. [R 6/30/14]

§12-229-7.1 Inspections and tests. (a) The department shall inspect to ensure compliance with chapter 397, HRS, any activity related to the erection, construction, alteration, demolition, or maintenance of buildings, structures, bridges, highways, roadways, dams, tunnels, sewers, underground buildings or structures, underground pipelines or ducts, and other construction projects or facilities containing elevators or kindred equipment.

(b) Elevators and kindred equipment. The following shall apply to inspections and tests:

- (1) All permit renewal inspections and witnessing of tests of elevators or kindred equipment as required under this chapter shall be performed by qualified inspectors employed by the department[-];
- (2) Where notations of discrepancies, recommendations, or requirements are made, these notations shall refer to the applicable code, rule, or standard[-];
- (3) Elevator or kindred equipment regulated under this part shall be inspected and tested in accordance with the schedule in Exhibit C, titled "Inspection and Test Intervals (In Months)", dated January 1, 2017, which is made a part of this chapter and located at the end of this chapter[-];
 - (A) Internal inspections of escalators and moving walks shall be performed at intervals of thirty-six months[-];
 - (B) Personnel hoists shall be load tested at intervals of three months[-];
 - (C) The category 3 test [~~may be waived or the~~] shall be performed on all holed and holeless hydraulic elevator systems. The interval may be extended at the discretion of the department for those hydraulic elevator installations such as holeless hydraulic elevators in which all components are readily accessible for visual inspection[-]; and
 - (D) The period between inspections may be extended by the department for cause. A written application by the owner

must be received by the department prior to the expiration date for review[-];

- (4) Any elevator or kindred equipment that is out of service and not continuously maintained for a period exceeding one year or has not been inspected in accordance with ~~[paragraph]~~ (3) shall be taken out of service by the owner by complying with the following:
- (A) Car and counterweight (if any) shall be landed at the bottom of the hoistway and hoisting ropes shall be disconnected at both ends[-]. For hydraulic driven elevators and hydraulic driven kindred equipment, the car shall be lowered to the bottom of the hoistway, oil line disconnected with partial or total oil supply line removal, and oil removed from the tank reservoir;
 - (B) All electric power shall be removed by disconnecting and removing the power feeders; and
 - (C) All hoistway entrances or escalator entrances and exits shall be permanently blocked or barricaded to prevent inadvertent entry. The owner or the owner's agent shall submit a certification that the unit has been properly taken out of service as indicated in this paragraph, on a form provided by the department. Prior to placing the elevator or kindred equipment back in service, the department shall be notified and an inspection made[-];
- (5) While conducting tests and inspections required by section 12-229-5.1 for acceptance of new elevators for load testing of elevators, a positive means of communication, such as a walkie-talkie system, between the various testing and witnessing personnel shall be furnished by the elevator maintenance company performing the test or inspection.

(c) Amusement rides. The following shall apply to amusement rides:

- (1) The department shall inspect and witness load tests, in accordance with ASTM-F24 and chapter 12-250 at least semi-annually, for all amusement rides at a carnival, circus, fair, amusement park, or other public venue, for protecting the safety of the public[-];
- (2) After the initial inspection, each amusement ride shall be inspected as often as necessary to ensure safe operation but not less than twice annually at intervals of not less than five months nor greater than seven months[-];
- (3) If the department finds, upon inspection, that an amusement ride is in a safe operating condition and meets with the requirements of this chapter and chapter 12-250, the department shall affix to the ride in a prominent location a permit to operate bearing upon its face the date of the inspection and the permit expiration date[-]; and
- (4) No ride shall be operated unless it has affixed to it a current permit to operate. [Eff and comp 6/30/14; am and comp 11/10/16; am and comp]
(Auth: HRS §397-4) (Imp: HRS §397-4)

§12-229-8 REPEALED. [R 6/30/14]

§12-229-8.1 Rights and enforcement. (a)

Rights.

- (1) Authorized representatives of the director may enter without delay during regular working hours and at other reasonable times, any place, establishment, or premises in which are located amusement rides, or elevators and kindred equipment requiring inspection pursuant to chapter 397, HRS[-];

- (2) The department may question any employer, owner, operator, agent, or employee in investigation, enforcement, and inspection activities covered by this chapter~~[.]~~; and
- (3) Any employee of the State acting within the scope of the employee's office, employment, or authority under this chapter shall not be liable for or made a party to any civil action growing out of administration and enforcement of chapter 397, HRS.
 - (b) Enforcement.
 - (1) Whenever the right of entry to a place to inspect an amusement ride, elevator, or kindred equipment required by this chapter to be inspected is refused to an authorized representative of the director, the department may apply to the circuit court where the equipment is located for a search warrant providing on its face that the wilful interference with its lawful execution may be punished as a contempt of court~~[.]~~;
 - (2) Whenever the department finds that the construction of or the operation of any amusement ride, or elevator and kindred equipment required to be inspected under this part is not safe, or that any practice, means, method, operation, or process employed or used is unsafe or is not in conformance with the standards and codes adopted pursuant to chapter 91, HRS, the department shall issue an order to render the construction or operation safe or in conformance with chapter 397, HRS, or its standards and codes and deliver the same to the contractor or owner. Each order shall be in writing and may be delivered by mail, electronically, or in person. The department may in the order direct that, in the manner and within a time specified, such additions, repairs, improvements, or changes be made and such safety devices and safeguards be furnished, provided, and used as are reasonably required to ensure compliance

with the purposes and provisions of chapter 397, HRS. An order to bring the operation of elevator or kindred equipment into compliance may require the owner to submit a plan of compliance that addresses interim corrective plans to ensure public and worker safety as well as the schedule for the correction of the non-conforming element. A plan of compliance shall not exceed five years for residential buildings or three years for all other buildings. The owner or contractor shall obey and observe all orders issued by the department or be subject to appropriate civil penalties[~~-~~];

- (3) Whenever, in the opinion of the department, the condition of or the operation of amusement rides, or elevators and kindred equipment required to be inspected by chapter 397, HRS, or any practice, means, method, operation, or process employed or used, is unsafe, or is not properly guarded, or is dangerously placed, its use may be prohibited by the department. An order to that effect shall be posted prominently on the equipment or near the place or condition referred to in the order. The order shall be removed when a determination has been made by an authorized representative of the department that the amusement rides, or elevators and kindred equipment are safe and the required safeguards or safety devices are provided[~~-~~];
- (4) Pursuant to section 397-4(d)(4), HRS, when an imminent hazard exists, the department may apply for a restraining order from a circuit court to effect enforcement restraining the use or operation until the use or operation is made safe[~~-~~];
- (5) Pursuant to section 397-4(d)(5), HRS, the director, or an authorized representative, shall have the same powers as are possessed by the court respecting administering of oaths, compelling attendance of witnesses, producing

documentary evidence, and examining witnesses or causing them to be examined, and may take depositions and certify to official acts[-];

- (6) Where a condition or practice involving any amusement ride, or elevator and kindred equipment required to be inspected by chapter 397, HRS, could reasonably be expected to cause death or serious physical harm, the department shall have the right, independent of any other enforcement powers under this chapter, to:
- (A) Immediately take steps to obtain abatement by informing the owner, contractor, and all persons in harm's way of the hazard by meeting, posted notice, or otherwise;
 - (B) Take steps to immediately obtain abatement through direct control or elimination of the hazard if, after reasonable search, the owner, contractor, or their representative is not available;
 - (C) Take steps to obtain immediate abatement when the nature and imminence of the danger or hazard does not permit a search for the owner or contractor; and
 - (D) Where appropriate, initiate necessary legal proceedings to require abatement by the owner or contractor[-]; and
- (7) The department may prosecute, defend, and maintain actions in the name of the department for the enforcement of the provisions of chapter 397, HRS, including the enforcement of any order issued by it, the appeal of an administrative or court decision, and other actions necessary to enforce chapter 397, HRS. [Eff and comp 6/30/14; comp 11/10/16; am and comp] (Auth: HRS §397-4) (Imp: HRS §§397-4, 397-6, 397-8)

§12-229-9 REPEALED. [R 6/30/14]

§12-229-9.1 Complaints. (a) Complaints may be made to the department and where reasonable grounds exist for the department to believe there may be a hazard, there shall be an inspection in response to the complaint.

(b) Names of all complainants and witnesses shall be held in confidence by the department, unless prior permission has been given by the complainants or witnesses to release his or her names, or unless it has been determined by the state attorney general that disclosure is necessary for the enforcement and review under this chapter. [Eff and comp 6/30/14; comp 11/10/16; comp] (Auth: HRS §397-4) (Imp: HRS §397-7)

§12-229-10 REPEALED. [R 6/30/14]

§12-229-10.1 Reporting of accidents. (a) Whenever an accident occurs involving either an amusement ride, or an elevator and kindred equipment, the owner shall promptly notify the division within eight hours by telephone at (808)586-9141. For reporting purposes, "accident" is defined as an occurrence resulting in significant damage to an elevator and kindred equipment and amusement device, including when it is rendered inoperative or any occurrence resulting in physical injury to a person or persons.

An accident report shall be submitted to the department within two calendar days after the owner has completed the accident investigation, and shall include the following information:

- (1) The date and time of the accident;
- (2) Hawaii registration number (HAW number) of the amusement ride, elevator, or kindred equipment involved;
- (3) Name and address of the victim or victims;

- (4) A brief description of the accident, including the nature and scope of the injuries;
- (5) Whether the amusement ride, elevator, or kindred equipment sustained any damage rendering it inoperative for any period of time;
- (6) Names and contact information of any witnesses interviewed;
- (7) A brief description of any inspections or tests conducted of the equipment to determine probable causation and who conducted them;
- (8) The investigators' conclusions as to the cause of the accident; and
- (9) The name and contact information of the investigator. For purposes of this section, the owner may contract another to perform the actual accident investigation, however, the owner is responsible for the report and its timely submittal to the department. If the accident investigation cannot be completed within three months of the date of the incident, the owner shall submit the incomplete report to the department with information as to when the investigation is expected to be completed. The final report shall be submitted as soon as the investigation is completed.

(b) Whenever an accident occurs which results in loss of life, the owner shall promptly notify the division by telephone at (808)586-9141, or messenger, within eight hours, and neither the amusement ride, or elevator and kindred equipment, or any of their parts, shall be removed or disturbed before permission has been given by the department except for the purpose of saving human life or limiting consequential damage.

(c) Additional reports, in writing or otherwise, may be required by the director. [Eff and comp 6/30/14; am and comp 11/10/16; comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-229-11 REPEALED. [R 6/30/14]

§12-229-11.1 Investigations. The department may investigate accidents reported under section 12-229-10.1 involving amusement rides, and elevators and kindred equipment inspected under this chapter and may issue orders and recommendations with respect to the elimination and control of the causal factors. [Eff and comp 6/30/14; comp 11/10/16; comp] (Auth: HRS §397-4) (Imp: HRS §§397-4, 397-6)

§12-229-12 REPEALED. [R 6/30/14]

§12-229-12.1 Violations and penalties. (a) The director may assess all civil penalties provided in this section, giving due consideration to the gravity of the violation, the good faith of the owner or contractor, and the history of previous violations.

(b) Violations. The following shall apply to violations:

- (1) Any owner or contractor who violates chapter 397, HRS, or any safety standards and codes adopted pursuant to chapter 91, HRS, or who violates or fails to comply with any order made under or by virtue of chapter 397, HRS, or who defaces, displaces, destroys, damages, or removes without the authority of the department any safety device, safeguard, notice, order, or warning required by chapter 397, HRS, its standards, or codes, shall be assessed a civil penalty of not more than \$10,000 for each such violation[-];
- (2) Any owner who allows the installation, construction, reconstruction, relocation, or alteration of any elevator or kindred equipment prior to obtaining an installation or alteration permit as

required by section 12-229-5.1 shall be assessed a civil penalty of not more than \$10,000. The penalty may be reduced by a maximum of ten [~~per cent~~] percent for history of past violations[~~-~~];

(3) Owners who fail to report an accident as required by section 12-229-10.1 shall be assessed a civil penalty of not more than \$5,000 per instance. Consideration may be given for good faith and history of violations [~~-~~];

(4) Owners who fail to maintain or provide records or reports to the department as required by this part shall be assessed a civil penalty of not more than \$5,000 per record not maintained or provided [~~-~~];

(5) Repeated violations shall be assessed a civil penalty of not more than \$10,000. Consideration may be given for gravity only[~~-~~];

(6) Owners who fail to take an elevator or kindred equipment out of service as specified in section 12-229-7.1(b) (4) shall be assessed a civil penalty of not more than \$10,000[~~-~~]; and

(7) Each day a violation continues shall constitute a separate violation except during an abatement period.

(c) Discrepancies and penalties. The following shall apply to discrepancies and penalties:

(1) Any conditions found not in conformance with applicable standards or codes adopted pursuant to chapter 397, HRS, shall be regarded as discrepancies and shall be made known to the owner or contractor by letter or written order to correct or both. All discrepancies shall be satisfactorily resolved as soon as possible. When, in the opinion of the department, a discrepancy constitutes a potentially serious hazard, the department may prohibit the use of the equipment until the condition is abated. Failure to abate unsafe conditions or failure to correct discrepancies within the time prescribed shall be a violation subject to

the civil penalties prescribed in this section.

- (2) Assessing penalties~~[-]~~;
 - (A) Consideration shall be given to the gravity of the violation. For a violative condition that could not or probably would not result in serious harm to life the penalty may be reduced by forty ~~[per-cent]~~ percent~~[-]~~;
 - (B) Consideration shall be given to the good faith of the owner or contractor. For immediate correction or for attempts to make corrections or abate hazards that have been thwarted by conditions beyond the control of the owner or contractor, the penalty may be reduced by forty ~~[per-cent]~~ percent~~[-]~~; and
 - (C) Consideration shall be given for the history of previous violations. For no previous violations by the owner or contractor, the penalty may be reduced by ten ~~[per-cent]~~ percent.

(d) Anyone who knowingly makes a false statement on any document required by chapter 397, HRS, upon conviction, shall be punished by a fine of not more than \$10,000 or imprisonment or both. Any evidence suggesting that a false statement may have been made shall be immediately referred to the director, who shall consult with the state attorney general for purposes of initiating appropriate action. [Eff and comp 6/30/14; am and comp 11/10/16; am and comp] (Auth: HRS §397-4) (Imp: HRS §397-8)

§12-229-13 REPEALED. [Eff 6/19/00; R 6/30/14]

§12-229-13.1 Review and appeal. (a) Any order or citation of the director shall be final and conclusive against an owner or contractor, unless an appeal is made in writing, clearly stating what items are being contested. The notice

of contest must be addressed to the director and received or, if mailed, postmarked by no later than the twentieth calendar day following receipt of the order or citation.

(b) The director or the director's designee may hold a formal hearing, which shall result in a decision and order by the director. Any party who disagrees with the director's decision may appeal in writing to the director within twenty calendar days of receipt of the decision and order. The director shall promptly notify the labor and industrial relations appeals board of the notice of contest. Where a prior formal hearing is held at the department level, the labor and industrial relations appeals board shall conduct a case review using only the record.

(c) An owner or contractor may petition the director for modification of the abatement requirements in an order, as provided in section 397-9, HRS. [Eff and comp 6/30/14; comp 11/10/16; comp] (Auth: HRS §397-4)
(Imp: HRS §397-9)

§12-229-14 REPEALED. [R 6/30/14]

§12-229-14.1 Trade secrets. Information obtained by the department containing or revealing a trade secret shall be held confidential and access shall be limited to authorized representatives of the director for purposes of carrying out chapter 397, HRS. [Eff and comp 6/30/14; comp 11/10/16; comp]
(Auth: HRS §397-4) (Imp: HRS §397-11)

§12-229-15 REPEALED. [R 6/30/14]

§12-229-15.1 Notifications of transfer and location. (a) The seller of any elevator or kindred

equipment regulated by this part shall notify the department in writing using a form provided by the department within thirty calendar days of the sale giving the HAW number, location name, location address of the equipment, and the name and address of the purchaser.

(b) The owner of any elevator or kindred equipment who gives, scraps, demolishes, or removes the device shall report the transaction and the name and address of the new owner, if any, within thirty calendar days of the transaction to the department using the form provided by the department. [Eff and comp 6/30/14; am and comp 11/10/16; comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-229-16 REPEALED. [R 6/30/14]

§12-229-16.1 Variances. (a) In cases of practical difficulties, undue hardships, or new developments, an owner may apply for a variance from any elevator safety standard. The application must be in writing, clearly stating the standard from which a variance is sought, the conditions, means, practices, methods, operations, or processes proposed to be used, together with drawings, specifications, and other supporting data. The director may issue an order for a variance if what is proposed will provide a substantially equivalent level of safety to that provided by the standard.

(b) All variances granted pursuant to this chapter shall have only a future effect. The director may decline to entertain an application for variance on a subject or issue for which a discrepancy letter or citation has been issued to the owner or contractor involved and the discrepancy or violation has not yet been satisfactorily corrected or resolved.

(c) Before granting the variance, the director shall publish a notice in a paper of general circulation or post notice on the department's website notifying all potentially

affected parties of the director's intent to grant the variance. The notice shall provide a period of thirty calendar days to object to the granting of the variance, after which time the variance shall become final if no objections are filed or a hearing is requested. The cost of the publication shall be borne by the petitioning party. Every notice shall specify the alternative to the safety standard being considered.

(d) Any party objecting to the granting of the variance must notify the director in writing within the thirty-day period, stating the reasons why the variance should not be granted and the resultant specific impact on public safety. The objecting party's reasons for objection may also be based on grounds other than impact on public safety such as feasibility of compliance or lack of undue hardship to the petitioner. The objecting party may also elect to provide the reasons for the objection at a hearing.

(e) The hearing requested by the objecting party shall be held no later than forty-five days after the thirty-day period stated in the public notice[-] as follows:

- (1) The objecting party or parties and the variance applicant shall be provided notice of the date, time, and place of the hearing at least fourteen calendar days before the scheduled hearing[-];
- (2) Each party shall be prepared to provide evidence supporting the party's case, including a brief oral statement summarizing such evidence[-];
- (3) The director shall provide a written determination to all parties[-];
- (4) If the director determines that the evidence does not support denial of the variance request, no further notice is required[-]; and
- (5) If the director determines that the evidence supports a denial of the variance request, a notice shall be published in a newspaper of general circulation stating the reasons why the variance is not granted.

(f) If the variance application does not include all relevant information as indicated in subsection (a), the director may deny the application. The denial shall be submitted in writing to the applicant within thirty calendar days. A notice of denial shall include a brief statement of the grounds for the denial. A denial of an application shall be without prejudice to the filing of another application.

(g) Requests for reconsideration on denied variance requests. The variance applicant whose variance request was denied may file a petition for reconsideration of the denial with the director. The petition must be filed in writing within twenty calendar days of the denial notice and should include all pertinent facts regarding why the variance should be granted.

- (1) The director may review the record on the case along with any additional information provided by the applicant or conduct further inquiries on the matter~~[-]~~; and
- (2) Any party objecting to the director's decision shall use the review and appeal process as provided for in section 12-229-13.1. [Eff and comp 6/30/14; am and comp 11/10/16; am and comp]
(Auth: HRS §397-4) (Imp: HRS §397-4)

§12-229-17 Records. Records shall be maintained by the elevator inspection branch of the department of labor and industrial relations for the purpose of preserving reports of inspections, witnessing of test and accident investigations, correspondence, prints, and memoranda for all objects inspected pursuant to this chapter. These records shall be maintained for a period of not less than five years for amusement rides, ~~[and]~~ elevators, and kindred equipment." [Eff and comp 6/30/14; comp 11/10/16; comp]
(Auth: HRS §397-4) (Imp: HRS §397-4)

EXHIBIT A
ELEVATOR AND KINDRED EQUIPMENT INSTALLATION AND
ALTERATION FEES

January 1, 2019

Alterations¹:

Involving only the replacement of a single (1) major component (such as a car door operator, valve, a jack or a cylinder)	\$200
Involving only cosmetic changes (such as car interior modernizations)	\$350
Involving two or more major components and/or subsystems:	
1-3 floors	\$630
4-9 floors	\$680
10-19 floors	\$740
20-29 floors	\$790
30-39 floors	\$850
40 or more floors	\$950

New Installations²

Dumbwaiter or material lift	\$525
Escalator, moving walk, or moving ramp	\$525
Platform lifts or stairway chairlifts	\$525
Elevator:	
1-3 floors	\$630
4-9 floors	\$680
10-19 floors	\$740
20-29 floors	\$790
30-39 floors	\$850
40 or more floors	\$950
Personnel hoists	\$450
Temporary use permits (construction car)	\$450

Additional inspections:

Normal workday, up to two hours	\$325/day
Normal workday, more than two hours	\$650/day
Overtime hours, up to two hours	\$650/day
Overtime hours, more than two hours	\$1,300/day

Building plan reviews \$200

¹ Where alterations to four or more units at the same location are identical, the fee for each additional alteration permit (beyond the initial four) shall be reduced by fifty percent. The applications shall be submitted at the same time to qualify for the fee reduction.

² For elevators which have considerable rise but few openings, such as observation or deep-well elevators, each ten feet of vertical rise shall be considered one floor for the purpose of determining installation or alteration permit fees.

EXHIBIT B

ELEVATOR AND KINDRED EQUIPMENT INSPECTION FEES

January 1, 2019

Permit and Renewal Inspection Fees¹:

Dumbwaiter or material lift	\$150
Escalator, moving walk, or moving ramp	\$225
Platform Lift or Stairway Chairlift	\$225
Hydraulic elevator - holed	\$275
Hydraulic elevator - holeless	\$275
Hydraulic elevator - roped holeless	\$325
Traction elevators:	
1-3 floors	\$250
4-9 floors	\$275
10-19 floors	\$300
20-29 floors	\$350
30-39 floors	\$425
40 or more floors	\$500
Personnel hoist	\$300
Temporary Use Permit (construction car)	\$300

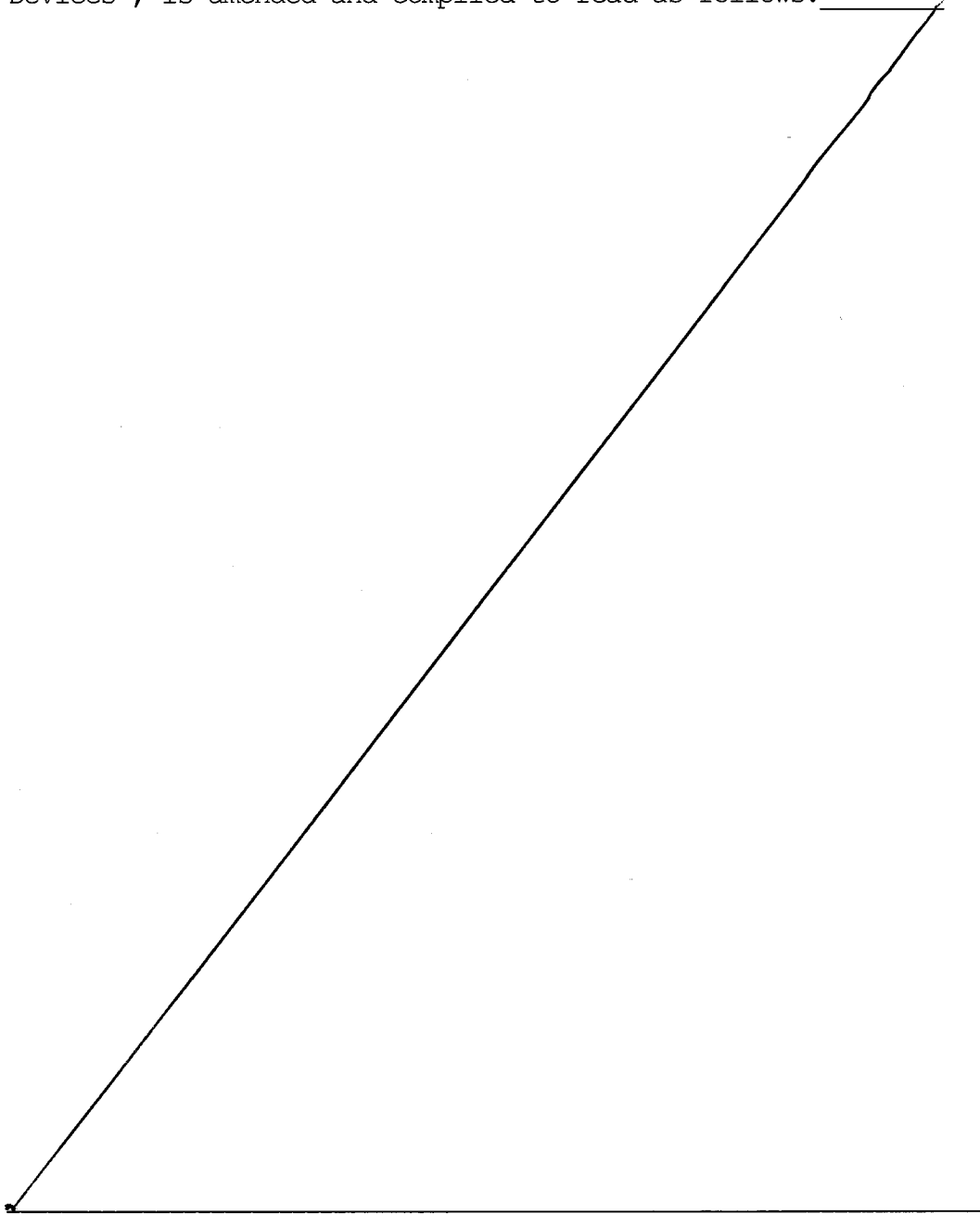
Safety, load or internal test (witness fees):

Category 3 test	\$325
Category 3 test with safety overspeed valve	\$375
Category 3/5 test for roped hydraulic	\$425
Category 5 test	\$425
Category 5 with counterweight test	\$525
Escalator, internal	\$425

¹ For elevators which have considerable rise but few openings, such as observation or deep-well elevators, each ten feet of vertical rise shall be considered one floor for the purpose of determining permit renewal inspection fees.

Permit renewal and witness fees are per inspection, which may constitute one day or part of the day. If the inspector is required to return on another day or at another time on the same day, additional fees shall be assessed at the rate of \$325 per day for up to two hours and \$650 per day for more than two hours. Fees for overtime hours shall be \$650 per day for up to two hours and \$1,300 per day for more than two hours.

2. Chapter 12-230.1, Hawaii Administrative Rules, entitled "Elevators, Escalators, Dumbwaiters, Moving Walks, and Material Lifts and Dumbwaiters with Automatic Transfer Devices", is amended and compiled to read as follows: _____



"HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 8

DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

PART 11

ELEVATORS AND RELATED SYSTEMS

CHAPTER 230.1

ELEVATORS, ESCALATORS, DUMBWAITERS, MOVING WALKS,
AND MATERIAL LIFTS AND DUMBWAITERS WITH
AUTOMATIC TRANSFER DEVICES

- §12-230.1-1 Applicability
- §12-230.1-2 General requirements
- §12-230.1-3 Requirements for the installation of
new elevators and kindred equipment or
the relocation of existing equipment
- §12-230.1-4 Requirements for existing elevators,
escalators, dumbwaiters, moving walks,
and material lifts and dumbwaiters with
automatic transfer devices

Historical Note: Chapter 230.1 is based on chapter 230 of title 12 of the Hawaii Occupational Safety and Health Standards, Rules and Regulations. [Eff

7/12/82; am 12/19/83; am 12/8/86; am, ren, and comp
12/6/90; am 11/5/93; am 7/6/98; R 6/30/14]

§12-230.1-1 Applicability. The requirements of this chapter shall be applicable to the design, construction, installation, plans review, testing, inspection, certification, operation, use, maintenance, repair, alteration and relocation of, and investigation of accidents involving elevators and kindred equipment subject to chapter 397, Hawaii Revised Statutes, including elevators, escalators, dumbwaiters, moving walks, and material lifts and dumbwaiters with automatic transfer devices. [Eff 6/30/14; comp 11/10/16; comp]
(Auth: HRS §397-4) (Imp: HRS §397-4)

§12-230.1-2 General requirements. (a) All new and existing installations of elevators and kindred equipment shall be reasonably safe to persons and property and in conformity with the provisions of this chapter.

(b) Conditions found not in conformity with the provisions of this chapter for which the director had not previously issued a discrepancy letter may be regarded as discrepancies. All discrepancies shall be satisfactorily resolved as soon as possible or within the time specified by the director. Failure to correct discrepancies or failure to abate an unsafe condition within the time specified shall be deemed a violation.

(c) All passenger elevators shall have a clearly legible "Smoking Prohibited by Law" or "No Smoking" sign installed inside of the cab. The letters on the sign shall not be less than one inch in height. The sign shall be posted in elevators in buildings open to the public, including elevators in apartments and other multi-unit residential buildings. The international no-smoking symbol may be posted in lieu of the sign provided that the diameter of the circle

is not less than four inches. [Eff 6/30/14; comp
11/10/16; comp] (Auth: HRS §397-
4) (Imp: HRS §397-4)

§12-230.1-3 Requirements for the installation of new elevators and kindred equipment or the relocation of existing equipment. (a) The design, construction, installation, operation, inspection, testing, maintenance, alteration, and repair of elevators, escalators, dumbwaiters, moving walks, and material lifts and dumbwaiters with automatic transfer devices, and its associated parts, shall conform to this chapter and the American Society of Mechanical Engineers A17.1-2010, which is adopted by reference and made a part of this chapter with the following amendments:

- (1) Section 5.2 of the American Society of Mechanical Engineers A17.1, Limited-Use/Limited-Application Elevators, is amended to read: "Limited-use/limited-application elevators (see 1.3) are not permitted to be installed or used, unless:
 - (A) The building is required to be accessible in accordance with the Department of Justice's ADA Standards for Accessible Design (2010), or in accordance with section 103-50, Hawaii Revised Statutes;
 - (B) The building is also on the National or Hawaii Register of Historic Places; and
 - (C) Accessibility cannot otherwise be achieved without adversely altering the historically protected features of the structure.";
- (2) Section 8.6.1.2.1(c) of the American Society of Mechanical Engineers A17.1 is amended to read: "A written Maintenance Control Program in electronic or paper form created for the equipment is the property of the equipment

owner, and shall be made available to the department and be located on site"~~[]~~; and

(3) Section 8.9.2 of the American Society of Mechanical Engineers A17.1 is amended to read: "The data plate shall be in plain view and securely attached to the controller door. An additional data plate shall be installed in the vicinity of the top key operated starting switch on the exterior of escalators and moving walks_".

(b) A stairway or ladder shall be provided at all personnel points of access where there is a break in elevation of eight (8) inches [~~(two hundred mm)~~] (200 millimeters) or more and when no ramp or runway is provided.

(c) International Building Code, 2012 edition, chapter 30, Elevators and Conveying Systems, is adopted by reference and made a part of this chapter, and shall apply to all new elevators and kindred equipment.

(d) International Code Council A117.1-2009, Accessible and Usable Buildings and Facilities, sections 407, 410, and related portions of sections 106, 302, 308, 309, 703, and 705 are adopted by reference and made a part of this chapter, and shall apply to all new installations.

(e) Chapter 21 of the National Fire Protection Association 72 National Fire Alarm and Signaling Code, 2010 edition, and its related annexes and provisions are adopted by reference and made a part of this chapter, and shall apply to all new elevators.

(f) Article 620 of the National Fire Protection Association 70, National Electric Code, 2011 edition, and its related provisions are adopted by reference and made a part of this chapter, and shall apply to all new elevators.

(g) Paragraph 8.15.5, of National Fire Protection Association 13, Standard for the Installation of Sprinkler Systems, 2010 edition, is adopted by reference and made a part of this chapter, and shall apply to all new elevators and escalators. The annexes A.8.15.5.1 to A.8.15.5.4, D.1.1.9.2,

D.1.1.10.2, D.2.23.2.2, and D.2.24.2.2, are explanatory and informational only.

(h) In each machine room, control room, machinery space, control space, and hoistway pit, there shall be provided at least one 125 volt, single phase, 15- or 20-ampere ground fault circuit interrupter (GFCI) duplex receptacle.

(i) ~~[A machine room light bulb shall be externally guarded.]~~ All lamps utilized for illumination in machine room/space, control room/space, hoistway and pit, shall be externally guarded to prevent accidental breakage.

(j) Section 2.27.8 (switch keys) of American Society of Mechanical Engineers A17.1 is amended to read: "The key switches required by 2.27.2 through 2.27.5 for all elevators in a building shall be operable by the "FEO-K1" key. The keys shall be Group 3 Security (see 8.1). A separate key shall be provided for each switch. These keys shall be kept inside the firefighter's lockbox. The firefighter's lockbox shall be located immediately adjacent to the firefighter's emergency recall key switch, at an approximate height of six (6) feet above the floor. Access to the firefighter's lockbox shall only be the standardized key (#25460) for Hawaii, as required by the Authority Having Jurisdiction (AHJ). The firefighter's emergency recall key switch shall be located [6] six (6) feet above the floor on the [left hand] left-hand side of the elevator wall when facing the elevator and [6] six (6) feet above the floor on the [left hand] left-hand side of the left elevator when facing the elevators for a group of elevators. [The fire key switch shall be located adjacent to the firefighter's lockbox. This] The key for the firefighter's emergency recall switch shall be of a tubular, ~~[7-pin]~~ 7-pin, style 137 construction and shall have a bitting code of 6143521 starting at the tab sequenced clockwise as viewed from the barrel end of the key. The key shall be coded "FEO-K1". The possession of the "FEO-K1" key shall be limited to elevator personnel, emergency personnel, elevator equipment manufacturers, and authorized personnel during checking of the Firefighter's

Emergency Operation (see 8.1 and 8.6.11.1).". [Eff
6/30/14; am and comp 11/10/16, am and
comp] (Auth: HRS §397-4) (Imp:
HRS §397-4)

§12-230.1-4 Requirements for existing elevators, escalators, dumbwaiters, moving walks, and material lifts and dumbwaiters with automatic transfer devices.

(a) All existing elevators, escalators, moving walks, and dumbwaiters and material lifts without automatic transfer devices shall comply with the code in effect at the time of installation or alteration as illustrated in Exhibit A, titled "Existing Elevator and Kindred Equipment Code Application Dates", dated January 1, 2017, which is made a part of this chapter and located at the end of this chapter, provided that for those years where the Hawaii Registration number (HAW) did not specify code year, the code version of the American Society of Mechanical Engineers A17.1 in effect at the time of installation or alteration shall apply. The director shall have the discretion to apply a specific code to any elevator and related system if the applicable code cannot be readily ascertained. If the installation or alteration permit was issued after 1997, then the elevator or kindred equipment shall comply with American Society of Mechanical Engineers A17.3-2011, which is adopted by reference and made a part of this chapter.

(b) The following provisions of American Society of Mechanical Engineers A17.1-2010 are adopted by reference and shall apply to existing elevators and kindred equipment as stated:

- (1) Part 1, General, shall apply to all existing elevators, escalators, moving walks, and dumbwaiters, and material lifts;
- (2) Section 5.10, Elevators Used for Construction, shall apply to all existing elevators used for construction;

- (3) Section 8.1, Security, shall apply to all existing elevators, escalators, and moving walks;
 - (4) Section 8.6, Maintenance, Repair, Replacement and Testing, shall apply to all existing elevators, escalators and moving walks, and dumbwaiters and material lifts with automatic transfer devices with the following amendment: Section 8.6.1.2.1(c) of the American Society of Mechanical Engineers A17.1 shall not apply~~[-]~~;
 - (5) Section 8.7, Alterations, shall apply to all existing elevators, escalators, moving walks, and material lifts and dumbwaiters with automatic transfer devices~~[-]~~;
 - (6) Section 8.8, Welding, shall apply to all existing elevators, escalators, moving walks, and material lifts and dumbwaiters with automatic transfer devices ~~[-]~~;
 - (7) Section 8.9, Code Data Plate, shall apply to all existing elevators, escalators, moving walks, and material lifts and dumbwaiters with automatic transfer devices, except section 8.9.2 is amended to read: "The data plate shall be in plain view and securely attached to the controller door. An additional data plate shall be installed in the vicinity of the top key operated starting switch on the exterior of escalators and moving walks."~~[-]~~;
 - (8) Section 8.10, Acceptance Inspections and Tests, shall apply to all existing elevators, escalators, moving walks, and material lifts and dumbwaiters with automatic transfer devices~~[-]~~; and
 - (9) Section 8.11, Flood Resistances, shall apply to all existing elevators, escalators, moving walks, and material lifts and dumbwaiters with automatic transfer devices.
- (c) Chapter 12-240 shall apply to all elevators where the installation or alteration application was received by the department after December 6, 1990.

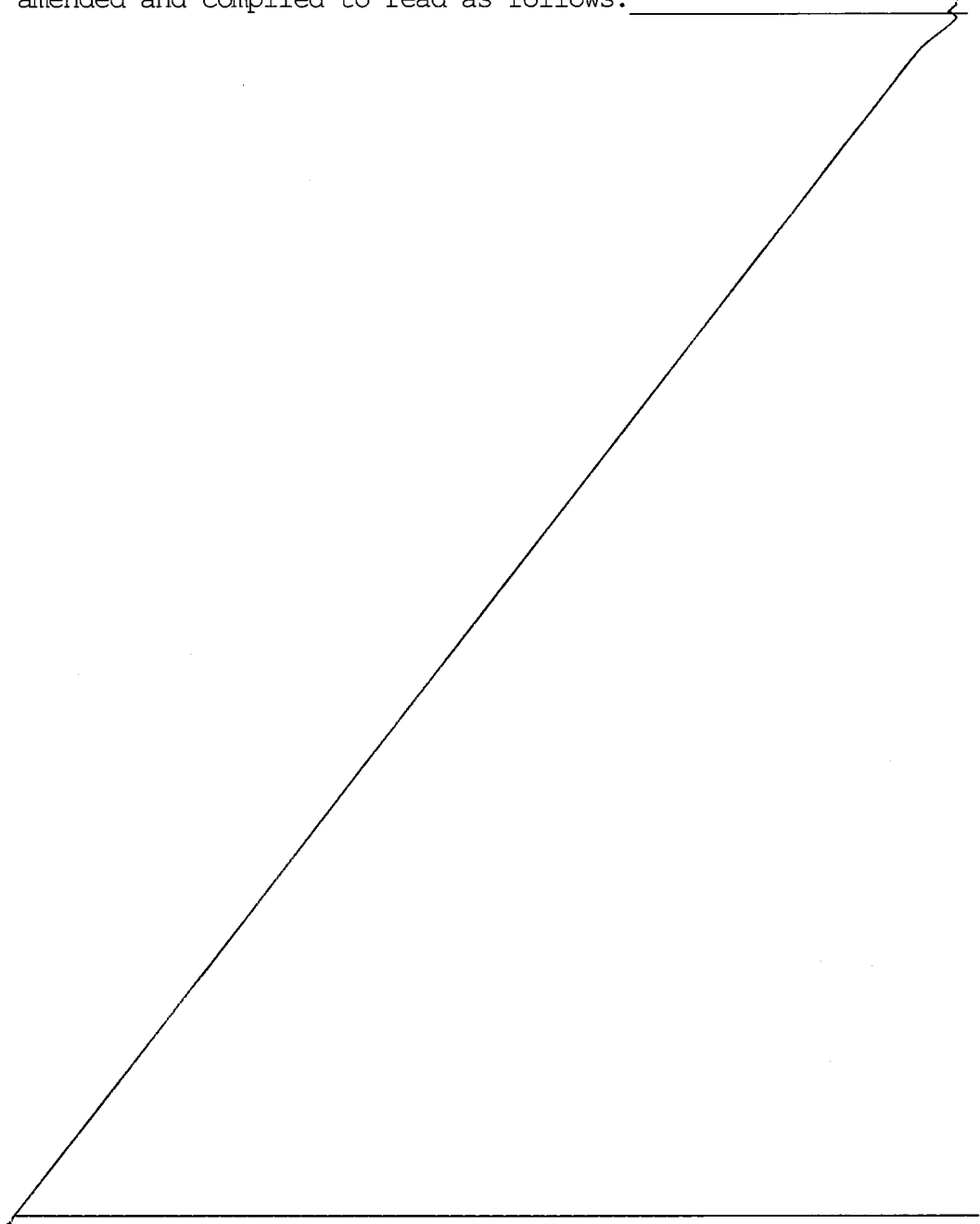
(d) American Society of Mechanical Engineers
17.6-2010 shall apply to existing elevators with other
types of suspension means and steel cables less than
three-eighths of an inch in diameter." [Eff 6/30/14;
am and comp 11/10/16; am and comp]
(Auth: HRS §397-4) (Imp: HRS §397-4)

**EXHIBIT A
EXISTING ELEVATOR AND KINDRED EQUIPMENT
CODE APPLICATION DATES**

January 1, 2017

YEAR Implemented	CODE/RULE	A17.1 REFERENCE YEAR
1958	HAR Chapter 22	No year specified, Applicable ANSI Edition 1955
1964	HAR Chapter 22	1960
1969	HAR Chapter 22	1965
1982	HAR Chapter 230	1981
1990	HAR Chapter 230	1987
1993	HAR Chapter 230	1990
1998	HAR Chapter 230	1996
2000	HAR Chapter 230	1996
2014	HAR Chapter 230.1	2010

3. Chapter 12-240, Hawaii Administrative Rules, entitled "Elevator Requirements for Individuals with Disabilities", is amended and compiled to read as follows: _____



"HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 8

DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

CHAPTER 240

ELEVATOR REQUIREMENTS FOR INDIVIDUALS WITH
DISABILITIES

§12-240-1	General
§12-240-2	Automatic operation
§12-240-3	Hall call buttons
§12-240-4	Hall lanterns
§12-240-5	Raised characters on hoistway entrances
§12-240-6	Door protective and reopening device
§12-240-7	Door and signal timing for hall calls
§12-240-8	Door delay for car calls
§12-240-9	Floor plan of elevator cars
§12-240-10	Floor surfaces
§12-240-11	Illumination levels
§12-240-12	Car controls
§12-240-13	Car position indicators
§12-240-14	Emergency communications

§12-240-1 General. Passenger elevators which have had their architectural plans reviewed for installation permit after December 6, 1990, shall have accessible elevators on an accessible route and

shall comply with American National Standards Institute specifications for making buildings and facilities accessible to and usable by persons with disabilities (ANSI A117.1-1986) and with the American National Standard Safety Code for Elevators, Dumbwaiters, Escalators, and Moving Walks, ASME A17.1 1996. This standard does not preclude the use of residential or fully enclosed wheelchair lifts when appropriate and approved by administrative authorities. Freight elevators shall not be considered as meeting the requirements of this section, unless the only elevators provided are used as combination passenger and freight elevators for the public and employees. [Eff 12/6/90; am 11/5/93; am 7/6/98; am 6/30/14; comp]
(Auth: HRS §397-4) (Imp: HRS §397-4)

§12-240-2 Automatic operation. Elevator operation shall be automatic. Each car shall be equipped with a self-leveling feature that will automatically bring the car to floor landings within a tolerance of 1/2 [~~in. (13 mm)~~] inch or thirteen (13) millimeters under rated loading to zero loading conditions. This self-leveling feature shall be automatic and independent of the operating device and shall correct the overtravel or undertravel. [Eff 12/6/90; am and comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-240-3 Hall call buttons. Call buttons in elevator lobbies and halls shall be centered at approximately [42 in. (1065 mm)] forty-two (42) inches (1065 millimeters) above the floor. When situations prohibit mounting at forty-two (42) inches, in conjunction with ICC A117.1-2009, hall buttons maybe be mounted between fifteen (15) inches to forty-eight (48) inches for unobstructed forward reach, and between twenty-five (25) inches to forty-eight (48) inches for

obstructed forward reach. Such call buttons shall have visual signals to indicate when each call is registered and when each call is answered. Call buttons shall be a minimum of 3/4 inch [~~(19 mm)~~] or nineteen (19) millimeters in the smallest dimension. The button designating the up direction shall be on top [~~(see Figure 240-1)~~] as shown in Figure 240-1, titled, "Hoistway and Elevator Entrances", dated December 6, 1990, which is made a part of this chapter, and located at the end of this chapter. Buttons shall be raised or flush. Objects mounted or placed beneath hall call buttons shall not project into the elevator lobby more than [~~4 in.(100 mm)~~] four (4) inches (100 millimeters).
[Eff 12/6/90; am and comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-240-4 Hall lanterns. A visible and audible signal shall be provided at each hoistway entrance to indicate which car is answering a call. Audible signals shall sound once for the up direction and twice for the down direction or shall have verbal annunciators that say "up" or "down." Visible signals shall have the following features:

- (1) Hall lantern fixtures shall be mounted so that their centerline is at least [~~72 in.(1830 mm)~~] seventy-two (72) (1830 millimeters) above the lobby floor;
- (2) Visual elements shall be at least [~~2-1/2 in.(64 mm)~~] two and a half (2.5) inches or sixty-four (64) millimeters in the smallest dimension; and
- (3) Signals shall be visible from the vicinity of the hall call button. In-car lanterns located in cars, visible from the vicinity of hall call buttons, and confirming to the above requirements, shall be acceptable [~~(see Figure 240-1)~~] as shown in Figure 240-1,

titled, "Hoistway and Elevator Entrances," dated December 6, 1990, which is made a part of this chapter, and located at the end of this chapter. [Eff 12/6/90; am and comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-240-5 Raised characters on hoistway entrances. All elevator hoistway entrances shall have raised floor designations provided on both jambs. The centerline of the characters shall be [~~60 in.(1525 mm)~~] sixty (60) inches (1525 millimeters) from the floor. Such characters shall be [~~2 in.(50 mm)~~] two (2) inches or fifty (50) millimeters high and shall comply with ANSI A117.1-1986 Rule 1.30. Permanently applied plates are acceptable if they are permanently fixed to the jambs [~~(See Figure 240-1)~~] as shown in Figure 240-1, titled, "Hoistway and Elevator Entrances", dated December 6, 1990, which is made a part of this chapter, and located at the end of this chapter. [Eff 12/6/90; am and comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-240-6 Door protective and reopening device. Elevator doors shall open and close automatically. They shall be provided with a reopening device that will stop and reopen a car door and hoistway door automatically if the door becomes obstructed by an object or person. The device shall be capable of completing these operations without requiring contact for an obstruction passing through the opening at heights of [~~5 in and 29 in.(125 mm and 735 mm)~~] (5)inches and twenty-nine (29) inches (125 and 735 millimeters) from the floor [~~(see Figure 240-1)~~] as shown in Figure 240-1, titled, "Hoistway and Elevator Entrances", dated December 6, 1990,

which is made a part of this chapter, and located at the end of this chapter. Door reopening devices shall remain effective for at least [~~20~~] twenty (20) seconds. After such an interval, doors may close in accordance with the requirements of ANSI A17.1b-1989. [Eff 12/6/90; am and comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-240-7 Door and signal timing for hall calls. The minimum acceptable time from notification that a car is answering a call until the doors of that car start to close shall be calculated from the following equation:

$$T = \frac{D}{1.5 \text{ ft./s}} \quad \text{or} \quad T = \frac{D}{455 \text{ mm/s}}$$

where T = total time in seconds and D = distance (in feet or millimeters) from a point in the lobby or corridor [~~60 in.~~] sixty (60) inches [~~(1525 mm)~~] sixty (60) inches (1525 millimeters) directly in front of the farthest call button controlling that car to the centerline of its hoistway door [~~(see Figure 240-2)~~] as shown in Figure 240-2, titled "Graph of Timing Equation", dated December 6, 1990, which is made a part of this chapter, and located at the end of this chapter. For cars with in-car lanterns, T begins when the lantern is visible from the vicinity of hall call buttons and an audible signal is sounded. The minimum acceptable notification time shall be [~~5~~] five (5) seconds. [Eff 12/6/90; am and comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-240-8 Door delay for car calls. The minimum time for elevator doors to remain fully open in response to a car call shall be [~~3~~] three (3) seconds. [Eff 12/6/90; am and comp]

(Auth: HRS §397-4) (Imp: HRS §397-4)

§12-240-9 Floor plan of elevator cars. The floor area of elevator cars shall provide space for wheelchair users to enter the car, maneuver within reach of controls, and exit from the car. Acceptable door opening and inside dimensions shall be as shown in Figure 240-3[-], titled "Minimum Dimensions of Elevator Cars", dated December 6, 1990, which is made a part of this chapter, and located at the end of this chapter. The clearance between the car platform sill and the edge of any hoistway landing shall be no greater than 1-1/4 [~~in.(32 mm)~~] inch or thirty-two (32) millimeters. [Eff 12/6/90; am 7/6/98; am and comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-240-10 Floor surfaces. Floor surfaces shall comply with ANSI A117.1-1980 Rule 4.5. [Eff 12/6/90; comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-240-11 Illumination levels. The level of illumination at the car controls, platform, and car threshold and landing sill shall be at least [5] five (5) footcandles (53.8 lux). [Eff 12/6/90; am and comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-240-12 Car controls. Elevator control panels shall have the following features:

- (1) Buttons. All control buttons shall be at least 3/4 [~~in.(19 mm)~~] inch or nineteen (19) millimeters in their smallest

- dimension. They may be raised or flush;
- (2) Tactile and [~~Visual Control Indicators~~] visual control indicators. All control buttons shall be designated by raised standard alphabet characters for letters, [~~arabic~~] Arabic characters for numerals, or standard symbols as shown in Figure 240-4(a), titled "Car Controls", dated December 6, 1990, which is made a part of this chapter, and located at the end of this chapter, and as required in ANSI A17.1-1989. Raised characters and symbols shall comply with ANSI A17.1-1986 Rule 4.30. The call button for the main entry floor shall be designated by a raised star at the left of the floor designation [~~(see Figure 240-4(a))~~] as shown in Figure 240-4(a), titled "Car Controls", dated December 6, 1990, which is made a part of this chapter, and located at the end of this chapter. All raised designations for control buttons shall be placed immediately to the left of the button to which they apply. Applied plates, permanently attached, are an acceptable means to provide raised control designations. Floor buttons shall be provided with visual indicators to show when each call is registered. The visual indicators shall be extinguished when each call is answered;
- (3) Height. All floor buttons shall be no higher than [~~54 in. (1220 mm)~~] fifty-four (54) inches (1220 millimeters), above the finish floor for side approach and [~~48 in.~~] forty-eight (48) inches for front approach. Emergency controls, including the emergency alarm and emergency stop, shall be grouped at the bottom of the panel and shall have their centerlines no

less than [~~35 in. (890 mm)~~] thirty-five (35) inches (890 millimeters) above the floor [~~(see Figure 240-4(a) and (b));~~] as shown in Figures 240-4(a) and (b), entitled "Car Controls", dated December 6, 1990, which is made a part of this chapter, and located at the end of this chapter. The emergency alarm bell shall be operable under normal power as well as for a minimum of one (1) hour on auxiliary power in the event of the loss of normal power; and

- (4) Location. Controls shall be located on a front wall if cars have center opening doors, and at the side wall or at the front wall next to the door if cars have side opening doors [~~(see Figure 240-4(c) and (d))~~] as shown in Figures 240-4(c) and (d), entitled "Car Controls", dated December 6, 1990, which is made a part of this chapter, and located at the end of this chapter. [Eff 12/6/90; am 11/5/93; am and comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-240-13 Car position indicators. In elevator cars, a visual car position indicator shall be provided above the car control panel or over the door to show the position of the elevator in the hoistway. As the car passes or stops at a floor served by the elevators, the corresponding numerals shall illuminate, and an audible signal shall sound. Numerals shall be a minimum of 1/2 [~~in. (13 mm)~~] inch or thirteen (13) millimeters high. The audible signal shall be no less than [~~20~~] twenty (20) decibels with a frequency no higher than 1500 Hz. An automatic verbal announcement of the floor number at which a car stops or which a car passes may be substituted for the audible signal. [Eff. 12/6/90; am and

comp
HRS §397-4)

] (Auth: HRS §397-4) (Imp:

§12-240-14 Emergency communications. If provided, emergency two-way communication systems between the elevator and a point outside the hoistway shall comply with ANSI A17.1-1989. The highest operable part of a two-way communication system shall be a maximum of [~~48 in. (1220 mm)~~] forty-eight (48) inches (1220 millimeters) from the floor of the car. It shall be identified by a raised or recessed symbol and lettering complying with ANSI A117-1986 Rule 4.30 and located adjacent to the device. If the system uses a handset, then the length of the cord from the panel to the handset shall be at least [~~29 in. (735 mm)~~] twenty-nine (29) inches (735 millimeters). If the system is located in a closed compartment, the compartment door hardware shall conform to ANSI A117.1-1980 Rule 4.27, Controls and Operating Mechanisms. The emergency intercommunication system shall not require voice communication." [Eff. 12/6/90; am and comp
HRS §397-4)] (Auth: HRS §397-4) (Imp:

4. Material, except source notes, to be repealed is bracketed. New material is underscored.

5. Additions to update source notes to reflect these amendments are not underscored.

6. These amendments to and compilation of chapters 12-229, 12-230-1, and 12-240, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

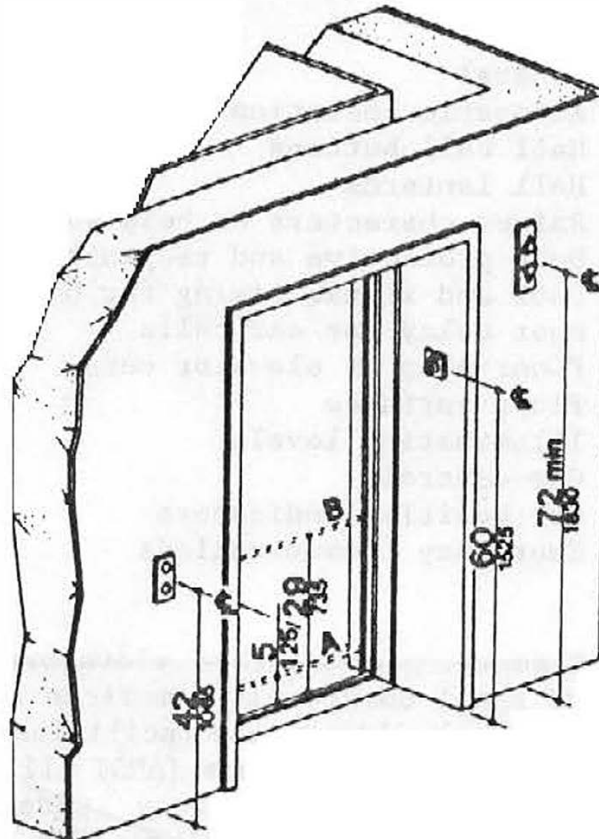
I certify that the foregoing are copies of the rules, drafted in Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on [Effective Date], and filed with the Office of the Lieutenant Governor.

Leonard Hoshijo
Director of Labor and
Industrial Relations

APPROVED AS TO FORM:

Deputy Attorney General

Figure 240-1
Holstway and Elevator Entrances
December 6, 1990



NOTE: The automatic door reopening device is activated if an object passes through either line A or line B. Line A and Line B represent the vertical locations of the door reopening device not requiring contact.

Figure 240-2
Graph of Timing Equation
December 6, 1990

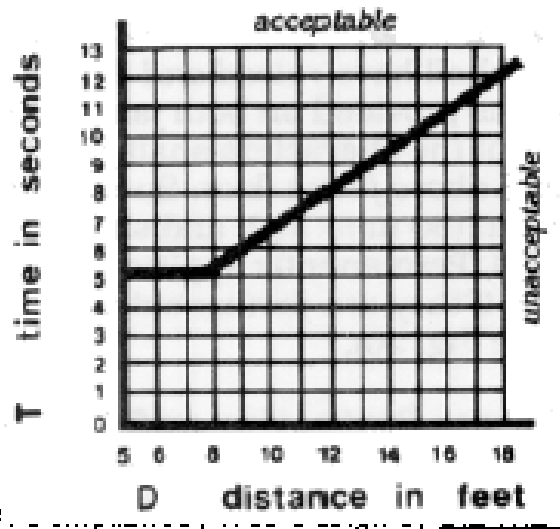


Figure 240-3
Minimum Dimensions of
Elevator Cars
December 6, 1990

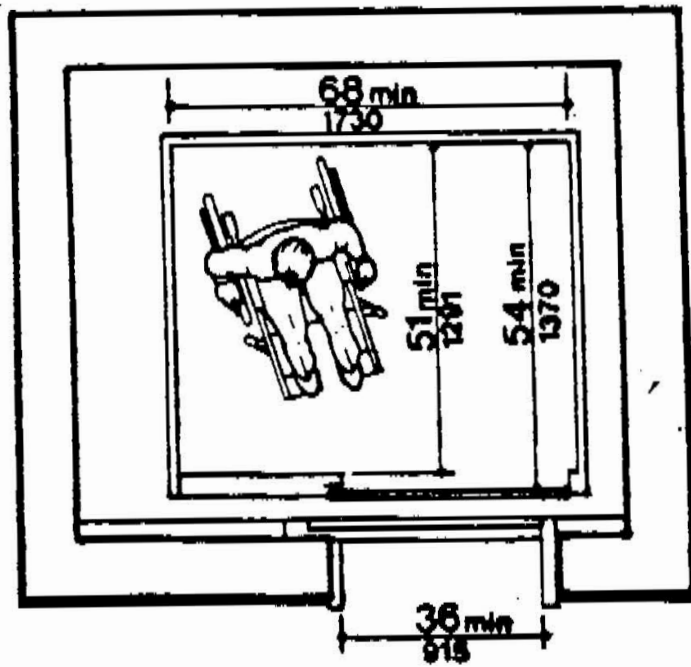
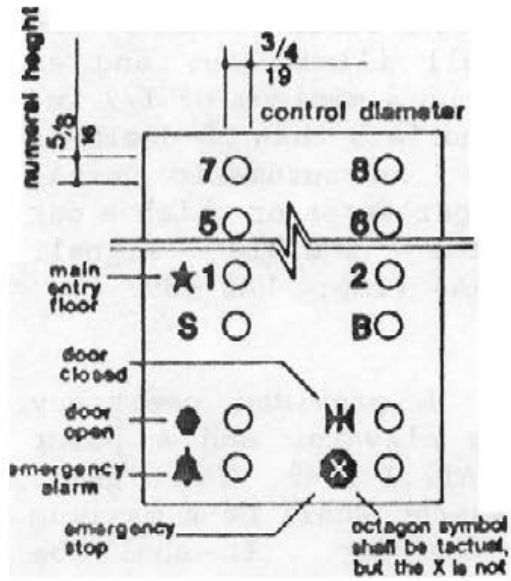
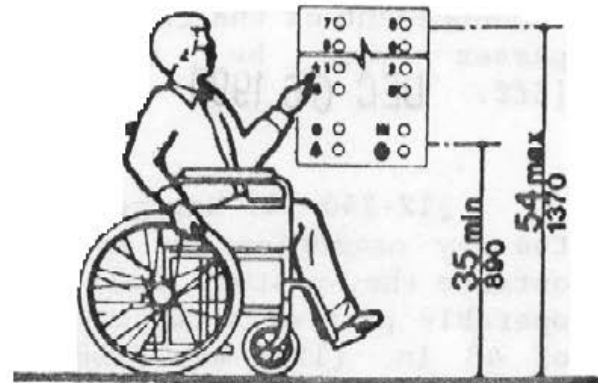


Figure 240-3
Minimum Dimensions of Elevator Cars

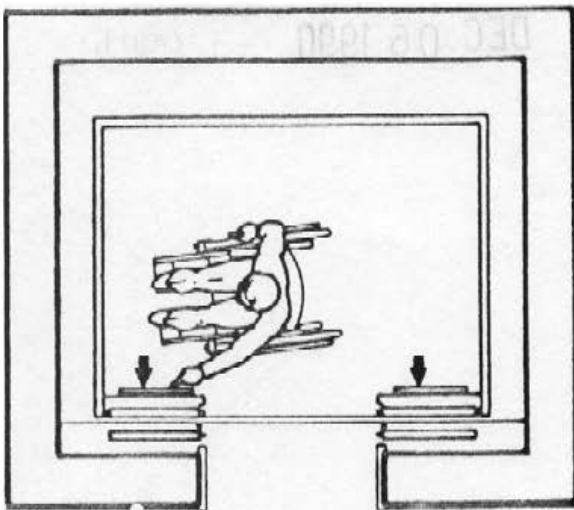
Figure 240-4
 Car Controls
 December 6, 1990



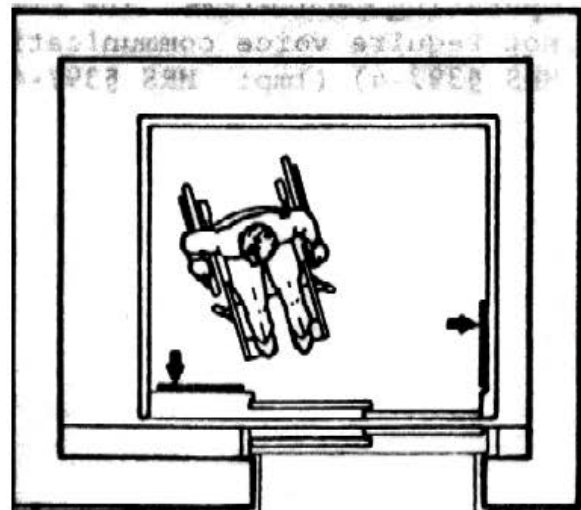
(a)
 Panel Detail



(b)
 Control Height



(c)
 Alternate Locations of Panel
 with Center Opening Door



(d)
 Alternate Locations of Panel
 with Side Opening Door

Figure 240-4
 Car Controls

IV. Old Business

- E. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 4 Chapter 71, **Plant and Non-Domestic Animal Quarantine Non-Domestic Animal Import Rules**, promulgated by DOA

**SMALL BUSINESS STATEMENT "AFTER" PUBLIC HEARING
TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD**

(Hawaii Revised Statutes (HRS), §201M-3)

Department or Agency: Department of Agriculture (HDOA), Plant Quarantine
Branch (PQB)

Administrative Rule Title and Chapter: Title 4, Chapter 71

Chapter Name: Plant and Non-Domestic Animal Quarantine, Non-Domestic Animal
Import Rules

Contact Person/Title: Jonathan K. Ho, Acting Manager

Phone Number: (808) 832-0566

E-mail Address: Jonathan.K.Ho@hawaii.gov **Date:** December 6, 2018

A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.
(See attachment)

B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7? Yes No

(If "Yes" please provide webpage address and when and where rules may be viewed in person.)

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

(Please keep the proposed rules on this webpage until after the SBRRB meeting.)

I. **Rule Description:** New Repeal Amendment Compilation

II. **Will the proposed rule(s) affect small business?** Yes No (If "No" you do not need to submit this form.)

The proposed rules will likely have an impact on a single small business, EK Fernandez, that has been the only company to request short-term import permits for live performance and exhibition of "dangerous wild animals" in circuses, etc., since the start of this proposed rule amendment.

* "Affect small business" is defined as "any potential or actual requirement imposed upon a small business . . . that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business." HRS §201M-1

* "Small business" is defined as a "for-profit enterprise consisting of fewer than one hundred full-time or part-time employees." HRS §201M-1

III. **Is the proposed rule being adopted to implement a statute or ordinance that**

does not require the agency to interpret or describe the requirements of the statute or ordinance? Yes No (If "Yes" no need to submit this form.)
(e.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives.) HRS §201M-2(d)

IV. Is the proposed rule being adopted pursuant to emergency rulemaking?
(HRS §201M-2(a)) Yes No (If "Yes" no need to submit this form.)

I. Please explain how the agency involved small business in the development of the proposed rules.

Pursuant to section 91-3, Hawaii Revised Statute (HRS), by notice of public hearing, HDOA notified the public, including small businesses, of the opportunity to deliver oral testimony on the proposed rule amendments at public hearings held in all counties in the State during May 1-5, 2017 and to submit written testimony to HDOA PQB from March 26 through May 5, 2017. EK Fernandez was contacted to submit testimony.

Members of the public, including small businesses, were provided further opportunity to deliver oral and written testimony regarding the proposed rule amendments at Board of Agriculture's (Board) meetings held on September 26, 2017, and September 25, 2018.

a. Were there any recommendations incorporated into the proposed rules? If yes, explain. If not, why not?

EK Fernandez, the only small business directly affected by the proposed ban on import of "dangerous wild animals," recommended in its testimony that the rules not be changed because there was no need, given the fact that EK Fernandez had never had a public safety incident involving "dangerous wild animals" and that the ban would negatively impact their ability to support worthwhile community events and causes, particularly those not on Oahu.

II. If the proposed rule(s) affect small business, and are not exempt as noted above, please provide the following information:

1. A description of how opinions or comments from affected small businesses were solicited.

See response under item I, above.

2. A summary of the public's and small businesses' comments.

For testimony in support of the proposed ban on import of "dangerous wild animals" for live performance or exhibition in circuses, etc., the reasons given included animal welfare, public health and safety, a societal change in the desire to see "dangerous wild animal" acts, and environmental protection. For testimony against prohibiting import of "dangerous wild animals", the reasons given include the likely adverse effects on a single small business, unfairness by virtue of allowing exemptions for zoos and commercial filming, no incidents involving EK Fernandez that affected public safety to prompt the change, and the need for legislative decision making on an issue of broad public interest, as opposed to administrative rulemaking by an agency.

3. A summary of the agency's response to those comments.

HDOA did not receive any comments about the proposed amendments that required an agency response. However, in the Hearing Officer's Report following the public hearings and in the Board's meeting submittals for September 26, 2017 and September 25, 2018, HDOA did respond to the public comments objecting to the exception to the import ban of these wild animals for commercial filming and zoo exhibition. HDOA explained that the risk to public safety is vastly reduced and can be controlled to a much greater degree in the commercial filming and zoo exhibition scenarios, as contrasted with circus-type entertainment or exhibition.

Additionally, there were also numerous testimonies submitted during the public hearing process that requested the inclusion of cetaceans (marine mammals including dolphins, porpoises and whales) as "dangerous wild animals." Because this requested change would be a major change that the public had not been given notice of prior to the public hearings, or reviewed by the Board or advisory committees, it was not considered. Additionally, although animal welfare issues were brought up as a justification for the ban on import of "dangerous wild animals", animal welfare was not a factor in the Board's decision because animal welfare is beyond HDOA's regulatory authority and is under the jurisdiction of the U.S. Department of Agriculture-Animal Care.

4. The number of persons who:

(i) Attended the public hearings:

Excluding HDOA staff, there were fifty-five (55) attendees for all five hearings combined.

(ii) Testified at the hearings:

Forty-one (41) attendees testified at the hearings, including private individuals, or persons testifying on behalf of environmental organizations, or public/private partnerships, representatives of animal protection agencies, and on behalf of small business.

Fourteen (14) attendees testified in support of the proposed amendments for banning "dangerous wild animals". Twenty-seven (27) attendees testified against the amendments for "dangerous wild animals".

(iii) Submitted written comments:

There were four hundred twenty-three (423) written testimonies received outside of the public hearings from private individuals, representatives of animal protection agencies, environmental organizations, and representatives of small businesses during the public comment period.

Three hundred thirteen (313) written testimonies were in support of the proposed amendments banning "dangerous wild animals". One hundred ten (110) were against the proposed amendments for "dangerous wild animals".

5. Was a request made at the hearing to change the proposed rule in a way that affected small business? No change to the proposed rule was requested at the public hearings.

(i) If "Yes" was the change adopted? Yes No

(ii) If No, please explain the reason the change was not adopted and the problems or negative result of the change.

Small Business *Regulatory Review *Board / DBEDT

Phone: (808) 586-2594 / Email: sbrrb@dbedt.hawaii.gov

This statement may be found on the SBRRB Website at: <http://dbedt.hawaii.gov/sbrrb-impact-statements-pre-and-post-public-hearing>

Summary of Proposed Amendments to Chapter 4-71, Hawaii
Administrative Rules, Relating to Import Requirements for Non-Domestic Animals

The proposed amendments to chapter 4-71, HAR, will, among other things, do the following:

1. Section 4-71-2, Definitions

Establishes a definition for "dangerous wild animals" and identifies specific species, including, but not limited to, lions, tigers, elephants, bears, and alligators, as "dangerous wild animals."

2. Section 4-71-3, Permits

Deletes "dangerous wild animals" from the animals allowed for import under short-term permit for performance or exhibition in circuses and carnivals, but provides that "dangerous wild animals" may be imported for performance in commercial filming for television or movies, subject to qualification for the performance exemption and subject to permit conditions adequate to address any associated risks.

3. Section 4-71-6.5 Permitted introductions and Restricted Animal lists

Restates, in the lists of restricted animals that contain the individual species designated as "dangerous wild animals", that these species are prohibited for short-term performance or exhibition in circuses, carnivals, or state fairs, but are allowed for short-term performance for commercial filming, for exhibition in government zoos, or for other purposes permitted in the rule section. Updates section 4-71-6.5 to reflect the revised list.

Rules Amending Title 4

Hawaii Administrative Rules

September 26, 2017

1. Chapter 71 of Title 4, Hawaii Administrative Rules, entitled "Plant and Non-Domestic Animal Quarantine Non-Domestic Animal Import Rules" is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES"

TITLE 4 DEPARTMENT OF AGRICULTURE

SUBTITLE 6 DIVISION OF PLANT INDUSTRY

CHAPTER 71

PLANT AND NON-DOMESTIC ANIMAL QUARANTINE

NON-DOMESTIC ANIMAL IMPORT RULES

Subchapter 1 General Provisions

- §4-71-1 Objective
- §4-71-2 Definitions
- §4-71-3 Permits
- §4-71-3.1 User permit fees

- §4-71-4 Submission of permit application to the board
- §4-71-4.1 Maximum time period for permit approvals, disapprovals, extensions, or automatic approvals
- §4-71-4.2 Public input and notification for listing
- §4-71-4.3 Violations

Subchapter 2 Non-Domestic Animal Introductions

- §4-71-5 Notice of quarantine
- §4-71-6 Prohibited introductions
- §4-71-6.1 Ad hoc panel for identification of prohibited hybrid animal
- §4-71-6.5 Permitted introductions
- §4-71-7 Bond for certain animals
- §4-71-8 Bonding procedure
- §4-71-9 Conditions for bonding
- §4-71-10 Failure to comply with bond conditions

Historical note: Chapter 71 is based substantially upon Regulation 2 entitled "Concerning the Introduction of Feral and Other Non-Domestic Animals into Hawaii," of the Division of Entomology and Marketing, Department of Agriculture and Conservation [Eff. 12/12/41; am and ren. Regulation 2 8/30/47; am 9/16/60; R 7/13/81]; and Regulation 3 entitled "Concerning the Introduction of Bacteria, Fungi and Viruses into Hawaii," of the Division of Entomology, Board of Commissioners of Agriculture and Forestry [Eff. 12/12/41; am and ren. Regulation 3 8/30/47; R 7/13/81]

SUBCHAPTER 1

GENERAL PROVISIONS

§4-71-1 Objective. The objective of this chapter is to implement the requirements of chapter 150A, Hawaii Revised Statutes, by restricting or prohibiting the importation of specific non-domestic animals that are detrimental to the agricultural, horticultural, and aquacultural industries, natural resources and environment of Hawaii, and on the basis of associated risks to animal or public health and safety. [Eff. 7/13/81; am and comp 9/19/91; comp 2/21/92; am and comp 9/13/93; comp 1/30/95; am and comp 8/16/99; am and comp 11/30/01; comp 4/06/07; am and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§150A-6, 150A-7)

§4-71-2 Definitions. As used in the chapter: "Advisory subcommittee" means one of the advisory subcommittees on entomology, invertebrate and aquatic biota, land vertebrates, algae, bacteria, fungi, protozoa, viruses, or plants appointed by the [chairman] chairperson pursuant to section 150A-10, HRS;

"Board" means the board of agriculture of the department of agriculture;

"Branch" means the plant quarantine branch;

"Chairperson" means the chairperson of the board of agriculture;

"Chief" means the chief or manager of the plant quarantine branch;

"Dangerous wild animal" means a non-domestic animal that has been determined by board to be capable of causing significant risk to animal or public health and safety in the absence of adequate containment measures and safeguards. The board has determined the following animals to be dangerous wild animals: lion (Panthera leo), tiger (Panthera tigris),

cheetah (Acinonyx jubatus), jaguar (Panthera onca), cougar (Felis concolor), leopard (Panthera pardus), clouded leopard (Panthera nebulosa), caracal (Felis caracal (=Lynx caracal)), ocelot (Felis pardalis), margay (Felis wiedii), serval (Felis serval), bear (Ursidae - all species in family), wolf (Canis lupus) and (Canis rufus), hyena (Crocuta crocuta), aardwolf (Proteles cristatus), elephant (Elephantidae - all species in family), rhinoceros (Rhinocerotidae - all species in family), hippopotamus (Hippopotamidae - all species in family), non-human primate (Primates - all species in Order), crocodile (Crocodylus - all species in genus), alligator (Alligator mississippiensis), caiman (Caiman crocodilus), and gharial or gavial (Gavialis gangeticus).

"Department" means the department of agriculture;

"Non-domestic animal" means any animal, including mammals, birds, reptiles, amphibians, fishes and invertebrates, other than domestic dog (Canis familiaris), domestic cat (Felis catus), domestic horse (Equus caballus), domestic ass, burro, or donkey (Equus asinus), domestic cattle (Bos taurus and Bos indicus) including the beefalo (3/8 bison and 5/8 domestic cattle), domestic sheep (Ovis aries), domestic goat (Capra hircus), domestic swine (Sus scrofa domestica), domestic pot-bellied pig (Sus salvanis), domestic alpaca (Lama pacos), domestic llama (Lama glama), domesticated races of European rabbit (Oryctolagus cuniculus), domesticated races of chicken (Gallus gallus), domesticated races of turkeys (Meleagris gallopavo), domesticated races of pigeons (Columba domestica and Columba livia), domesticated races of muscovy ducks (Cairina moschata), domesticated races of greylag geese (Anser anser) and swan geese (Anser cygnoides), and domestic hybrids (crosses between two domestic animals). As used in this chapter, the term or word, "animal," shall mean "non-domestic animal";["]

"Permittee" means any person or agency that has applied for and been granted a permit for the introduction or possession of an animal under this chapter;

"Primate sanctuary" means a facility that provides permanent care, rehabilitation, and protection for donated, abandoned, or displaced primates, does not trade or sell primates for financial gain, and that maintains a 501(c) (3) not-for-profit federal tax-exempt status and any permits or licenses required by federal, state, or municipal laws; and

"Private use" means use for non-commercial purposes, such as non-profit research, and does not include individual possession of an animal as a pet. [Eff. 7/13/81; am and comp 9/19/91; am and comp 2/21/92; am and comp 9/13/93; comp 1/30/95; am and comp 8/16/99; am and comp 11/30/01; am and comp 4/06/07; am and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§150A-6, 150A-6.2, 150A-7)

§4-71-3 Permits. (a) All importation of animals shall be by permit. A permit application shall be submitted to the chief with an appropriate bond, if required in this chapter, and the following information:

- (1) Name and address of shipper and importer, including mailing and street address;
- (2) Approximate number and kind (common and scientific name) of animal;
- (3) Sex, if determinable;
- (4) Object of importation;
- (5) Mode of transportation; and
- (6) Approximate date of arrival.

(b) The chief, without submitting the permit application to the board, may approve or disapprove the issuance of a permit based on a past board decision relating to the same species of animal and the respective conditions for importation previously established by the board for that animal species, provided that, if approved, the current import request is, in all essential respects, the same as the previously approved request and that the importer is able to comply with the previously established conditions.

(c) A permit application for an animal which was previously disapproved may be resubmitted for board

action pursuant to section 4-71-4 upon determination by the chief that conditions for importation are significantly different from the previously disapproved request.

(d) A permit application for an animal allowed for import under these rules but not previously permitted entry by the board shall be submitted for board action pursuant to section 4-71-4.

(e) The chairperson, without submitting the permit application to the advisory committee on plants and animals and the board, may approve a short term permit for animals on the conditionally approved or restricted lists, or a short-term special permit for unlisted animals, not to exceed ninety days, for [performing animals] performance or exhibition in a circus, carnival, commercial filming for television or movies, or other performance, or exhibition [when it has been determined] provided that [the]:

- (1) The animals shall be adequately safeguarded under the control of professional trainers or handlers [, provided that the animals];
- (2) The animals are not dangerous wild animals or animals on the list of prohibited animals, [and further provided that an] except that dangerous wild animals may be imported for performance in commercial filming for television or movies provided that the animal's performance is part of the scene within a production being filmed and subject to permit conditions adequate to address any associated risks and to assure the applicability of the exemption;
- (3) Appropriate permit conditions are established by the board; and
- (4) [an] An appropriate bond, if applicable, is secured with the department as required by sections 4-71-7 and 4-71-8.

(f) The permittee shall comply with all permit conditions established by the board. Violation of permit conditions may result in citation as provided in section 150A-12, HRS, or in cancellation of the permit, or both. Any violation of law or rule that calls into question the permittee's fitness to hold a permit, especially the likelihood of the permittee

maintaining proper security and safeguarding for animals under the permittee's other permits, may result in cancellation of the permittee's other permits as well. [Eff. 7/13/81; comp 9/19/91; am and comp 2/21/92; am and comp 9/13/93; comp 1/30/95; am and comp 8/16/99; am and comp 11/30/01; am and comp 4/06/07; am and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§150A-6.2, 150A-6.4, 150A-7)

§4-71-3.1 User permit fees. (a) A fee for the processing application and issuance of a permit is required as follows:

- (1) Five dollars per permit for a single shipment within one year from date of issuance;
- (2) Fifty dollars per permit for unlimited shipments within one year from date of issuance; and
- (3) Fees shall be paid in full at the time of request and are non-refundable except for an appropriate bond as required in this chapter.

(b) In addition to the requirements of subsection (a) herein, a fee for a site inspection as required in this chapter and by permit conditions shall be twenty-five dollars per inspection plus mileage reimbursement.

(c) For inspections requiring the services of personnel beyond official working hours, an additional fee shall be assessed which shall include applicable charges for overtime wages, fixed charges for personnel services, and meals if required.

(d) Fees may be waived by the chief for research by not-for-profit organizations, universities, or government agencies, or for exhibition in [municipal] government zoos or government-affiliated aquariums. [Eff and comp 8/16/99; am and comp 11/30/01; am and comp 4/06/07; am and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-7.5)

§4-71-4 Submission of permit application to the board.

(a) The applicant shall provide the chief with the following additional information:

- (1) A statement of reasons for importation;
- (2) The person responsible for the animal;
- (3) A description of safeguarded facilities;
- (4) The method of disposition;
- (5) An abstract of the animal; and
- (6) Any other pertinent documented information as required by the branch on the proposed introduction.

(b) The applicant shall provide an adequate number of copies of the application and attachments as requested by the chief.

(c) The chief shall compile the information submitted by the applicant and send it to the members of the appropriate advisory subcommittee(s) for review.

(d) The comments and recommendations of the advisory subcommittee(s) shall be compiled and sent to the advisory committee on plants and animals for review.

(e) The comments and recommendations of the advisory subcommittee(s), the advisory committee on plants and animals, including the committee's votes, and of the chief shall be compiled and submitted to the board at its regular scheduled meeting.

(f) The board shall take action to approve or disapprove the permit application. The board may impose permit conditions including but not limited to, health requirements, safeguarding the animal from escape, unauthorized release, or theft, as well as any applicable requirements of municipal, state, or federal law. [Eff. 7/13/81; comp 9/19/91; comp 2/21/92; am and comp 9/13/93; comp 1/30/95; am and comp 8/16/99; am and comp 11/30/01; comp 4/06/07; comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§150A-6.2, 150A-6.4, 150A-7)

§4-71-4.1 Maximum time period for permit approvals, disapprovals, extensions, or automatic approvals.

(a) Pursuant to the requirements of

chapter 91, HRS, the department shall establish the following maximum time periods for the processing of permit requests after acceptance of a completed permit application and payment of applicable fees pursuant to sections 4-71-3 and 4-71-3.1:

- (1) For same species of animals with respective conditions for importation previously established by the board, the chief may approve or disapprove the issuance of a permit within 90 days;
- (2) For certain [performing] animals in a circus, carnival, or commercial filming for television or movies, or other performance or exhibition, and with an appropriate bond secured with the department for each animal, the chairperson, without submitting the permit application to the board, may approve or disapprove a short term permit or short-term special permit within 120 days;
- (3) For a permitted animal enumerated in section 4-71-6.5 that requires board action pursuant to section 4-71-4 to amend or establish permit conditions, the chief may approve or disapprove the issuance of a permit within 180 days; and
- (4) For an animal not previously permitted entry, excluding those animals enumerated in section 4-71-6, an application request must be submitted for board action pursuant to section 4-71-4 and subject to public input and notification for listing under section 4-71-4.2 or as provided by section 150A-6.2, HRS, the chief may approve or disapprove the issuance of a permit within one year.

(b) Notwithstanding the requirements of subsection (a) herein, the maximum period of time shall be extended indefinitely in the event of a national disaster, state emergency, or union strike, which prevents the department from fulfilling application or review requirements in a timely manner.

(c) Except as provided for in subsection (b), an application request for the issuance of a permit shall be given automatic approval if action is not taken by

§4-71-4.1

the department within the established maximum period of time as specified in subsection (a). After the expiration of the maximum time period is brought to the attention of the department; the department shall have a reasonable amount of time to issue the permit. This section shall apply only to application requests for business or development-related permits required by law to be obtained prior to the formation, operation, or expansion of a commercial or industrial enterprise. [Eff and comp 8/16/99; am and comp 11/30/01; am and comp 4/06/07; am and comp] (Auth: HRS §§91-13.5, 141-2, 150A-9) (Imp: HRS §§91-13.5, 150A-6.2)

§4-71-4.2 Public input and notification for listing. (a) By order, the board may adopt additions to or deletions from the lists of animals without regard to the notice and public hearing requirements of chapter 91, HRS, provided that thirty days or more prior to the effective date of the order, the department shall issue a press release and mail notices to the Office of Environmental Quality Control for publication and to all persons who have made a timely written request of the department for advance notice of the order or the department's rulemaking proceedings. The press release and the notice shall include:

- (1) A statement summarizing the substance of the proposed order which may include examples of the kinds of animals being added to or deleted from the lists required under section 150A-6.2, HRS;
- (2) A statement that a copy of the proposed order and the proposed exact changes will be mailed to any interested person who requests a copy upon payment in advance of costs for photocopying, preparing, and mailing the copy;
- (2) A statement as to where to obtain a copy of the proposed order and the proposed exact changes for inspection, or for pick-up after payment in full of costs for photocopying

and preparing; and

- (4) A statement that the department is soliciting comments regarding the proposed order during the next thirty days, where comments may be forwarded to, and where the proposed order will be discussed.

(b) The department shall consider all oral and written comments and may incorporate the same in its review of the proposed order by the advisory committee on plants and animals in a noticed, public meeting.

(c) Upon approval by the board at a noticed, public meeting, the order to adopt additions to or deletions from the lists of animals shall take effect ten days after the department gives public notice of the order in a daily or weekly publication of statewide circulation or in separate daily or weekly publications whose combined circulation is statewide. [Eff and comp 8/16/99; am and comp 11/30/01; comp 4/06/07; comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §150A-6.6)

§4-71-4.3 Violations. Any person who violates any provision or requirement of this chapter or of any notice given pursuant thereto, shall be subject to the penalties provided for under section 150A-14, HRS. [Eff and comp 8/16/99; comp 11/30/01; comp 4/06/07; comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§150A-6.4, 150A-14)

SUBCHAPTER 2

NON-DOMESTIC ANIMAL INTRODUCTIONS

§4-71-5 Notice of quarantine. The board finds that there exists serious danger to the agricultural, horticultural, and aquacultural industries, natural resources, and environment of Hawaii, risk to animal or public health and safety, by the uncontrolled

introduction of feral and other non-domestic animals.
[Eff. 7/13/81; comp 9/19/91; comp 2/21/92; comp
9/13/93; comp 1/30/95; am and comp 8/16/99; comp
11/30/01; comp 4/06/07; am and comp]
(Auth: HRS §§141-2, 150A-9) (Imp: HRS §§150A-6,
150A-6.2, 150A-7)

§4-71-6 Prohibited introductions. (a) The introduction into Hawaii of live animals or live non-domestic animals as defined in this chapter at any stage of development is prohibited except for those animals on the lists incorporated in §4-71-6.5, by permit, and except as provided by section 150A-6.2, HRS.

(b) The list of animals designated as prohibited entry pursuant to section 150A-6.2, HRS, dated November 28, 2006, and located at the end of this chapter is made a part of this section. No person shall introduce into Hawaii any animal from the list of prohibited animals. [Eff. 7/13/81; am and comp 9/19/91; am and comp 2/21/92; am and comp 9/13/93; am and comp 1/30/95; am and comp 8/16/99; am and comp 11/30/01; am and comp 4/06/07; comp]
(Auth: HRS §§141-2, 150A-9) (Imp: HRS §§150A-6.2, 150A-7)

§4-71-6.1 Ad hoc panel for identification of Ad hoc panel for identification of prohibited hybrid animal.

(a) The chairperson shall establish an ad hoc panel of no fewer than three members with applicable expertise in vertebrate biology to determine if an animal is a prohibited hybrid animal when the branch suspects that the lineage of the animal is not as stated by the owner or on other official documents.

(b) The ad hoc panel shall review all pertinent information including, but not limited to, expert consultations, health and pedigree certificates, owner's statements, branch findings, or viewings of the animal, to determine lineage of a suspect

prohibited hybrid animal.

(c) After its review and determination the ad hoc panel shall report its findings to the branch, and appropriate action shall be taken by the branch on the disposition of the suspect hybrid prohibited animal.

(d) In any contested case arising out of the identification of a suspected hybrid animal, the method of identification selected by the ad hoc panel shall not be overturned absent evidence of actual bias on the part of one or more of the ad hoc panel members or unless the method of identification lacks a scientific basis. [Eff and comp 8/16/99; comp 11/30/01; comp 4/06/07; comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§150A-6, 150A-6.2)

§4-71-6.5 Permitted introductions. (a) The introduction into Hawaii of live animals or live non-domestic animals as defined in this chapter is only allowed:

- (1) For those animals on the list designated as conditionally approved and dated November 28, 2006, or on the list designated as restricted entry, dated [November 28, 2006] **September 25, 2018**, pursuant to section 150A-6.2, HRS, both of which lists are located at the end of this chapter and made a part of this section;
- (2) By permit approved by the board, chairperson, or chief, as appropriate, pursuant to sections 4-71-3 and 4-71-4; and
- (3) After securing appropriate bond for certain animals pursuant to sections 4-71-7, 4-71-8, and 4-71-9.

(b) Pursuant to the requirements of subsection (a) herein, the introduction of animals on the lists of conditionally approved or restricted animals, **including dangerous wild animals,** is allowed as follows:

- (1) Animals on the list of conditionally approved animals, for individual possession, businesses, government agencies, or institutions;

- (2) Animals on Part A of the list of restricted animals, for research, medical or scientific purposes as determined by the board, by universities, [or] government agencies, or other institutions approved by the board, for exhibition in [municipal] government zoos or government-affiliated aquariums, [for other institutions for medical or scientific purposes as determined by the board], or for other purposes as specified in this chapter; and
- (3) Animals on Part B of the list of restricted animals, for the purposes described in subsection (b) (2) herein or for government use, or private and commercial use, including research, zoological parks, or aquaculture production, except that animals in the order Primates shall not be allowed for import or possession for private or commercial use other than for purposes described in subsection (b) (2) or for primate sanctuaries, as determined by the board.

(c) The introduction of unlisted animals for the purpose of remediating medical emergencies or agricultural or ecological disasters, or conducting scientific research that is not detrimental to agriculture, the environment, or humans is allowed for import and possession by a special permit on a case-by-case basis, if the importer can meet permit requirements or other guidelines as determined by the board pursuant to section 150A-6.2, HRS.

(d) The introduction of unlisted animals for the purpose of filming, performance, or exhibition is allowed by short-term special permit on a case-by-case basis not to exceed 90 days for importation and possession if the importer can meet permit and bonding requirements as determined by the board pursuant to section 150A-6.2, HRS.

(e) The permittee shall obtain [prior] site approval prior to the issuance of a permit for animals on the list of restricted animals and for unlisted animals [under special permit] as determined by the board.

(f) Restricted list animals and unlisted animals [under special permit as determined by the board] require a permit for both import and possession. Where a permit for a restricted list animal or an unlisted animal allows transfer or sale, the proposed transferee shall first obtain a permit for possession of the imported animal by application to the chief, site inspection approval, and [satisfaction of] shall satisfy any bond or other requirements applicable.

(g) The board may establish permit conditions including but not limited to, time, place, location, use, special precautions, health requirements, and safeguarding the animal from escape, unauthorized release, or theft, as well as any applicable requirements of municipal, state, or federal laws. The permittee shall comply with the requirements of this chapter, chapter 150A, HRS, and specific permit conditions established by the board. [Eff. and comp 2/21/92; am and comp 9/13/93; am and comp 1/30/95; am and comp 8/16/99; am and comp 11/30/01; am and comp 4/06/07; am and comp] (Auth: §§141-2, 150A-9) (Imp: HRS §150A-6.2)

§4-71-7 Bond for certain animals. The applicant shall secure an appropriate bond, as specified in this chapter, for the following:

- (1) Monkeys, apes, baboons, chimpanzees, gibbons, lemurs, pottos, wallabies, and any other animal that the board or chairperson may require to be bonded as a condition for importation or possession;
- (2) Any offspring of bonded animals; and
- (3) Certain [performing] animals in a circus, carnival, commercial filming for television or movie productions, or other performance or exhibition under short-term or short-term special permit that have been permitted entry by the chairperson without advisory committee review and board action pursuant to section 4-71-3(e), or certain unlisted animals that have been permitted entry by the board under special permit pursuant to section 150A-6.2, HRS. [Eff. 7/13/81; am

and comp 9/19/91; comp 2/21/92; am and comp 9/13/93; comp 1/30/95; am and comp 8/16/99; am and comp 11/30/01; am and comp 4/06/07; am and comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§150A-6.2, 150A-7)

§4-71-8 Bonding procedure. (a) When required in this chapter, the bonding of animals shall be by cashier's check, or cash secured with the department.

(b) An appropriate individual bond shall be secured with the department for the sum of three thousand dollars for each animal except as provided for in subsection (c).

(c) An appropriate individual bond shall be secured with the department for the sum of two thousand dollars for each animal for owners holding valid United States Department of Agriculture licenses under the Animal Welfare Act.

(d) A cashier's check or cash secured with the department as a bond, shall be returned to the owner without interest, upon verification of the death or exportation of the animal, or the transfer or sale of the animal to a new owner who has secured the necessary bond and permit in advance of the transfer.

(e) Government organizations, such as municipal zoos, and animal sanctuaries determined by the United States Internal Revenue Service to be not-for-profit entities are exempt from the bonding requirements of this section. [Eff. 7/13/81; am and comp 9/19/91; comp 2/21/92; am and comp 9/13/93; comp 1/30/95; am and comp 8/16/99; am and comp 11/30/01; am and comp 4/06/07; comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§150A-6.2, 150A-7)

§4-71-9 Conditions for bonding. An owner, dealer, or organization shall import and maintain bonded animals under the following conditions:

- (1) The owner, dealer, or organization shall submit information to the chief with respect

- to the number, sex, if determinable, and species of animal;
- (2) The animal shall be kept in captivity and as required by permit conditions at all times;
 - (3) The chief shall be notified immediately upon the escape of any bonded animal;
 - (4) The chief shall be notified immediately upon the death of the bonded animal and the carcass shall be presented immediately to the state veterinarian or his designate for examination and verification;
 - (5) Out-of-state movement of a bonded animal shall be verified by an inspector in advance of the movement and after prior arrangements for verification have been made with the chief;
 - (6) An animal may be sold or given away in Hawaii only to persons who have secured an appropriate bond with and acquired a permit from the department prior to the sale or transfer;
 - (7) A bond or cashier's check in the appropriate amount required under section 4-71-8 shall be kept in full force and effect;
 - (8) The owner, dealer, or organization shall report to the chief the birth of and secure an appropriate bond and permit for any offspring within thirty calendar days of the birth;
 - (9) The owner, dealer, or organization shall report to the chief any change of mailing address and related contact information within seven business days of the change; and
 - (10) The owner, dealer, or organization possessing a valid United States Department of Agriculture license under the Animal Welfare Act shall report to the chief any suspension, revocation, or expiration of the required federal license within seven business days of the license status change.
[Eff. 7/13/81; am and comp 9/19/91; comp

2/21/92; comp 9/13/93; comp 1/30/95; am and
comp 8/16/99; am and comp 4/06/07;
comp] (Auth: HRS §§141-2,
150A-9) (Imp: HRS §§150A-6.2, 150A-7)

§4-71-10 Failure to comply with bond conditions.

(a) The department may seize the bonded animal, and foreclose on the bond or retain such sums secured by cash or cashier's check upon failure of the owner to comply with the bonding conditions in section 4-71-9.

(b) Should the bonded animal escape, the owner shall take necessary action to recapture the animal. If the owner fails to recapture the animal within one week after escape or when the animal becomes a nuisance or poses a serious threat to the community, the department may employ its resources to recapture the animal after due notice to the owner. The owner shall be held responsible for the cost incurred by the department.

(c) Any bonded animal that is captured after escape or seized pursuant to section 4-71-10 may be sold at a private sale, shipped out state, donated to a government agency, or destroyed no sooner than fifteen days after cancellation of the bond." [Eff 7/13/81; am and comp 9/19/91; comp 2/21/92; am and comp 9/13/93; comp 1/30/95; am and comp 8/16/99; am and comp 4/06/07; comp] (Auth: HRS §§141-2, 150A-9) (Imp: HRS §§150A-6.2, 150A-7)

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

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

4. These amendments to and compilation of chapter 4-71, 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 Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on September 26, 2017 and filed with the Office of the Lieutenant Governor.

SCOTT E. ENRIGHT
Chairperson, Board of
Agriculture

APPROVED AS TO FORM:

Deputy Attorney General

LIST OF RESTRICTED ANIMALS

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PART A: FOR RESEARCH AND EXHIBITION

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
INVERTEBRATES	
PHYLUM Annelida	
CLASS Hirudinea	
ORDER Gnathobdellida	
FAMILY Hirudinidae	
<u>Hirudo medicinalis</u>	leech, medicinal
ORDER Rhynchobdellae	
FAMILY Glossiphoniidae	
<u>Helobdella triserialis</u>	leech, small snail
CLASS Oligochaeta	
ORDER Haplotaxida	
FAMILY Euchytraeidae	
Enchytraeidae (all species in family)	worm, white
FAMILY Eudrilidae	
<u>Helodrilus foetidus</u>	earthworm
FAMILY Lumbricidae	
<u>Lumbricus terrestris</u>	earthworm
<u>Allophora</u> (all species in genus)	earthworm
CLASS Polychaeta	
ORDER Phyllodocida	
FAMILY Nereidae	
<u>Nereis japonica</u>	lugworm
PHYLUM Arthropoda	
CLASS Arachnida	
ORDER Acari	
FAMILY Phytoseiidae	

SCIENTIFIC NAMECOMMON NAME

<u>Iphiseius degenerans</u>	predator, spider mite
<u>Mesoseiulus longipes</u>	predator, spider mite
<u>Mesoseiulus macropilis</u>	predator, spider mite
<u>Neoseiulus californicus</u>	predator, spider mite
<u>Neoseiulus longispinosus</u>	predator, spider mite
<u>Typhlodromus occidentalis</u>	mite, western predatory

FAMILY Tetranychidae

<u>Tetranychus lintearius</u>	biocontrol agent, gorse
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CLASS Crustacea

ORDER Amphipoda

FAMILY Hyalidae

<u>Parhyale hawaiiensis</u>	amphipod, marine
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ORDER Anomura FAMILY

Porcellanidae

<u>Petrolisthes cabrolloi</u>	crab, porcelain
<u>Petrolisthes cinctipes</u>	crab, porcelain
<u>Petrolisthes elongatus</u>	crab, porcelain
<u>Petrolisthes eriomerus</u>	crab, porcelain
<u>Petrolisthes gracilis</u>	crab, porcelain
<u>Petrolisthes granulatus</u>	crab, porcelain
<u>Petrolisthes japonicus</u>	crab, porcelain
<u>Petrolisthes laevigatus</u>	crab, porcelain
<u>Petrolisthes manimaculis</u>	crab, porcelain
<u>Petrolisthes tuberculatus</u>	crab, porcelain
<u>Petrolisthes violaceus</u>	crab, porcelain

ORDER Cladocera

FAMILY Daphnidae

<u>Ceriodaphnia dubia</u>	flea, water
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ORDER Mysidacea

FAMILY Mysidae

<u>Mysidopsis bahia</u>	shrimp, mysid
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CLASS Insecta

ORDER Coleoptera

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
FAMILY Apionidae	
<u>Apion scutellare</u>	biocontrol agent, gorse
FAMILY Buprestidae	
<u>Lius poseidon</u>	biocontrol agent, clidemia
FAMILY Chrysomelidae	
<u>Chlamisus gibbosa</u>	biocontrol agent, blackberry
FAMILY Coccinellidae	
<u>Delphastus pusillus</u>	predator, spiraling whitefly
<u>Hippodamia convergens</u>	beetle, convergent lady
<u>Nephaspis oculatus</u>	predator, spiraling whitefly
<u>Nephaspis bicolor</u>	predator, spiraling whitefly
<u>Stethorus nigripes</u>	predator, spider mites
<u>Stethorus picipes</u>	predator, spider mites
FAMILY Curculionidae	
<u>Acythopeus</u> sp. 1	biocontrol agent, ivy gourd
<u>Acythopeus</u> sp. 2	biocontrol agent, ivy gourd
<u>Acythopeus</u> sp. 3	biocontrol agent, ivy gourd
<u>Auletobius convexifrons</u>	biocontrol agent, firetree
<u>Gymnaetron tetrum</u>	biocontrol agent, common mullein
FAMILY Scarabaeidae	
<u>Euoniticellus intermedius</u>	predator, hornfly
<u>Onitis vanderkelleni</u>	predator, horn fly
ORDER Diptera	
FAMILY Chamaemyiidae	
<u>Leucopis</u> (all species in subgenus)	predator
FAMILY Drosophilidae	
<u>Drosophila</u> (all species in genus)	flies, pomace
<u>Zapriothrica</u> sp.	biocontrol agent, banana poka
FAMILY Lonchaeidae	

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
<u>Dasiops curubae</u>	biocontrol agent, banana poka
FAMILY Muscidae <u>Musca domestica</u>	house fly
FAMILY Tephritidae <u>Ceratitus capitata</u> <u>Urophora stylata</u>	fly, Mediterranean fruit biocontrol agent, bull thistle
ORDER Heteroptera FAMILY Anthocoridae <u>Orius tristicolor</u>	bug, minute pirate
ORDER Homoptera FAMILY Eriococcidae <u>Tectococcus ovatus</u>	biocontrol agent, strawberry guava
ORDER Hymenoptera FAMILY Aphelinidae <u>Aphelinus</u> (all species in genus) <u>Cales noacki</u> <u>Encarsia formosa</u> <u>Encarsia guadeloupae</u> <u>Encarsia ?haitiensis</u> <u>Encarsia lutea</u> <u>Encarsia mineoi</u> <u>Encarsia pergandiella</u> <u>Mesidia</u> (all species in genus) <u>Mesidiopsis</u> (all species in genus) <u>Protaphelinus</u> (all species in genus)	parasite, aphid parasite, woolly whitefly parasite, greenhouse whitefly parasite, spiraling whitefly parasite, spiraling whitefly parasite, sweetpotato whitefly parasite, sweetpotato whitefly parasite, greenhouse whitefly parasite, aphid parasite, aphid parasite, aphid
FAMILY Aphidiidae Aphidiidae (all species in family)	parasite, aphid

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
FAMILY Bethylidae	
<u>Cephalonomia stefanoderis</u> (lab-reared strains)	parasite, tropical nut borer
<u>Prorops nasuta</u> (lab-reared strains)	parasite, tropical nut borer
FAMILY Braconidae	
<u>Apanteles gelechiidivorus</u>	parasite, tomato pinworm
<u>Apanteles scutellaris</u>	parasite, tomato pinworm
<u>Diachasmimorpha tryoni</u>	wasp, parasitic
<u>Fopius ceratitivorus</u>	biocontrol agent, Mediterranean fruit fly
<u>Heterospilus coffeicola</u> (lab-reared strains)	parasite, tropical nut borer
<u>Opius dissitus</u>	parasite, leafminer
<u>Opius dimidiatus</u>	parasite, leafminer
<u>Orgilus elasmopalpi</u>	parasite, lesser cornstalk borer
<u>Parahormius pallidipes</u>	parasite, tomato pinworm
<u>Pseudapanteles dignus</u>	parasite, tomato pinworm
<u>Psytallia insignipennis</u>	parasite, Medfly
FAMILY Cynipidae	
<u>Ganaspidium utilis</u>	parasite, leafminer
FAMILY Encyrtidae	
<u>Copidosoma truncatellum</u>	parasite, green garden looper
<u>Psyllaephagus yaseeni</u>	parasite, leucaena psyllid
<u>Zeteticontus utilis</u>	parasite, souring beetles
FAMILY Eulophidae	
<u>Chrysocharis oscinidis</u>	parasite, leafminer
<u>Chrysonotomyia punctiventris</u>	parasite, leafminer
<u>Diaulinopsis callichroma</u>	parasite, leafminer
<u>Diglyphus begini</u>	parasite, leafminer
<u>Horismenus elineatus</u>	parasite, lesser cornstalk borer
<u>Pediobius acantha</u>	parasite, leafminer
<u>Phymasticus coffea</u> (lab-reared strains)	parasite, tropical nut borer
<u>Sympiesis stigmatipennis</u>	parasite, tomato pinworm
<u>Tetrastichus brontispae</u>	parasite, blue coconut leaf beetle

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
FAMILY Ichneumonidae	
<u>Diadegma aemiclausum</u>	parasite, diamondback moth
<u>Diadegma collaris</u>	parasite, diamondback moth
FAMILY Platygasteridae	
<u>Amitas ?spiniferus</u>	parasite, woolly whitefly
FAMILY Pteromalidae	
<u>Halticoptera patellana</u>	parasite, leafminer
FAMILY Tenthredinidae	
<u>Priophorus morio</u>	biocontrol agent, blackberry
ORDER Isoptera	
FAMILY Rhinotermitidae	
<u>Coptotermes formosanus</u>	termite, Formosan subterranean
ORDER Lepidoptera	
FAMILY Carposinidae	
<u>Carposinia bullata</u>	biocontrol agent, Koster's curse
FAMILY Coleophoridae	
<u>Coleophora klimeschiella</u>	biocontrol agent, Russian thistle
<u>Coleophora parthenica</u>	biocontrol agent, Russian thistle
FAMILY Crambidae	
<u>Pyrausta perelegans</u>	biocontrol agent, banana poka
FAMILY Diptidae	
<u>Josia ligata</u>	biocontrol agent, banana poka
<u>Josia fluonia</u>	biocontrol agent, banana poka
FAMILY Gracillariidae	
<u>Caloptilia schinella</u>	biocontrol agent, firetree
<u>Phyllonorycter myricae</u>	biocontrol agent, firetree

SCIENTIFIC NAMECOMMON NAME

FAMILY Momphidae <u>Mompha trithalama</u>	biocontrol agent, Koster's curse
FAMILY Noctuidae <u>Antiblemma acclinalis</u> <u>Cucullia verbasci</u>	biocontrol agent, Koster's curse biocontrol agent, common mullein
FAMILY Notodontidae <u>Cyanotricha necyria</u>	biocontrol agent, banana Poka
FAMILY Oecophoridae <u>Agonopterix utlicetella</u>	biocontrol agent, gorse
FAMILY Pyralidae <u>Ephestia kuehniella</u> <u>Galleria mellonella</u> <u>Pempelia genistella</u>	moth, Mediterranean flour moth, greater wax biocontrol agent, gorse
FAMILY Scythrididae <u>Scythris gallicella</u>	biocontrol agent, gorse
FAMILY Sesiidae <u>Melittia oedipus</u> <u>Pennisetia marginata</u>	biocontrol agent, ivy gourd biocontrol agent, blackberry
FAMILY Tortricidae <u>Cryptophlebia ombrodelta</u>	moth, litchi fruit
[ORDER Orthoptera FAMILY Gryllidae <u>Acheta domesticus</u>	cricket, house]
ORDER Thysanoptera FAMILY Thripidae <u>Scolothrips sexmaculatus</u> <u>Sericothrips staphylinus</u>	thrips, sixspotted biocontrol agent, gorse

CLASS Crustacea

SCIENTIFIC NAMECOMMON NAME

ORDER Decapoda	
FAMILY Alpheidae	
<u>Athanas</u> (all species in genus)	shrimp, anemone
FAMILY Cambaridae	
<u>Cambarus</u> (all species in genus)	crayfish
FAMILY Coenobitidae	
<u>Birgus latro</u>	crab, coconut
<u>Coenobita brevipanus</u>	crab, hermit
<u>Coenobita perlatus</u>	crab, hermit
FAMILY Gecarcinidae	
<u>Cardisoma carnifex</u>	crab, land
<u>Cardisoma guanhumi</u>	crab, great land
<u>Gecarcoides lalandii</u>	crab, land
FAMILY Hippolytidae	
<u>Thor amoinessis</u>	shrimp, anemone
<u>Thor paschalis</u>	shrimp, anemone
FAMILY Majidae	
<u>Mithrax spinosissimus</u>	crab, herbivorous; spider, spiny
FAMILY Ocypodidae	
<u>Uca</u> (all species in genus)	crab, fiddler
FAMILY Palaemonidae	
<u>Periclimenes brevicarpalis</u>	shrimp, anemone
<u>Periclimenes longirostris</u>	shrimp, anemone
<u>Periclimenes ornatus</u>	shrimp, anemone
<u>Periclimenes paraornatus</u>	shrimp, anemone
<u>Periclimenes tunipes</u>	shrimp, anemone
CLASS Merostomata	
ORDER Xiphosura	
FAMILY Limulidae	
<u>Limulus polyphemus</u>	crab, horseshoe
PHYLUM Chordata	
CLASS Ascidiacea	
ORDER Aplousobranchia	

SCIENTIFIC NAMECOMMON NAME

FAMILY Didemnidae <u>Lissoclinum patellum</u>	tunicates (sea squirts)
PHYLUM Cnidaria CLASS Anthozoa ORDER Actinaria FAMILY Actiniidae Actiniidae (all species in family)	anemone, sea
FAMILY Edwardsiidae <u>Nematostella vectensis</u>	anemone, starlet sea
FAMILY Stichodactylidae Stichodactylidae (all species in family)	anemone, sea
FAMILY Thalassianthidae Thalassianthidae (all species in family)	anemone, sea
ORDER Alcyonacea FAMILY Acanthogorgiidae Acanthogorgiidae (all species in family)	gorgonian
FAMILY Alcyoniidae Alcyoniidae (all species in family, except <u>Sarcophyton ehrenbergi</u> , <u>S. glaucum</u> , <u>S. trocheliophorum</u>)	coral, leather
FAMILY Asterozoniidae Asterozoniidae (all species in family)	coral, leather
FAMILY Briareidae Briareidae (all species in family)	gorgonian
FAMILY Clavulariidae Clavulariidae (all species in family)	polyp, star

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
FAMILY Cornulariidae Cornulariidae (all species in family)	polyp, star
FAMILY Ellisellidae Ellisellidae (all species in family)	gorgonian
FAMILY Gorgoniidae Gorgoniidae (all species in family)	gorgonian
FAMILY Isidadae Isidadae (all species in family)	gorgonian
FAMILY Melithaeidae Melithaeidae (all species in family)	gorgonian
FAMILY Nephtheidae Nephtheidae (all species in family)	coral, tree
FAMILY Nidaliidae Nidaliidae (all species in family)	coral, tree
FAMILY Paralcyniidae Paralcyniidae (all species in family)	coral, Christmas tree
FAMILY Subergordiidae Subergordiidae (all species in family)	gorgonian
FAMILY Tubiporidae Tubiporidae (all species in family)	coral, red pipe organ
FAMILY Xeniidae Xeniidae (all species in family)	coral, pulse
ORDER Antipatharia Antipatharia (all species in order)	coral, black and whip
ORDER Ceriantharia Ceriantharia (all species in order)	anemone, tube

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
ORDER Corallimorpharia FAMILY Discosomatidae Discosomatidae (all species in family)	anemone, mushroom
FAMILY Ricordeidae Ricordeidae (all species in family)	anemone, mushroom
ORDER Helioporacea FAMILY Helioporidae <u>Heliopora coerulea</u>	coral, blue
ORDER Pennatulacea Pennatulacea (all species in order)	sea pen
ORDER Scleractinia FAMILY Acroporidae Acroporidae (all species in family, except <u>Acropora aspersa</u> , <u>A. austera</u> , <u>A. elseyi</u> , <u>A. formosa</u> , <u>A. microphthalma</u> , <u>A. nana</u>)	coral, staghorn
FAMILY Agariciidae Agariciidae (all species in family)	coral
FAMILY Astrocoeniidae Astrocoeniidae (all species in family)	coral
FAMILY Caryophylliidae Caryophylliidae (all species in family)	coral
FAMILY Dendrophylliidae Dendrophylliidae (all species in family)	coral
FAMILY Faviidae Faviidae (all species in family)	coral

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
FAMILY Fungiidae Fungiidae (all species in family)	coral, mushroom
FAMILY Merulinidae Merulinidae (all species in family)	coral
FAMILY Mussidae Mussidae (all species in family)	coral
FAMILY Oculinidae Oculinidae (all species in family)	coral
FAMILY Pectiniidae Pectiniidae (all species in family)	coral
FAMILY Pocilloporidae Pocilloporidae (all species in family)	coral
FAMILY Poritidae Poritidae (all species in family)	coral
FAMILY Siderastreidae Siderastreidae (all species in family)	coral
FAMILY Trachyphylliidae Trachyphylliidae (all species in family)	coral
ORDER Zoantharia	
FAMILY Epizoanthidae Epizoanthidae (all species in family)	polyp, button
FAMILY Parazoanthidae Parazoanthidae (all species in family)	polyp, button
FAMILY Zoanthidae Zoanthidae (all species in family)	polyp, button
CLASS Hydrozoa	
ORDER Hydroidea	
FAMILY Stylasteridae	

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
Stylasteridae (all species in family)	coral, lace
CLASS Scyphozoa	
ORDER Rhizostomeae	
Rhizostomeae (all species in order)	jellyfish
ORDER Semaestomeae	
Semaestomeae (all species in order)	jellyfish
PHYLUM Echinodermata	
CLASS Crinoidea	
Crinoidea (all species in class)	crinoid
CLASS Echinoidea	
Echinoidea (all species in class)	echinoderm
PHYLUM Echiuroida	
CLASS Echiura	
ORDER Xenopneusta	
FAMILY Urechidae	
<u>Urechis caupo</u>	worm, innkeeper
PHYLUM Mollusca	
CLASS Bivalvia	
ORDER Arcoida	
FAMILY Arcidae	
<u>Anadara maculosa</u>	clam, Fiji
ORDER Veneroida	
FAMILY Veneridae	
<u>Gafarium tumidum</u>	clam, Fiji

SCIENTIFIC NAMECOMMON NAME

CLASS Cephalopoda	
ORDER Nautilida	
FAMILY Nautilidae	
<u>Nautilus belauensis</u>	nautilus
<u>Nautilus pompilius</u>	nautilus
ORDER Octopoda	
FAMILY Octopodidae	
<u>Octopus</u> sp. 19 [Norman 2000]	octopus, mimic
<u>Octopus</u> sp. 20 [Norman 2000]	octopus, "Wunderpus"
ORDER Sepioidea	
FAMILY Idiosepiidae	
<u>Idiosepius paradoxus</u>	squid, northern pygmy
<u>Idiosepius pygmaeus</u>	squid, two-tone pygmy
FAMILY Sepiadariidae	
<u>Sepioloidea lineolata</u>	squid, striped pyjama
FAMILY Sepiidae	
<u>Sepia</u> (all species in genus)	cuttlefish
ORDER Teuthoidea	
FAMILY Loliginidae	
<u>Sepioteuthis lessoniana</u>	squid, baby
CLASS Gastropoda	
ORDER Anaspidea	
FAMILY Aplysiidae	
<u>Aplysia californica</u>	sea hare, California
ORDER Mesogastropoda	
FAMILY Ampullariidae	
<u>Pila ampullacea</u>	snail, apple
<u>Pila angelica</u>	snail, apple
<u>Pila conica</u>	snail, apple
<u>Pila luzonica</u>	snail, apple
<u>Pila polita</u>	snail, apple

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
<u>Pila scutata</u>	snail, apple
<u>Pomacea</u> (all species in genus)	snail, apple
FAMILY Cypraeidae	
Cypraeidae (all species in family)	cowry
FAMILY Strombidae	
<u>Lambis lambis</u>	conch
<u>Strombus luhuanus</u>	conch
FAMILY Vermetidae	
<u>Dendropoma gregaria</u>	vermetid
<u>Dendropoma meroclista</u>	vermetid
<u>Dendropoma platypus</u>	vermetid
<u>Dendropoma psarocephala</u>	vermetid
<u>Petalconchus keenae</u>	vermetid
<u>Serpulorbis variabilis</u>	vermetid
ORDER Neogastropoda	
FAMILY Conidae	
<u>Conus marmoreus</u>	snail, marine
FAMILY Muricidae	
<u>Drupa morum</u>	snail, marine
<u>Drupa ricina</u>	snail, marine
ORDER Pulmonata	
FAMILY Vaginulidae	
<u>Vaginulus plebeius</u>	slug, land
PHYLUM Nemata (=Nematoda)	
CLASS Adenophorea	
ORDER Mermithida	
FAMILY Mermithidae	
<u>Romanomermis culicivorax</u>	nematode, mosquito
ORDER Trichocephalida	
FAMILY Trichinellidae	
<u>Trichinella spiralis</u>	nematode

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
FAMILY Trichuridae <u>Capillaria</u> (all species in genus)	nematode
CLASS Secernentea ORDER Ascaridida FAMILY Anisakidae <u>Anisakis</u> (all species in genus)	nematode
FAMILY Ascarididae <u>Ascaris lumbricoides</u>	nematode
FAMILY Dioctophymatidae <u>Dioctophyma renale</u>	nematode
FAMILY Toxocaridae <u>Toxocara</u> (all species in genus)	nematode
ORDER Camallanida FAMILY Dracunculidae <u>Dracunculus medinensis</u>	nematode
ORDER Rhabditida FAMILY Cephalobidae <u>Chiloplacus</u> (all species in genus) <u>Panagrellus</u> (all species in genus) <u>Turbatrix aceti</u> <u>Turbatrix silusae</u>	nematode, free living nematode, saprophytic eel, vinegar microworm
FAMILY Heterorhabditidae <u>Heterorhabditis bacteriophora</u> <u>Heterorhabditis megides</u>	nematode, entomogenous nematode, entomogenous
FAMILY Steinernematidae <u>Neoaplectana</u> (all species in genus) <u>Steinernema</u> (all species in genus except <u>S. carpocapsae</u>)	nematode, entomogenous nematode, entomogenous
ORDER Strongylida FAMILY Ancylostomatidae <u>Ancylostoma</u> (all species in genus)	nematode
FAMILY Metastrongylidae	

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
<u>Angiostrongylus costaricensis</u>	nematode, rat
FAMILY Strongyloididae <u>Strongyloides</u> (all species in genus)	nematode
FAMILY Uncinariidae <u>Necator americanus</u>	nematode
ORDER Tylenchida FAMILY Allantonematidae <u>Heterotylenchus autumnalis</u>	nematode, entomogenous
FAMILY Criconematidae <u>Meloidogyne incognita</u>	nematode, root-knot
PHYLUM Platyhelminthes CLASS Catenulida ORDER Turbellaria FAMILY Stenostomidae <u>Stenostomum</u> (all species in genus)	flatworm
CLASS Cestoda ORDER Cyclophyllidea FAMILY Dilepididae <u>Dipylidium caninum</u>	cestode
FAMILY Taeniidae <u>Taenia</u> (all species in genus) <u>Echinococcus</u> (all species in genus)	cestode cestode
ORDER Pseudophyllidea FAMILY Diphyllbothriidae <u>Diphyllbothrium latum</u>	cestode
CLASS Trematoda ORDER Echinostomida FAMILY Fasciolidae <u>Fasciola hepatica</u> <u>Fasciolopsis buski</u>	trematode trematode

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
FAMILY Gastrodiscidae <u>Gastrodiscoides hominis</u>	trematode
ORDER Opisthorchiida FAMILY Heterophyidae <u>Heterophyes heterophyes</u>	trematode
FAMILY Opisthorchiidae <u>Opisthorchis viverrini</u>	trematode
ORDER Plagiorchiida FAMILY Paragonimidae <u>Paragonimus</u> (all species in genus)	trematode
ORDER Strigeidida FAMILY Schistosomatidae <u>Schistosoma</u> (all species in genus)	trematode

AMPHIBIANS

PHYLUM Chordata CLASS Amphibia ORDER Caudata FAMILY Ambystomidae <u>Ambystoma jeffersonianum</u> <u>Ambystoma texanum</u>	salamander, mole salamander, mole
FAMILY Cryptobranchidae <u>Andrias japonicus</u> <u>Andrias (Megalobatrachus)</u> <u>japonicus davidianus</u> <u>Cryptobranchus alleganiensis</u>	salamander, Japanese giant salamander, Chinese giant salamander, hellbender
FAMILY Plethodontidae <u>Eurycea longicauda</u>	salamander, long-tailed
FAMILY Salamandridae <u>Echinotriton andersoni</u>	newt, spiny

SCIENTIFIC NAMECOMMON NAMENotophthalmus viridescens

newt, red-spotted

ORDER Salientia

FAMILY Bufonidae

Bufo (all species in genus)

toad

FAMILY Discoglossidae

Bombina maxima

toad, giant fire-bellied

Bombina orientalis

toad, fire-bellied

FAMILY Hylidae

Agalychnis annae

treefrog, yellow-eyed

Agalychnis callidryas

treefrog, red-eyed

Pachymedusa dacnicolor

treefrog, Mexican giant

Smilisca baudini smiliscatreefrog, mottled
(Mexican)

FAMILY Leptodactylidae

Ceratophrys calcarata

frog, Columbian horned

Ceratophrys ornata

frog, ornate horned

Leptodactylus pentadactylus

bullfrog, South American

FAMILY Microhylidae

Dyscophus (all species in genus)

frog, tomato

Kaloula mediolineata

toad, Siamese-painted

Kaloula pulchratoad, Malayan
narrow-mouthed

FAMILY Pelobatidae

Megophrys montana nasuta

frog, Siamese-horned

Megophrys monticola nasuta

frog, Asian-horned

FAMILY Pipidae

Pipa pipa

toad, Surinam

Xenopus laevis

frog, African clawed

FAMILY Ranidae

Pyxicephalus adspersusbullfrog, (African grove
crown)

FAMILY Rhacophoridae

Kassina maculata

frog, spotted running

Mantella (all species in genus)

frog, golden

Rhacophorus (Polypedates)

frog, bamboo climbing

leucomystax(gold) (white-bearded
flying)

SCIENTIFIC NAMECOMMON NAME

REPTILES

PHYLUM Chordata	
CLASS Reptilia	
ORDER Crocodylia	
FAMILY Crocodylidae	
<u>Alligator mississippiensis</u>	alligator, American
(Prohibited for short-term performance or exhibition in circuses, carnivals, or state fairs. Allowed for short-term performance for commercial filming, for exhibition in government zoos, or for other purposes permitted under section 4-71-6.5)	
<u>Caiman crocodilus</u>	caiman, spectacled
(Prohibited for short-term performance or exhibition in circuses, carnivals, or state fairs. Allowed for short-term performance for commercial filming, for exhibition in government zoos, or for other purposes permitted under section 4-71-6.5)	
<u>Crocodylus</u> (all species in genus)	crocodile
(Prohibited for short-term performance or exhibition in circuses, carnivals, or state fairs. Allowed for short-term performance for commercial filming, for exhibition in government zoos, or for other purposes permitted under section 4-71-6.5)	
<u>Gavialis gangeticus</u>	gavial, garial
(Prohibited for short-term performance or exhibition in circuses, carnivals, or state fairs. Allowed for short-term performance for commercial filming, for exhibition in government zoos, or for other	

SCIENTIFIC NAMECOMMON NAME

purposes permitted under section
4-71-6.5)

ORDER Squamata	
Two non-venomous male snakes in the suborder Serpentes for exhibition in a government zoo	snakes, non-venomous
FAMILY Agamidae	
<u>Acanthosaura armata</u>	lizard, mountain horned
<u>Agama agama</u>	lizard, common agama
<u>Agama atricollis</u>	lizard, South African agama
<u>Agama stellio</u>	hardum
<u>Calotes calotes</u>	lizard, sawback agamidae
<u>Ceratophora stoderti</u>	lizard, horned agama
<u>Ctenophor (Amphibolurus) cristatus</u>	lizard, crested dragon
<u>Ctenophor (Amphibolurus) scutulatus</u>	lizard, lozenge marked dragon
<u>Draco</u> (all species in genus)	lizard, flying dragon
<u>Gonocephalus borniensis</u>	lizard, horn-headed tree dragon
<u>Hydrosaurus</u> (all species in genus)	lizard, sailfin
<u>Leiolepis belliana</u>	lizard, smooth-scaled agama, butterfly
<u>Leiolepis rubritaeniata</u>	lizard, giant ground
<u>Moloch horridus</u>	lizard, thorny devil
<u>Physignathus cocincinus</u>	lizard, Malayan water dragon
<u>Physignathus lesueuri</u>	lizard, brown water dragon
<u>Pogona (Amphibolurus) barbatus</u>	lizard, Australian bearded dragon
<u>Pogona (Amphibolurus) nullarbor</u>	lizard, Nullarbor bearded dragon
<u>Pogona (Amphibolurus) vitticeps</u>	dragon, inland bearded
FAMILY Anguidae	
<u>Gerrhonotus (Elguria) multicarinata</u>	lizard, southern alligator
<u>Ophisaurus ventralis</u>	lizard, eastern glass

SCIENTIFIC NAMECOMMON NAME

FAMILY Chamaeleonidae	
<u>Chamaeleo chamaeleon</u>	chameleon, common
<u>Furcifer oustaleti</u> (<u>Chamaeleo oustaleti</u>)	chameleon, Oustalet's
FAMILY Colubridae	
<u>Boiga irregularis</u> (four sterile male snakes for research or training of snake detector dogs)	snake, brown tree
FAMILY Cordylidae	
<u>Cordylus cataphractus</u>	lizard, armadillo
<u>Cordylus giganteus</u>	lizard, sun gazer
<u>Cordylus warreni</u>	lizard, Warrens girdled
<u>Gerrhosaurus flavigularis</u>	lizard, yellow-throated plated
<u>Gerrhosaurus major</u>	lizard, tawny plated
<u>Gerrhosaurus nigrolineatus</u>	lizard, black-lined plated
FAMILY Gekkonidae	
<u>Chondrodactylus angulifer</u>	gecko, sand
<u>Coleonyx elegans</u>	gecko, elegant banded
<u>Coleonyx variegatus</u>	gecko, western banded
<u>Cyrtodactylus pulchellus</u>	gecko, Malayan banded (naked-toe)
<u>Cyrtodactylus louisadensis</u>	gecko, naked-finger
<u>Diplodactylus spinigerus</u>	gecko, West Australian spiny-tailed (zig-zag)
<u>Eublepharis macularius</u>	gecko, leopard
<u>Gehyra mutilata</u> (Peropus)	gecko, stump-toed
<u>Gekko gekko</u>	gecko, tokay
<u>Gekko stentor</u>	gecko, giant
<u>Gymnodactylus penguensis zebraic</u>	gecko, leopard's (bent-toe)
<u>Hemidactylus frenatus</u>	gecko, house
<u>Hemidactylus garnoti</u>	gecko, Indo-Pacific
<u>Hemiphyllodactylus typus</u>	gecko, tree
<u>Hemitheconyx caudicinctus</u>	gecko, African fat-tailed
<u>Homopholus walbergi</u>	gecko, Wallberg's velvety
<u>Nephrurus</u> (all species in genus)	gecko, knob-tailed
<u>Oedura lesueuri</u>	gecko, Lesueur's velvet
<u>Oedura marmorata</u>	gecko, velvet
<u>Oedura robusta</u>	gecko, robust velvet
<u>Pachydactylus bibroni</u>	gecko, Bibron's
<u>Phelsuma abbotti</u>	gecko, Aldabra day

SCIENTIFIC NAMECOMMON NAME

<u>Phelsuma cepediana</u>	gecko, blue-tailed day
<u>Phelsuma guimbeaui</u>	gecko, orange-spotted day
<u>Phelsuma laticauda</u>	gecko, gold dust day
<u>Phelsuma madagascariensis</u>	gecko, Madagascar day
<u>Phelsuma ornata</u>	gecko, Reunion Island day (ornate day)
<u>Phyllurus cornutus</u>	gecko, northern leaf-tailed
<u>Phyllurus platurus</u>	gecko, southern leaf-tailed
<u>Ptychozoon kuhli</u>	gecko, flying
<u>Ptychozoon lionotum</u>	gecko, flying
<u>Rhacodactylus leachianus</u>	gecko, New Caledonia giant
<u>Thecadactylus rapicauda</u>	gecko, turnip-tailed
<u>Underwoodsaurus mili</u>	gecko, turnip-tailed
<u>Uroplatus</u> (all species in genus)	gecko, flat-tailed
FAMILY Iguanidae	
<u>Anolis equestris</u>	lizard, knight anole
<u>Basiliscus basiliscus</u>	lizard, brown basilisk
<u>Basiliscus plumifrons</u>	lizard, green basilisk (double crested)
<u>Basiliscus vittatus</u>	lizard, banded basilisk
<u>Brachylophus fasciatus</u>	iguana, Tongan (Fiji banded)
<u>Callisaurus draconoides</u>	lizard, zebra-tailed
<u>Corytophanes cristatus</u>	iguana, helmeted
<u>Crotaphytus collaris</u>	lizard, collared
<u>Ctenosaura similis</u>	iguana, spiny-tailed
<u>Cyclura macleayi</u>	iguana, Cuban (rhinoceros)
<u>Dipsosaurus dorsalis</u>	iguana, desert
<u>Enyaliosaurus quinquecarinatus</u>	iguana, club tail
<u>Gambelia wislizeni</u>	lizard, long-nosed leopard
<u>Holbrookia maculata</u>	lizard, lesser earless
<u>Iguana</u> (all species in genus)	iguana
<u>Phrynosoma</u> (all species in genus)	lizard, horned (horned toad)
<u>Sauromalus obesus</u>	lizard, chuckwalla
<u>Sauromalus varius</u>	lizard, chuckwalla
<u>Sceloporus clarki</u>	lizard, Clark's spiny
<u>Sceloporus jarrovi</u>	lizard, Yarrow's spiny
<u>Sceloporus magister</u>	lizard, desert spiny
<u>Sceloporus occidentalis</u>	lizard, western fence
<u>Sceloporus orcutti</u>	lizard, granite spiny
<u>Urosaurus ornatus</u>	lizard, tree
<u>Uta stansburiana</u>	lizard, side-blotched

SCIENTIFIC NAMECOMMON NAME

FAMILY Lacertidae

Lacerta lepida

lizard, jeweled lacerta

Lacerta sicula

lizard, European wall

Lacerta viridis

lizard, green

Takydromus sexlineatuslizard, long-tailed
(oriental six-lined
runner)

FAMILY Pygopodidae

Delma imparlizard, smooth-scaled
scaleyfootLialis burtonis

lizard, Burton's snake

Pygopus lepidopus

lizard, common scaley-foot

FAMILY Scincidae

Acontias percivalilizard, East African
leglessCorucia zebrata

skink, green tree

Cryptoblepharus boutoni

skink, snake-eyed

Cyclodomorphus (Tiliqua) branchialisskink, West Australian
short-limbedDasia smaragdina

skink, spotted green tree

Egernia cunninghami

skink, Cunningham's

Egernia stokesii

skink, gidgee

Emoia cyanura

skink, blue-tailed slender

Eumeces obsoletus

skink, Great Plains

Leiolopisma metallicum

skink, metallic

Lipinia noctua

skink, moth

Mabuya capensis

skink, South African

Mabuya capensisskink, South African
blue-tailedMabuya macularia

skink, orange-throated

Omolepida (Tiliqua) branchialisskink, Australian
short-limbedTiliqua nigroluteaskink, blotched-
blue-tonguedTiliqua occipitalisskink, West Australian
blue-tonguedTiliqua scincoides

skink, blue-tongued

Trachysaurus rugosus (Tiliqua
rugosus)

skink, shingle back

FAMILY Teiidae

Ameiva ameiva

lizard, jungle runners

Callopiastes maculatus

lizard, monitor tegu

SCIENTIFIC NAMECOMMON NAME

<u>Cnemidophorus tessellatus</u>	lizard, checkered whiptail
<u>Cnemidophorus tigris</u>	lizard, western whiptail
<u>Tubinambis nigropunctatus</u>	lizard, golden tegu
<u>Tupinambis rufescens</u>	lizard, tegu red
<u>Tupinambis teguixin</u>	lizard, tegu black

FAMILY Varanidae

<u>Varanus acanthurus</u>	monitor, spiny-tailed
<u>Varanus bengalensis</u>	monitor, Bengal
<u>Varanus dumerili</u>	monitor, Dumeril's
<u>Varanus exanthematicus</u>	monitor, savannah
<u>Varanus giganteus</u>	monitor, Perentee
<u>Varanus gouldi</u>	monitor, Gould's
<u>Varanus indicus</u>	monitor, Pacific
<u>Varanus komodoensis</u>	monitor, komodo
<u>Varanus niloticus</u>	monitor, Nile
<u>Varanus salvadori</u>	monitor, crocodile
<u>Varanus salvator</u>	monitor, water
<u>Varanus storri</u>	monitor, pygmy (Storr's dwarf)
<u>Varanus varius</u>	monitor, variegated

ORDER Testudines

FAMILY Chelidae

<u>Chelus fimbriatus</u>	turtle, mata mata
<u>Emydura albertisi</u>	turtle, New Guinea snake neck
<u>Podocnemis unifilis</u>	turtle, yellow-spotted Amazon

FAMILY Chelydridae

<u>Chelydra serpentina</u>	turtle, snapping
<u>Macroclemys temmincki</u>	turtle, alligator snapping

FAMILY Emydidae

<u>Heosemys grandis</u>	turtle, Asian temple
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FAMILY Pelomedusidae

<u>Pelomedusa subrufa olivacera</u>	turtle, helmeted
<u>Pelusios</u> (all species in genus)	terrapins, African hinged

FISHES

PHYLUM Chordata

CLASS Chonodrichthyes

ORDER Carcharhiniiformes

SCIENTIFIC NAMECOMMON NAME

FAMILY Carcharhinidae	
<u>Carcharhinus amblyrhynchos</u>	shark, gray reef
<u>Carcharhinus galapagensis</u>	shark, Galapagos
<u>Carcharhinus longimanus</u>	shark, oceanic whitetip
<u>Carcharhinus limbatus</u>	shark, blacktip
CLASS Osteichthyes	
ORDER Acipenseriformes	
FAMILY Acipenseridae	
<u>Acipenser baeri</u>	sturgeon, Siberian
<u>Acipenser brevirostrum</u>	sturgeon, shortnose
<u>Acipenser fulvescens</u>	sturgeon, lake
<u>Acipenser guldenstadti</u>	sturgeon, Russian
<u>Acipenser guldenstadti</u> x <u>Huso huso</u>	sturgeon, Oceber
<u>Acipenser medirostris</u>	sturgeon, green
<u>Acipenser oxyrhynchus</u>	sturgeon, Atlantic
<u>Acipenser ruthenus</u>	sturgeon, Siberian; sterlet
<u>Acipenser ruthenus</u> x <u>Huso huso</u>	sturgeon, Bester
<u>Acipenser stellatus</u>	sturgeon, Servuga (starry)
<u>Huso huso</u>	sturgeon, Beluga
<u>Scaphirhynchus albus</u>	sturgeon, pallid
<u>Scaphirhynchus platorhynchus</u>	sturgeon, shovelnose
FAMILY Polyodontidae	
<u>Polyodon spathula</u>	paddlefish
ORDER Atheriniformes	
FAMILY Atherinidae	
<u>Menidia beryllina</u>	silverside
ORDER Cypriniformes	
FAMILY Cyprinidae	
<u>Notemigonus crysoleucas</u>	minnow, golden shiner
<u>Pimephales promelas</u>	minnow, fathead
FAMILY Erythrinidae	
<u>Hoplias malabaricus</u>	tiger fish
ORDER Perciformes	

SCIENTIFIC NAMECOMMON NAME

[FAMILY Cichlidae <u>Oreochromis niloticus</u>	tilapia, Nile]
FAMILY Mugilidae <u>Mugil cephalus</u>	mullet, striped
FAMILY Nototheniidae <u>Dissostichus mawsoni</u> <u>Notothenia</u> (all species in genus)	cod, Antarctic cod, Antarctic
FAMILY Siganidae <u>Lo magnificentus</u>	foxface, white (rabbitfish)
<u>Lo uspi</u>	foxface, bicolor (rabbitfish)
<u>Lo vulpinus</u>	lo, foxface (rabbitfish)
<u>Siganus corallinus</u>	rabbitfish, spotted
<u>Siganus lineatus</u>	goldenspot
<u>Siganus puellus</u>	rabbitfish, blueline
<u>Siganus vermiculatus</u>	rabbitfish, vermiculated
<u>Siganus vermiculatus</u>	rabbitfish, spinefoot
<u>Siganus virgatus</u>	rabbitfish, barhead
ORDER Siluriformes FAMILY Clariidae <u>Clarias fuscus</u>	catfish, Chinese
ORDER Synbranchiformes FAMILY Synbranchidae <u>Monopterus albe</u>	eel, rice paddy

BIRDS

(Taxonomy after Sibley and Monroe 1990)

PHYLUM Chordata
CLASS Aves
ORDER Anseriformes

SCIENTIFIC NAMECOMMON NAME

FAMILY Anatidae <u>Anas platyrhynchos</u>	duck, mallard
FAMILY Anhimidae <u>Chauna chavaria</u>	screamer, black-necked
ORDER Apteriygiformes FAMILY Apteriygidae <u>Apteriyx australis</u>	kiwi, common zoi (brown)
ORDER Caprimulgiformes FAMILY Podargidae <u>Batrachostomus javensis</u> <u>Podargus strigoides</u>	frogmouth, Javan frogmouth, tawny
ORDER Casuariiformes FAMILY Casuariidae <u>Casuaris</u> (all species in genus)	cassowarie
FAMILY Dromaiidae <u>Dromaius novaehollandiae</u>	emu, common
ORDER Charadriiformes FAMILY Burhinidae <u>Burhinus bistratus</u> <u>Burhinus capensis</u>	thick-knee, double-striped cape thick-knee
FAMILY Charadriidae <u>Pluvialis dominica</u> <u>Vanellus armatus</u> <u>Vanellus spinosus</u>	plover, lesser golden plover, blacksmith plover, African spur-wing (spur-winged lapwing)
FAMILY Glareolidae <u>Glareola pratincola</u>	pratincoles, collared
FAMILY Haematopidae <u>Haematopus ostralegus</u>	oyster catcher, European
FAMILY Jacanidae <u>Actophilornis africana</u>	jacana, African
FAMILY Laridae	

SCIENTIFIC NAMECOMMON NAME

<u>Anous stolidus</u>	tern, brown noddy
<u>Gygis alba</u>	tern, fairy
<u>Larosterna inca</u>	tern, Inca
<u>Larus atricilla</u>	gull, laughing
<u>Larus californicus</u>	gull, California
<u>Larus heermanni</u>	gull, Heermans
<u>Procelsterna cerulea</u>	noddy, blue-grey
<u>Sterna fuscata</u>	tern, sooty
<u>Sterna sumatrana</u>	tern, black-naped
<u>Thalasseus maximus</u>	tern, royal
FAMILY Recurvirostridae	
<u>Himantopus himantopus</u>	stilt, black-winged
<u>Himantopus mexicanus</u>	stilt, black-necked
FAMILY Scolopacidae	
<u>Limnodromus griseus</u>	dowitcher, short-billed
ORDER Ciconiiformes	
FAMILY Ardeidae	
<u>Ardea herodias</u>	heron, great blue
<u>Ardeola (Bubulcus) ibis</u>	egrets, cattle
<u>Egretta alba</u>	egret, great
<u>Egretta garzetta</u>	egret, little
<u>Egretta intermedia</u>	egret, plumed
<u>Egretta thula</u>	egret, snowy
<u>Hydranassa caerulea</u>	heron, little blue
<u>Hydranassa tricolor</u>	heron, tricolored
<u>Tigrisoma lineatum</u>	heron, rufescent tiger
FAMILY Ciconiidae	
<u>Anastomus lamelligerus</u>	stork, open-billed
<u>Ephippiorhynchus asiaticus</u>	stork, black-neck
<u>Ephippiorhynchus senegalensis</u>	stork, saddle-bill
<u>Jabiru mycteria</u>	jabiru
<u>Leptoptilos crumeniferus</u>	stork, Marabou
FAMILY Scopidae	
<u>Scopus umbetta</u>	hammerkop (hammerhead)
FAMILY Threskiornithidae	
<u>Carphibis spinipectus</u>	ibis, straw-necked
<u>Eudocimus albus</u>	ibis, American white
<u>Plegadis falcinellus</u>	ibis, glossy

SCIENTIFIC NAMECOMMON NAME

ORDER Coliiformes	
FAMILY Coliidae	
<u>Colius striatus</u>	mousebird, speckled
ORDER Columbiformes	
FAMILY Columbidae	
<u>Caloenas nicobarica</u>	pigeon, Nicobar
<u>Didunculus strigirostris</u>	pigeon, tooth-billed
<u>Ducula aenea</u>	pigeon, green imperial
<u>Ducula bicolor</u>	pigeon, pied (imperial)
<u>Ducula myristicivora</u>	pigeon, New Guinea imperial
<u>Geopelia humeralis</u>	dove, bar-shouldered
<u>Goura cristata</u>	pigeon, common crowned
<u>Leucosarcia melanoleuca</u>	pigeon, wonga
<u>Macropygia phasianella</u>	dove, slender-bill cuckoo
<u>Macropygia unchall</u>	dove, bar-tailed cuckoo
<u>Otidiphaps nobilis</u>	pigeon, pheasant (magnificent ground)
<u>Ptilinopus jambu</u>	pigeon, jambu fruit
<u>Ptilinopus melanospila</u>	pigeon, black naped fruit
<u>Ptilinopus perousii</u>	dove, many colored fruit
<u>Ptilinopus roseicapilla</u>	dove, Mariana fruit
<u>Ptilinopus victor</u>	dove, orange
<u>Streptopelia risoria</u>	dove, ringed turtle
<u>Streptopelia senegalensis</u>	dove, laughing
<u>Turtur chalcospilos</u>	dove, wood emerald-spotted
<u>Uropelia campestris</u>	dove, long-tailed ground
FAMILY Pteroclididae	
<u>Pterocles indicus</u>	sandgrouse, painted
<u>Syrrhaptes paradoxus</u>	sandgrouse, pallas
ORDER Coraciiformes	
FAMILY Alcedinidae	
<u>Alcedo cristata</u>	kingfisher, malchite
<u>Ceyx erithacus</u>	kingfisher, Indian forest
<u>Ceyx rufidorsus</u>	kingfisher, red-backed
<u>Dacelo gigas</u>	kookabura, laughing
<u>Halcyon chloris</u>	kingfisher, white-collared

SCIENTIFIC NAMECOMMON NAME

<u>Halcyon cinnamomina</u>	kingfisher, Micronesian
<u>Halcyon leucocephala</u>	kingfisher, grey-headed
<u>Halcyon pileata</u>	kingfisher, black-capped
<u>Halcyon recurvirostris</u>	kingfisher, flat-billed
<u>Tanysiptera galatea</u>	kingfisher, common paradise
FAMILY Bucerotidae	
<u>Aceros leucocephalus</u>	hornbill, wrinkled
<u>Aceros nipalensis</u>	hornbill, rufous-necked
<u>Aceros plicatus</u>	hornbill, Papuan (Blyths)
<u>Aceros undulatus</u>	hornbill, wreathed
<u>Anthracoceros coronatus</u>	hornbill, pied
<u>Anthracoceros malabaricus</u>	hornbill, northern pied
<u>Buceros bicornis</u>	hornbill, great
<u>Buceros hydrocorax</u>	hornbill, rufous
<u>Buceros rhinoceros silvestris</u>	hornbill, rhinoceros
<u>Bucorvus abyssinicus</u>	hornbill, Abyssinian ground
<u>Bucorvus leadbeateri</u>	hornbill, African ground
<u>Penelopides exarhatus</u>	hornbill, Celebean
<u>Tockus erythrorhynchus</u>	hornbill, red-billed
FAMILY Coraciidae	
<u>Coracias benghalensis</u>	roller, Indian
<u>Coracias caudata</u>	roller, lilac-breasted
FAMILY Meropidae	
<u>Merops nubicus</u>	bee-eater, carmine
<u>Merops philippinus</u>	bee-eater, brown-breasted
FAMILY Momotidae	
<u>Momotus momota</u>	motmot, blue-crowned
FAMILY Phoeniculidae	
<u>Phoenicilus purpureus</u>	hoopoe, green wood
FAMILY Upupidae	
<u>Upupa epops</u>	hoopoe, common
ORDER Cuculiformes	
FAMILY Cuculidae	
<u>Carpococcyx renauldi</u>	cuckoo, red-billed ground

SCIENTIFIC NAMECOMMON NAME

Centropus sinensis
Rhopodytes tristis

coucal, greater
malkoha, greater
green-billed

FAMILY Musophagidae
Corythaixoides leucogaster

go-away bird,
white-bellied
turaco, red-crested
turaco, white-crested
turaco, Livingstone's

Tauraco erythrolophus
Tauraco leucolophus
Tauraco livingstonii

ORDER Falconiformes
FAMILY Accipitridae
Aegypius monachus
Aquila (all species in genus)
Buteo jamaicensis
Buteo solitarius
Gyps africanus
Gyps bengalensis
Haliaeetus (all species in genus)
Haliastur indus
Harpia harpyja
Harpyopsis novaegineae
Heterospizias meridionalis
Necrosyrtes monachus
Neophron percnopterus
Parabuteo unicinctus harrisi

Pithecophaga jefferyi
Trigonoceps occipitalis

vulture, cinereous
eagle
hawk, red-tailed
hawk, Hawaiian
vulture, white-backed
vulture, white-backed
eagle
kite, Brahminy
eagle, harpy
eagle, New Guinea harpy
hawk, savana
vulture, hooded
vulture, Egyptian
hawk, Harris's
(bay-winged)
eagle, monkey-eating
vulture, white-headed

FAMILY Cathartidae
Cathartes aura
Coragyps atratus
Sarcorhamphus papa

vulture, turkey
vulture, black
vulture, king

FAMILY Falconidae
Falco (all species in genus)
Herpetotheres (all species in
genus)
Polihierax semitorquatus
Polyborus (all species in genus)

falcon
falcon

falcon, African pigmy
caracara

FAMILY Sagittariidae
Sagittarius serpentarius

secretary bird

SCIENTIFIC NAMECOMMON NAME

ORDER Galliformes

FAMILY Cracidae

Crax mituPenelope pileataPenelope purpurascens

curassow, razor-billed

guan, white crested

guan, crested

FAMILY Megapodiidae

Aepyodius arfakianusAlectura lathamiiMegapodius freycinetMegapodius laperouseMegapodius pritchardii

turkey, wattled brush

turkey, brush

scrubfowl, common

fowl, Micronesia scrub

megapode, Niuafu'ou

FAMILY Phasianidae

Caloperdix ocellataGuttera edouardiMeleagris ocellatapartridge, ferruginous
wood

fowl, crested Guinea

turkey, ocellated

ORDER Gruiformes

FAMILY Eurypygidae

Eurypyga helias

bittern, sun

FAMILY Gruidae

Grus japonensisGrus vipio

crane, Manchurian

crane, white-naped

FAMILY Psophiidae

Psophia crepitansPsophia leucopteraPsophia viridis

trumpeter, common

trumpeter, white-winged

trumpeter, green-winged

FAMILY Rallidae

Aramides cajaneaLimnocorax flavirostraPorphyrio poliocephalusPorphyrio pulverulentusRallus owstoniRallus philippensis

rail, grey-necked wood

crake, black

moorhen

pukeko

rail, Guam

rail, banded

ORDER Passeriformes

SCIENTIFIC NAMECOMMON NAME

FAMILY Alaudidae	
<u>Alauda arvensis</u>	skylark
<u>Eremopterix keycioareua</u>	lark, Fishers sparrow
FAMILY Artamidae	
<u>Artamus leucorhynchus</u>	swallow, white-breasted wood
FAMILY Bombycillidae	
<u>Ptilogonys cinereus</u>	flycatcher, gray silky
FAMILY Campephagidae	
<u>Coracina pectoralis</u>	shrike, white-breasted cuckoo
<u>Coracina tenuirostris</u>	bird, cicada
<u>Prionops plumata</u>	shrike, straight-crested helmet
FAMILY Corvidae	
<u>Cissa chinensis</u>	magpie, green
<u>Corvus albus</u>	crow, pied
<u>Corvus corax</u>	raven
<u>Corvus kubaryi</u>	crow, Mariana
<u>Cyanocitta cristata</u>	jay, blue
<u>Cyanocitta stelleri</u>	jay, Stellers
<u>Cyanocorax chrysops</u>	jay, pileated (plush crested)
<u>Platylophus galericulatus</u>	jay, crested
<u>Urocissa erythrorhyncha</u>	magpie, blue (red billed)
FAMILY Cotingidae	
<u>Cephalopterus penduliger</u>	umbrella bird, long-wattled
<u>Rupicola peruviana</u>	cock-of-the-rock, Andean
<u>Procnis nudicollis</u>	bellbird, naked throated
FAMILY Dicruridae	
<u>Dicrurus remifer</u>	drongo, lesser racket-tailed
FAMILY Emberizidae	
<u>Paroaria gularis pheucticus</u>	cardinal, black-throated (red-capped)
<u>Passerina cyanoides</u>	grosbeak, blue-back
<u>Pheucticus ludovicianus</u>	grosbeak, rose-breasted
<u>Pheucticus melanocephalus</u>	grosbeak, black-headed

SCIENTIFIC NAMECOMMON NAME

FAMILY Estrildidae	
<u>Estrilda rhodopyga</u>	waxbill, crimson-rumped
<u>Lonchura maja</u>	nun, white-headed;
	white-headed munia
<u>Ortygospiza atricollis</u>	finch, quail
FAMILY Eurylaimidae	
<u>Calyptomena viridis</u>	broadbill, green
FAMILY Icteridae	
<u>Icterus chrysocephalus</u>	oriole, moriche
<u>Icterus icterus</u>	troupial
<u>Psarocolius decumanus</u>	oropendola, crested
FAMILY Irenidae	
<u>Chloropsis aurifrons</u>	leafbird, golden-fronted
FAMILY Mimidae	
<u>Dumetella carolinensis</u>	catbird, common
<u>Mimus gilvus</u>	mockingbird, tropical
FAMILY Motacillidae	
<u>Motacilla flava</u>	wagtail, yellow
FAMILY Muscicapidae	
<u>Acrocephalus luscini</u>	warbler, nightingale reed
<u>Acrocephalus syrinx</u>	warbler, Caroline Islands
	reed
<u>Cettia subulata</u>	warbler, bush
<u>Cyornis tickelliae</u>	flycatcher, Tickell's blue
<u>Erithacus calliope</u>	rubythroat, Siberian
<u>Erithacus komadori</u>	robin, Temminck's
<u>Erithacus obscurus</u>	robin, black-throated
<u>Eumyias thalassina</u>	flycatcher, verditer
<u>Ficedula narcissina</u>	flycatcher, narcissus
<u>Garrulax leucolophus</u>	thrush, white-crested
	laughing
<u>Garrulax milnei</u>	thrush, red-tailed
	laughing
<u>Garrulax monileger</u>	thrush, lesser necklaced
	laughing
<u>Metabolus regensis</u>	monarch, Truk
<u>Monarcha godeffroyi</u>	monarch, Yap
<u>Monarcha takatsuakasa</u>	monarch, Tinian

SCIENTIFIC NAMECOMMON NAME

<u>Myadestes obscurus</u>	solitaire, brown-backed
<u>Myadestes townsendi</u>	solitaire, Townsend's
<u>Myiagra azureocapilla</u>	flycatcher, blue-crested
<u>Myiagra erythrops</u>	broadbill, Palau
<u>Myiophoneus caeruleus</u>	thrush, blue whistling
<u>Niltava sundara</u>	niltava, rufous-bellied
<u>Pachycephala pectoralis</u>	whistler, golden
<u>Phoenicurus aureus</u>	redstart, Daurian
<u>Rhipidura lepida</u>	fantail, Palau
<u>Rhipidura rufifrons</u>	fantail, rufous
<u>Turdus migratorius</u>	robin, American
FAMILY Oriolidae	
<u>Oriolus chinensis</u>	oriole, black-naped
FAMILY Paradisaeidae	
<u>Astrapia mayeri</u>	astrapia, ribbon-tailed
<u>Astrapia stephaniae</u>	bird-of-paradise, Princess Stephanie's
<u>Cicinnurus regius</u>	bird-of-paradise, king
<u>Diphyllodes magnificus</u>	bird-of-paradise, magnificent
<u>Diphyllodes respublica</u>	bird-of-paradise, Wilson's
<u>Lophorina superba</u>	bird-of-paradise, superb
<u>Paradisaea apoda</u>	bird-of-paradise, greater
<u>Paradisaea guilielmi</u>	bird-of-paradise, white plumed
<u>Paradisaea minor</u>	bird-of-paradise, lesser
<u>Paradisaea rubra</u>	bird-of-paradise, red
<u>Paradisaea rudolphi</u>	bird-of-paradise, blue
<u>Paradisaea raggiana</u>	bird-of-paradise, Count Raggi's
<u>Parotia carolae</u>	bird-of-paradise, Queen Carol's
<u>Parotia lawesii</u>	parotia, Lawe's
<u>Ptiloris magnificus</u>	rifle bird, magnificent
<u>Seleucidis melanoleuca</u>	bird-of-paradise, twelve-wired
FAMILY Pipridae	
<u>Chiroxiphia caudata</u>	manakin, swallow-tailed
FAMILY Pittidae	
<u>Pitta moluccensis</u>	pitta, blue-winged
<u>Pitta sordida</u>	pitta, hooded
<u>Pitta steerii</u>	pitta, steers

SCIENTIFIC NAMECOMMON NAME

FAMILY Ploceidae

Bubalornis albirostris

weaver, buffalo

Dinemellia dinemelliweaver, white-headed
buffaloPlocepasser mahaliweaver, white-browed
sparrow

FAMILY Ptilonorhynchidae

Amblyornis macgregoriae

bowerbird, Macgregor's

Chlamydera cerviniventris

bowerbird, fawn-breasted

Ptilonorhynchus violaceus

bowerbird, satin

FAMILY Sturnidae

Buphagus africanus

oxpecker, yellow-billed

Cinnyricinclus leucogaster

starling, violet-backed

Cosmopsarus regius

starling, golden-breasted

Lamprotornis purpureus

starling, purple glossy

Lamprotornis purpuropterus

starling, Ruppell's

Leucopsar rothschildi

long-tailed

Spreo superbus

mynah, Bali

Sturnus nigricollis

starling, superb

starling, black collared

FAMILY Thraupidae

Piranga olivacea (males only)

tanager, scarlet

Ramphocelus dimidiatus (males only)

tanager, crimson-backed

Thraupis episcopus (males only)

tanager, blue-grey

FAMILY Tinamidae

Eudromia formosa

tinamou, crested

FAMILY Zosteropidae

Zosterops palpebrosa

white-eye, oriental

ORDER Pelecaniformes

FAMILY Pelecanidae

Pelecanus (all species in genus)

pelican

FAMILY Phalacrocoracidae

Phalacrocorax carbo

cormorant, common

ORDER Piciformes

FAMILY Capitonidae

SCIENTIFIC NAMECOMMON NAME

Lybius (all species in genus)
Megalaima armillaris

barbets
barbett, Armott's (blue
crowned)

Megalaima asiatica
Semnornis ramphastinus
Trachyphonus erythrocephalus

barbet, blue-throated
barbet, toucan
barbet, red and yellow

FAMILY Indicatoridae
Indicator indicator

honeyguide, black-throated

FAMILY Picidae
Chrysocalptes lucidus

woodpecker, greater
goldenbacked
woodpecker, gray-capped

Picoides canicapillus

FAMILY Rhamphastidae
Pteroglossus beauharnaesii
Ramphastos ambiguus swainsonii
Ramphastos discolorus
Ramphastos sulfuratus
sulfuratus
Ramphastos toco cuvieri
Ramphastos toco toco
Ramphastos vitellinus ariel
Ramphastos vitellinus
vitellinus
Selenidera maculirostris

aracari, curl-crested
toucan, bicolored-billed
toucan, red-breasted
toucan, sulfur breasted,
north kneel-bill
toucan, Cuvier's
toucan, north toco
toucan, ariel channel-bill
toucan, sulphur and white,
north channel-bill
toucanet, spot-billed

ORDER Procellariiformes
FAMILY Procellariidae
Puffinus pacificus

shearwater, wedge-tailed

ORDER Psittaciformes
FAMILY Loriidae
Chalcopsitta sintillata
Charmosyna papou goliathina
Trichoglossus haematodus
Trichoglossus johnstoniae
Trichoglossus rubiginosus
Vini peruviana

lory, yellow streaked
lory, central Stella's
lory, rainbow
lorikeet, Johnstone's
lory, Ponape
lory, Tahitian

FAMILY Psittacidae
Brotogeris jugularis
Eunymphicus cornutus

parakeet, orange-chinned
parakeet, horned

SCIENTIFIC NAMECOMMON NAME

<u>Lathamus discolor</u>	parrot, swift
<u>Loriculus galgulus</u>	lory, blue-crowned
<u>Loriculus philippensis</u>	parrot, Philippine hanging
<u>Nandayus nenday</u>	conure, nanday
<u>Nestor notabilis</u>	kea
<u>Prosopoeia tabuensis</u>	parrot, red shining
<u>Psittaculirostris</u> (all species in genus)	parrot, fig
<u>Psitttrichas fulgidus</u>	parrot, Pesquets

ORDER Rheiformes

FAMILY Rheidae

Rhea americana

rhea, common (greater)

ORDER Strigiformes

FAMILY Strigidae

Asio flammeus

owl, short-eared

Bubo virginianus

owl, great horned

Glaucidium brodiei

owlet, pygmy

Scotopelia peli

owl, Pell's fishing

Speotyto cunicularia

owl, burrowing

Strix varia

owl, barred

FAMILY Tytonidae

Tyto alba

owl, common barn

ORDER Trogoniformes

FAMILY Trogonidae

Pharomachrus auriceps

quetzal, golden-headed

Pharomachrus mocinno

quetzal, resplendent

Harpactes erythrocephalus

trogon, red-headed

Trogon viridis

trogon, white-tailed

ORDER Apodiformes

FAMILY Trochilidae

Trochilidae (sexually dimorphic
males only)

hummingbirds

ORDER Psittaciformes

SCIENTIFIC NAMECOMMON NAME

FAMILY Loriidae	
<u>Eos bornea</u> (males only)	lory, red
<u>Eos squamata</u> (males only)	lory, violet-necked
<u>Lorius lory</u> (males only)	lory, black-capped
MAMMALS	
PHYLUM Chordata	
CLASS Mammalia	
ORDER Artiodactyla	
FAMILY Bovidae	
Bovidae (all species in family)	wild cattle, buffalo, antelopes, etc.
FAMILY Camelidae	
<u>Camelus bactrianus</u>	camel, Bactrian
<u>Camelus dromedarius</u>	camel
FAMILY Cervidae	
<u>Cervus nippon</u>	deer, sika
<u>Dama dama</u> (=Cervus dama)	deer, white European fallow
<u>Muntiacus muntjak</u>	deer, Indian muntjac
<u>Muntiacus reevesi</u>	muntjac, Reeve's
<u>Odocoileus hemionus</u>	deer, black-tailed
FAMILY Girrafidae	
<u>Okapia johnstoni</u>	okapi
FAMILY Hippopotamidae	
<u>Choeropsis liberiensis</u>	hippo, pygmy
<u>(Prohibited for short-term performance or exhibition in circuses, carnivals, or state fairs. Allowed for short-term performance for commercial filming, for exhibition in government zoos, or for other purposes permitted under section 4-71-6.5)</u>	
<u>Hippopotamus amphibius</u>	hippopotamus
<u>(Prohibited for short-term performance or exhibition in circuses, carnivals, or state</u>	

SCIENTIFIC NAMECOMMON NAME

fairs. Allowed for short-term performance for commercial filming, for exhibition in government zoos, or for other purposes permitted under section 4-71-6.5)

FAMILY Suidae

Babyrousa babyrousa
Phacochoerus aethiopicus
Sus barbatus

barbirusa
hog, wart
pig, bearded

FAMILY Tayassuidae

Tayassu tajacu

peccary, collared

ORDER Carnivora

FAMILY Canidae

Lycaon pictus
Otocyon megalotis
Vulpes (all species in genus)

dog, African hunting
fox, bat-eared
fox

FAMILY Felidae

Acinonyx jubatus

cheetah

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Felis caracal (=Lynx caracal)

caracal

(Prohibited for short-term performance or exhibition in circuses, carnivals, or state fairs. Allowed for short-term performance for commercial filming, for exhibition in government zoos, or for other purposes permitted under section 4-71-6.5)

Felis pardalis

ocelot

(Prohibited for short-term performance or exhibition in

SCIENTIFIC NAMECOMMON NAME

<p><u>circuses, carnivals, or state fairs. Allowed for short-term performance for commercial filming, for exhibition in government zoos, or for other purposes permitted under section 4-71-6.5)</u></p>	
<p><u>Felis serval</u> (Prohibited for short-term performance or exhibition in circuses, carnivals, or state fairs. Allowed for short-term performance for commercial filming, for exhibition in government zoos, or for other purposes permitted under section 4-71-6.5)</p>	serval
<p><u>Felis wiedii</u> (Prohibited for short-term performance or exhibition in circuses, carnivals, or state fairs. Allowed for short-term performance for commercial filming, for exhibition in government zoos, or for other purposes permitted under section 4-71-6.5)</p>	margay
<p><u>Panthera leo</u> (Prohibited for short-term performance or exhibition in circuses, carnivals, or state fairs. Allowed for short-term performance for commercial filming, for exhibition in government zoos, or for other purposes permitted under section 4-71-6.5)</p>	lion
<p><u>Panthera nebulosa (=Neofelis nebulosa)</u> (Prohibited for short-term performance or exhibition in circuses, carnivals, or state fairs. Allowed for short-term performance for commercial</p>	clouded leopard

SCIENTIFIC NAMECOMMON NAME

<u>filming, for exhibition in government zoos, or for other purposes permitted under section 4-71-6.5)</u>	
<u>Panthera onca</u> (Prohibited for short-term performance or exhibition in circuses, carnivals, or state fairs. Allowed for short-term performance for commercial filming, for exhibition in government zoos, or for other purposes permitted under section 4-71-6.5)	jaguar
<u>Panthera pardus</u> (Prohibited for short-term performance or exhibition in circuses, carnivals, or state fairs. Allowed for short-term performance for commercial filming, for exhibition in government zoos, or for other purposes permitted under section 4-71-6.5)	leopard
<u>Panthera tigris</u> (Prohibited for short-term performance or exhibition in circuses, carnivals, or state fairs. Allowed for short-term performance for commercial filming, for exhibition in government zoos, or for other purposes permitted under section 4-71-6.5)	tiger
<u>Profelis concolor (=Felis concolor)</u> (Prohibited for short-term performance or exhibition in circuses, carnivals, or state fairs. Allowed for short-term performance for commercial filming, for exhibition in government zoos, or for other purposes permitted under section 4-71-6.5)	puma, (cougar), (mountain lion)

FAMILY Hyaenidae

SCIENTIFIC NAMECOMMON NAMECrocuta crocuta

hyena, spotted

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FAMILY Mustelidae

Aonyx cinerea

otter, Asian small-clawed

Lutra canadensis

otter, land river

Mephitis (all species in genus)

skunk

Mustela lutreola

mink

Mustela putorius furo

ferret

Mustela vison

mink

Pteronura brasiliensis

otter, giant

FAMILY Procyonidae

Ailurus fulgens

panda, red

Nasua (all species in genus)

coati

Potos flavus

kinkajou

Procyon lotor

raccoon

FAMILY Ursidae

Helarctos malayanus

sunbear, Malayan

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Melursus ursinus

bear, sloth

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SCIENTIFIC NAMECOMMON NAME

4-71-6.5)

Ursus (all species in genus)

bear

(Prohibited for short-term performance or exhibition in circuses, carnivals, or state fairs. Allowed for short-term performance for commercial filming, for exhibition in government zoos, or for other purposes permitted under section 4-71-6.5)

FAMILY Viverridae

Arctictis binturong

binturong

Suricata suricatta

meerkat, slender-tailed

Herpestes auropunctatus

mongoose, small Indian

ORDER Diprotodontia (=Marsupialia)

FAMILY Didelphidae

Didelphis marsupialis

opossum

FAMILY Macropodidae

Aepyrymnus (all species in genus)

rat-kangaroo, Rufous

Bettongia (all species in genus)

rat-kangaroo

Caloprymnus (all species in genus)

rat-kangaroo, desert

Dendrolagus (all species in genus)

tree-kangaroo

Dorcopsis (all species in genus)

wallaby, New Guinea forest

Dorcopsulus (all species in genus)wallaby, New Guinea
mountainHypsiprymnodon (all species
in genus)

rat-kangaroo, musk

Lagorchestes (all species in genus)

wallaby, hare

Lagostrophus (all species in genus)

wallaby, banded hare

Macropus (all species in genus)

wallaby (kangaroo)

Megaleia (all species in genus)

kangaroo, red

Onychogalea (all species in genus)

wallaby, nail-tailed

Peradorcas (all species in genus)

rock-wallaby, little

Petrogale (all species in genus)

rock-wallaby

Potorous (all species in genus)

potoroo

Setonix (all species in genus)

quokka

Thylogale (all species in genus)

pademelon

Wallabia (all species in genus)

wallaby, swamp

FAMILY Phascolarctidae

Phascolarctos cinereus

bear, koala

SCIENTIFIC NAMECOMMON NAME

ORDER Edentata	
FAMILY Bradipodidae	
<u>Bradypus</u> (all species in genus)	sloth, three toed
<u>Choloepus</u> (all species in genus)	sloth, two toed
FAMILY Dasypodidae	
<u>Dasypus</u> (all species in genus)	armadillo
FAMILY Myrmecophagidae	
<u>Myrmecophaga tridactyla</u>	anteater, giant
ORDER Hyracoidea	
FAMILY Procaviidae	
<u>Procavia capensis</u>	hyrax, rock
ORDER Insectivora	
FAMILY Erinaceidae	
<u>Hemiechinus auritis</u>	hedge hog, long-eared
FAMILY Soricidae	
<u>Crocidura</u> (all species in genus)	shrew, musk
ORDER Perissodactyla	
FAMILY Equidae	
<u>Equus africanus</u> (= <u>Equus asinus</u>)	ass, African wild
FAMILY Rhinocerotidae	
<u>Ceratotherium simum</u>	rhinoceros, southern white
<u>(Prohibited for short-term performance or exhibition in circuses, carnivals, or state fairs. Allowed for short-term performance for commercial filming, for exhibition in government zoos, or for other purposes permitted under section 4-71-6.5)</u>	
<u>Diceros bicornis</u>	rhinoceros, black
<u>(Prohibited for short-term performance or exhibition in circuses, carnivals, or state</u>	

SCIENTIFIC NAMECOMMON NAME

fairs. Allowed for short-term performance for commercial filming, for exhibition in government zoos, or for other purposes permitted under section 4-71-6.5)

Rhinoceros unicornis

rhinoceros, great Indian

(Prohibited for short-term performance or exhibition in circuses, carnivals, or state fairs. Allowed for short-term performance for commercial filming, for exhibition in government zoos, or for other purposes permitted under section 4-71-6.5)

FAMILY Tapiridae

Tapirus indicus

tapir, Malayan

Tapirus terrestris

tapir

ORDER Proboscidea

FAMILY Elephantidae

Elaphas maximus

elephant, Asian

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Loxodonta africana

elephant, African

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SCIENTIFIC NAMECOMMON NAME

ORDER Rodentia	
FAMILY Caviidae	
<u>Dolichotis patagonum</u>	cavy, Patagonian
FAMILY Cricetidae	
<u>Cricetulus griseus</u>	mouse, Chinese
<u>Gerbillus gerbillus</u>	gerbil
<u>Meriones unguiculatus</u>	gerbil
<u>Mesocricetus auratus</u>	hamster
<u>Sigmondon hispidus</u>	rat, cotton
FAMILY Dasyproctidae	
<u>Agouti paca</u>	agouti
<u>Dasyprocta agouti</u> (=D. <u>leporina</u>)	agouti
FAMILY Erethizontidae	
<u>Erethizon dorsatum</u>	porcupine, North American
FAMILY Heteromyidae	
<u>Perognathus longimembris</u>	mice, pocket
FAMILY Hystricidae	
<u>Hystrix cristata</u>	porcupine, African crested
FAMILY Myocastoridae	
<u>Myocastor coypu</u>	nutria
FAMILY Sciuridae	
<u>Callosciurus prevosti</u>	squirrel, prevost's
<u>Marmota</u> (all species in genus)	marmots
<u>Sciurus variegatoide</u>	squirrel, variegated
ORDER Scandentia	
FAMILY Tupaiidae	
<u>Tupaia glis</u>	shrew, tree
ORDER Tubulidentata	
FAMILY Orycteropodidae	
<u>Orycteropus afer</u>	aardvark

PART B: FOR PRIVATE AND COMMERCIAL USE

SCIENTIFIC NAMECOMMON NAME

INVERTEBRATES

PHYLUM Annelida	
CLASS Oligochaeta	
ORDER Haplotaxida	
FAMILY Lumbricidae	
<u>Lumbricus rubellus</u>	earthworm, red
PHYLUM Arthropoda	
CLASS Crustacea	
ORDER Amphipoda	
FAMILY Gammaridae	
<u>Gammarus</u> (all species in genus)	crustacean, freshwater; scud
FAMILY Hyalellidae	
<u>Hyalella azteca</u>	shrimps, imps (amphipod)
ORDER Cladocera	
FAMILY Sididae	
<u>Diaphanosoma</u> (all species in genus)	flea, water
ORDER Cyclopoida	
FAMILY Cyclopidae	
<u>Cyclops</u> (all species in genus)	copepod, freshwater
ORDER Decapoda	
FAMILY Alpheidae	
<u>Alpheus brevicristatus</u>	shrimp, Japan (pistol)
FAMILY Palinuridae	
<u>Panulirus gracilis</u>	lobster, green spiny
<u>Panulirus</u> (all species in genus except <u>Panulirus argus</u> , <u>P. longipes femoristriga</u> , <u>P. pencillatus</u>)	lobster, spiny
FAMILY Pandalidae	
<u>Pandalus platyceros</u>	shrimp, giant (prawn)
FAMILY Penaeidae	

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
<u>Penaeus indicus</u>	shrimp, penaeid
<u>Penaeus californiensis</u>	shrimp, penaeid
<u>Penaeus japonicus</u>	shrimp, wheel (ginger)
<u>Penaeus monodon</u>	shrimp, jumbo tiger
<u>Penaeus orientalis</u> (<u>chinensis</u>)	shrimp, penaeid
<u>Penaeus plebjius</u>	shrimp, penaeid
<u>Penaeus schmitti</u>	shrimp, penaeid
<u>Penaeus semisulcatus</u>	shrimp, penaeid
<u>Penaeus setiferus</u>	shrimp, white
<u>Penaeus stylirostris</u>	shrimp, penaeid
<u>Penaeus vannamei</u>	shrimp, penaeid
ORDER Isopoda	
FAMILY Asellidae	
<u>Asellus</u> (all species in genus)	crustacean, freshwater
ORDER Podocopina	
FAMILY Cyprididae	
<u>Cypris</u> (all species in genus)	ostracod, freshwater
CLASS Insecta	
ORDER Diptera	
FAMILY Calliphoridae	
<u>Lucilia sericata</u>	blow fly, green bottle
ORDER Hymenoptera	
FAMILY Braconidae	
<u>Cotesia plutellae</u>	parasite, diamondback moth
ORDER Lepidoptera	
FAMILY Nymphalidae	
<u>Dryadula phaetusa</u>	butterfly
<u>Eueides isabella</u>	butterfly
<u>Heliconius charitonius</u>	butterfly
<u>Heliconius erato</u>	butterfly
<u>Heliconius hecale</u>	butterfly
<u>Heliconius melpomene</u>	butterfly
<u>Heliconius sara</u>	butterfly
<u>Morpho menelaus</u>	butterfly
<u>Morpho peleides</u>	butterfly
FAMILY Papilionidae	
<u>Ornithoptera priamus</u>	butterfly

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
<u>Pachliopta aristolochiae</u>	butterfly
<u>Pachliopta kotzebuea</u>	butterfly
<u>Papilio thoas</u>	butterfly
<u>Papilio ulysses</u>	butterfly
<u>Parides iphidamas</u>	butterfly
<u>Parides photinus</u>	butterfly
<u>Trogonoptera brookiana</u>	butterfly
<u>Troides helena</u>	butterfly
<u>Troides rhadamanthus</u>	butterfly
ORDER Orthoptera	
FAMILY Gryllidae	
<u>Acheta domesticus</u>	<u>cricket, house</u>
PHYLUM Cnidaria	
CLASS Anthozoa	
ORDER Alcyonacea	
FAMILY Alcyoniidae	
<u>Sarcophyton ehrenbergi</u>	coral, leather
<u>Sarcophyton glaucum</u>	coral, leather
<u>Sarcophyton trocheliophorum</u>	coral, leather
ORDER Scleractinia	
FAMILY Acroporidae	
<u>Acropora aspersa</u>	coral, stony
<u>Acropora austera</u>	coral, stony
<u>Acropora elseyi</u>	coral, stony
<u>Acropora formosa</u>	coral, stony
<u>Acropora microphthalma</u>	coral, stony
<u>Acropora nana</u>	coral, stony
PHYLUM Mollusca	
CLASS Bivalvia	
ORDER Pelecypoda	
FAMILY Margaritiferidae	
<u>Margaritifera margaritifera</u>	mussel, freshwater
ORDER Pterioida	
FAMILY Pteridae	
<u>Pinctada fucata</u>	oyster, akoya

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
<u>Pinctada margaritifera</u>	oyster, black lipped pearl
<u>Pinctada maxima</u>	oyster, silver lipped pearl
ORDER Unionoida	
FAMILY Unionidae	
<u>Anodonta</u> (all species in genus)	mussel, freshwater
<u>Proptera alata</u>	mussel, freshwater
<u>Unio</u> (all species in genus)	mussel, freshwater
ORDER Veneroida	
FAMILY Tridacnidae	
<u>Hippopus hippopus</u>	clam, giant
<u>Tridacna crocea</u>	clam, giant
<u>Tridacna derasa</u>	clam, giant
<u>Tridacna gigas</u>	clam, giant
<u>Tridacna hippopus</u>	clam, giant
<u>Tridacna maxima</u>	clam, giant
<u>Tridacna squamosa</u>	clam, giant
FAMILY Veneridae	
<u>Anodontia stearnsiana</u>	clam, mangrove
<u>Mercenaria mercenaria</u> x <u>M. campechiensis</u>	clam, hybrid
CLASS Gastropoda	
ORDER Archaeogastropoda	
FAMILY Trochidae	
<u>Trochus niloticus</u>	topshell
PHYLUM Nemata (=Nematoda)	
CLASS Adenophorea	
ORDER Trichocephalida	
FAMILY Trichuridae	
<u>Trichuris trichiura</u>	nematode
CLASS Secernentea	
ORDER Ascaridida	
FAMILY Oxvuridae	
<u>Enterobius vermicularis</u>	nematode
ORDER Strongylida	

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
FAMILY Trichostrongylidae <u>Trichostrongylus</u> (all species in genus)	nematode
ORDER Tylenchida FAMILY Heteroderidae <u>Rotylenchus</u> (all species in genus)	nematode

AMPHIBIANS

PHYLUM Chordata CLASS Amphibia ORDER Caudata FAMILY Salamandridae <u>Triturus boscai</u> <u>Triturus italicus</u> <u>Tylostrotion verrococus</u>	newt newt, Italian newt, emperor
ORDER Salientia FAMILY Dendrobatidae <u>Dendrobates</u> (all species in genus)	frog, poison arrow (poison dart)
FAMILY Hylidae <u>Hyla vasta</u>	treefrog, Haitian giant
FAMILY Ranidae <u>Rana erythraea</u> <u>Rana jerboa</u> <u>Rana limnocharis</u> <u>Rana pustulosa</u>	frog, red-eared frog frog, rice frog

REPTILES

PHYLUM Chordata CLASS Reptilia ORDER Squamata FAMILY Chamaeleonidae <u>Chamaeleo jacksoni</u>	chameleon, Jackson's
FAMILY Iguanidae <u>Amblyrhynchus cristatus</u>	iguana, Galapagos-marine

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
<u>Anolis carolinensis</u>	chameleon, American
<u>Conolophus subcristatus</u>	iguana, Galapagos-land
FAMILY Scincidae	
<u>Emoia physicae</u>	skink, ground
<u>Lobulia elegans</u>	skink, ground
<u>Lobulia morokana</u>	skink, ground
<u>Lobulia stanleyana</u>	skink, ground
ORDER Testudines	
FAMILY Chelidae	
<u>Chelodina longicollis</u>	turtle, Australian side-neck
FAMILY Cheloniidae	
<u>Chelonia mydas agassizii</u>	turtle, green sea
<u>Lepidochelys olivacea</u>	turtle, loggerhead (Ridley)
FAMILY Emydidae	
<u>Batagur baska</u>	turtle, Batagur
<u>Callagur borneoensis</u>	turtle, giant river
<u>Chinemys kwangtungensis</u>	turtle, Kwangtung pond
<u>Chinemys reevesi</u>	turtle, Reeves
<u>Chrysemys (Pseudemys) alabamensis</u>	turtle, Alabama red-bellied
<u>Chrysemys (Pseudemys) rubriventris</u>	turtle, Plymouth red-bellied
<u>Cuora amboinensis</u>	turtle, Malayan box
<u>Cuora flavomarginata</u>	turtle, yellow-margined box
<u>Cuora galbinifrons</u>	turtle, white-fronted box
<u>Cuora trifasciata</u>	turtle, three-keeled box
<u>Cyclemys dentata</u>	turtle, Asian leaf
<u>Geoclemys hamiltoni</u>	turtle, black pond
<u>Geoemyda spengleri</u>	turtle, black-bellied notched
<u>Graptemys oculifera</u>	turtle, ringed map
<u>Hardella thurji</u>	turtle, Brahminy river
<u>Heosemys (all species in genus except H. grandis)</u>	turtle, cogwheel
<u>Hieremys annandalei</u>	turtle, temple
<u>Kachuga (all species in genus)</u>	turtle, roof
<u>Malaclemys terrapin</u>	turtle, diamond back terrapin
<u>Mauremys (Annamemys) annamensis</u>	turtle, Eurasian pond
<u>Melanochelys tricarinata</u>	turtle, three-keeled Indian terrapin
<u>Melanochelys trijuga</u>	turtle, black-bellied terrapin
<u>Morenia ocellata</u>	turtle, ocellated peacock

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
<u>Morenia petersi</u>	turtle, Peter's peacock
<u>Notochelys platynota</u>	turtle, flat-back
<u>Ocadia sinensis</u>	turtle, Chinese striped
<u>Orlitia borneensis</u>	turtle, Bornean river
<u>Pyxidea mouhoti</u>	turtle, Indian thorn
<u>Rhinoclemmys (Callopsis)</u> (all species in genus)	turtle, painted forest
<u>Sacalia bealei</u>	turtle, six-eyed pond
<u>Siebenrockiella crassicollis</u>	turtle, fat-headed
<u>Terrapene coahuila</u>	turtle, aquatic box
<u>Trachemys</u> (all species in genus)	turtle, slider
FAMILY Kinosternidae	
<u>Kinosternon</u> (all species in genus)	turtle, mud
<u>Staurotypus salvini</u>	turtle, giant musk
<u>Staurotypus triporcatus</u>	turtle, giant musk
<u>Sternotherus carinatus</u>	turtle, keel-backed musk
<u>Sternotherus minor depressus</u>	turtle, flattened musk
<u>Sternotherus minor minor</u>	turtle, loggerhead musk
<u>Sternotherus minor peltifer</u>	turtle, musk
<u>Sternotherus odoratus</u>	turtle, stinkpot (common musk)
FAMILY Testudinidae	
<u>Asterochelys radiata</u>	tortoise, radiated
<u>Asterochelys yniphora</u>	tortoise, angulated
<u>Chelonoidis elephantopus</u>	tortoise, Galapagos
<u>Gopherus (Xerobates) agassizi</u>	tortoise, desert
<u>Gopherus flavomarginatus</u>	tortoise, Bolson
<u>Gopherus polyphemus</u>	tortoise, gopher
<u>Indotestudo</u> (all species in genus)	tortoise
<u>Kinixys belliana</u>	tortoise, Bell's hinged
<u>Kinixys erosa</u>	tortoise, Schweigger's hinge-back
<u>Kinixys homeana</u>	tortoise, Homer's hinged
<u>Malacochersus tornieri</u>	tortoise, pancake
<u>Manouria</u> (all species in genus)	tortoise
<u>Psammobates geometricus</u>	tortoise, cape geometric
<u>Pyxi arachnoides</u>	tortoise, spider
FAMILY Trionychidae	
<u>Chitra indica</u>	turtle, narrow-headed soft-shell
<u>Cyclanorbis elegans</u>	turtle, Nubian soft-shell
<u>Cyclanorbis senegalensis</u>	turtle, Senegal soft-shell
<u>Cycloderma aubryi</u>	turtle, Aubry's soft-shell
<u>Cycloderma frenatum</u>	turtle, bridled soft-shell

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
<u>Lissemys punctata</u>	turtle, Indian flap-shelled
<u>Pelochelys bibroni</u>	turtle, giant soft-shell
<u>Trionyx</u> (all species in genus)	turtle, soft-shell

FISHES

PHYLUM Chordata	
CLASS Chondrichthyes	
ORDER Carcharhiniformes	
FAMILY Carcharhinidae	
<u>Carcharhinus melanopterus</u>	shark, black-tip reef
<u>Cephaloscyllium ventriosum</u>	shark, swell
FAMILY Hemigaleidae	
<u>Triaenodon obesus</u>	shark, white-tip reef
FAMILY Triakidae	
<u>Rhinnotriakis henlei</u>	shark, smoothound
<u>Triakis semifasciatum</u>	shark, leopard
ORDER Heterodontiformes	
FAMILY Heterodontidae	
<u>Heterodontus zebra</u>	shark, highfin
ORDER Orectolobiformes	
FAMILY Brachaeluridae	
<u>Brachaelurus waddi</u>	shark, blind
FAMILY Ginglymostomatidae	
<u>Ginglymostoma cirratum</u>	shark, nurse
FAMILY Hemiscyllidae	
<u>Chiloscyllium colax</u>	shark, banded
<u>Hemiscyllium ocellatum</u>	shark, epaulette
FAMILY Stegostomatidae	
<u>Stegostoma fasciatum</u>	shark, zebra
CLASS Osteichthyes	
ORDER Acipenseriformes	
FAMILY Acipenseridae	
<u>Acipenser transmontanus</u>	sturgeon, white

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
ORDER Atheriniformes	
FAMILY Anablepidae	
<u>Anableps</u> (all species in genus)	four-eyes
<u>Jenynsia</u> (all species in genus)	livebearer
FAMILY Goodeidae	
<u>Allodontichthys</u> (all species in genus)	darther goodeid
<u>Alloophorus</u> (all species in genus)	goodeid
<u>Allotoca</u> (all species in genus)	goodeid
<u>Ameca</u> (all species in genus)	goodeid
<u>Ataeniobius</u> (all species in genus)	goodeid
<u>Chapalichthys</u> (all species in genus)	goodeid
<u>Characodon</u> (all species in genus)	goodeid
<u>Girardinichthys</u> (all species in genus)	goodeid
<u>Goodea</u> (all species in genus)	goodea
<u>Hubbsina</u> (all species in genus)	goodeid
<u>Ilyodon</u> (all species in genus)	goodeid
<u>Neoophorus</u> (all species in genus)	goodeid
<u>Skiffia</u> (all species in genus)	goodeid
<u>Xenoophorus</u> (all species in genus)	goodeid
<u>Xenotaenia</u> (all species in genus)	goodeid
<u>Xenotoca</u> (all species in genus)	goodeid
<u>Zoogoneticus</u> (all species in genus)	goodeid
FAMILY Poeciliidae	
<u>Alfaro</u> (all species in genus)	livebearer
<u>Brachyrhaphis</u> (all species in genus)	bishop
<u>Carlhubbsia</u> (all species in genus)	widow
<u>Cnesterodon</u> (all species in genus)	millionfish
<u>Flexipenis</u> (all species in genus)	mosquitofish
<u>Gambusia</u> (all species in genus except <u>Gambusia amistadensis</u> , <u>G. gaigei</u> , <u>G. georgei</u> , <u>G. heterochir</u> and <u>G. nobilis</u>)	mosquitofish
<u>Girardinus</u> (all species in genus)	girardinus
<u>Heterandria</u> (all species in genus)	mosquitofish
<u>Heterophallus</u> (all species in genus)	strange-fin
<u>Limia</u> (all species in genus)	molly
<u>Neoheterandria</u> (all species in genus)	killifish

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
<u>Phallichthys</u> (all species in genus)	widow
<u>Phalloceros</u> (all species in genus)	livebearer
<u>Phalloptychus</u> (all species in genus)	livebearer
<u>Phallotorynus</u> (all species in genus)	livebearer
<u>Poecilia</u> (all species in genus)	molly
<u>Poeciliopsis</u> (all species in genus except <u>Poeciliopsis occidentalis</u>)	livebearer
<u>Priapella</u> (all species in genus)	livebearer
<u>Priapichthys</u> (all species in genus)	diamond-scale
<u>Pseudopoecilia</u> (all species in genus)	diamond-scale
<u>Quintana</u> (all species in genus)	livebearer
<u>Scolichthys</u> (all species in genus)	mosquitofish
<u>Tomeurus</u> (all species in genus)	prongfin
<u>Xenodexia</u> (all species in genus)	livebearer
<u>Xenophallus</u> (all species in genus)	mosquitofish
<u>Xiphophorus</u> (all species in genus)	platy
ORDER Cypriniformes	
FAMILY Cyprinidae	
<u>Aristichthys nobilis</u>	carp, bighead
<u>Ctenopharyngodon idellus</u>	carp, grass (white amur)
<u>Hypophthalmichthys molitrix</u>	carp, silver
<u>Mylopharyngodon piceus</u>	carp, black
ORDER Gonorynchiformes	
FAMILY Chanidae	
<u>Chanos chanos</u>	milkfish
ORDER Perciformes	
FAMILY Centrarchidae	
<u>Micropterus salmoides floridanus</u>	bass, Florida largemouth
FAMILY Centropomidae	
<u>Lates calcarifer</u>	bass, Asian sea
FAMILY Channidae	
<u>Ophiocephalus (Channa) striatus</u>	pongee (snakehead)
FAMILY Cichlidae	

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
<u>Oreochromis aureus</u>	tilapia, blue
<u>Oreochromis mossambicus</u>	tilapia, Mozambique
<u>Oreochromis niloticus</u>	<u>tilapia, Nile</u>
<u>Oreochromis spilurus</u>	tilapia
<u>Paretroplus polyactis</u>	cichlid, Damba
<u>Paretroplus</u> sp. "lamena"	cichlid, Damba
FAMILY Percichthyidae	
<u>Morone saxatilis</u> x <u>Morone chrysops</u>	bass, hybrid striped
FAMILY Potophaenidae	
<u>Coryphae hippurus</u>	mahimahi
ORDER Pleuronectiformes	
FAMILY Bothidae	
<u>Paralichthys olivaceus</u>	flounder, Japanese (hirame)
FAMILY Pleuronectidae	
<u>Hippoglossus hippoglossus</u>	halibut, Atlantic
<u>Hippoglossus stenolepis</u>	halibut, Pacific
ORDER Salmoniformes	
FAMILY Salmonidae	
<u>Oncorhynchus kisutch</u>	salmon, coho
<u>Oncorhynchus mykiss</u>	trout, rainbow
<u>Oncorhynchus tshawytscha</u>	salmon, Chinook
<u>Salmo gairdnerii</u>	trout, rainbow
<u>Salmo salar</u>	salmon, atlantic
ORDER Scorpaeniformes	
FAMILY Anoplopomatidae	
<u>Anoplopoma fimbria</u>	sablefish

BIRDS

(Taxonomy after Sibley and Monroe 1990)

PHYLUM Chordata

CLASS Aves

ORDER Anseriformes

FAMILY Anatidae

<u>Aix galericulata</u>	duck, mandarin
<u>Aix sponsa</u>	duck, wood
<u>Alopochen aegyptiacus</u>	goose, Egyptian
<u>Anas acuta</u>	duck, north pintail

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
<u>Anas bahamensis</u>	duck, Bahama pintail (white-cheeked)
<u>Anas capensis</u>	duck (teal), cape
<u>Anas clypeata</u>	duck, northern shoveler
<u>Anas crecca</u>	duck (teal), green wing
<u>Anas cyanoptera</u>	duck (teal), cinnamon
<u>Anas discors</u>	duck (teal), blue wing
<u>Anas flavirostris</u>	duck (teal), Chilean
<u>Anas penelope</u>	duck, European wigeon (Eurasian)
<u>Anas platyrhynchos laysanensis</u>	duck (teal), Laysan
<u>Anas platyrhynchos wyvilliana</u>	duck (teal), Hawaiian
<u>Anas sibilatrix</u>	wigeon (duck), Chiloe
<u>Anas undulata</u>	duck, African yellowbill
<u>Anser caerulescens</u>	goose, lesser snow
<u>Anser canagicus</u>	goose, emperor
<u>Anser indicus</u>	goose, bar-headed
<u>Aythya americana</u>	duck, red head
<u>Aythya fuligula</u>	duck, tufted
<u>Aythya valisineria</u>	duck, canvasback
<u>Biziura lobata</u>	duck, musk
<u>Branta (Nesochen) sandvicensis</u>	goose, nene
<u>Branta bernicla</u>	goose, brant
<u>Branta canadensis</u>	goose, Canadian
<u>Branta canadensis minima</u>	goose, cackling (Canada)
<u>Branta ruficollis</u>	goose, red-breasted
<u>Calonetta leucophrys</u>	teal, ringed
<u>Cereopsis novaehollandiae</u>	goose, Cape Barren
<u>Chloephaga melanoptera</u>	goose, Andean
<u>Chloephaga picta leucoptera</u>	goose, Andean (greater Magellan)
<u>Chloephaga poliocephala</u>	goose, ashy-headed
<u>Cyanochen cyanopetrus</u>	goose, Abyssinian blue wing
<u>Cygnus (all species in genus)</u>	swan
<u>Dendrocygna arborea</u>	duck, black-billed whistling
<u>Dendrocygna arcuata</u>	duck, wandering whistling
<u>Dendrocygna autumnalis</u>	duck, red-billed whistling
<u>Dendrocygna bicolor</u>	duck, fulvous tree (fulvous whistling)
<u>Dendrocygna eytoni</u>	duck, Eyton tree (plumed whistling)
<u>Dendrocygna viduata</u>	duck, white-faced tree (whistling)
<u>Heteronetta atricapilla</u>	duck, black-headed
<u>Merganetta armata</u>	duck, torrent
<u>Mergus cucullatus</u>	duck, hooded merganser
<u>Mergus merganser</u>	duck, goosander (merganser)
<u>Mergus octosetaceus</u>	duck, Brazilian merganser

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
<u>Neochen jubatus</u>	goose, Orinoco
<u>Netta erythrophthalma</u>	pochard
<u>Netta peposaca</u>	rosy-bill
<u>Netta rufina</u>	pochard, red-crested
<u>Oxyura jamaicensis</u>	duck, North American ruddy
<u>Sarkidiornis melanotos</u>	duck, comb
<u>Somateria mollissima</u>	duck, common eider
<u>Somateria mollissima dresseri</u>	duck, American eider
<u>Tadorna</u> (all species in genus)	shelduck
ORDER Charadriiformes	
FAMILY Scolopacidae	
<u>Numenius tahitiensis</u>	curlew, bristle-thighed
ORDER Ciconiiformes	
FAMILY Ardeidae	
<u>Nycticorax nycticorax</u>	heron, black-crowned night
FAMILY Ciconiidae	
<u>Ciconia ciconia</u>	stork, white
<u>Mycteria ibis</u>	stork, yellow-billed
FAMILY Phoenicopteridae	
<u>Phoeniconaias minor</u>	flamingo, African lesser
<u>Phoenicopterus chilensis</u>	flamingo, Chilean
<u>Phoenicopterus ruber</u>	flamingo, rosy (scarlet), American
FAMILY Threskiornithidae	
<u>Ajaia ajaja</u>	spoonbill, roseate
<u>Eudocimus ruber</u>	ibis, scarlet
<u>Hagedashia hagedash</u>	ibis, hadada
<u>Platalea alba</u>	spoonbill, African
<u>Threskionis aethiopicus</u>	ibis, sacred
ORDER Cuculiformes	
FAMILY Musophagidae	
<u>Tauraco hartlaubi</u>	turaco, blue-crested
ORDER Gruiformes	
FAMILY Gruidae	
<u>Anthropoides paradisea</u>	crane, Stanley (paradise)
<u>Anthropoides virgo</u>	crane, Demoiselle
<u>Balearica pavonina</u>	crane, crown of Africa

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
	(crowned)
<u>Grus antigone</u>	crane, sarus
<u>Grus canadensis</u>	crane, sandhill
FAMILY Rallidae	
<u>Fulica americana alai</u>	coot, Hawaiian
<u>Gallinula chloropus sandvicensis</u>	gallinule, Hawaiian
ORDER Pelecaniformes	
FAMILY Fregatidae	
<u>Fregata minor</u>	frigate bird, great
<u>Fregata minor palmerstoni</u>	frigate bird
FAMILY Phaethontidae	
<u>Phaethon lepturus</u>	tropicbird, white-tailed
<u>Phaethon rubricauda</u>	tropicbird, red-tailed
FAMILY Sulidae	
<u>Sula dactylatra</u>	booby, blue-faced (masked)
<u>Sula leucogaster</u>	booby, brown
<u>Sula neboxii</u>	booby, blue-footed
<u>Sula sula</u>	booby, red-footed
ORDER Procellariiformes	
FAMILY Diomedeidae	
<u>Diomedea immutabilis</u>	albatross, Laysan
<u>Diomedea nigripes</u>	albatross, black-footed
ORDER Psittaciformes	
FAMILY Psittacidae	
<u>Coracopsis nigra</u>	parrot, black
<u>Coracopsis vasa</u>	parrot, vasa
<u>Psittacula krameri</u>	parakeet, rose-ringed (ringnecked)
<u>Rhynchopsitta pachyrhyncha</u>	parrot, thick-billed
ORDER Sphenisciformes	
FAMILY Spheniscidae	
Spheniscidae (all species in family)	penguins
ORDER Struthioniformes	
FAMILY Struthionidae	
<u>Struthio camelus</u>	ostrich

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
MAMMALS	
PHYLUM Chordata	
CLASS Mammalia	
ORDER Artiodactyla	
FAMILY Bovidae	
<u>Aepyceros melampus</u>	impala
<u>Ammotragus lervia</u>	sheep, barbary (aoudad)
<u>Antilope cervicapra</u>	antelope, blackbuck
<u>Bison bison</u>	bison
<u>Capra falconeri</u>	markhor
<u>Capra ibex</u>	ibex
<u>Gazella dama</u>	gazelle, dama
<u>Hippotragus niger</u>	antelope, sable
<u>Oryx beisa beisa</u> (=O. <u>gazella beisa</u>)	oryx, beisa
<u>Ovis musimon</u>	sheep, mouflon
<u>Tragelaphus imberbis</u>	kudu, lesser
<u>Tragelaphus oryx</u> (=Taurotragus <u>oryx</u>)	eland, common
<u>Tragelaphus scriptus</u>	bushbuck
<u>Tragelaphus strepsiceros</u>	kudu, greater
FAMILY Cervidae	
<u>Axis axis</u> (=Cervis <u>axis</u>)	deer, axis
<u>Cervus elaphus</u>	elk
<u>Rangifer tarandus</u>	reindeer
FAMILY Giraffidae	
<u>Giraffa</u> sp.	giraffe
ORDER Carnivora	
FAMILY Mustelidae	
<u>Lutra persipicillata</u>	otter, Malayan smooth
FAMILY Otariidae	
<u>Zalophus californianus</u>	sea lion
FAMILY Phocidae	
<u>Monachus schauinslandii</u>	seal, Hawaiian monk
ORDER Diprotodontia (=Marsupialia)	
FAMILY Macropodidae	
<u>Macropus eugenii</u>	wallaby, dama
<u>Macropus robustus</u>	wallaro, Woodward's
<u>Macropus rufogriseus</u>	wallaby, Bennett's
<u>Macropus rufus</u>	kangaroo, red

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
ORDER Odontoceti (=Cetacea)	
FAMILY Delphinidae	
<u>Globicephala macrorhynchus scammoni</u>	whale, Pacific pilot
<u>Pseudorca crassidens</u>	whale, false killer
<u>Tursiops truncatus</u>	porpoise, bottlenosed
ORDER Perissodactyla	
FAMILY Equidae	
<u>Equus burchelli</u>	zebra, plains
<u>Equus burchelli bohmi</u>	zebra, Grant
ORDER Pinnipedia	
FAMILY Phocidae	
<u>Phoca vitulana</u>	seal, harbor
ORDER Primates	
FAMILY Callithricidae	
Callithricidae (all species in family)	monkey, marmosets, tamarins
<u>(Prohibited for short-term performance or exhibition in circuses, carnivals, or state fairs. Allowed for short-term performance for commercial filming, for exhibition in government zoos, or for other purposes permitted under section 4-71-6.5)</u>	
FAMILY Cebidae	
Cebidae (all species in family)	monkey, new world
<u>(Prohibited for short-term performance or exhibition in circuses, carnivals, or state fairs. Allowed for short-term performance for commercial filming, for exhibition in government zoos, or for other purposes permitted under section 4-71-6.5)</u>	
FAMILY Cercopithecidae	
Cercopithecidae (all species in family)	monkey, old world; baboon; colobus; langur,

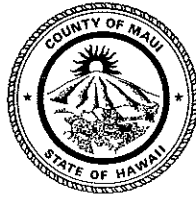
<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
(Prohibited for short-term performance or exhibition in circuses, carnivals, or state fairs. Allowed for short-term performance for commercial filming, for exhibition in government zoos, or for other purposes permitted under section 4-71-6.5)	Macaque
FAMILY Hylobatidae <u>Hylobates</u> (all species in genus) (Prohibited for short-term performance or exhibition in circuses, carnivals, or state fairs. Allowed for short-term performance for commercial filming, for exhibition in government zoos, or for other purposes permitted under section 4-71-6.5)	gibbons
FAMILY Lemuridae <u>Lemuridae</u> (all species in family) (Prohibited for short-term performance or exhibition in circuses, carnivals, or state fairs. Allowed for short-term performance for commercial filming, for exhibition in government zoos, or for other purposes permitted under section 4-71-6.5)	lemur, bush baby (Galago)
FAMILY Lorisidae <u>Nycticebus coucang</u> (Prohibited for short-term performance or exhibition in circuses, carnivals, or state fairs. Allowed for short-term performance for commercial filming, for exhibition in government zoos, or for other purposes permitted under section 4-71-6.5)	loris, slow
<u>Perodicticus potto</u> (Prohibited for short-term performance or exhibition in	potto

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
<p><u>circuses, carnivals, or state fairs. Allowed for short-term performance for commercial filming, for exhibition in government zoos, or for other purposes permitted under section 4-71-6.5)</u></p>	
<p>FAMILY Pongidae</p> <p><u>Gorilla gorilla</u> <u>(Prohibited for short-term performance or exhibition in circuses, carnivals, or state fairs. Allowed for short-term performance for commercial filming, for exhibition in government zoos, or for other purposes permitted under section 4-71-6.5)</u></p>	gorilla
<p><u>Pan troglodytes</u> <u>(Prohibited for short-term performance or exhibition in circuses, carnivals, or state fairs. Allowed for short-term performance for commercial filming, for exhibition in government zoos, or for other purposes permitted under section 4-71-6.5)</u></p>	chimpanzee
<p><u>Pan paniscus</u> <u>(Prohibited for short-term performance or exhibition in circuses, carnivals, or state fairs. Allowed for short-term performance for commercial filming, for exhibition in government zoos, or for other purposes permitted under section 4-71-6.5)</u></p>	chimpanzees
<p><u>Pongo pygmaeus</u> <u>(Prohibited for short-term performance or exhibition in circuses, carnivals, or state fairs. Allowed for short-term performance for commercial filming, for exhibition in government zoos, or for other purposes permitted under section 4-71-6.5)</u></p>	orangutan

V. New Business

A. Discussion and Action on Proposed Amendments to Title 8 Chapter 101, **Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui**, promulgated by Department of Liquor Control, County of Maui

ALAN M. ARAKAWA
MAYOR



GLENN MUKAI
DIRECTOR

RECEIVED

By SMALL BUSINESS REGULATORY REVIEW BOARD at 7:57 am, Nov 14, 2018

GEORGETTE C.R. TYAU
DEPUTY DIRECTOR


DEPARTMENT OF LIQUOR CONTROL

C O U N T Y O F M A U I

2145 KAOHU STREET, ROOM 105 • WAILUKU, MAUI, HAWAII 96793
PHONE (808) 243-7753 • FAX (808) 243-7558

MEMORANDUM

TO: Anthony Borge, Chairperson
Small Business Regulatory Review Board/DBEDT

FROM: Glenn Mukai, Director 
Department of Liquor Control, County of Maui

DATE: November 13, 2018

SUBJECT: **Proposed Rule Amendments for Department of Liquor Control, County of Maui, Title 8, Chapter 101, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui**

Pursuant to Chapters 91 and 92, Hawaii Revised Statutes, the County of Maui Liquor Commission has provided notice of a public hearing for the purpose of amending certain subsections of the Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui. Enclosed are the Notice of Public Hearing and the proposed Rule Amendments for your review, comments and suggestions.

The Department of Liquor Control, County of Maui, Small Business Review and Advisory Committee met on 7/16/18 and 8/13/18 to review the proposed amendments and made the following findings:

1. The proposed rule amendments will not cause any direct or significant economic burden upon small business.
2. The proposed rule amendments will not impact or be directly related to the formation, operation or expansion of a small business.
3. The proposed rule amendments will greatly assist and not adversely affect small business.
4. All of the proposed rule amendments are necessitated by amendments to Chapter 281, H.R.S. by the State legislature.

The Department of Liquor Control, County of Maui, Small Business Review and Advisory Committee consists of individuals representing various classes of liquor licenses and Lisa Paulson, Executive Director of the Maui Hotel & Lodging Association.

Should you require further information or assistance, please do not hesitate to call me at (808) 243-7754.

**PRE-PUBLIC HEARING
SMALL BUSINESS IMPACT STATEMENT
TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD**
(Hawaii Revised Statutes §201M-2)

Department or Agency: Department of Liquor Control, County of Maui

Administrative Rule Title and Chapter: Title 08, Chapter 101

Chapter Name: Rules Governing the Manufacture and Sale of Intoxication Liquor of the County of Maui

Contact Person/Title: Glenn Mukai, Director

Phone Number: 1-808-243-7754

E-mail Address: liquor@mauicounty.gov **Date:** November 13, 2018

A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.

B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7? Yes No (If Yes, please provide webpage address and when and where rules may be viewed in person☺)

www.mauicounty.gov/1004/RulesLaws

(Please keep the proposed rules on this webpage until after the SBRRB meeting.)

I. **Rule Description:** New Repeal Amendment Compilation

II. **Will the proposed rule(s) affect small business?** Yes No (If No, no need to submit this form.)

* "Affect small business" is defined as "any potential or actual requirement imposed upon a small business . . . that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business." HRS §201M-1

* "Small business" is defined as a "for-profit enterprise consisting of fewer than one hundred full-time or part-time employees." HRS §201M-1

III. **Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance?** Yes No (If Yes, no need to submit this form.)

(e.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives.) HRS §201M-2(d)

IV. **Is the proposed rule being adopted pursuant to emergency rulemaking?** (HRS §201M-2(a)) Yes No (If Yes, no need to submit this form.)

* * *

If the proposed rule affects small business and are not exempt as noted above, please provide a reasonable determination of the following:

1. Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected.

DNA

2. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance.

DNA

If the proposed rule imposes a new or increased fee or fine:

- a. Amount of the current fee or fine and the last time it was increased.
- b. Amount of the proposed fee or fine and the percentage increase.
- c. Reason for the new or increased fee or fine.
- d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).

3. The probable monetary costs and benefits to the agency or other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used.

DNA

4. The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or other mitigating techniques.

DNA

5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.

DNA

6. Consideration of creative, innovative, or flexible methods of compliance for small businesses. The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules.

DNA

7. How the agency involved small business in the development of the proposed rules.

The Department's Small Business Review and Advisory Committee worked in partnership on and creating the amendments. Committee consists of Executive Director of Maui Hotel & Lodging Associations and representatives from various classes of liquor licenses.

- a. If there were any recommendations made by small business, were the recommendations incorporated into the proposed rule? If yes, explain. If no, why not.

Recommendations were incorporated into the proposed rules.

8. Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

DNA

If yes, please provide information comparing the costs and benefits of the proposed rules to the costs and benefits of the comparable federal, state, or county law, including the following:

- a. Description of the public purposes to be served by the proposed rule.

- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.

- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.

- d. A comparison of the monetary costs and benefits of the proposed rule with the costs and benefits of imposing or deferring to the related federal, state, or county law, as well as a description of the manner in which any additional fees from the proposed rule will be used.

- e. A comparison of the adverse effects on small business imposed by the proposed rule with the adverse effects of the related federal, state, or county law.

* * *

Small Business Regulatory Review Board / DBEDT

Phone: (808) 586-2594

Email: dbedt.sbrrb@hawaii.gov

This Statement may be found on the
SBRRB Website at:

<http://dbedt.hawaii.gov/sbrrb/small-business-impact-statements-pre-and-post-public-hearing>

NOTICE OF PUBLIC HEARING

Pursuant to Section 91-3(a), Hawaii Revised Statutes, the Liquor Control Commission of the County of Maui (the "Liquor Commission") hereby provides notice of a public hearing for the purpose of amending the following sections of its Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui (the "Rules").

The entire text of the proposed rule amendments is listed below, and is further summarized as follows:

SUMMARY:

1. Section 08-101-22: Licenses, classes.

Authorizing the issuance of new class 2 restaurant licenses before commencing operation; clarifies that class 2 licenses are transferrable; requires an applicant for a new class 2 license or a transferee to certify that the applicant or transferee intends to and shall derive no less than thirty per cent of the establishment's gross revenue from the sale of food.

Authorizing class 4 retail dealer licensees to sell up to one half-gallon of beer, malt beverages or cider in sealed containers provided by the patron.

Allowing social clubs holding class 10 special licenses to sell wine from the social club's inventory to club members for off-premises consumption; waiver of certain requirements for the issuance of class 10 licenses; allowing class 10 licensees to auction liquor in sealed or covered containers or services that provide liquor; requiring a current list of officers and directors, if the applicant is a nonprofit organization; and unless waived by the commission, requiring proof of liquor liability insurance.

Permitting class 14 brewpub and class 18 small craft producer licensees to allow minors accompanied by a parent or legal guardian on to the class 14 and class 18 licensee's premises.

2. Section 08-101-24: Temporary licenses.

Waiving hearings, fees, notarization of documents, submission of floor plans and other requirements for one-day temporary liquor licenses for fundraising events by nonprofit organizations; allowing auction of liquor in sealed or covered containers or services that provide liquor; no requirement of criminal history record checks; and providing a definition of "nonprofit organization."

3. Section 08-101-30: Application.

Eliminating the requirement that an applicant for a liquor license or a transferee of a liquor license obtain a federal tax clearance.

4. Section 08-101-31: No license issued, when.

Providing that only the officers and directors of a publicly traded corporation designated as a primary decision-maker shall be considered for disqualification as a liquor licensee, and eliminating the requirement that an applicant for a liquor license or a transferee of a liquor license obtain a federal tax clearance.

5. Section 08-101-33: Renewal of license.

Eliminating the requirement that an applicant for renewal of an existing license obtain a federal tax clearance.

PROPOSED RULE AMENDMENTS

1. Section 08-101-22, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

“§08-101-22 Licenses, classes. (a) Licenses may be granted by the commission as provided in this rule.

(b) Class 1. Manufacturer license.

(1) A license for the manufacture of liquor shall authorize the licensee to manufacture the liquor therein specified and to sell it at wholesale in original packages to any person who holds a license to resell it and to sell draught beer or wine manufactured from grapes or other fruits grown in the State in any quantity to any person for private use and consumption.

(2) Under this license, no liquor shall be consumed on the premises except as authorized by the commission.

(3) Of this class, there shall be the following kinds:

(A) Beer[;].

(B) Wine[;].

(C) Alcohol[; and].

(D) Other specified liquor.

(4) It shall be unlawful for any holder of a manufacturer license to have any interest whatsoever in the license or licensed premises of any other licensee, except as may be provided within section 08-101-106 of the rules of the commission. This subsection shall not prevent the holder of a manufacturer license under this chapter or under the law of another jurisdiction from maintaining any interest in the

license or licensed premises of a wholesale dealer licensee under this chapter.

- (c) Class 2. Restaurant license.
- (1) A license under this class shall authorize the licensee to sell liquor specified in this section for consumption on the premises; provided that a restaurant licensee, with commission approval, may provide off-premises catering of food and liquor by applying and obtaining approval for a catering permit while performing food catering functions; provided further that the catering activity shall be directly related to the licensee's operation as a restaurant. A license under this class shall also authorize the licensee to sell beer, malt beverages, or cider for off-premises consumption, provided that the licensee has the appropriate kind of license pursuant to paragraph (4); and provided further that the beer, malt beverage, or cider is sold in a securely sealed or covered glass, ceramic, or metal container that is sold to or provided by the patron, and each sealed or covered glass, ceramic, or metal container does not exceed a maximum capacity of one-half gallon.
- (2) A licensee under this class shall be issued a license according to the category of establishment the licensee owns or operates. The categories shall be:
 - (A) A standard bar; or
 - (B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by the rules of the commission. The subcategories of this category shall be:
 - (i) Premises in which recorded background music is provided; and].
 - (ii) Premises in which live entertainment or recorded music is provided; provided that facilities for dancing by the patrons may be permitted as provided by the rules of the commission.
- (3) If a licensee under class 2 desires to change the category of establishment the licensee owns or operates, the licensee shall apply for a new license applicable to the category of the licensee's establishment.
- (4) Of this class, there shall be the following kinds:
 - (A) General (includes all liquor except alcohol);].
 - (B) Beer and wine; and].
 - (C) Beer.
- (5) Notwithstanding section 281-57, HRS, the commission may approve at one public hearing and without notice the change to a class 2 restaurant license of a licensee holding and operating a class 5 dispenser license who meets the requirements of a class 2 license.

- (6) Restaurant license may be granted to a place, which regularly, and in a bona fide manner, is used and kept open for the serving of meals to patrons for compensation, and which has suitable State department of health and County of Maui department of fire control approved kitchen facilities within, containing the necessary equipment and supplies for cooking an assortment of foods, which may be required for ordinary meals. Additionally, the premises must have been continuously operated for one year prior to any application, and the applicant must provide a financial report of gross revenue of that year of which at least 30 percent of the establishment's gross revenue must be derived from the sale of foods.
- (7) Restaurant license may be transferred to an applicant for a class 2 restaurant license, whose proposed premises is the same premises of the transferor, provided:
- (A) The premises meet all requirements for a restaurant license and is the same class, kind, and category.
- (B) The transferee certifies that the transferee intends to and shall derive no less than 30 percent of the establishment's gross revenue from the sale of food.
- (C) The applicant shall submit, not later than the fifth day of each month for a period of one year, a financial report of food and liquor gross revenue of which 30 percent of the establishment's gross revenue must be derived from the sale of food, failure to meet this requirement, the license shall be automatically downgraded to a dispenser license of the same category and kind.
- (8) A new class 2 restaurant license may be issued prior to an establishment commencing operation. An application for a new class 2 license shall include an affidavit by the applicant that the applicant intends to and shall derive no less than 30 percent of the establishment's gross revenue from the sale of food.
- (A) The premises shall meet all requirements for a restaurant license.
- (B) The applicant shall submit, no later than the fifth day of each month for a period of one year, a financial report of food and liquor gross revenue of which 30 percent of the establishment's gross revenue must be derived from the sale of food, failure to meet this requirement, the license shall be automatically downgraded to a dispenser license of the same category and kind.
- (d) Class 3. Wholesale dealer license.
- (1) A license for the sale of liquor at wholesale shall authorize the licensee to import and sell only to licensees or to others who are by law authorized to resell the liquor specified by the license but are

not by law required to hold a license provided that a class 3 licensee may sell samples of liquor back to the manufacturer.

- (2) Under a class 3 license no liquor shall be consumed on the premises except as authorized by the commission.
 - (3) Of this class, there shall be the following kinds:
 - (A) General (includes all liquor except alcohol)[;].
 - (B) Beer and wine[; and].
 - (C) Alcohol.
 - (4) If any wholesale dealer solicits or takes any orders in any county other than that where the dealer's place of business is located, the orders may be filled only by shipment direct from the county in which the wholesale dealer holds the dealer license. Nothing in this subsection shall prevent a wholesaler from selling liquor to post exchanges, ships' service stores, army or navy officers' clubs, or like organizations located on army or navy reservations, or to any vessel other than vessels performing a regular water transportation service between any two or more ports in the State, or to aviation companies who operate an aerial transportation enterprise subject to chapter 269, HRS, and engaged in flight passenger services between any two or more airports in the State for use on aircraft, or aviation companies engaged in transpacific flight operations for use on aircraft outside the jurisdiction of the State.
- (e) Class 4. Retail dealer license.
- (1) A license to sell liquor at retail or to class 10 [licensees,] licensee, shall authorize the licensee to sell the liquor therein specified in their original packages. A license under this class shall also authorize the licensee to sell beer, malt beverages, or cider in non-original packages; provided that the beer, malt beverage, or cider is sold in a securely sealed or covered glass, ceramic, or metal container that is sold to or provided by the patron, and each sealed or covered glass, ceramic, or metal container does not exceed a maximum capacity of one half-gallon.
 - (2) Under a class 4 license, no liquor shall be consumed on the premises except as authorized by the commission.
 - (3) Of this class, there shall be the following kinds:
 - (A) General (includes all liquor except alcohol)[;].
 - (B) Beer and wine[; and].
 - (C) Alcohol.
- (f) Class 5. Dispenser license.
- (1) A license under this class shall authorize the licensee to sell liquor specified in this subsection for consumption on the premises.
 - (2) A licensee under this class shall be issued a license according to the category of establishment the licensee owns or operates. The categories shall be:
 - (A) A standard bar[;].

- (B) Premises in which a person performs or entertains unclothed or in attire restricted to use by entertainers pursuant to the rules of the commission[;].
 - (C) Premises in which live entertainment or recorded music is provided. The subcategories of this category shall be:
 - (i) Premises in which recorded background music is provided; or
 - (ii) Premises in which live entertainment or recorded music is provided; provided that facilities for dancing by the patrons may be permitted as provided by the rules of the commission[; or].
 - (D) Premises in which employees or entertainers are compensated to sit with patrons, whether or not the employees or entertainers are consuming nonalcoholic beverages while in the company of the patrons, pursuant to the rules of the commission; provided that all employees, entertainers, or other persons or patrons therein shall be twenty-one years of age or older; and provided further that there shall be no more than twelve category D, class 5 dispenser licenses in the County.
- (3) If a licensee under class 5 desires to change the category of establishment the licensee owns or operates, the licensee shall apply for a new license applicable to the category of the licensee's establishment.
- (4) Of this class, there shall be the following kinds:
- (A) General (includes all liquor except alcohol)[;].
 - (B) Beer and wine[; and].
 - (C) Beer.
- (5) Any licensee holding a different class of license and who would otherwise come within this class with the same or downgrade of kind or category of license, or both, shall not be required to apply for a new license.
- (g) Class 6. Club license.
- (1) A club license shall be general only but shall exclude alcohol and shall authorize the licensee to sell liquor to members of the club, and to guests of the club enjoying the privileges of membership for consumption only on the premises kept and operated by the club; provided that the license shall also authorize any club member to keep in the member's private locker on the premises a reasonable quantity of liquor owned by the member, for the member's own personal use and not to be sold that may be consumed only on the premises. A club licensee shall be authorized to host charitable functions that are open to the general public in accordance with commission rules.

- (2) Club licensees shall keep a complete list of its members, which list shall at all times be conspicuously posted and exposed to view, convenient for inspection on the licensed premises. The categories of this class shall be as follows:
 - (A) A standard bar; or
 - (B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by the rules of the commission. The subcategories of this category shall be:
 - (i) Premises in which recorded music is provided; or
 - (ii) Premises in which live entertainment or recorded music is provided.
- (3) Any person enjoying the guest privileges of a club and to whom liquor may be sold must be a bona fide guest of a member of the club, and the member must be present at all times within the premises with his or her guest(s).
- (4) Clubs shall keep records as to registration of guests for at least one year, which records shall be produced whenever required by the director.
- (5) Licensee shall have readily available at all times a guest book on the licensed premises and shall be responsible for its member signing in his or her guest(s) at the time his or her guest(s) enter the licensed premises.
- (h) Class 8. Transient vessel license.
 - (1) A general license may be granted to the owner of any vessel for the sale of liquor (other than alcohol) on board the vessel while en route within the jurisdictional limits of the State and within any port of the State.
 - (2) Sales shall be made only for consumption by passengers and their guests on board the vessel.
 - (3) The license shall be issuable in each county where the sales are to be made.
 - (4) The application for the license may be made by any agent representing the owner.
- (i) Class 9. Tour or cruise vessel license.
 - (1) A general license may be granted to the owner of any tour or cruise vessel for the sale of liquor other than alcohol on board the vessel while in the waters of the State; provided that sales be made only for consumption by passengers on board while the vessel is in operation outside the port or dock of any island of the State, unless otherwise approved by the commission.
 - (2) The license shall be issuable in the county where the home port of the vessel is situated.
 - (3) If on any vessel for which no license has been obtained under the rules of the commission, any liquor is sold or served within three

miles off the shore of any island of the County, the same shall constitute a violation of the rules of the commission.

- (4) A license under this class shall be issued a license according to the category of establishment the licensee owns or operates. The categories shall be:
 - (A) A standard bar; or
 - (B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by the rules of the commission.
- (j) Class 10. Special license.
 - (1) A special license may be granted by the director for the sale of liquor for a period not to exceed three consecutive days at the same location for fundraising events by nonprofit organizations, political candidates, and political parties; provided that any registered educational or charitable nonprofit organization may sell liquor in its original package for off-premises consumption[.]; provided further than any social club granted tax exempt status pursuant to U.S. Internal Revenue section 501(c)(7) may sell wine from the social club's inventory to the club's members for off-premises consumption.
 - (2) Special licenses shall be issued only to charitable or educational nonprofit organizations, to political parties and to candidates seeking public office from which organization no person is entitled to or takes, directly or indirectly, any share of the profits thereof. Nonprofit charitable or educational organizations shall be required to attach their U.S. Internal Revenue's sections 501(c)(3), 501(c)(4), 501(c)(10), or 501(c)(19) exemption letter and political candidates shall be required to attach a copy of their organizational report filed with the State campaign spending commission, to their application. [Notwithstanding the provisions in subchapter 4, Licensing Procedures, special license applications for non-profits shall not require personal history statements or criminal history background checks, but shall be subject to the following conditions:
 - (A) (Applicable to individual only). The applicant is the sole owner of the nonprofit proposed to be licensed, is no less than twenty-one years of age, and is not a person who has been convicted of a felony and not pardoned.
 - (B) (Applicable to corporation only). The individuals indicated on the application are all the officers and directors of the corporation or stockholders who own 25 percent or more of its outstanding capital stock, and each officer, director, and stockholder is no less than twenty-one years of age, and is not a person who has been convicted of a felony and not pardoned.
 - (C) (Applicable to partnership or LLC only). The individuals indicated on the application are all the members of the

partnership or LLC indicated on the application, and each member is no less than twenty-one years of age, and is not a person who has been convicted of a felony and not pardoned.

- (D) (Applicable to unincorporated association only). The individuals indicated on the application are all the members of the applicant association and the full names of the officers thereof, each of whom is no less than twenty-one years of age and is not a person who has been convicted of a felony and not pardoned.
 - (E) No person other than the applicant named herein will have any interest in the business affected by the application without prior approval of the commission.
 - (F) No liquor license heretofore issued to the applicant has been revoked within a term of two years preceding the date of the application.
 - (G) The applicant (or if the applicant is an entity, the officers and directors thereof) is familiar with the provisions of the State statutes relating to intoxicating liquor and with these rules.
 - (H) The applicant shall comply with all applicable State and County rules, laws, and regulations.
 - (I) The information submitted with the application represents a full, true, and correct statement of the applicant.]
- (3) Of this class, there shall be the following kinds:
- (A) General (includes all liquor except alcohol)[;].
 - (B) Beer and wine[; and].
 - (C) Beer.
- (4) Liquor sold under a class 10 license shall be consumed on the premises.
- (5) Notwithstanding any other section of chapter 281, HRS, to the contrary, the commission shall waive any hearings, fees, notarization of documents, submission of floor plans, and other requirements for the issuance of a class 10 license. The class 10 license granted under this subsection for fundraising event shall include the ability to auction off, at live or silent auction, liquor in sealed or covered glass, ceramic, or metal containers or services that provide liquor. No background check under section 846-2.7, section 281-53.5, HRS, or any other section of chapter 281, HRS, shall be required. The applicant shall provide a current list of officers and directors, if the applicant is a nonprofit organization. Unless waived by the commission, proof of liquor liability insurance shall be required.
- (k) Class 11. Cabaret licenses.
- (1) A cabaret license shall be general only but shall exclude alcohol and shall authorize the sale of liquor for consumption on the premises.
 - (2) This license shall be issued only for premises where:

- (A) Food is served[;].
 - (B) Facilities for dancing by the patrons are provided, including a dance floor of not more than one hundred square feet[; and].
 - (C) Live entertainment other than by a person who performs or entertains unclothed, is visible and audible to all patrons.
- (3) Professional entertainment by persons who perform or entertain unclothed shall only be authorized by:
- (A) A cabaret license for premises where professional entertainment by persons who perform or entertain unclothed was presented on a regular and consistent basis immediately prior to June 15, 1990; or
 - (B) A cabaret license that, pursuant to rules adopted by the commission, permits professional entertainment by persons who perform or entertain unclothed.
- (4) A cabaret license under subparagraphs (3)(A) or (3)(B) of this subsection authorizing professional entertainment by persons who perform or entertain unclothed shall be transferable through June 30, 2000.
- (5) A cabaret license under subparagraphs (3)(A) or (3)(B) authorizing professional entertainment by persons who perform or entertain unclothed shall not be transferable after June 30, 2000, except upon approval by the commission, and pursuant to rules adopted by the commission.
- (6) A cabaret license in a resort area may be open for the transaction of business until 4:00 a.m. throughout the entire week.
- (7) Any cabaret premises not located within a County zoned resort district shall operate only during the hours prescribed for dispenser premises.
- (8) All bars in cabaret premises, in order to operate during hours prescribed for cabarets must confine liquor service to patrons within an area where live entertainment is visible and audible to all patrons. Bars in cabaret premises which do not comply with the foregoing requirements shall operate only during the hours prescribed for dispenser premises.
- (l) Class 12. Hotel license.
- (1) A license to sell liquor in a hotel shall authorize the licensee to provide entertainment and dancing on the hotel premises and to sell all liquor, except alcohol for consumption on the premises; provided that a hotel licensee, with commission approval, may provide off-premises catering of food and liquor if the catering activity is directly related to the licensee's food service.
- (A) A hotel licensee may be granted a catering permit while performing food catering functions.

- (B) No catering service for the sale of liquor will be performed off the licensee's premises unless prior written application for the service has been delivered to the department and approved by the director. The director shall not approve any catered function unless it includes a written statement signed by the owner or representative of the property that the function will be subject to the liquor laws and to inspection by investigators. Application shall be submitted at least seven days prior to the catered function.
 - (C) The director will not approve catering functions on premises not zoned to allow commercial activities thereon unless the catered function is requested and hosted by the owner or the lessee or its like of the property or anyone with written authorization for the use of the property.
- (2) Procedures such as room service, self-service no-host, minibars, or similar service in guest rooms, and service at parties in areas that are the property of, and contiguous to the hotel are permitted subject to liquor laws, rules of the commission, and the following conditions:
- (A) Except as provided in paragraph (3) of this subsection, hotel licensees are prohibited from selling liquor as authorized by retail dealers' licenses.
 - (B) Room service:
 - (i) Liquor may be sold by the individual drink, or in its original manufacturer sealed container for consumption within a registered guest's room[;].
 - (ii) Current prices of alcoholic beverages shall be conspicuously posted and exposed to view or within the guest's room service menu at all times within the interior of each guest room[; and].
 - (iii) The sale and service of liquor shall be made by an employee approved by the director.
- (3) A license to sell liquor within a hotel shall, upon written approval of the commission, authorize the sale of liquor of any kind or brand to hotel guests for consumption within their respective hotel rooms, subject to the following conditions:
- (A) Minibars or honor bars:
 - (i) Storage of any liquor authorized for sale under this rule shall be completely enclosed in a secured cabinet or other suitable container and shall be accessible by means of a key or other similar device provided to the hotel guests[;].
 - (ii) A written schedule of selling prices shall be conspicuously posted in a manner convenient for

- inspection within the hotel rooms or selling prices shall be affixed to each bottle of liquor[;].
- (iii) Retail sales shall be limited to not more than the following container sizes: distilled spirits, 50 milliliters; beer, 12 ounces; and wine, 375 milliliters[; and].
 - (iv) At no time nor under any circumstances shall any licensee or its employee issue the key or similar device to the enclosed liquor cabinet or other suitable liquor container to anyone under twenty-one years of age.
- (B) At no time nor under any circumstances shall a licensee permit liquor to be furnished:
- (i) To any person under twenty-one years of age;
 - (ii) To any person, who at the time, is under the influence of liquor; or
 - (iii) To any person when there is reasonable grounds to believe that such person is permitting any person under twenty-one years of age to consume said liquor.
- (C) The licensee shall fully comply with any additional condition or restriction which the commission, in its discretion, may impose to protect the health, safety, and welfare of the public.
- (4) Licensees shall be restricted from selling liquor in its original packages except via room service and in minibars installed in hotel guest rooms. Said service shall be initiated at the request of the adult guest. Minibar and room service sales shall be restricted to registered guests of the hotel of legal drinking age and consumption of liquor shall be restricted to the hotel guest room.
 - (5) Unless authorized by law, hotel licensees shall not sell liquor in the manner authorized by the retail dealer's licenses.

Notwithstanding section 281-57, HRS, the commission may approve at one public hearing and without notice the change to a class 2 restaurant license(s) of a licensee holding and operating a class 12 hotel license, who meets the requirements of a class 2 license.

- (m) Class 13. Caterer license.
- (1) A general license may be granted to any class 2 restaurant licensee, or any applicant, who is authorized to sell liquor for on-premises consumption who has on file with the department an approved one year financial report showing 30 percent of the establishment's gross revenue is derived from the sale of food that is prepared and cooked within its department of health and department of fire control approved kitchen facilities and served for consumption by patrons within its premises, and who serves food as part of their operation for the sale of liquor (other than alcohol) while performing food catering functions. At least 30 percent of the gross revenues of the catered event shall be food sales.

- (2) No catering service for the sale of liquor shall be performed off the licensee's premises unless prior written application for the service has been delivered to the department and approved by the director. Off premises catering will only be authorized upon issuance by the department and the licensee receiving a class 13 caterer's license. The commission shall not approve any catered function unless it includes a written statement signed by the owner or representative of the property that the function will be subject to the liquor laws and to inspection by investigators.
- (3) The commission shall not issue a caterer's license to any licensee whose original license does not authorize the licensee to sell and serve alcoholic beverages for consumption on the premises.
- (4) The commission shall not approve catering functions on premises not zoned to allow commercial activities thereon unless the catered function is requested and hosted by the owner of the property or anyone authorized the use of the property. Catered functions for which the owner or the lessee or its like of the property is being compensated for the use of the property shall be limited to properly zoned property.
- (5) The application for a caterer license shall be submitted to the department at least seven working days prior to the catered function and shall include, but not be limited to, a floor plan showing the boundaries of the proposed catered licensed premises; the date, times, and location of the event; a lease, rental agreement or authorization which allow the applicant the use and exclusive control of the property for the sale, service and consumption of liquor, and obtaining a statement from the licensee that all required governmental clearances were obtained for the catered function.
- (6) A caterer license may be granted by the director for the sale of liquor for a period not to exceed one day for any occasion or location, provided a class 12 hotel licensee, may be granted a caterer license by the director for sale of liquor for a period not to exceed three consecutive days for any occasion or location, whose catering function is directly related to its operation and the catered group consists of permanent or transient hotel guests that registered for and provided sleeping accommodations at the licensed premises.
- (7) Catered functions for which patrons are being assessed a fee is prohibited. The privilege of catering is to permit legitimate catered functions and is not intended to be utilized to circumvent the liquor laws by allowing a licensee to operate its liquor license outside of its licensed premises. Any use of property for catered events by a licensee which appears to be an extension of the licensee's premises, place the health, safety and welfare of the public at risk, or appears to be excessive where a liquor license for class 2, class 5, or a similar

- class which allows consumption at its premises should be obtained, applications for use of said premises may be denied by the director.
- (8) A licensee who is authorized to provide catering shall report the gross sales of liquor and pay the applicable fees pursuant to section 08-101-50 of the rules of the commission.
 - (n) Class 14. Brewpub license.
 - (1) A brewpub licensee:
 - (A) May sell malt beverages manufactured on the licensee's premises for consumption on the premises[;].
 - (B) May sell malt beverages manufactured by the licensee in brewery-sealed packages to class 3, wholesale dealer licensees pursuant to conditions imposed by the county by ordinance or rule[;].
 - (C) May sell intoxicating liquor purchased from a class 3 wholesale dealer licensee to consumers for consumption on the licensee's premises[;].
 - (D) May, subject to federal labeling and bottling requirements, sell malt beverages manufactured on the licensee's premises to consumers in brewery-sealed kegs and growlers for off-premise consumption; provided that for purposes of this paragraph, "growler" means a glass or metal container, not to exceed one half-gallon, which shall be securely sealed[;].
 - (E) May, subject to federal labeling and bottling requirements, sell malt beverages manufactured on the licensee's premises in recyclable containers provided by the licensee or by the consumer which do not exceed one gallon per container and are securely sealed on the licensee's premises to consumers for off-premises consumption[;].
 - (F) Shall comply with all regulations pertaining to class 4 retail dealer licensees when engaging in the retail sale of malt beverages[;].
 - (G) May, subject to federal labeling and bottling requirements, sell malt beverages manufactured on the licensee's premises in brewery-sealed containers directly to class 2 restaurant licensees, class 3 wholesale dealer licensees, class 4 retail dealer licensees, class 5 dispenser licensees, class 6 club licensees, class 8 transient vessel licensees, class 9 tour or cruise vessel licensees, class 10 special licensees, class 11 cabaret licensees, class 12 hotel licensees, class 13 caterer licensees, class 14 brewpub licensees, class 15 condominium hotel licensees, class 18 small craft producer pub licensees, and consumers pursuant to conditions imposed by the county departments of planning, public works, and environmental management and regulations governing class 1 manufacturer licensees and class 3 wholesale dealer licensees[; and].

- (H) May conduct the activities under paragraphs (A) through (G) at one location other than the licensee's premises; provided that:
 - (i) The manufacturing takes place in Hawaii[; and].
 - (ii) The other location is properly licensed under the same ownership.
- (I) May allow minors, who are accompanied by a parent or legal guardian of legal drinking age on the premises.
- (o) Class 15. Condominium hotel license.
 - (1) A license to sell liquor in a condominium hotel shall authorize the licensee to provide entertainment and dancing on the condominium hotel premises and to sell all liquor except alcohol for consumption on the premises; provided that a condominium hotel licensee, with commission approval, may provide off-premises catering of food and liquor if the catering activity is directly related to the licensee's food service by applying and obtaining approval for a catering permit while performing food catering functions.
 - (A) A condominium hotel licensee may be granted a catering permit while performing food catering functions.
 - (B) No catering service for the sale of liquor will be performed off the licensee's premises unless prior written application for the service has been delivered to the department and approved by the director. The director shall not approve any catered function unless it includes a written statement signed by the owner or representative of the property that the function will be subject to the liquor laws and to inspection by investigators. Application shall be submitted at least seven days prior to the catered function.
 - (C) The director will not approve catering functions on premises not zoned to allow commercial activities thereon unless the catered function is requested and hosted by the owner or the lessee or its like of the property or anyone with written authorization for the use of the property.
 - (2) Room service, self-service no host minibars, or similar service in apartments, and service at parties in areas that are the property of and contiguous to the condominium hotel are permitted with commission approval and subject to the following conditions:
 - (A) Room service:
 - (i) Liquor may be sold by the individual drink, or in its original manufacturer-sealed container for consumption within a registered guest's apartment.
 - (ii) Current prices of alcoholic beverages shall be conspicuously posted and exposed to view or within the apartment's room service menu at all times within the interior of each guest apartment.

- (iii) The sale and service of liquor shall be made by an employee approved by the director.
 - (B) Minibars or honor bars:
 - (i) Storage of any liquor authorized for sale under this rule shall be completely enclosed in a secured cabinet or other suitable container and shall be accessible by means of a key or other similar device provided to the hotel guests.
 - (ii) A written schedule of selling prices shall be conspicuously posted in a manner convenient for inspection within the hotel rooms or selling prices shall be affixed to each bottle of liquor.
 - (iii) Retail sales shall be limited to not more than the following container sizes: distilled spirits, 50 milliliters; beer, 12 ounces; and wine, 375 milliliters.
 - (iv) At no time or under any circumstances shall any licensee or its employee issue the key or similar device to the enclosed liquor cabinet or other suitable liquor container to anyone under twenty-one years of age.
- (3) At no time or under any circumstances shall a licensee permit liquor to be furnished:
 - (A) To any person under twenty-one years of age;
 - (B) To any person, who at the time, is under the influence of liquor; or
 - (C) To any person when there [is] are reasonable grounds to believe that such person is permitting any person under twenty-one years of age to consume said liquor.
- (4) The licensee shall fully comply with any additional condition or restriction which the commission, in its discretion, may impose to protect the health, safety, and welfare of the public.
- (5) Licensees shall be restricted from selling liquor in its original packages except via room service and in minibars installed in condominium hotel guest rooms. Said service shall be initiated at the request of the adult guest. Minibar and room service sales shall be restricted to registered guests of the condominium hotel of legal drinking age and consumption of liquor shall be restricted to the condominium hotel guest room.
- (6) Unless authorized by law, a condominium hotel licensee shall not sell liquor in the manner authorized by a class 4 retail dealer license.
- (7) Any licensee who would otherwise meet the criteria for the condominium hotel license class but holds a different class of license may be required to apply for a condominium hotel license.
- (p) Class 16. Winery license.
A winery licensee:

- (1) Shall manufacture not more than twenty thousand barrels of wine on the licensee's premises during the license year[;].
- (2) May sell wine manufactured on the licensee's premises for consumption on the premises[;].
- (3) May sell wine manufactured by the licensee in winery-sealed packages to class 3 wholesale dealer licensees pursuant to conditions imposed by the county by ordinance or rule[;].
- (4) May, subject to federal labeling and bottling requirements, sell wine manufactured on the licensee's premises to consumers in winery-sealed kegs and magnums to consumers for off-premises consumption; provided that for purposes of this paragraph, "magnum" means a glass container not to exceed one half-gallon, which may be securely sealed[;].
- (5) May, subject to federal labeling and bottling requirements, sell wine manufactured on the licensee's premises in recyclable containers provided by the licensee or by the consumer which do not exceed one gallon per container and are securely sealed on the licensee's premises to consumers for off-premises consumption[;].
- (6) Shall comply with all rules pertaining to class 4 retail dealer licensees when engaging in the retail sale of wine; [; and].
- (7) May sell wine manufactured on the licensee's premises in winery-sealed containers directly to class 2 restaurant licensees, class 3 wholesale dealer licensees, class 4 retail dealer licensees, class 5 dispenser licensees, class 6 club licensees, class 8 transient vessel licensees, class 9 tour or cruise vessel licensees, class 10 special licensees, class 11 cabaret licensees, class 12 hotel licensees, class 13 caterer licensees, class 14 brewpub licensees, class 15 condominium hotel licensees, and class 18 small craft producer pub licensees, pursuant to conditions imposed by the County departments of planning, public works, and environmental management and rules governing class 3 wholesale dealer licensees.
- (q) Class 18. Small craft producer pub license.

A small craft producer pub licensee:

 - (1) Shall manufacture not more than:
 - (A) Sixty thousand barrels of malt beverages;
 - (B) Twenty thousand barrels of wine; or
 - (C) Seven thousand five hundred barrels of alcohol on the licensee's premises during the license year; provided that for purposes of this paragraph, "barrel" means a container not exceeding thirty one gallons or wine gallons of liquor[;].
 - (2) May sell malt beverages, wine, or alcohol manufactured on the licensee's premises for consumption on the premises[;].
 - (3) May sell malt beverages, wine, or alcohol manufactured by the licensee in producer-sealed packages to class 3 wholesale dealer

- licensees pursuant to conditions imposed by the County by ordinance or rule[;].
- (4) May sell intoxicating liquor purchased from a class 3 wholesale dealer licensee to consumers for consumption on the licensee's premises. The categories of establishments shall be as follows:
 - (A) A standard bar; or
 - (B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules[;].
 - (5) May, subject to federal labeling and bottling requirements, sell malt beverages manufactured on the licensee's premises to consumers in producer-sealed kegs and growlers for off-premises consumption; provided that for purposes of this paragraph, "growler" means a glass or metal container, not to exceed one half-gallon, which shall be securely sealed[;].
 - (6) May, subject to federal labeling and bottling requirements, sell malt beverages, wine, or alcohol manufactured on the licensee's premises in recyclable containers provided by the licensee or by the consumer which do not exceed:
 - (A) One gallon per container for malt beverages and wine[; and].
 - (B) One liter for alcohol; and are securely sealed on the licensee's premises to consumers for off-premises consumption[;].
 - (7) Shall comply with all regulations pertaining to class 4 retail dealer licensees when engaging in the retail sale of malt beverages, wine, and alcohol[;].
 - (8) May, subject to federal labeling and bottling requirements, sell malt beverages, wine, and alcohol manufactured on the licensee's premises in producer-sealed containers directly to class 2 restaurant licensees, class 3 wholesale dealer licensees, class 4 retail dealer licensees, class 5 dispenser licensees, class 6 club licensees, class 8 transient vessel licensees, class 9 tour or cruise vessel licensees, class 10 special licensees, class 11 cabaret licensees, class 12 hotel licensees, class 13 caterer licensees, class 14 brewpub licensees, class 15 condominium hotel licensees, class 18 small craft producer pub licensees, and consumers pursuant to conditions imposed by county regulations governing class 1 manufacturer licensees and class 3 wholesale dealer licensees[; and].
 - (9) May conduct the activities under paragraphs (1) through (8) at one location other than the licensee's premises; provided that:
 - (A) The manufacturing takes place in Hawaii; and
 - (B) The other location is properly licensed under the same ownership.
 - (10) May allow minors, who are accompanied by a parent or legal guardian of legal drinking age, on the licensee's premises.

(r) Restaurants, retail dealers, dispensers, clubs, cabarets, hotels, caterers, brewpubs, condominium hotels, and small craft producer pubs licensed under class 2, class 4, class 5, class 6, class 11, class 12, class 13, class 14, class 15, and class 18 shall maintain at all times liquor liability insurance coverage in an amount not less than \$1,000,000; provided that convenience minimarts holding a class 4 license shall not be required to maintain liquor liability insurance coverage in that amount. Proof of coverage shall be kept on the premises and shall be made available for inspection by the commission at any time during the licensee's regular business hours. In the event of a licensee's failure to obtain or maintain the required coverage, the commission shall refuse to issue or renew a license, or shall suspend or terminate the license as appropriate. No license shall be granted, reinstated, or renewed until after the required insurance coverage is obtained.

(s) It shall be unlawful for any licensee to utilize any liquor, acquired or purchased from a class 1 manufacturers' licensee, or a class 3 wholesale dealers' licensee, or a person authorized by the commission as a solicitor or representative of a manufacturer or for personal or private use or consumption, except as authorized by the commission. All liquor shall be sold as authorized by the license issued.

(t) A patron may remove from a class 2 restaurant licensee, class 5 dispenser licensee, class 6 club licensee, class 12 hotel licensee, class 14 brewpub licensee, class 15 condominium hotel licensee, and class 18 small craft producer pub licensee, licensed premises, who has on file with the department a current yearly approved financial report that shows at least 30 percent of establishment's gross revenue is derived from the sale of food that is prepared and cooked at the time of ordering within its State of Hawaii department of health and County of Maui, department of fire and public safety approved kitchen facilities, any portion of wine, liquor, or beer that was purchased on or brought onto the premises of the licensee, for consumption with a meal; provided that it is recorked or resealed in its original container as provided in section 281-31(u), HRS. A licensee wishing to exercise this privilege shall inform the patron of the State of Hawaii "open container" law as stated in sections 291-3.1, 291-3.2, 291-3.3 and 291-3.4 [of the Hawaii Revised Statutes], HRS. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 11/29/15; am and comp 3/4/17; am and comp 1/14/18; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)"

2. Section 08-101-24, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

"§08-101-24 Temporary licenses. (a) A temporary license of any class and kind may be granted under the following conditions:

- (1) The premises shall have been operated under a license of the same class, kind, and category issued by the commission at least one year immediately prior to the date of filing of the application for

temporary license, except as otherwise approved by the commission; or to any premises that have been operated under a license of the same class, kind, and category issued by the commission at least one year prior to the license being revoked or canceled, provided that the license application must be filed within ninety days of the surrender of the previous license or the closing of business[;].

- (2) The license of the same class, kind, and category then in effect for the premises shall be surrendered in such manner and at such time as the commission shall direct[;].
- (3) The applicant for a temporary license shall have filed with the commission an application for a license of the same class, kind, and category currently or previously in effect for the premises[;].
- (4) The application for a temporary license shall be accompanied by a license fee in such amount as may be prescribed by the commission. If the application is denied or withdrawn, the fee which accompanied the application shall become a realization of the county liquor fund;
- (5) A temporary license shall be for a period of not in excess of one hundred twenty days. The license may be renewed at the discretion of the commission for not more than one additional one hundred twenty-day period upon payment of such additional fee as may be prescribed by the commission and upon compliance with all conditions required in this rule. When a temporary license has expired and no permanent license has been issued, the sale and service of liquor shall cease until the permanent license is issued; provided that, when applicable, the license shall be properly renewed[;].
- (6) A temporary license shall authorize the licensee to purchase liquor only by payment in currency, check or certified check for the liquor before or at the time of delivery of the liquor to the licensee, except as otherwise provided by commission rule[;].
- (7) A temporary license shall contain the same restrictions and/or conditions as placed on the previous license[;].
- (8) A temporary license shall terminate upon the issuance of the transferred or new license, denial or withdrawal of the transfer or new application, or at midnight on the one hundred twentieth day on the first temporary license or midnight on the one hundred twentieth day on the second temporary license after being effected or issued.

(b) Notwithstanding any other law to the contrary, the commission shall reduce submission requirements, including the waiving of hearings, fees, notarization of documents, submission of floor plans and other requirements, to provide for the issuance of temporary licenses for the sale of liquor for period not to exceed one day for fundraising events by nonprofit organizations. The temporary license granted under this subsection to nonprofit organization for a fundraising event shall enable the nonprofit organization to auction off at live or

silent auction, liquor in sealed or covered glass, ceramic, or metal containers or services that provide liquor. No criminal history record checks under section 281-53.5, HRS, shall be required.

For purpose of this subsections, "nonprofit organization" means those charitable organizations recognized under State or federal law and exempt from federal taxes under section 501(c)(3) of the Internal Revenue Code. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 11/29/15; am and comp 3/4/17; am and comp 1/14/18; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)"

3. Section 08-101-30, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsection (b) to read as follows:

"(b) The [department of health clearance,] certificate of occupancy[,] and other clearances or executed copies of other documents, as approved by the commission, may be submitted after filing the application and hearing thereon, but must be filed before issuance of the license. State [and federal] tax [clearances] clearance shall be dated within ninety days of the acceptance of any application by the department. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 11/29/15; am and comp 3/4/17; am and comp 1/14/18; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)"

4. Section 08-101-31, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

"§08-101-31 No license issued, when. No license shall be issued:

- (1) To any minor or to any person who has been convicted of a felony and not pardoned, or to any other person not deemed by the commission to be a fit and proper person to have a license; provided that the commission may grant a license under the rules of the commission to a partnership, trust, association, limited liability partnership, limited liability company, corporation, or any other person, that has been convicted of a felony where the commission finds that the partner, member, manager, organizer, or any person of a limited liability partnership, limited liability company or organization's officers, directors, and any person owning or controlling 25 percent or more of the outstanding stock are fit and proper persons to have a license;
- (2) To any partner in a partnership, or a corporation, trust or association, the officers, directors, or any other person of which, or any of them, would be disqualified under subsection (1) from obtaining the license individually, or any person of which, owning or controlling 25 percent or more of the outstanding capital stock, or

any other person, would be disqualified under such subsection (1) from obtaining the license individually; provided that for publicly-traded companies or entities ultimately solely owned by a publicly traded company, only the officers and directors designated as primary decision-makers shall be considered to determine disqualification under paragraph (1);

- (3) To any applicant for a license, or a renewal of a license, or in the case of a transfer of a license, where both the transferor and the transferee, failed to present to the issuing agency a tax clearance certificate from the department of taxation, [and from the Internal Revenue Service] showing that the applicant or the transferor and transferee do not owe the State [or federal governments] government any delinquent taxes, penalties, or interest; or that the applicant, or in the case of a transfer of a license, the transferor or transferee, has entered into an installment plan agreement with the department of taxation [and the Internal Revenue Service] for the payment of delinquent taxes in installments and that the applicant is or the transferor or transferee is, in the case of a transfer of a license, complying with the installment plan agreement;
- (4) To any applicant who has a partner in the partnership, limited liability partnership, member, manager, agent, organizer, or any person owning or controlling 25 percent or more of a limited liability company, or any officer, director or any person owning or controlling 25 percent or more of the outstanding stock of any corporation, trust, association, or any other person, who has had any liquor license revoked less than two years previous to the date of the application for any like or other license under the rules of the commission;
- (5) To any person owning or controlling 25 percent or more of the outstanding stock of the corporation, trust, or association of a licensee, who is currently delinquent in filing the gross liquor sales report of any license that was issued, or currently owing any fees or monies due to the department, or both. "Any fees or monies" shall include but not be limited to license fees, publication fees, and any assessment of a penalty imposed by the department, commission, or board. Any licensee, who has any person, or person owning or controlling 25 percent or more of the outstanding stock of a corporation, trust, or association of a licensee, who is delinquent in filing the gross liquor sales report of any other license that was issued, or currently owing any fees or monies to the department, shall not exercise its license until the gross sales report is filed and percentage fee paid;

- (6) To a limited liability company, the members, managers, organizers, or any person, of which or any of them, would be disqualified under subsection (1) from obtaining the license individually, would be disqualified under that paragraph from obtaining the license individually;
- (7) To a limited liability company, partnership, limited liability partnership, or corporation, that may consist of a limited liability company, partnership, limited liability partnership, corporation, or any other person or any combination thereof, the members, managers, organizers, partners, officers, directors, or any person thereof, of which any of them would be disqualified under subsection (1) from obtaining the license individually, or a person owning or controlling 25 percent or more of the outstanding stock of such corporation would be disqualified under that paragraph from obtaining the license individually; or
- (8) To an applicant for a class 2, class 4 except for convenience minimarts, class 5, class 6, class 11, class 12, class 13, class 14, class 15, or class 18 license, unless the applicant for issuance of a license or renewal of a license, both the transferor and the transferee, present to the issuing agency proof of liquor liability insurance coverage in an amount of \$1,000,000. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 11/29/15; am and comp 3/4/17; am and comp 1/14/18; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)”

5. Section 08-101-33, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsection (a) to read as follows:

“§08-101-33 Renewal of license. (a) Other than for good cause, the renewal of an existing license shall be granted upon the filing of a completed application, payment of the basic fee, submission of State [and federal] tax [clearances] clearance, and other required documents. State [and federal] tax clearances shall be dated within ninety days of the acceptance of the application by the department. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 11/29/15; am and comp 3/4/17; am and comp 1/14/18; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)”

6. Material, except source notes, to be repealed is bracketed. New material is underscored.

7. Additions to update source notes to reflect these amendments are not underscored.

8. These amendments to Chapter 101, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, shall take effect ten days after filing with the Office of the County Clerk.

Copies of the proposed amendments may be viewed or downloaded from the Department of Liquor Control web page at www.mauicounty.gov/liquor and selecting the Rules/Laws tab.

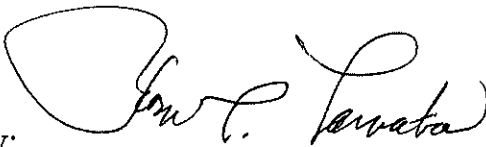
Copies of the proposed amendments will be mailed to any interested person who requests a copy and pays the required fees for copying and postage. Requests for a copy may be made at the Department of Liquor Control, 2145 Kaohu Street, Room 105, Wailuku, Hawaii 96793, or by calling (808)244-4666.

The Liquor Commission will conduct a public hearing on the proposed amendments on December 12, 2018, at 10:00 a.m. at the Department of Liquor Control Conference Room, 2145 Kaohu Street, Room 108, Wailuku, Maui, Hawaii.

Any interested person may submit oral or written testimony on the proposed amendments at the public hearing. Also, written testimony may be submitted by mail to: Liquor Commission, 2145 Kaohu Street, Room 105, Wailuku, Maui, Hawaii 96793. Written testimony must be received by the Liquor Commission before the public hearing closes on December 12, 2018.

Any person requesting accommodations due to disabilities must call (808) 244-4666 at least six (6) days before the date of the scheduled public hearing.

Please contact the Commission Secretary at (808)244-4666 if further information is needed.

By: 
ROBERT TANAKA
Chair
Liquor Commission

Amendments to Title 08, Chapter 101,
Rules Governing the Manufacture and Sale
of Intoxicating Liquor of the County of Maui

1. Section 08-101-22, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

“§08-101-22 Licenses, classes. (a) Licenses may be granted by the commission as provided in this rule.

(b) Class 1. Manufacturer license.

(1) A license for the manufacture of liquor shall authorize the licensee to manufacture the liquor therein specified and to sell it at wholesale in original packages to any person who holds a license to resell it and to sell draught beer or wine manufactured from grapes or other fruits grown in the State in any quantity to any person for private use and consumption.

(2) Under this license, no liquor shall be consumed on the premises except as authorized by the commission.

(3) Of this class, there shall be the following kinds:

(A) Beer[;].

(B) Wine[;].

(C) Alcohol[; and].

(D) Other specified liquor.

(4) It shall be unlawful for any holder of a manufacturer license to have any interest whatsoever in the license or licensed premises of any other licensee, except as may be provided within section 08-101-106 of the rules of the commission. This subsection shall not prevent the holder of a manufacturer license under this chapter or under the law of another jurisdiction from maintaining any interest in the license or licensed premises of a wholesale dealer licensee under this chapter.

(c) Class 2. Restaurant license.

(1) A license under this class shall authorize the licensee to sell liquor specified in this section for consumption on the premises; provided that a restaurant licensee, with commission approval, may provide off-premises catering of food and liquor by applying and obtaining approval for a catering permit while performing food catering functions; provided further that the catering activity shall be directly related to the licensee's operation as a restaurant. A license under this class shall also authorize the licensee to sell beer, malt beverages, or cider for off-premises consumption, provided that the licensee has the appropriate kind of license pursuant to paragraph (4); and provided further that the beer, malt beverage, or cider is sold in a securely sealed or covered glass, ceramic, or metal container that is sold to or provided by the patron, and each sealed

- or covered glass, ceramic, or metal container does not exceed a maximum capacity of one-half gallon.
- (2) A licensee under this class shall be issued a license according to the category of establishment the licensee owns or operates. The categories shall be:
 - (A) A standard bar; or
 - (B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by the rules of the commission. The subcategories of this category shall be:
 - (i) Premises in which recorded background music is provided; and
 - (ii) Premises in which live entertainment or recorded music is provided; provided that facilities for dancing by the patrons may be permitted as provided by the rules of the commission.
 - (3) If a licensee under class 2 desires to change the category of establishment the licensee owns or operates, the licensee shall apply for a new license applicable to the category of the licensee's establishment.
 - (4) Of this class, there shall be the following kinds:
 - (A) General (includes all liquor except alcohol);
 - (B) Beer and wine; and
 - (C) Beer.
 - (5) Notwithstanding section 281-57, HRS, the commission may approve at one public hearing and without notice the change to a class 2 restaurant license of a licensee holding and operating a class 5 dispenser license who meets the requirements of a class 2 license.
 - (6) Restaurant license may be granted to a place, which regularly, and in a bona fide manner, is used and kept open for the serving of meals to patrons for compensation, and which has suitable State department of health and County of Maui department of fire control approved kitchen facilities within, containing the necessary equipment and supplies for cooking an assortment of foods, which may be required for ordinary meals. Additionally, the premises must have been continuously operated for one year prior to any application, and the applicant must provide a financial report of gross revenue of that year of which at least 30 percent of the establishment's gross revenue must be derived from the sale of foods.
 - (7) Restaurant license may be transferred to an applicant for a class 2 restaurant license, whose proposed premises is the same premises of the transferor, provided:
 - (A) The premises meet all requirements for a restaurant license and is the same class, kind, and category.

- (B) The transferee certifies that the transferee intends to and shall derive no less than 30 percent of the establishment's gross revenue from the sale of food.
 - (C) The applicant shall submit, not later than the fifth day of each month for a period of one year, a financial report of food and liquor gross revenue of which 30 percent of the establishment's gross revenue must be derived from the sale of food, failure to meet this requirement, the license shall be automatically downgraded to a dispenser license of the same category and kind.
- (8) A new class 2 restaurant license may be issued prior to an establishment commencing operation. An application for a new class 2 license shall include an affidavit by the applicant that the applicant intends to and shall derive no less than 30 percent of the establishment's gross revenue from the sale of food.
- (A) The premises shall meet all requirements for a restaurant license.
 - (B) The applicant shall submit, no later than the fifth day of each month for a period of one year, a financial report of food and liquor gross revenue of which 30 percent of the establishment's gross revenue must be derived from the sale of food, failure to meet this requirement, the license shall be automatically downgraded to a dispenser license of the same category and kind.
- (d) Class 3. Wholesale dealer license.
- (1) A license for the sale of liquor at wholesale shall authorize the licensee to import and sell only to licensees or to others who are by law authorized to resell the liquor specified by the license but are not by law required to hold a license provided that a class 3 licensee may sell samples of liquor back to the manufacturer.
 - (2) Under a class 3 license no liquor shall be consumed on the premises except as authorized by the commission.
 - (3) Of this class, there shall be the following kinds:
 - (A) General (includes all liquor except alcohol)[;].
 - (B) Beer and wine[; and].
 - (C) Alcohol.
 - (4) If any wholesale dealer solicits or takes any orders in any county other than that where the dealer's place of business is located, the orders may be filled only by shipment direct from the county in which the wholesale dealer holds the dealer license. Nothing in this subsection shall prevent a wholesaler from selling liquor to post exchanges, ships' service stores, army or navy officers' clubs, or like organizations located on army or navy reservations, or to any vessel other than vessels performing a regular water transportation service between any two or more ports in the State, or to aviation companies who operate an aerial transportation enterprise subject to chapter

269, HRS, and engaged in flight passenger services between any two or more airports in the State for use on aircraft, or aviation companies engaged in transpacific flight operations for use on aircraft outside the jurisdiction of the State.

- (e) Class 4. Retail dealer license.
 - (1) A license to sell liquor at retail or to class 10 [~~licensees,~~] licensee, shall authorize the licensee to sell the liquor therein specified in their original packages. A license under this class shall also authorize the licensee to sell beer, malt beverages, or cider in non-original packages; provided that the beer, malt beverage, or cider is sold in a securely sealed or covered glass, ceramic, or metal container that is sold to or provided by the patron, and each sealed or covered glass, ceramic, or metal container does not exceed a maximum capacity of one half-gallon.
 - (2) Under a class 4 license, no liquor shall be consumed on the premises except as authorized by the commission.
 - (3) Of this class, there shall be the following kinds:
 - (A) General (includes all liquor except alcohol)[;].
 - (B) Beer and wine[; and].
 - (C) Alcohol.
 - (f) Class 5. Dispenser license.
 - (1) A license under this class shall authorize the licensee to sell liquor specified in this subsection for consumption on the premises.
 - (2) A licensee under this class shall be issued a license according to the category of establishment the licensee owns or operates. The categories shall be:
 - (A) A standard bar[;].
 - (B) Premises in which a person performs or entertains unclothed or in attire restricted to use by entertainers pursuant to the rules of the commission[;].
 - (C) Premises in which live entertainment or recorded music is provided. The subcategories of this category shall be:
 - (i) Premises in which recorded background music is provided; or
 - (ii) Premises in which live entertainment or recorded music is provided; provided that facilities for dancing by the patrons may be permitted as provided by the rules of the commission[; or].
 - (D) Premises in which employees or entertainers are compensated to sit with patrons, whether or not the employees or entertainers are consuming nonalcoholic beverages while in the company of the patrons, pursuant to the rules of the commission; provided that all employees, entertainers, or other persons or patrons therein shall be twenty-one years of age or older; and provided further that there shall be no more

than twelve category D, class 5 dispenser licenses in the County.

- (3) If a licensee under class 5 desires to change the category of establishment the licensee owns or operates, the licensee shall apply for a new license applicable to the category of the licensee's establishment.
- (4) Of this class, there shall be the following kinds:
 - (A) General (includes all liquor except alcohol)[;].
 - (B) Beer and wine[; and].
 - (C) Beer.
- (5) Any licensee holding a different class of license and who would otherwise come within this class with the same or downgrade of kind or category of license, or both, shall not be required to apply for a new license.
- (g) Class 6. Club license.
 - (1) A club license shall be general only but shall exclude alcohol and shall authorize the licensee to sell liquor to members of the club, and to guests of the club enjoying the privileges of membership for consumption only on the premises kept and operated by the club; provided that the license shall also authorize any club member to keep in the member's private locker on the premises a reasonable quantity of liquor owned by the member, for the member's own personal use and not to be sold that may be consumed only on the premises. A club licensee shall be authorized to host charitable functions that are open to the general public in accordance with commission rules.
 - (2) Club licensees shall keep a complete list of its members, which list shall at all times be conspicuously posted and exposed to view, convenient for inspection on the licensed premises. The categories of this class shall be as follows:
 - (A) A standard bar; or
 - (B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by the rules of the commission. The subcategories of this category shall be:
 - (i) Premises in which recorded music is provided; or
 - (ii) Premises in which live entertainment or recorded music is provided.
 - (3) Any person enjoying the guest privileges of a club and to whom liquor may be sold must be a bona fide guest of a member of the club, and the member must be present at all times within the premises with his or her guest(s).
 - (4) Clubs shall keep records as to registration of guests for at least one year, which records shall be produced whenever required by the director.

- (5) Licensee shall have readily available at all times a guest book on the licensed premises and shall be responsible for its member signing in his or her guest(s) at the time his or her guest(s) enter the licensed premises.
- (h) Class 8. Transient vessel license.
 - (1) A general license may be granted to the owner of any vessel for the sale of liquor (other than alcohol) on board the vessel while en route within the jurisdictional limits of the State and within any port of the State.
 - (2) Sales shall be made only for consumption by passengers and their guests on board the vessel.
 - (3) The license shall be issuable in each county where the sales are to be made.
 - (4) The application for the license may be made by any agent representing the owner.
- (i) Class 9. Tour or cruise vessel license.
 - (1) A general license may be granted to the owner of any tour or cruise vessel for the sale of liquor other than alcohol on board the vessel while in the waters of the State; provided that sales be made only for consumption by passengers on board while the vessel is in operation outside the port or dock of any island of the State, unless otherwise approved by the commission.
 - (2) The license shall be issuable in the county where the home port of the vessel is situated.
 - (3) If on any vessel for which no license has been obtained under the rules of the commission, any liquor is sold or served within three miles off the shore of any island of the County, the same shall constitute a violation of the rules of the commission.
 - (4) A license under this class shall be issued a license according to the category of establishment the licensee owns or operates. The categories shall be:
 - (A) A standard bar; or
 - (B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by the rules of the commission.
- (j) Class 10. Special license.
 - (1) A special license may be granted by the director for the sale of liquor for a period not to exceed three consecutive days at the same location for fundraising events by nonprofit organizations, political candidates, and political parties; provided that any registered educational or charitable nonprofit organization may sell liquor in its original package for off-premises consumption[.]; provided further than any social club granted tax exempt status pursuant to U.S. Internal Revenue section 501(c)(7) may sell wine from the social club's inventory to the club's members for off-premises consumption.

- (2) Special licenses shall be issued only to charitable or educational nonprofit organizations, to political parties and to candidates seeking public office from which organization no person is entitled to or takes, directly or indirectly, any share of the profits thereof. Nonprofit charitable or educational organizations shall be required to attach their U.S. Internal Revenue's sections 501(c)(3), 501(c)(4), 501(c)(10), or 501(c)(19) exemption letter and political candidates shall be required to attach a copy of their organizational report filed with the State campaign spending commission, to their application. [Notwithstanding the provisions in subchapter 4, Licensing Procedures, special license applications for non-profits shall not require personal history statements or criminal history background checks, but shall be subject to the following conditions:
- (A) (Applicable to individual only). The applicant is the sole owner of the nonprofit proposed to be licensed, is no less than twenty-one years of age, and is not a person who has been convicted of a felony and not pardoned.
 - (B) (Applicable to corporation only). The individuals indicated on the application are all the officers and directors of the corporation or stockholders who own 25 percent or more of its outstanding capital stock, and each officer, director, and stockholder is no less than twenty-one years of age, and is not a person who has been convicted of a felony and not pardoned.
 - (C) (Applicable to partnership or LLC only). The individuals indicated on the application are all the members of the partnership or LLC indicated on the application, and each member is no less than twenty-one years of age, and is not a person who has been convicted of a felony and not pardoned.
 - (D) (Applicable to unincorporated association only). The individuals indicated on the application are all the members of the applicant association and the full names of the officers thereof, each of whom is no less than twenty-one years of age and is not a person who has been convicted of a felony and not pardoned.
 - (E) No person other than the applicant named herein will have any interest in the business affected by the application without prior approval of the commission.
 - (F) No liquor license heretofore issued to the applicant has been revoked within a term of two years preceding the date of the application.
 - (G) The applicant (or if the applicant is an entity, the officers and directors thereof) is familiar with the provisions of the State statutes relating to intoxicating liquor and with these rules.
 - (H) The applicant shall comply with all applicable State and County rules, laws, and regulations.

- (I) The information submitted with the application represents a full, true, and correct statement of the applicant.]
- (3) Of this class, there shall be the following kinds:
 - (A) General (includes all liquor except alcohol)[;].
 - (B) Beer and wine[; and].
 - (C) Beer.
- (4) Liquor sold under a class 10 license shall be consumed on the premises.
- (5) Notwithstanding any other section of chapter 281, HRS, to the contrary, the commission shall waive any hearings, fees, notarization of documents, submission of floor plans, and other requirements for the issuance of a class 10 license. The class 10 license granted under this subsection for fundraising event shall include the ability to auction off, at live or silent auction, liquor in sealed or covered glass, ceramic, or metal containers or services that provide liquor. No background check under section 846-2.7, section 281-53.5, HRS, or any other section of chapter 281, HRS, shall be required. The applicant shall provide a current list of officers and directors, if the applicant is a nonprofit organization. Unless waived by the commission, proof of liquor liability insurance shall be required.
- (k) Class 11. Cabaret licenses.
 - (1) A cabaret license shall be general only but shall exclude alcohol and shall authorize the sale of liquor for consumption on the premises.
 - (2) This license shall be issued only for premises where:
 - (A) Food is served[;].
 - (B) Facilities for dancing by the patrons are provided, including a dance floor of not more than one hundred square feet[; and].
 - (C) Live entertainment other than by a person who performs or entertains unclothed, is visible and audible to all patrons.
 - (3) Professional entertainment by persons who perform or entertain unclothed shall only be authorized by:
 - (A) A cabaret license for premises where professional entertainment by persons who perform or entertain unclothed was presented on a regular and consistent basis immediately prior to June 15, 1990; or
 - (B) A cabaret license that, pursuant to rules adopted by the commission, permits professional entertainment by persons who perform or entertain unclothed.
 - (4) A cabaret license under subparagraphs (3)(A) or (3)(B) of this subsection authorizing professional entertainment by persons who perform or entertain unclothed shall be transferable through June 30, 2000.
 - (5) A cabaret license under subparagraphs (3)(A) or (3)(B) authorizing professional entertainment by persons who perform or entertain unclothed shall not be transferable after June 30, 2000, except upon

approval by the commission, and pursuant to rules adopted by the commission.

- (6) A cabaret license in a resort area may be open for the transaction of business until 4:00 a.m. throughout the entire week.
 - (7) Any cabaret premises not located within a County zoned resort district shall operate only during the hours prescribed for dispenser premises.
 - (8) All bars in cabaret premises, in order to operate during hours prescribed for cabarets must confine liquor service to patrons within an area where live entertainment is visible and audible to all patrons. Bars in cabaret premises which do not comply with the foregoing requirements shall operate only during the hours prescribed for dispenser premises.
- (l) Class 12. Hotel license.
- (1) A license to sell liquor in a hotel shall authorize the licensee to provide entertainment and dancing on the hotel premises and to sell all liquor, except alcohol for consumption on the premises; provided that a hotel licensee, with commission approval, may provide off-premises catering of food and liquor if the catering activity is directly related to the licensee's food service.
 - (A) A hotel licensee may be granted a catering permit while performing food catering functions.
 - (B) No catering service for the sale of liquor will be performed off the licensee's premises unless prior written application for the service has been delivered to the department and approved by the director. The director shall not approve any catered function unless it includes a written statement signed by the owner or representative of the property that the function will be subject to the liquor laws and to inspection by investigators. Application shall be submitted at least seven days prior to the catered function.
 - (C) The director will not approve catering functions on premises not zoned to allow commercial activities thereon unless the catered function is requested and hosted by the owner or the lessee or its like of the property or anyone with written authorization for the use of the property.
 - (2) Procedures such as room service, self-service no-host, minibars, or similar service in guest rooms, and service at parties in areas that are the property of, and contiguous to the hotel are permitted subject to liquor laws, rules of the commission, and the following conditions:
 - (A) Except as provided in paragraph (3) of this subsection, hotel licensees are prohibited from selling liquor as authorized by retail dealers' licenses.
 - (B) Room service:

- (i) Liquor may be sold by the individual drink, or in its original manufacturer sealed container for consumption within a registered guest's room[;].
 - (ii) Current prices of alcoholic beverages shall be conspicuously posted and exposed to view or within the guest's room service menu at all times within the interior of each guest room[; and].
 - (iii) The sale and service of liquor shall be made by an employee approved by the director.
- (3) A license to sell liquor within a hotel shall, upon written approval of the commission, authorize the sale of liquor of any kind or brand to hotel guests for consumption within their respective hotel rooms, subject to the following conditions:
- (A) Minibars or honor bars:
 - (i) Storage of any liquor authorized for sale under this rule shall be completely enclosed in a secured cabinet or other suitable container and shall be accessible by means of a key or other similar device provided to the hotel guests[;].
 - (ii) A written schedule of selling prices shall be conspicuously posted in a manner convenient for inspection within the hotel rooms or selling prices shall be affixed to each bottle of liquor[;].
 - (iii) Retail sales shall be limited to not more than the following container sizes: distilled spirits, 50 milliliters; beer, 12 ounces; and wine, 375 milliliters[; and].
 - (iv) At no time nor under any circumstances shall any licensee or its employee issue the key or similar device to the enclosed liquor cabinet or other suitable liquor container to anyone under twenty-one years of age.
 - (B) At no time nor under any circumstances shall a licensee permit liquor to be furnished:
 - (i) To any person under twenty-one years of age;
 - (ii) To any person, who at the time, is under the influence of liquor; or
 - (iii) To any person when there is reasonable grounds to believe that such person is permitting any person under twenty-one years of age to consume said liquor.
 - (C) The licensee shall fully comply with any additional condition or restriction which the commission, in its discretion, may impose to protect the health, safety, and welfare of the public.
- (4) Licensees shall be restricted from selling liquor in its original packages except via room service and in minibars installed in hotel guest rooms. Said service shall be initiated at the request of the adult guest. Minibar and room service sales shall be restricted to

registered guests of the hotel of legal drinking age and consumption of liquor shall be restricted to the hotel guest room.

- (5) Unless authorized by law, hotel licensees shall not sell liquor in the manner authorized by the retail dealer's licenses.

Notwithstanding section 281-57, HRS, the commission may approve at one public hearing and without notice the change to a class 2 restaurant license(s) of a licensee holding and operating a class 12 hotel license, who meets the requirements of a class 2 license.

(m) Class 13. Caterer license.

- (1) A general license may be granted to any class 2 restaurant licensee, or any applicant, who is authorized to sell liquor for on-premises consumption who has on file with the department an approved one year financial report showing 30 percent of the establishment's gross revenue is derived from the sale of food that is prepared and cooked within its department of health and department of fire control approved kitchen facilities and served for consumption by patrons within its premises, and who serves food as part of their operation for the sale of liquor (other than alcohol) while performing food catering functions. At least 30 percent of the gross revenues of the catered event shall be food sales.
- (2) No catering service for the sale of liquor shall be performed off the licensee's premises unless prior written application for the service has been delivered to the department and approved by the director. Off premises catering will only be authorized upon issuance by the department and the licensee receiving a class 13 caterer's license. The commission shall not approve any catered function unless it includes a written statement signed by the owner or representative of the property that the function will be subject to the liquor laws and to inspection by investigators.
- (3) The commission shall not issue a caterer's license to any licensee whose original license does not authorize the licensee to sell and serve alcoholic beverages for consumption on the premises.
- (4) The commission shall not approve catering functions on premises not zoned to allow commercial activities thereon unless the catered function is requested and hosted by the owner of the property or anyone authorized the use of the property. Catered functions for which the owner or the lessee or its like of the property is being compensated for the use of the property shall be limited to properly zoned property.
- (5) The application for a caterer license shall be submitted to the department at least seven working days prior to the catered function and shall include, but not be limited to, a floor plan showing the boundaries of the proposed catered licensed premises; the date, times, and location of the event; a lease, rental agreement or authorization which allow the applicant the use and exclusive control of the property for the sale, service and consumption of

- liquor, and obtaining a statement from the licensee that all required governmental clearances were obtained for the catered function.
- (6) A caterer license may be granted by the director for the sale of liquor for a period not to exceed one day for any occasion or location, provided a class 12 hotel licensee, may be granted a caterer license by the director for sale of liquor for a period not to exceed three consecutive days for any occasion or location, whose catering function is directly related to its operation and the catered group consists of permanent or transient hotel guests that registered for and provided sleeping accommodations at the licensed premises.
 - (7) Catered functions for which patrons are being assessed a fee is prohibited. The privilege of catering is to permit legitimate catered functions and is not intended to be utilized to circumvent the liquor laws by allowing a licensee to operate its liquor license outside of its licensed premises. Any use of property for catered events by a licensee which appears to be an extension of the licensee's premises, place the health, safety and welfare of the public at risk, or appears to be excessive where a liquor license for class 2, class 5, or a similar class which allows consumption at its premises should be obtained, applications for use of said premises may be denied by the director.
 - (8) A licensee who is authorized to provide catering shall report the gross sales of liquor and pay the applicable fees pursuant to section 08-101-50 of the rules of the commission.
 - (n) Class 14. Brewpub license.
 - (1) A brewpub licensee:
 - (A) May sell malt beverages manufactured on the licensee's premises for consumption on the premises[;].
 - (B) May sell malt beverages manufactured by the licensee in brewery-sealed packages to class 3, wholesale dealer licensees pursuant to conditions imposed by the county by ordinance or rule[;].
 - (C) May sell intoxicating liquor purchased from a class 3 wholesale dealer licensee to consumers for consumption on the licensee's premises[;].
 - (D) May, subject to federal labeling and bottling requirements, sell malt beverages manufactured on the licensee's premises to consumers in brewery-sealed kegs and growlers for off-premise consumption; provided that for purposes of this paragraph, "growler" means a glass or metal container, not to exceed one half-gallon, which shall be securely sealed[;].
 - (E) May, subject to federal labeling and bottling requirements, sell malt beverages manufactured on the licensee's premises in recyclable containers provided by the licensee or by the consumer which do not exceed one gallon per container and are securely sealed on the licensee's premises to consumers for off-premises consumption[;].

- (F) Shall comply with all regulations pertaining to class 4 retail dealer licensees when engaging in the retail sale of malt beverages[;].
- (G) May, subject to federal labeling and bottling requirements, sell malt beverages manufactured on the licensee's premises in brewery-sealed containers directly to class 2 restaurant licensees, class 3 wholesale dealer licensees, class 4 retail dealer licensees, class 5 dispenser licensees, class 6 club licensees, class 8 transient vessel licensees, class 9 tour or cruise vessel licensees, class 10 special licensees, class 11 cabaret licensees, class 12 hotel licensees, class 13 caterer licensees, class 14 brewpub licensees, class 15 condominium hotel licensees, class 18 small craft producer pub licensees, and consumers pursuant to conditions imposed by the county departments of planning, public works, and environmental management and regulations governing class 1 manufacturer licensees and class 3 wholesale dealer licensees[; and].
- (H) May conduct the activities under paragraphs (A) through (G) at one location other than the licensee's premises; provided that:
 - (i) The manufacturing takes place in Hawaii[; and].
 - (ii) The other location is properly licensed under the same ownership.
- (I) May allow minors, who are accompanied by a parent or legal guardian of legal drinking age on the premises.
- (o) Class 15. Condominium hotel license.
- (1) A license to sell liquor in a condominium hotel shall authorize the licensee to provide entertainment and dancing on the condominium hotel premises and to sell all liquor except alcohol for consumption on the premises; provided that a condominium hotel licensee, with commission approval, may provide off-premises catering of food and liquor if the catering activity is directly related to the licensee's food service by applying and obtaining approval for a catering permit while performing food catering functions.
 - (A) A condominium hotel licensee may be granted a catering permit while performing food catering functions.
 - (B) No catering service for the sale of liquor will be performed off the licensee's premises unless prior written application for the service has been delivered to the department and approved by the director. The director shall not approve any catered function unless it includes a written statement signed by the owner or representative of the property that the function will be subject to the liquor laws and to inspection by investigators. Application shall be submitted at least seven days prior to the catered function.

- (C) The director will not approve catering functions on premises not zoned to allow commercial activities thereon unless the catered function is requested and hosted by the owner or the lessee or its like of the property or anyone with written authorization for the use of the property.
- (2) Room service, self-service no host minibars, or similar service in apartments, and service at parties in areas that are the property of and contiguous to the condominium hotel are permitted with commission approval and subject to the following conditions:
- (A) Room service:
- (i) Liquor may be sold by the individual drink, or in its original manufacturer-sealed container for consumption within a registered guest's apartment.
 - (ii) Current prices of alcoholic beverages shall be conspicuously posted and exposed to view or within the apartment's room service menu at all times within the interior of each guest apartment.
 - (iii) The sale and service of liquor shall be made by an employee approved by the director.
- (B) Minibars or honor bars:
- (i) Storage of any liquor authorized for sale under this rule shall be completely enclosed in a secured cabinet or other suitable container and shall be accessible by means of a key or other similar device provided to the hotel guests.
 - (ii) A written schedule of selling prices shall be conspicuously posted in a manner convenient for inspection within the hotel rooms or selling prices shall be affixed to each bottle of liquor.
 - (iii) Retail sales shall be limited to not more than the following container sizes: distilled spirits, 50 milliliters; beer, 12 ounces; and wine, 375 milliliters.
 - (iv) At no time or under any circumstances shall any licensee or its employee issue the key or similar device to the enclosed liquor cabinet or other suitable liquor container to anyone under twenty-one years of age.
- (3) At no time or under any circumstances shall a licensee permit liquor to be furnished:
- (A) To any person under twenty-one years of age;
 - (B) To any person, who at the time, is under the influence of liquor; or
 - (C) To any person when there [is] are reasonable grounds to believe that such person is permitting any person under twenty-one years of age to consume said liquor.

- (4) The licensee shall fully comply with any additional condition or restriction which the commission, in its discretion, may impose to protect the health, safety, and welfare of the public.
- (5) Licensees shall be restricted from selling liquor in its original packages except via room service and in minibars installed in condominium hotel guest rooms. Said service shall be initiated at the request of the adult guest. Minibar and room service sales shall be restricted to registered guests of the condominium hotel of legal drinking age and consumption of liquor shall be restricted to the condominium hotel guest room.
- (6) Unless authorized by law, a condominium hotel licensee shall not sell liquor in the manner authorized by a class 4 retail dealer license.
- (7) Any licensee who would otherwise meet the criteria for the condominium hotel license class but holds a different class of license may be required to apply for a condominium hotel license.
- (p) Class 16. Winery license.
A winery licensee:
 - (1) Shall manufacture not more than twenty thousand barrels of wine on the licensee's premises during the license year[;].
 - (2) May sell wine manufactured on the licensee's premises for consumption on the premises[;].
 - (3) May sell wine manufactured by the licensee in winery-sealed packages to class 3 wholesale dealer licensees pursuant to conditions imposed by the county by ordinance or rule[;].
 - (4) May, subject to federal labeling and bottling requirements, sell wine manufactured on the licensee's premises to consumers in winery-sealed kegs and magnums to consumers for off-premises consumption; provided that for purposes of this paragraph, "magnum" means a glass container not to exceed one half-gallon, which may be securely sealed[;].
 - (5) May, subject to federal labeling and bottling requirements, sell wine manufactured on the licensee's premises in recyclable containers provided by the licensee or by the consumer which do not exceed one gallon per container and are securely sealed on the licensee's premises to consumers for off-premises consumption[;].
 - (6) Shall comply with all rules pertaining to class 4 retail dealer licensees when engaging in the retail sale of wine; [; and].
 - (7) May sell wine manufactured on the licensee's premises in winery-sealed containers directly to class 2 restaurant licensees, class 3 wholesale dealer licensees, class 4 retail dealer licensees, class 5 dispenser licensees, class 6 club licensees, class 8 transient vessel licensees, class 9 tour or cruise vessel licensees, class 10 special licensees, class 11 cabaret licensees, class 12 hotel licensees, class 13 caterer licensees, class 14 brewpub licensees, class 15 condominium hotel licensees, and class 18 small craft producer pub licensees, pursuant to conditions imposed by the County

departments of planning, public works, and environmental management and rules governing class 3 wholesale dealer licensees.

- (q) Class 18. Small craft producer pub license.
A small craft producer pub licensee:
- (1) Shall manufacture not more than:
 - (A) Sixty thousand barrels of malt beverages;
 - (B) Twenty thousand barrels of wine; or
 - (C) Seven thousand five hundred barrels of alcohol on the licensee's premises during the license year; provided that for purposes of this paragraph, "barrel" means a container not exceeding thirty one gallons or wine gallons of liquor[;].
 - (2) May sell malt beverages, wine, or alcohol manufactured on the licensee's premises for consumption on the premises[;].
 - (3) May sell malt beverages, wine, or alcohol manufactured by the licensee in producer-sealed packages to class 3 wholesale dealer licensees pursuant to conditions imposed by the County by ordinance or rule[;].
 - (4) May sell intoxicating liquor purchased from a class 3 wholesale dealer licensee to consumers for consumption on the licensee's premises. The categories of establishments shall be as follows:
 - (A) A standard bar; or
 - (B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules[;].
 - (5) May, subject to federal labeling and bottling requirements, sell malt beverages manufactured on the licensee's premises to consumers in producer-sealed kegs and growlers for off-premises consumption; provided that for purposes of this paragraph, "growler" means a glass or metal container, not to exceed one half-gallon, which shall be securely sealed[;].
 - (6) May, subject to federal labeling and bottling requirements, sell malt beverages, wine, or alcohol manufactured on the licensee's premises in recyclable containers provided by the licensee or by the consumer which do not exceed:
 - (A) One gallon per container for malt beverages and wine[; and].
 - (B) One liter for alcohol; and are securely sealed on the licensee's premises to consumers for off-premises consumption[;].
 - (7) Shall comply with all regulations pertaining to class 4 retail dealer licensees when engaging in the retail sale of malt beverages, wine, and alcohol[;].
 - (8) May, subject to federal labeling and bottling requirements, sell malt beverages, wine, and alcohol manufactured on the licensee's premises in producer-sealed containers directly to class 2 restaurant licensees, class 3 wholesale dealer licensees, class 4 retail dealer licensees, class 5 dispenser licensees, class 6 club licensees, class 8 transient vessel licensees, class 9 tour or cruise

vessel licensees, class 10 special licensees, class 11 cabaret licensees, class 12 hotel licensees, class 13 caterer licensees, class 14 brewpub licensees, class 15 condominium hotel licensees, class 18 small craft producer pub licensees, and consumers pursuant to conditions imposed by county regulations governing class 1 manufacturer licensees and class 3 wholesale dealer licensees[; and].

(9) May conduct the activities under paragraphs (1) through (8) at one location other than the licensee's premises; provided that:

(A) The manufacturing takes place in Hawaii; and

(B) The other location is properly licensed under the same ownership.

(10) May allow minors, who are accompanied by a parent or legal guardian of legal drinking age, on the licensee's premises.

(r) Restaurants, retail dealers, dispensers, clubs, cabarets, hotels, caterers, brewpubs, condominium hotels, and small craft producer pubs licensed under class 2, class 4, class 5, class 6, class 11, class 12, class 13, class 14, class 15, and class 18 shall maintain at all times liquor liability insurance coverage in an amount not less than \$1,000,000; provided that convenience minimarts holding a class 4 license shall not be required to maintain liquor liability insurance coverage in that amount. Proof of coverage shall be kept on the premises and shall be made available for inspection by the commission at any time during the licensee's regular business hours. In the event of a licensee's failure to obtain or maintain the required coverage, the commission shall refuse to issue or renew a license, or shall suspend or terminate the license as appropriate. No license shall be granted, reinstated, or renewed until after the required insurance coverage is obtained.

(s) It shall be unlawful for any licensee to utilize any liquor, acquired or purchased from a class 1 manufacturers' licensee, or a class 3 wholesale dealers' licensee, or a person authorized by the commission as a solicitor or representative of a manufacturer or for personal or private use or consumption, except as authorized by the commission. All liquor shall be sold as authorized by the license issued.

(t) A patron may remove from a class 2 restaurant licensee, class 5 dispenser licensee, class 6 club licensee, class 12 hotel licensee, class 14 brewpub licensee, class 15 condominium hotel licensee, and class 18 small craft producer pub licensee, licensed premises, who has on file with the department a current yearly approved financial report that shows at least 30 percent of establishment's gross revenue is derived from the sale of food that is prepared and cooked at the time of ordering within its State of Hawaii department of health and County of Maui, department of fire and public safety approved kitchen facilities, any portion of wine, liquor, or beer that was purchased on or brought onto the premises of the licensee, for consumption with a meal; provided that it is recorked or resealed in its original container as provided in section 281-31(u), HRS. A licensee wishing to exercise this privilege shall inform the patron of the State of Hawaii "open container" law as stated in sections 291-3.1, 291-3.2, 291-

3.3 and 291-3.4 [of the Hawaii Revised Statutes], HRS. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 11/29/15; am and comp 3/4/17; am and comp 1/14/18; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)”

2. Section 08-101-24, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

“§08-101-24 Temporary licenses. (a) A temporary license of any class and kind may be granted under the following conditions:

- (1) The premises shall have been operated under a license of the same class, kind, and category issued by the commission at least one year immediately prior to the date of filing of the application for temporary license, except as otherwise approved by the commission; or to any premises that have been operated under a license of the same class, kind, and category issued by the commission at least one year prior to the license being revoked or canceled, provided that the license application must be filed within ninety days of the surrender of the previous license or the closing of business[;].
- (2) The license of the same class, kind, and category then in effect for the premises shall be surrendered in such manner and at such time as the commission shall direct[;].
- (3) The applicant for a temporary license shall have filed with the commission an application for a license of the same class, kind, and category currently or previously in effect for the premises[;].
- (4) The application for a temporary license shall be accompanied by a license fee in such amount as may be prescribed by the commission. If the application is denied or withdrawn, the fee which accompanied the application shall become a realization of the county liquor fund;
- (5) A temporary license shall be for a period of not in excess of one hundred twenty days. The license may be renewed at the discretion of the commission for not more than one additional one hundred twenty-day period upon payment of such additional fee as may be prescribed by the commission and upon compliance with all conditions required in this rule. When a temporary license has expired and no permanent license has been issued, the sale and service of liquor shall cease until the permanent license is issued; provided that, when applicable, the license shall be properly renewed[;].
- (6) A temporary license shall authorize the licensee to purchase liquor only by payment in currency, check or certified check for the liquor before or at the time of delivery of the liquor to the licensee, except as otherwise provided by commission rule[;].
- (7) A temporary license shall contain the same restrictions and/or conditions as placed on the previous license[;].

(8) A temporary license shall terminate upon the issuance of the transferred or new license, denial or withdrawal of the transfer or new application, or at midnight on the one hundred twentieth day on the first temporary license or midnight on the one hundred twentieth day on the second temporary license after being effected or issued.

(b) Notwithstanding any other law to the contrary, the commission shall reduce submission requirements, including the waiving of hearings, fees, notarization of documents, submission of floor plans and other requirements, to provide for the issuance of temporary licenses for the sale of liquor for period not to exceed one day for fundraising events by nonprofit organizations. The temporary license granted under this subsection to nonprofit organization for a fundraising event shall enable the nonprofit organization to auction off at live or silent auction, liquor in sealed or covered glass, ceramic, or metal containers or services that provide liquor. No criminal history record checks under section 281-53.5, HRS, shall be required.

For purpose of this subsections, "nonprofit organization" means those charitable organizations recognized under State or federal law and exempt from federal taxes under section 501(c)(3) of the Internal Revenue Code. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 11/29/15; am and comp 3/4/17; am and comp 1/14/18; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)"

3. Section 08-101-30, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsection (b) to read as follows:

"(b) The [department of health clearance,] certificate of occupancy[,] and other clearances or executed copies of other documents, as approved by the commission, may be submitted after filing the application and hearing thereon, but must be filed before issuance of the license. State [and federal] tax [clearances] clearance shall be dated within ninety days of the acceptance of any application by the department. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 11/29/15; am and comp 3/4/17; am and comp 1/14/18; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)"

4. Section 08-101-31, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

"§08-101-31 No license issued, when. No license shall be issued:

- (1) To any minor or to any person who has been convicted of a felony and not pardoned, or to any other person not deemed by the commission to be a fit and proper person to have a license; provided that the commission may grant a license under the rules of the commission to a partnership, trust, association, limited liability

partnership, limited liability company, corporation, or any other person, that has been convicted of a felony where the commission finds that the partner, member, manager, organizer, or any person of a limited liability partnership, limited liability company or organization's officers, directors, and any person owning or controlling 25 percent or more of the outstanding stock are fit and proper persons to have a license;

- (2) To any partner in a partnership, or a corporation, trust or association, the officers, directors, or any other person of which, or any of them, would be disqualified under subsection (1) from obtaining the license individually, or any person of which, owning or controlling 25 percent or more of the outstanding capital stock, or any other person, would be disqualified under such subsection (1) from obtaining the license individually; provided that for publicly-traded companies or entities ultimately solely owned by a publicly traded company, only the officers and directors designated as primary decision-makers shall be considered to determine disqualification under paragraph (1);
- (3) To any applicant for a license, or a renewal of a license, or in the case of a transfer of a license, where both the transferor and the transferee, failed to present to the issuing agency a tax clearance certificate from the department of taxation, [and from the Internal Revenue Service] showing that the applicant or the transferor and transferee do not owe the State [or federal governments] government any delinquent taxes, penalties, or interest; or that the applicant, or in the case of a transfer of a license, the transferor or transferee, has entered into an installment plan agreement with the department of taxation [and the Internal Revenue Service] for the payment of delinquent taxes in installments and that the applicant is or the transferor or transferee is, in the case of a transfer of a license, complying with the installment plan agreement;
- (4) To any applicant who has a partner in the partnership, limited liability partnership, member, manager, agent, organizer, or any person owning or controlling 25 percent or more of a limited liability company, or any officer, director or any person owning or controlling 25 percent or more of the outstanding stock of any corporation, trust, association, or any other person, who has had any liquor license revoked less than two years previous to the date of the application for any like or other license under the rules of the commission;
- (5) To any person owning or controlling 25 percent or more of the outstanding stock of the corporation, trust, or association of a licensee, who is currently delinquent in filing the gross liquor sales report of any license that was issued, or currently owing any fees or monies due to the department, or both. "Any fees or monies" shall include but not be limited to license fees, publication fees, and any

assessment of a penalty imposed by the department, commission, or board. Any licensee, who has any person, or person owning or controlling 25 percent or more of the outstanding stock of a corporation, trust, or association of a licensee, who is delinquent in filing the gross liquor sales report of any other license that was issued, or currently owing any fees or monies to the department, shall not exercise its license until the gross sales report is filed and percentage fee paid;

- (6) To a limited liability company, the members, managers, organizers, or any person, of which or any of them, would be disqualified under subsection (1) from obtaining the license individually, would be disqualified under that paragraph from obtaining the license individually;
- (7) To a limited liability company, partnership, limited liability partnership, or corporation, that may consist of a limited liability company, partnership, limited liability partnership, corporation, or any other person or any combination thereof, the members, managers, organizers, partners, officers, directors, or any person thereof, of which any of them would be disqualified under subsection (1) from obtaining the license individually, or a person owning or controlling 25 percent or more of the outstanding stock of such corporation would be disqualified under that paragraph from obtaining the license individually; or
- (8) To an applicant for a class 2, class 4 except for convenience minimarts, class 5, class 6, class 11, class 12, class 13, class 14, class 15, or class 18 license, unless the applicant for issuance of a license or renewal of a license, both the transferor and the transferee, present to the issuing agency proof of liquor liability insurance coverage in an amount of \$1,000,000. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 11/29/15; am and comp 3/4/17; am and comp 1/14/18; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)”

5. Section 08-101-33, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsection (a) to read as follows:

“§08-101-33 Renewal of license. (a) Other than for good cause, the renewal of an existing license shall be granted upon the filing of a completed application, payment of the basic fee, submission of State [and federal] tax [clearances] clearance, and other required documents. State [and federal] tax clearances shall be dated within ninety days of the acceptance of the application by the department. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 11/29/15; am and comp 3/4/17; am and

comp 1/14/18; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)”

6. Material, except source notes, to be repealed is bracketed. New material is underscored.

7. Additions to update source notes to reflect these amendments are not underscored.

8. These amendments to Chapter 101, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, shall take effect ten days after filing with the Office of the County Clerk.

2016-1770
2018-10-27 Admin Rules Chapter 101 - Ramseyer

Adopted this _____ day of _____, 2018, at Wailuku, Maui, Hawaii.

By _____
ROBERT TANAKA
Chairperson
LIQUOR COMMISSION

Approved this ____ day of _____, 2018.

ALAN M. ARAKAWA
Mayor, County of Maui

APPROVED AS TO FORM
AND LEGALITY:

EDWARD S. KUSHI, JR.
Deputy Corporation Counsel
County of Maui

Received this _____ day of _____, 2018.

Clerk, County of Maui

CERTIFICATION

I, ROBERT TANAKA, Chairperson of the Liquor Commission of the Department of Liquor Control, County of Maui, do hereby certify:

1. That the foregoing is a copy of the amendments to the Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, drafted in Ramseyer format, pursuant to the requirements of Section 91-4.1, Hawaii Revised Statutes, which were adopted on the ____ day of _____, 2018, by affirmative vote of the proper majority following a public hearing on _____, and filed with the Office of the County Clerk.

2. That the notice of public hearing on the foregoing amendments to the rules was published in The Maui News on the ____ day of _____, 2018.

COUNTY OF MAUI

ROBERT TANAKA
Chairperson
LIQUOR COMMISSION

VI. Administrative Matters

- A. Discussion and Action on the Board's Draft 2018 *201M-7 Periodic Review; Evaluation Report* for Submission to the Hawaii State Legislature under Section 201M-7, HRS



HAWAII SMALL BUSINESS REGULATORY REVIEW BOARD – DRAFT

Changes Since Last Review are in Red

Periodic Review; Evaluation Report

**In Compliance with
Regulatory Flexibility Act
Section 201M –7,
Hawaii Revised Statutes**

2018

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SMALL BUSINESS REGULATORY REVIEW BOARD

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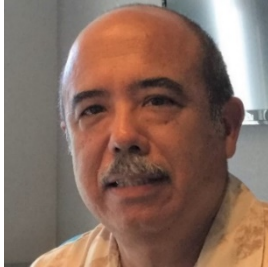
Nancy Atmospera-Walch
O'ahu

Mary Albitz
Maui

William Lydgate
Kaua'i

Director, DBEDT
Voting Ex Officio

MESSAGE FROM THE CHAIR



This 210M-7 report consists of existing administrative rules that both State and County departments have determined impact small business and the reasons for the rules' continued implementation. This is in accordance with our effort to reduce negative small business impact and to improve our rule-making procedures.

In 2003, the Board began its state-wide rule-review process with fourteen departments submitting 345 rules that impact small business and the purpose for their continuation. After modification of many of these rules in 2005, eleven departments provided the Board with 237 rules. Upon the review of each of the 237 rules, the Board members recommended a full analysis on 49 of them. This has, subsequently, been narrowed to 27 rules the Board believes warrant modifications. Pages 24 through 40 of this Report provides this Board's recommendations and responses from the departments on the final 27 rules.

Overall, the SBRRB members have donated numerous hours of their valuable time, business acumen, and remain committed to the cause of improving the economic climate for small businesses in Hawaii. I congratulate each member for their tireless effort, teamwork and for keeping the Board's mission front and center.

On behalf of this Board, I extend a special Mahalo to our Governor, our State Legislators, and to all the State and Counties departments that submitted the requested information on time.

Anthony Borge, Chair, SBRRB, 2018

OVERVIEW

Section 201M-7 Periodic review; evaluation, Hawaii Revised Statutes (HRS)

(a) Each agency having rules that affect small business in effect on July 1, 1998 shall submit to the board by June 30 of each odd-numbered year, a list of those rules and a report describing the specific public purpose or interest for adopting the respective rules that affect small business and any other reasons to justify continued implementation of the rules; provided that, by June 30 of each year, each agency shall submit to the board a list of any rules to be amended or repealed, based upon any new, amended, or repealed statute that impacts small business.

Pursuant to Section 201M-7 (a), HRS, the SBRRB requested from the State and County agencies the following:

- 1) No later than June 30th of each year, a list of any rules to be amended or repealed, based upon any new, amended, or repealed statute; and
- 2) No later than June 30th of each odd-numbered year, a list of rules adopted during the prior year that affect small business, and a report describing the specific public purpose or interest for adopting the respective rules that affect small business and any other reasons to justify their continued implementation.

Response: The information in this Report is a compilation of the responses and justifications received.

(b) The board shall provide to the head of each agency a list of any rules adopted by the agency that affect small business and have generated complaints or concerns, including any rules that the board determines may duplicate, overlap, or conflict with other rules, or exceed statutory authority. Within forty-five days after being notified by the board of the list, the agency shall submit a written report to the board in response to the complaints or concerns. The agency shall also state whether the agency has

considered the continued need for the rules and the degree to which technology, economic conditions, and other relevant factors may have diminished or eliminated the need for maintaining the rules.

Response: In accordance with Section 201M-7(b), the SBRRB provided communication to the Director of Hawaii Department of Transportation (DOT) regarding concern over alleged unfairness and inequitable treatment of small business drivers allowed to operate at the Honolulu International Airport. In response, DOT submitted amendments, under HAR Chapter 20.1, "Commercial Services at Public Airports," which the SBRRB subsequently recommended for public hearing and adoption; HAR Chapter 20.1 become effective in August 2018.

(c) The board may solicit testimony from the public regarding any report submitted by the Agency under this section at a public meeting held pursuant to chapter 92. Upon consideration of any report submitted by an agency under this section and any public testimony, the board shall submit an evaluation report to the legislature each even-numbered year. The evaluation report shall include an assessment as to whether the public interest significantly outweighs a rule's effect on small business and any legislative proposal to eliminate or reduce the effect on small business. The legislature may take any action in response to the report as it finds appropriate.

Response: The SBRRB did not specifically solicit testimony from the public regarding any report submitted by the Agency under this section at a public meeting held pursuant to Chapter 92, HRS. However, the SBRRB does receive and review testimonies on administrative rules that are proposed or amended during the monthly board meetings; each testimony is handled accordingly.

ADMINISTRATIVE RULE REVIEW MATRIX

State and Counties Departments	Existing Rules, Rules that were Amended or to be Amended, and Rules to be Repealed (July 2015 to June 2017)
STATE DEPARTMENTS	
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES	8
DEPARTMENT OF AGRICULTURE	NA
DEPARTMENT OF THE ATTORNEY GENERAL	0
DEPARTMENT OF BUDGET AND FINANCE – FINANCIAL ADMINISTRATION DIVISION	NA
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM	3
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS PUBLIC UTILITIES COMMISSION	30 12
DEPARTMENT OF DEFENSE	0
DEPARTMENT OF HAWAIIAN HOME LANDS	0
DEPARTMENT OF HEALTH MEDICAL DIVISION ENVIRONMENTAL DIVISION	5 9
DEPARTMENT OF HUMAN SERVICES	5
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS	5
DEPARTMENT OF LAND AND NATURAL RESOURCES	9
DEPARTMENT OF TAXATION	2
DEPARTMENT OF TRANSPORTATION	5
UNIVERSITY OF HAWAII	2
COUNTY DEPARTMENTS	
HAWAII COUNTY	37
MAUI COUNTY	5
KAUAI COUNTY	NA
CITY AND COUNTY OF HONOLULU	21

STATE DEPARTMENTS – JUSTIFICATION OF RULES AND RULES EXPECTED TO BE AMENDED OR REPEALED BASED ON ANY NEW, AMENDED OR REPEALED STATUTE

Department of Accounting and General Services

The following is a list of rules that affect small business that were approved during the period of July 1, 2015 through June 30, 2017, with reasons for justifying the rules' continued implementation:

State Procurement Office (SPO)

- 1. HAR Title 3 Chapter 120-4 – Procurements exempt from chapter 103D, HRS**
Justification – The purpose of amending exemption #6 is to avoid ambiguity from the previous inclusion of “etc.” The application of “etc.” is unclear. The use of “etc.” may be interpreted in several ways and has opened the door for expanding the scope of this exemption, creating confusion and uncertainty and procurement officers. Removing “etc.” will limit the exception to situations that “are advantageous and available on short notice through an auction, bankruptcy, or foreclosure.”

Continued implementation is necessary to allow to avoid confusion and ambiguity. SPO does not view this amendment to affect small business.

- 2. HAR Title 3 Chapter 122-14 – Exempted Items**

Justification – Section 3-122-14 was amended to read as follows:
Section 3-122-14 Exempted Items – Purchasing agencies are granted the authority to prepare specifications for goods, services and construction procured under sections 103D-102 and 103D-304, HRS. However, all public employees are responsible for adhering to remaining ethical considerations in public procurement, as guided by relevant provisions in section 103D-101, HRS and section 3-131-1.02.

SPO does not view this amendment to affect small business. The amendment is to provide clarity in the HAR that regardless of being exempt from HRS 103D, there are always ethical and contractual requirements, and that State employees still must do their due diligence and be responsible. Continued implementation is necessary because it provides clarification guidance on ethics throughout the acquisition life cycle.

- 3. HAR Title 3 Chapter 122-66 – Waiver to requirement for procurement of professional services**

Justification – Waiver to requirement for procurement of professional services, has been invalidated by the Hawaii Supreme Court in Asato v. Procurement Policy Board Hawaii, 2014. The purpose of this repeal is to align HAR with current law, clarifying that HAR Section 3-122-66 is no longer able to be utilized when procuring professional services. This amendment repealed HAR Section 3-122-66 that allows for an option in procurement of professional services pursuant to HRS Section 103D-304(g), for situations where a review committee receives less than three qualified persons' submittals to provide professional services under specific selection criteria.

This waiver has been in effect since December 15, 1995, with the establishment of Title 3, Subtitle 11, Hawaii Administrative Rules for Chapter 103D, HRS. It is not known how the repeal of this waiver will adversely affect or benefit small business.

4. HAR Title 3 Chapter 130 – Inventory Management

Justification – The purpose of amending this rule is to align inventory accountability designations with statute and make other inventory management clarifications. These amendments clarify that inventory accountability is the responsibility of “the head of the department or head of the board or commission, agency, bureau, or office of the State.” The SPO also recommended changes, such as the repeal of rules that still mention inventory, and the streamlining of the management process.

These changes have no direct or indirect effect on small business. Implementation is necessary as it provides guidance on inventory accountability for State and County agencies.

Stadium Authority

5. HAR Title 3 Chapter 70-11 – Rental charges, payment

Justification – This section clarifies and reprices the rental charge language, eliminates and restructures rental rate categories, updates rental rates for facility use as well as rates for events held in parking areas, adds a new subsection for charitable, religious, and other events or activities, and adds subsections and rates for commercial media and non-commercial media events.

The restructuring and repricing of rental categories and its respective rates is necessary to accurately reflect the market, the type of events that utilize the Aloha Stadium facility, and to align categories that would provide for best user fit. It is also necessary to ensure that the rate fee structure is adequate to help support the operations and solvency of the special funded Aloha Stadium facility.

Continued implementation is necessary to allow the special funded Stadium Authority to generate revenues to address both its fixed and variable operating costs and in doing so, provide the Authority with the ability to continue to maintain and operate the Aloha Stadium facility in a safe, clean, and financially solvent manner. It should be noted that while expenses have continued to increase over the years, user fees have not increased. As a result, it has put a significant financial strain on the special funded Authority’s ability to keep up with recurring rising expenses. This adjustment to rental rates/fees provides the Authority with an ability to address recurring rising expenses and provide it with a means to remain financially solvent.

6. HAR Title 3 Chapter 70-20 – Parking rates, parking stalls

Justification – The purpose is to implement an increase in vehicular users’ parking rates/fees for all events and shows.

The restructuring and repricing of parking fees by category is necessary to accurately reflect the market, the types of events that utilize the Aloha Stadium facility, and to provide “unit pricing” that will help to support the continued operation of the special funded Aloha Stadium facility.

Continued implementation is necessary to allow the special funded Stadium Authority to generate revenues to address both its fixed and variable operating costs and in doing

so, provide the Authority with the ability to continue to maintain and operate the Aloha Stadium facility in a safe, clean, and financially solvent manner. It should be noted that while expenses have continued to increase over the years, user fees have not increased. As a result, it has put a significant financial strain on the special funded Authority's ability to keep up with recurring rising expenses. This adjustment to rental rates/fees provides the Authority with an ability to address recurring rising expenses and provide it with a means to remain financially solvent.

State Building Code Council

7. HAR Title 3 Chapter 181 – State Energy Conservation Code

Justification – The purpose of repealing Chapter 3-181, HAR, and replacing it with a new rule, Chapter 3-181.1, is to base the new rules on a model national building code (2015 International Energy Conservation Code) amended by the State Building Code Council to address situations specific to Hawaii and required by Section 107-25, HRS.

Continued implementation is necessary to allow building owners, designers, contractors, and code enforcers within the State to be able to apply consistent standards.

8. HAR Title 3 Chapter 182 – State Electrical Code

Justification – The purpose of repealing Chapter 3-182, HAR, and replacing it with a new rule, Chapter 3-182.1, is to base the new rules on a model national building code (2014 National Electrical Code) with amendments to ensure recognition of new methods and installation practices for safely distributing electrical power, safe interaction with electrical systems, address safety concerns, and put new requirements in place that facilitates the safe implementation of new technology. Additionally, this is required by Section 107-25, HAR.

Continued implementation is necessary to allow building owners, designers, contractors, and code enforcers within the State to apply consistent standards.

Department of Agriculture

As of the date of this report, the Department of Agriculture has not responded to the Board's requests.

Department of the Attorney General

The Department of the Attorney General has indicated it has no plans to amend or repeal any rule based upon any new, amended, or repealed statute, and has not adopted any rules during the prior year that affect small businesses. Therefore, there is no report describing the specific public purpose or interest for the adoption of the rules.

Department of Budget and Finance

As of the date of this report, the Department of Budget and Finance has not responded to the Board's requests.

Department of Business, Economic Development, and Tourism

The following outlines a list of rules to be amended or repealed, based upon any new, amended or repealed statute:

Business Development & Support Division

1. HAR Title 15 Chapter 126 – Relating to the Hawaii Community-based Economic Development Technical and Financial Assistance Program

Justification – Amends the definition of “community-based organization.” Amends the qualifications for community-based economic development grants to include technical assistance to community-based organizations. Reduces the number of Community-Based Economic Development Advisory Council members from twelve to ten.

Hawaii Housing Finance & Development Corporation

2. HAR Title 15 Chapter 169 – Down payment Loan Program”

Justification – Because of Act 123, SLH 2017, Relating to Homebuyer Assistance, this chapter requires amendments.

3. HAR Title 15 Chapter 307 – State Assisted Land and Housing Development Program

Justification – Because of the enactment of Act 159, SLH 2017, Relating to Affordable Housing, this chapter requires amendment.

Department of Commerce and Consumer Affairs

The following outlines specific public purpose for adopting the rules and other reasons to justify continued implementation - only rules adopted between 7/1/16 to 6/30/17 are included:

Professional and Vocational Licensing Division (PVL)

1. HAR Title 16 Chapter 53 – Fees Relating to Boards and Commissions

Justification – The purpose of this chapter is to establish and update fees for the 49 regulatory areas under the purview the PVL Division and the Regulated Industries Complaints Office. The rule amendments apply to the fee structures for the 49 licensing areas. A Small Business Impact Statement dated November 30, 2015 was sent to the SBRRB; on February 4, 2016, no official action was taken on this matter, as three SBRRB members were required to recuse themselves due to a direct financial impact under the Hawaii State Ethics Code.

2. HAR Title 16 Chapter 85 – Medical Examiners

Justification – The purpose of this chapter is to implement licensing and regulation of this profession. The rules are needed because they facilitate licensing and enforcement of the licensing law. The purpose of the amendments is to better serve the community and to reflect national trends by licensing three classes of emergency medical service personnel: Emergency Medical Technician, Advanced Emergency Medical Technician, and Paramedic. A Small Business Impact Statement dated February 23, 2016 was sent to the SBRRB; the SBRRB raised no objections to the proposed rule amendments.

3. HAR Title 16 Chapter 99 – Relating to Real Estate Brokers and Salespersons

Justification – The purpose of this chapter is to implement licensing and regulation of the professions. The rules are needed because they facilitate licensing and enforcement of

the licensing law. The purpose of the amendments is to create a new definition for solicitation materials. A Small Business Impact Statement dated February 19, 2015 was sent to the SBRRB; on March 18, 2015, the SBRRB raised no objections to the proposed rule amendments.

4. HAR Title 16 Chapter 114 – Relating to Real Estate Appraisers

Justification – The purpose of this chapter is to implement licensing and regulation of the profession. The rules are needed because they facilitate licensing and enforcement of the licensing law. The purpose of the amendments is to incorporate appraiser trainee regulations to comply with federal requirements. A Small Business Impact Statement dated April 1, 2016 was sent to the SBRRB, and on April 28, 2016, a response from the SBRRB stated that these rules did not fall under its purview.

5. HAR Title 16 Chapter 255 – Relating to Post-Secondary Education Authorization Program

Justification – The purpose of this chapter is to facilitate authorization and regulation of accredited, degree-granting post-secondary educational institutions under the authorizing law. A Small Business Impact Statement dated April 25, 2016 was sent to the SBRRB; on May 13, 2016, the SBRRB determined that the proposed rules would not be heard at an SBRRB meeting as they do not negatively impact small businesses and are in-line with, and are not more restrictive than, the Federal rules.

The following is a list of rules to be amended or repealed, based upon any new, amended or repealed statute for 2017:

Division of Financial Institutions (DFI)

6. HAR Title 16 Chapter 24 – Money Transmitters

DFI plans to work on a draft to update provisions concerning bond and security device requirements, and the hourly exam fee for consistency with Chapter 489D, the Money Transmitters Act.

7. HAR Title 16 Chapter 25 – Application Procedures Relating to Hawaii Financial Institutions

DFI plans to work on a draft to delete references to fees that are subsumed by Hawaii financial institutions yearly assessment in Section 412:2-105.2, HRS.

8. HAR Title 16 Chapter 28 – Escrow Depositories

DFI plans to work on a draft to update net capital bond, fidelity bond, and E & O sections for consistency with Chapter 449, the Escrow Depositories law.

9. HAR Title 16 Chapter 35 – Secure and Fair Enforcement for Mortgage Licensing Act (proposed new chapter)

On 3/23/2015, the SBRRB issued a memo supporting a public hearing for the proposed rules relating to Chapter 454F, HRS, the Secure and Fair Enforcement for Mortgage Licensing Act. Thereafter, Act 122 (2016) was enacted and section 18 partially obviated the need for the proposed rules. DFI plans to move forward with a public hearing pending consultation with the departmental advisory committee on small business.

Professional and Vocational Licensing Division

10. HAR Title 16 Chapter 72 – Acupuncture

The Board is currently working on a draft.

- 11. HAR Title 16 Chapter 73 – Barbers**
The Board plans to work on a draft.
- 12. HAR Title 16 Chapter 76 – Chiropractors**
The Board plans to work on a draft.
- 13. HAR Title 16 Chapter 77 – Contractors**
A memo requesting to hold a public hearing was sent to the Governor’s Office on March 28, 2017. The Board is also currently working on two sets of draft rules.
- 14. HAR Title 16 Chapter 78 – Cosmetology**
The Board is currently working on a draft.
- 15. HAR Title 16 Chapter 79 - Dentists and Dental Hygienists**
The Board is currently working on a draft.
- 16. HAR Title 16 Chapter 81 – Elevator Mechanics**
The Board is currently working on a draft.
- 17. HAR Title 16 Chapter 84 – Massage Therapy**
The Board is currently working on a draft.
- 18. HAR Title 16 Chapter 85 – Medical Examiners**
The Board plans to work on a draft relating to physician assistants.
- 19. HAR Title 16 Chapter 88 – Naturopaths**
The Board is currently working on a draft.
- 20. HAR Title 16 Chapter 89 – Nurses**
The Board is currently working on a draft.
- 21. HAR Title 16 Chapter 92 – Optometrists**
The Board is currently discussing proposed rule amendments.
- 22. HAR Title 16 Chapter 94 – Pest Control Operators**
The Board is currently working on a draft.
- 23. HAR Title 16 Chapter 97 – Private Detectives and Guards**
The Board is currently discussing proposed rule amendments.
- 24. HAR Title 16 Chapter 99 – Real Estate Brokers and Salespersons**
The Board is currently working on a draft.
- 25. HAR Title 16 Chapter 100 – Speech Pathologists and Audiologists**
The Board is currently discussing whether to proceed with rule amendments.
- 26. HAR Title 16 Chapter 101 – Veterinarians**
The Board is currently working on a draft.
- 27. HAR Title 16 Chapter 106 – Timesharing**
The Program is currently working on a draft.

28. HAR Title 16 Chapter 110 – Physical Therapy

The Physical Therapy Board plans to work on a draft.

29. HAR Title 16 Chapter 115 – Professional Engineers, Architects, Surveyors, and Landscape Architects

The appropriate Board is currently working on a draft.

Cable Television Division

30. HAR Title 16 Chapter 131 – Designation and Selection of Access Organizations

Amend rule to conform to HRS Section 440G-8.3, pursuant to Act 93, SLH 2014, which allows the DCCA Director to designate public, educational, and governmental (PEG) access organizations exempt from HRS Chapter 103D. Currently, HAR Section 131-70 requires PEG designations in compliance with HRS Chapter 103D. Division is working on draft language.

The following is a list of rules to be amended or repealed, based upon any new, amended or repealed statute for 2018:

1. HAR Title 16 Chapter 39 – Securities

Currently working on a draft to address crowdfunding, use of senior designations, and changes to the federal securities laws.

2. HAR Title 16 Chapter 131 – Hawaii Cable Communication Systems

Division is working on draft language to update chapter and amend HAR § 16-131-70 to conform with HRS § 440G-8.3, which allows the Director to designate public, educational, and governmental access organizations exempt from the requirements of HRS Chapter 103D.

3. HAR Title 16 Chapter 24 – Money Transmitters

Rules are being reviewed for updates needed to conform to HRS Chapter 489D and DFI's current processes. Anticipated areas of amendment include bond and security device requirements, hourly exam fee, and application processes.

4. HAR Title 16 Chapter 25 – Application Procedures Relating to Hawaii Financial Institutions

Rules are being reviewed for updates needed to conform to HRS Chapter 412 and DFI's current processes. Anticipated areas of amendment include deleting outdated references to certain fees, and application processes.

5. HAR Title 16 Chapter 28 – Escrow Depositories

Rule are being reviewed for updates needed to conform to HRS Chapter 449 and DFI's current processes. Anticipated areas of amendment include fidelity bond and E&O provisions, and application processes.

6. HAR Title 16 Chapter 35 – Secure and Fair Enforcement for Mortgage Licensing Act (proposed new chapter)

DFI plans to move forward with a public hearing on proposed rules for Chapter 454F, HRS. The rules primarily concern the Mortgage Loan Recovery Fund and have been reviewed by the SBRRB.

- 7. HAR Title 16 Chapter 71 – Accountancy**
The appropriate Board is currently working on a draft.
- 8. HAR Title 16 Chapter 72 – Acupuncture Practitioners**
The appropriate Board is currently working on a draft.
- 9. HAR Title 16 Chapter 73 – Barbers**
The appropriate Board plans to work on a draft.
- 10. HAR Title 16 Chapter 74 – Boxing**
The Commission is currently working on a draft.
- 11. HAR Title 16 Chapter 76 – Chiropractors**
The appropriate Board plans to work on a draft.
- 12. HAR Title 16 Chapter 77 – Contractors**
A public hearing was held in November 2017 (Work Incidental and Supplemental). The Board is also currently working on two sets of draft rules.
- 13. HAR Title 16 Chapter 78 – Cosmetology**
The appropriate Board is currently working on a draft.
- 14. HAR Title 16 Chapter 79 – Dentists and Dental Hygienists**
The appropriate Board is currently working on a draft.
- 15. HAR Title 16 Chapter 81 – Elevator Mechanics**
The appropriate Board is planning to work on a draft.
- 16. HAR Title 16 Chapter 84 – Massage Therapy**
The appropriate Board is currently working on a draft.
- 17. HAR Title 16 Chapter 85 – Medical Examiners**
The appropriate Board is currently working on a draft relating to physician assistants.
- 18. HAR Title 16 Chapter 8 – Motor Vehicle Industry**
The appropriate Board is planning to work on a draft.
- 19. HAR Title 16 Chapter 88 – Naturopaths**
The appropriate Board is currently working on a draft.
- 20. HAR Title 16 Chapter 89 – Nurses**
The appropriate Board, on May 25, 2018, sent a request to the Governor to hold a public hearing.
- 21. HAR Title 16 Chapter 92 – Optometrists**
The appropriate Board is currently working on a draft.
- 22. HAR Title 16 Chapter 94 – Pest Control Operators**
The appropriate Board received SBRRB approval and is being prepped to send to the Governor for approval to hold a public hearing.

- 23. HAR Title 16 Chapter 95 – Pharmacy and Pharmacists**
The Board is currently discussing whether to proceed with rule amendments.
- 24. HAR Title 16 Chapter 97 – Private Detectives and Guards**
The Board is currently working on a draft.
- 25. HAR Title 16 Chapter 99 – Real Estate Brokers and Salespersons**
The Commission is currently working on a draft.
- 26. HAR Title 16 Chapter 100 – Speech Pathologists and Audiologists**
The Board is currently discussing whether to proceed with rule amendments.
- 27. HAR Title 16 Chapter 106 – Timesharing**
The Program is currently working on a draft.
- 28. HAR Title 16 Chapter 110 – Physical Therapy**
The Board is currently working on a draft.
- 29. HAR Title 16 Chapter 114 – Real Estate Appraisers**
The Program is currently working on a draft.
- 30. HAR Title 16 Chapter 115 – Professional Engineers, Architects, Surveyors, and Landscape Architects**
The Board is currently working on a draft.
- 31. HAR Title 16 Chapter 116 – Travel Agencies**
The Program is currently working on a draft.
- 32. HAR Title 16 Chapter 119 – Condominium (514B)**
The Commission is currently working on a new chapter of rules.

Public Utility Commission

Act 108, Session Laws of Hawaii 2014, transferred the Public Utilities Commission (PUC) from Department of Budget and Finance (B&F) to Department of Commerce and Consumer Affairs (DCCA). The numbering system for the Hawaii Administrative Rules uses different numbers for different departments. The B&F rules are in Title 6, and the DCCA rules are in Title 16.

The complete list of PUC's rules is shown below. The rules will move in stages, starting with the ones that can move as-is and that are referenced by other sections.

- 1. HAR Title 6 Chapter 60 – Standards for Electric and Gas Utility Service**
To be moved from Title 6 to Title 16 per Act 108, Session Laws of Hawaii (SLH) 2014; review required.
- 2. HAR Title 6 Chapter 61 – Rules of Practice and Procedure**
To be moved from Title 6 to Title 16 per Act 108, SLH 2014, substantially as-is.

3. **HAR Title 6 Chapter 68 – Investigation and Enforcement of Laws Governing Public Utilities, Motor Carriers, and Water Carriers**
To be moved from Title 6 to Title 16 per Act 108, SLH 2014, substantially as-is.
4. **HAR Title 6 Chapter 68 – Investigation and Enforcement of Laws Governing Public Utilities, Motor Carriers, and Water Carriers**
To be moved from Title 6 to Title 16 per Act 108, SLH 2014, substantially as-is.
5. **HAR Title 6 Chapter 73 – Installation, Operation, and Maintenance of Overhead and Underground Electrical Supply and Communication Lines**
To be moved from Chapter Title 6 to Title 16 per Act 108, SLH 2014; review required.
6. **HAR Title 6 Chapter 74 – Standards for Small Power Production and Co-generation**
To be moved from Title 6 to Title 16 per Act 108, SLH 2014; review required.
7. **HAR Title 6 Chapter 76 – Shared Tenant Service**
To be moved from Title 6 to Title 16 per Act 108, SLH 2014; review required.
8. **HAR Title 6 Chapter 79 – Aggregator and Operator Service**
To be moved from Title 6 to Title 16 per Act 108, SLH 2014; review required.
9. **HAR Title 6 Chapter 80 – Competition in Telecommunications Services**
To be moved from Title 6 to Title 16 per Act 108, SLH 2014; review required.
10. **HAR Title 6 Chapter 81 – Universal Service Fund**
To be moved from Title 6 to Title 16 per Act 108, SLH 2014; review required.
11. **HAR Title 6 Chapter 82 – Pay Telephone Service**
To be moved from Title 6 to Title 16 per Act 108, SLH 2014; review required.
12. **HAR Title 6 Chapter 83 – Hawaii One Call Center Subsurface Installation Damage Prevention Program**
To be moved from Title 6 to Title 16 per Act 108, SLH 2014; review required.

Phase 1 – Move 4 chapters substantially as-is

Four of the chapters will move, substantially as-is, from B&F (Title 6) to DCCA (Title 16). To change the numbers requires the simultaneous repeal of the existing chapters (in the B&F title) and adoption of new chapters (in the DCCA title). The existing and new chapters are provided below:

Repeal: **HAR Title 6 Chapter 61 – Rules of Practice and Procedure before the Public Utilities Commission**

Adopt: **HAR Title 16 Chapter 601 – Rules of Practice and Procedure before the Public Utilities Commission**

Repeal: **HAR Title 6 Chapter 63 – Motor Carrier Tariffs and Schedules**

Adopt: **HAR Title 16 Chapter 603 – Motor Carrier Tariffs and Schedules**

Repeal: **HAR Title 6 Chapter 65 – Water Carriers**

Adopt: **HAR Title 16 Chapter 605 – Water Carriers**

- Repeal: **HAR Title 6 Chapter 68 – Investigation and Enforcement of Laws Governing Public Utilities, Motor Carriers, and Water Carriers**
- Adopt: **HAR Title 16 Chapter 608 – Investigation and Enforcement of Laws Governing Public Utilities, Motor Carriers, and Water Carriers**

Two of these chapters are broadly applicable (Rules of Practice and Procedure, and Enforcement), referenced by and affecting the other sections and all regulated entities. Once these two chapters are moved into the proper title, they can be referenced by the other industry-specific sections and any changes to the other sections can be reviewed in context.

The other two chapters (6-63 and 6-65) were referenced by number in the policies and procedures chapter (6-61). By moving chapters 6-63 and 6-65 at the same time, the correct chapter numbers (16-603 and 16-605) could be referenced by the new policies and procedures chapter (16-601).

Phase 2 – Review ALL sections for updates; propose relevant amendments, with input from the affected entities.

Once the basic sections (Rules of Practice and Procedure, and Enforcement) are in place with their proper numbers, the industry-specific chapters can be reviewed and amended, repealed, or new rules put into place, as appropriate and other actions take place, it will be possible to use the correct section numbers when referring to the practice and procedure or enforcement chapters:

1. **HAR Title 6 Chapter 60 – Standards for Electric and Gas Utility Service**
2. **HAR Title 6 Chapter 62 – Rules and Regulations to be Observed by Motor Carriers**
3. **HAR Title 6 Chapter 63 – Motor Carrier Tariffs and Schedules**
4. **HAR Title 6 Chapter 65 – Water Carriers**
5. **HAR Title 6 Chapter 73 – Installation, Operation, and Maintenance of Overhead and Underground Electrical Supply and Communication Lines**
6. **HAR Title 6 Chapter 74 – Standards for Small Power Production and Co-generation**
7. **HAR Title 6 Chapter 76 – Shared Tenant Service**
8. **HAR Title 6 Chapter 79 – Aggregator and Operator Service**
9. **HAR Title 6 Chapter 80 – Competition in Telecommunications Services**
10. **HAR Title 6 Chapter 81 – Universal Service Fund**
11. **HAR Title 6 Chapter 82 – Pay Telephone Service**
12. **HAR Title 6 Chapter 83 – Hawaii One Call Center Subsurface Installation Damage Prevention Program**

The two chapters of general applicability that moved over without changes to content (16-601 and 16-608) will also be reviewed and updated, as appropriate.

Department of Defense

Department of Defense performed an extensive review of existing rules and statutes that resulted in the conclusion that there were no amendments or repeals made during 2016. In addition, a comprehensive survey of bills was introduced in 2017, sent to the Governor, and all Acts signed into law revealed none that would affect small business.

Department of Hawaiian Home Lands

Department of Hawaiian Home Lands (DHHL) currently does not have any administrative rules to be amended or repealed, based upon any new, amended, or repealed statute; and DHHL did not adopt any rules during 2016.

Department of Health

The following outlines a list of rules adopted during the prior year that affect small business, and a report describing the specific public purpose or interest for adopting the respective rules that affect small business and any other reasons to justify their continued implementation.

Medical Division

- 1. HAR Title 11 Chapter 50 – Food Safety Code**
Justification – Impact to small business; SBRRB reviewed and approved; currently waiting for approval by the Governor on final rules.
- 2. HAR Title 11 Chapter 103 – Licensure and Certification Fees for Health Care Facilities and Agencies**
Justification – Impact to small business; SBRRB reviewed and approved; Governor approved for hearing, hearing to be scheduled.
- 3. HAR Title 11 Chapter 143 – Licensure and Certification Fees for Health Care Facilities and Agencies**
Justification – No small business impact; amendment increases the fee for the newborn screening kit from \$55.00 to \$99.00 and adds Severe Combined Immunodeficiency Disease to Hawaii's panel of test.
- 4. HAR Title 11 Chapter 216 – Disability and Communication Access Board Rules of Practice and Procedures**
Justification – No small business impact; final rules have been approved. Amendment clarifies that the Disability and Communication Access Board shall review public accommodations and commercial facilities on public land and projects that are intended to be transferred to the State or a County.

Environmental Division

- 5. HAR Title 11 Chapter 25 – Certification of Public Water System Operators**
Justification – Impact to small business; SBRRB reviewed and approved. Awaiting approval by the Governor on final rules (new and amendments to rules).

A list of rules to be amended or repealed, based upon any new, amended or repealed statute:

Medical Division

- 6. HAR Title 11 Chapter 106 – Background Check**
Justification – Consolidation of all background check rules is proposed. Office of Health Care Assurance is working on background check rules along with Office of Human Services. Rules are drafted but DOH would like to consolidate background check rules for continuity. This may help to save time and costs for background check services for the department and providers of services.

Environmental Division

7. **HAR Title 11 Chapters 72 and 72.1 – State Comprehensive Emergency Medical Services System**
Justification – Update existing rules, repeal of HAR 72, adopt HAR 72.1 Comprehensive Emergency Medical Services System; finalizing draft rules.
8. **HAR Title 11 Chapter 110.1 – Certification of Adult Foster Homes**
Justification – Updating rules due to Federal Statutory changes; finalizing draft rules.
9. **HAR Title 11 Chapters 117 and 117.1 – Vital Statistics**
Justification – Updating existing rules, repeal of HAR 117, adopt 117.1. Financial draft rules.
10. **HAR Title 11 Chapters 177 and 177.1 - Certification Standards for Substance Abuse**
Justification – Drafting new rules pursuant to repeal of HAR 177, adoption of new rules HAR 177.1; finalizing draft rules.
11. **HAR Title 11 Chapter 157 – Examination and Immunization**
Justification – To be heard before the SBRRB, July 19, 2017 due to impact on small business.
12. **HAR Title 11 Chapter 164.2 – Tuberculosis**
Justification – Obtaining public hearing approval by Governor.
13. **HAR Title 11 Chapter 200 - Title**
Justification – Rules are being amended to reflect changes in procedures. Rules will be drafted within a couple of months and target final rules approval by the end of 2017. These rules will impact small business.
14. **HAR Title 11 Chapter 201 - Title**
Justification – Rules are being amended to reflect changes in procedures. Rules will be drafted within a couple of months and target final rules approval by the end of 2017. These rules will impact small business.

Department of Human Services

The following outlines a list of rules adopted during the prior year that affect small business, and a report describing the specific public purpose or interest for adopting the respective rules that affect small business and any other reasons to justify their continued implementation.

1. **HAR Title 17 Chapter 795 – Supporting Employment Empowerment (SEE) Program**
Justification – The SEE Program is a business-friendly program that transforms lives by helping Temporary Assistance for Needy Families (TANF) cash assistance recipients break multi-generational cycles of poverty, find rewarding jobs in the private sector, and stay engaged in gainful employment. SEE Program provides on-the-job training and employment opportunities with private sector employers for First-To-Work (FTW) Program participants who may have little or no work experience or basic work skills. DHS subsidizes a portion of the participant's wages and direct/indirect costs that the

employer may incur such as fringe benefits, training, transportation, etc. Participating employers set and pay SEE employees' (FTW participants) wages and benefits.

Chapter 17-795 standardizes and outlines the requirements that businesses must meet to become a SEE employer; the payment process for participating employers to claim reimbursements for the wages that were paid to the participants; and the review process to resolve an employer's payment dispute.

Small businesses that wish to participate in the SEE Program as an employer are required to comply with Chapter 17-795. The rules do not adversely affect any small businesses as the requirements are aligned with the federal, state and/or county regulations that businesses are mandated to comply with to operate in Hawaii.

Rules to be amended or repealed, based upon any new, amended or repealed statute:

2. **HAR Title 17 Chapter 891.1 – Registration of Family Child Care Homes**
3. **HAR Title 17 Chapter 892.1 – Licensing of Group Child Care Centers and Group Child Care Homes**
4. **HAR Title 17 Chapter 895 – Licensing of Infant and Toddler Child Care Centers**
5. **HAR Title 17 Chapter 896 – Licensing of Before and After School Child Care Facilities**

There are reported to be no rules adopted during 7/1/2016 to 6/30/2017 that affect small businesses.

Department of Labor and Industrial Relations

A list of rules adopted during the prior year that affect small business, and a report describing the specific public purpose or interest for adopting the respective rules that affect small business and any other reasons to justify their continued implementation:

1. **HAR Title 12 Chapter 229 – General, Administrative and Legal Provisions**
Justification – Chapter 12-229 and 123-230.1 administered by the Hawaii Occupational Safety and Health Branch (HIOSH) – updates to the elevator rules with a mixed effect on small businesses, see detailed explanation in attached memorandum.
2. **HAR Title 12 Chapter 52.1 – Recording and Reporting Occupational Injuries and Illnesses**
Justification – HIOSH also amended this chapter to maintain conformity to federal law and to ensure continue federal funding.

The following outlines rules to be amended or repealed, based upon any new, amended or repealed statute:

3. **HAR Title 12 Chapter 15 – Medical Fee Schedule Rules**
Justification – Physicians and Providers of service other than physicians – Act 153 amends the definition of physician to include advanced practice registered nurses.

Providers of service other than physicians also require an amendment due to Act 1010 (SLH, 2016) which added a new section 386-21.1, HRS, to Workers' Compensation law that will allow physicians and providers of service to other than physicians for workers'

compensation claims to transmit treatment plans by mail or facsimile to an address provided by the employer.

Section 386-21(d) requires periodic updates to allowable workers' compensation medical charges which is in the process of being amended and intended to take effect on January 1, 2018.

Department of Land and Natural Resources

The following outlines a list of rules that affect small business to be amended, based on any new, amended, or repealed statute (period of July 1, 2015 through June 30, 2017).

- 1. Chapter 13 Title 74 Section 20 - Commercial Marine License Fee Increases**
- 2. Chapter 13- title 74 Section 46 - Marine Dealer Reporting Deadline**

The following outlines a list of rules that affect small business to be repealed based upon any new, amended, or repealed statute (period of July 1, 2015 through June 30, 2017).

- 3. Title 13 Chapter 256 Section 16 - Thrill Craft Operations; General Provisions and Section 17 - Recreational Thrill Craft Operations**

The following outlines a list of rules adopted (period of July 1, 2015 through June 30, 2017) that affect small business, and a report describing the specific public purpose or interest for adopting the respective rules that affect small business and any other reasons to justify their continued implementation.

- 4. HAR Title 13 Chapter 16 – Relating to Conveyances**

Justification – The reason for the rule changes was to encourage broader use of electronic recording and to update the fee schedule to simplify the fees charged and more accurately reflect the staff time involved.

The rules predominately affect individuals involved in any transaction (e.g. the person seeking a mortgage ends up paying the filing fee, a creditor often passes on the filing fee to the debtor, etc.) The proposed rule changes were sent to interested parties, such as the Hawaii Land Title Association and Hawaii Escrow Association throughout the amendment process. A public hearing was held, and no members of the public attended, and no testimony was provided.

The amendments are anticipated to result in increased e-recording for documents, which should over the long-term, save both time and expense for those needing to record documents with the Bureau of Conveyances (Bureau). The amendments updating the fee schedule are anticipated to clarify the filing fees associated with a transaction to facilitate compliance with the Federal Truth in Lending Act and support the Bureau's ability to maintain an efficient and effective state recording office.

- 5. HAR Title 13 Chapter 60.4 – Ka'upulehu Marine Reserve**

Justification – This was a community-based proposal to establish a Marine Reserve at Ka'upulehu, West Hawaii. The purpose was to provide a 10-year “no take” rest period to allow for the recovery of reef fish stocks prior to the implementation of a subsistence fishery management plan for the area. The 10-year duration of the Reserve is important

to give the Department enough time to monitor the recovery of fish stocks to assess the effectiveness of the rule.

6. HAR Title 13 Chapter 86.1 Sea Cucumbers

Justification – The new rules went into effect on January 10, 2016 and addressed the recent spike in the commercial consumptive harvest of sea cucumbers and generally managed the various other uses of these species. Specifically, the rules generally prohibited the take of sea cucumbers for sale for human consumption or for any other commercial purpose. There is a narrow exception carved out to allow for limited commercial harvest for aquarium purposes. This exception, which allows licensed commercial aquarium collectors to harvest two species of sea cucumber from Oahu waters only up to 20 per person per day and up to 3,600 per year for the entire fisher, is intended to keep the small commercial aquarium fishery open at the current level of take. The rules would also allow a small level of take for personal, non-commercial use.

The new rules had the desired effect in that the large scale commercial harvest of sea cucumbers for consumption was closed but still allowed some existing commercial aquarium to take to continue at a sustainable level. It is expected that the rule would need to continue in existence to prevent any new commercial food business from starting a sea cucumber fishery. It will take at least five years to determine what a reasonable take might be for this fishery, depending on resources to make an assessment, and the threat of a new business would be concerning.

7. HAR Title 13 Chapter 256-73.13 Ahu O Laka (Oahu) Safety Zone

Justification – Alcohol and illegal drugs have a much more powerful effect on people when combined with dehydration and the effects of the sun and ocean. Numerous incidents had resulted in serious injuries when large crowds of people gathered at the “sand bar” in Kaneohe Bay where, because of loopholes in local laws, people could drink alcoholic beverages in public without being cited. The Ahu O Laka Safety Zone was conceived as an area where alcohol and illegal drugs would be banned to reduce fighting and disorderly conduct on three three-day weekends in a year (Memorial Day, Independence Day and Labor Day), the weekends when most problems occurred.

This prohibition on possession and consumption of alcohol, narcotics and illegal drugs in the specified safety zone in Kaneohe Bay evolved from an emergency rule, to a rule with a sunset date, and finally into a permanent rule.

8. HAR Title 13 Chapter 256-162 – Kahalu’u Bay (Oahu) Ocean Waters

Justification – The Division of Boating and Ocean Recreation (DOBOR) initiated this rule amendment in response to community feedback about safety issues caused by a proliferation of commercial activity in the bay (predominantly surf schools), overcrowding in the water, and illegal vehicular parking issues.

The rule, as approved by the Board of Land and Natural Resources, modified the swim and surf zone designations and allowed for a total of four commercial surf instruction permits for this waterway. It also contained surf instruction to the surf zone and prohibited vessels in the swim zones. In the context of DOBOR rules, the definition of “vessel” includes surfboards.

The consensus of the public was that the controls placed on commercial activity in Kahalu’u Bay through this rule amendment would provide more opportunity for residents

to enjoy the Bay. The rule, drafted in cooperation with several community groups, was intended to “maintain the integrity of the bay as a popular recreational site.”

Department of Taxation

1. HAR Title 18 Chapter 231- Administration of Taxes

Justification – The adopted rules add an additional method for the Department and taxpayers to reach agreement before or during a tax appeal. Decreasing the number of outstanding tax controversies also decreases the administrative burden on the Tax Board or Review and the Tax Appeal Court.

DoTax adopted administrative rules relating to audit reconsideration, effective March 26, 2016. The adopted rules added two new sections which created an administrative mechanism for taxpayers to request the Department reconsider an assessment based on documentation or evidence that was not provided during the audit examination which led to the assessment or denial for refund.

2. HAR Title 18 Chapter 251, Rental Motor Vehicle, Tour Vehicle, and Car-Sharing Vehicle Surcharge Tax

Justification – The adopted rules are necessary to clarify how car-sharing organizations can report and pay the Car-Sharing Vehicle Surcharge Tax.

The Department adopted administrative rules relating to the Car-Sharing Vehicle Surcharge Tax, effective April 8, 2016. The adopted rules specify how to determine whether an entity is a “car-sharing organization” under section 251-1, HRS, specify how to determine when a rental period has begun and ended, and specify how to calculate the length of a rental period.

Department of Transportation

The following outlines rules to be amended or repealed, based upon any new, amended or repealed statute:

Highways Division

1. HAR Title 19 Chapter 133.2 – Periodic Inspection of Vehicles

Justification - Relates to motor vehicle inspections.

2. HAR Title 19 Chapter 135 – Periodic Inspection of Mopeds

Justification - Relates to the inspection of mopeds.

3. HAR Title 19 Chapter 141 – Motor Carrier Safety Regulations

Justification - HAR is a means whereby the State adopts the Federal Motor Carrier Regulations. This is a way of ensuring that the State complies with the regulations.

4. HAR Title 19 Chapter 142 – Periodic Safety Inspection of Motor Carrier Vehicles

Justification - Relates to the inspection of heavy vehicles which are motor carrier vehicles.

5. HAR Title 19 Chapter 145 – Hazardous Materials Regulations

Justification - HAR is a means whereby the State adopts the Federal Motor Carrier Safety Regulations that relate to the transportation of hazardous materials in quantities

large enough to require the transporting vehicle to be placarded. Adopting the regulations ensures that the State complies with the regulations.

University of Hawaii

The following outlines rules to be amended or repealed, based upon any new, amended or repealed statute:

1. HAR Title 20 Chapter 42 – Hawaii State Postsecondary Review Program

Justification – The University intends to repeal Chapter 20-42, which sets forth the rules and procedures governing the Hawaii Postsecondary Review Program established by Part II of HRS Chapter 305H. HRS Chapter 305H was repealed in 2006 and the postsecondary review responsibilities of the former program were moved to the Hawaii Department of Commerce and Consumer Affairs (DCCA) in 2013 when HRS Chapter 305AJ was enacted. Considering the review responsibilities to the DCCA, Chapter 20-42 serves no purpose and has been approved by Board of Regents for repeal.

The University believes that the repeal of Chapter 20-42 does not affect small business. On December 8, 2016, the University was informed that the Chair of the Small Business Regulatory Review Board (SBRRB) determined that the repeal of Chapter 20-42 does not pose an impact to small business, and therefore, did not require that a small business impact statement be submitted for review. With the approval of the Governor, public notice to repeal Chapter 20-42 was published, and there were no petitions filed during the public notice period which ended on May 31, 2017. Process to effectuate the repeal of this chapter is underway.

2. HAR Title 20 Chapter 25 – Hawaii Educator Loan Program

Justification – The University intends to amend Chapter 20-25, which provides guidelines and procedures for the administration of the Hawaii Educator Loan Program in conformance with the guidelines established in HRS Section 304A-701. The University seeks to amend Chapter 20-25 in response to statutory changes that were approved by the Hawaii State Legislature in 2007. In 2007, the Hawaii State Legislature changed the loan repayment period and the teaching service requirement from six years to seven years. Although the University has already implemented the changes, HAR Chapter 20-25 needs to be updated to provide consistency with the HRS.

The University believes that the amendments of Chapter 20-25 do not affect small business. On December 8, 2016, the University was informed that the chair of SBRRB had reviewed the proposed amendments to Chapter 20-25 and determined that said amendments do not pose an impact to small business. SBRRB, therefore, does not require that a small business impact statement be submitted for review. Given HRS Section 304A-701 specifically exempts the adoption of rules pertaining to the Hawaii Educator Loan Program from public notice and public hearing requirements of HRS Chapter 91, the proposed amendments to Chapter 20-25 are pending Governor's final approval.

The University did not adopt any rules during the period of July 1, 2016 through June 30, 2017.

Follow-up on Prior SBRRB Administrative Rule Reviews

The following twenty-seven (27) Hawaii Administrative Rules were previously reviewed by the SBRRB; current updates/final commentary are noted below:

Department of Agriculture

Division of Measurement Standards

1. HAR Title 4 Chapter 93 – Packaging and Labeling

Agency's Justification

This rule ensures that consumer commodities offered for sale in the State are correctly labeled as to their content identification and unit amount. The rule also defines specific identification regarding the Department of Agriculture's logo, "Island Fresh." The rules were established in 1981 and amended in 1995.

2006 Recommendation

Many products that are represented as Hawaiian-made and Hawaiian-grown are not. Rules need re-analysis and updating.

Response from Agency

A conversation with Mr. William Pierpont, Branch Chief of the Measurement Standards Branch on February 8, 2008 noted that the Review Board's comments that products represented as Hawaiian-made and Hawaiian-grown does not apply. Packaging and labeling requirements are implemented through the National Institute of Standards and Technology Handbook 130, 1993 edition, which are current. Further, the logo "Island Fresh" is completely different than "Hawaiian-made" and "Hawaiian-grown" therefore; no future plans to amend the rules are expected.

The SBRRB was not in agreement with the Agencies' response and justification. Therefore, a full analysis of this rule with a draft to be provided to the SBRRB by December 2009 is requested. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

Final Commentary

A discussion with DOA in 2018 reveals that the rules are in the process of being reviewed and will be updated accordingly; no date for completion has been determined.

Division of Plant Industry

2. HAR Title 4 Chapter 73 – Plant and Non-Domestic Animal Quarantine Plant Export Rules

Agency's Recommendations

This rule provides for export plant and plant products inspectional and dis-infestation treatment services that meet the requirements of the state or country of destination.

Agriculture is an important economic industry to the State of Hawaii.

From the inception of large-scale mono-crop production such as pineapple and sugarcane to the diversification of specialized crops, which include gourmet baby vegetables, exotic cut flowers and tropical fruits, as well as ornamental plants, now include the culture of various aquatic ornamental and food species. This is a far cry from the traditional plant crops grown historically in soil.

Because of this expansion, there has been an increased need to ship plants or plant products out of the State. Presently, this administrative rule provides for export plant and plant products' inspectional and disinfestations treatment services, which is provided by the Plant Quarantine Branch, which meets the requirements of the State or Country of destination; each State or Country has their own requirements that must be met before plants can enter their state or country. To implement the requirements, the Branch has the authority to impose nursery inspection fees as well as burrowing nematode testing fees, which may seem to impact small business. The necessary fee helps to defray the operational and travel costs borne to the Branch, which may be hampered by general budgetary constraints.

Without this administrative rule in place, the services provided by the Branch to certify plants going out of the state to other states or countries would not be possible. Programs such as the nursery certification program and the origin inspection program for cut flowers are administered through this rule. Although the rule imposes many restrictions on nurseries and the flower businesses, these requirements must be met or the destination state or country will not accept the plants or flowers being shipped or taken to the respective state or country. The rule was established in 1981.

2006 Recommendation

Rule amendments were submitted to the SBRRB in 2006; however, the Branch has subsequently pulled the rules for further analysis. The Branch is in the process of updating this rule; the SBRRB agrees the rule should be reviewed and revised.

Response from Agency

This rule provides an amendment to modify the nursery certification program and establish a compliance agreement program for exporting nurseries. The amendments will update rules based on new science and changing industry needs as well as stricter requirements for certifying nurseries. The Branch's targeted date for transmitting the draft rules to the Board of Agriculture for review is February 2009 with a public hearing has a projected date of June 2009. The SBRRB was in concurrence and will follow-up with the Agency.

Final Commentary

A discussion with DOA in 2018 revealed that the rules are currently "frozen" in terms of modification however because the statute governing these rules reflect a change in fees, proposed amendments regarding the fees may be brought forth in front of this Board within the next few years.

Division of Animal Industry

3. HAR Title 4 Chapter 16 – Cattle, Sheep, and Goats

Agency's Justification

The rules refer to the regulation of cattle, sheep and goats. Proposed rule amendments will enhance livestock disease management through testing and tracing back to flocks or origin and other housekeeping amendments. The amendments will also update the existing rules to allow Hawaii to remain consistent with the National Scrapie Eradication Program, require additional testing for incoming cattle, and additional permit requirements for incoming livestock as well as qualifications.

A quarantine order put in place for the intrastate movement of sheep and goats has

reduced the urgency to amend the rules as the Agency's targeted date for transmitting the draft rules to the Board of Agriculture for review was January 2008.

On February 14, 2008, Dr. James Foppoli, Administrator of Animal Industry Division, indicated that these rules are still in the process of being amended. The SBRRB will continue to monitor the status.

2006 Recommendation

The rules are 25 years old; the Agency has indicated that the rules are in process of being updated.

Final Commentary

A discussion with DoAg in 2018 indicated that these rules have been under review and in the process of being updating for several years; a completion of the updates is expected in 2020.

4. HAR Title 4 Chapter 17 – Swine

Agency's Justification

This rule authorizes the department to undertake disease control measures intended to control and eradicate certain disease of local and national economic significance or that may affect public health adversely. Preventing the introduction of diseases reduces the potential for animal losses due to death or poor growth and maintains the general health and welfare of domestic pigs.

The rule is justified due to the importance of disease surveillance, diagnosis and eradication on the economic viability of the swine industry and in protecting public health from infectious disease transmitted from animals to man. General health and welfare of livestock is enhanced through disease control and eradication activities, resulting in a more wholesome product for the Hawaii market and enhanced consumer confidence in Hawaii products. The rules were established in 1981.

On February 14, 2008, Dr. James Foppoli, Administrator of Animal Industry Division, indicated that these rules are still in the process of being amended. The Review Board will continue to monitor the status.

2006 Recommendation

The rules are 25 years old; the agency has indicated that the rules are in the process of being updated.

On February 14, 2008, Dr. James Foppoli, Administrator of Animal Industry Division, indicated that these rules are still in the process of being amended. The Review Board will continue to monitor the status.

Final Commentary

A discussion with DoAg in 2018 indicated that these rules have been under review and in the process of being updated for several years; a completion of the updates is expected in 2020.

5. HAR Title 4 Chapter 23 – Horses

Agency's Justification

This rule controls the importation of diseases and pests that affect horses. Preventing

the introduction of certain horse diseases and pests into Hawaii is essential to maintain a healthy horse population. In addition, freedom from certain diseases reduces the economic burden for horse owners resulting from illness and death. Since the majority of horses in Hawaii are pets, there is little impact on small business by these import requirements. The rules were established in 1949 and last amended in 1981. On February 14, 2008, Dr. James Foppoli, Administrator of Animal Industry Division, indicated that these rules are still in the process of being amended. The Review Board will continue to monitor the status.

2006 Recommendation

The rules are 25 years old; the Agency has indicated that the rules are in process of being updated.

Final Commentary

A discussion with DoAg in 2018 indicated that these rules have been under review and in the process of being updated for several years; a completion of the updates is expected in 2020.

Department of Commerce and Consumer Affairs

6. HAR Title 16 Chapter 73 – Barbers

Agency's Justification

The purpose of the rules is to implement licensing and regulation of barbers and rules under the department's regulatory authority. The rules are needed as they facilitate licensing and enforcement. The rules were established in 1994.

2006 Recommendation

The Agency indicated that the rules are in the process of being amended and are expected to be finalized within two years. The SBRRB is in concurrence with the Agency that the rules should be amended.

Response from Agency

The Agency plans to amend the rules to address public health and safety issues such as the exclusion or controlled use of implements, equipment, and activities that have been shown to adversely affect consumers if used or if used improperly. Additionally, descriptions of allowable exceptions to the place of practice will be expanded, and descriptions of exemptions from licensure will be included. The Agency's targeted date for transmitting the draft rules to the Department of the Attorney General for review was December 2007. The Agency has since updated this date by the latest, December 2009, and indicated that there has been activity on the amendments. The SBRRB is in concurrence and will follow-up with the Agency.

Final Commentary

To date, Chapter 16-73 Barbers has not been updated.

7. HAR Title 16 Chapter 74 - Boxing

Agency's Justification

The purpose of the rules is to implement licensing and regulation of the boxing industry under the department's regulatory authority. The rules are needed as they facilitate licensing and enforcement. They were established in 1981 and amended in 1991.

2006 Recommendation

The rules are arduous and long; the Agency has indicated that the rules are in the process of being amended and are expected to be finalized within a year. The Review Board is in concurrence with the Agency that the rules should be amended.

Response from Agency

The SBRRB expressed concerns that the rules are arduous and long. The Agency intends to amend the rules to: (1) remove outdated requirements that are no longer relevant; (2) update and conform the rules to the Federal Boxing Safety Act of 1996; and (3) implement statutory changes made by Act 135, Session Laws of Hawaii (SLH) 2004. The Agency's targeted date for transmitting the draft rules to the Department of the Attorney General for review is December 2007. The SBRRB is in concurrence with the Agency.

Final Commentary

A discussion with DCCA in 2018 indicated the following – The Boxing Commission has met only a few times since 2011 due to the lack of boxing events. Amendments were drafted, however, the Commissioners termed out and the new Commissioners requested that the process begin all over again. Another new draft is currently being worked on; no timeframe for completion has been given.

8. HAR Title 16 Chapter 75 - Cemeteries and Funeral Trusts

Agency's Justification

The purpose of the rules is to implement licensing and regulation of the cemetery and funeral trust industry under the department's regulatory authority. The rules are still needed as they facilitate licensing and enforcement. The rules were established in 1969 and amended in 1991.

2006 Recommendation

This industry has had its share of publicity. Full analysis and update should be performed.

Response from Agency

The SBRRB indicated that the industry has had its share of publicity and recommended that a full analysis and update be performed. The Agency plans to amend the rules to: (1) make them consistent with Act 188, SLH 2007; (2) incorporate current practices; and (3) update references to corporations to include limited liability companies. The Agency's targeted date for transmitting the draft rules to the Department of the Attorney General for review is August 2008.

The SBRRB is in concurrence with the Agency.

Final Commentary

A discussion with DCCA in 2018 has indicated that these rules are, by nature, quite sensitive to change, although changes have been discussed. No date has been determined for final updates.

9. HAR Title 16 Chapter 83 – Hearing Aid Dealers and Fitters

Agency's Justification

The purpose of the rules is to implement licensing and regulation of hearing aid dealers and fitters under the department's regulatory authority. The rules are necessary as they

facilitate licensing and enforcement. The rules were established in 1982 and amended in 1994.

2006 Recommendation

Since the rules were last amended 12 years ago, there have been huge changes in the industry. Full analysis and update should be performed.

Response from Agency

The SBRRB expressed concerns that the rules were last amended 12 years ago. Consequently, the SBRRB recommended that a full analysis and update be performed. The Agency intends to amend the rules to: (1) conform to the changes made by Act 88, SLH 1997 relating to establishing experience requirements for licensure and clarifying provisions for direct supervision of unlicensed individuals; (2) identify and clarify the examination and passing score required for licensure; (3) repeal references relating to re-examination; and (4) clarify the license renewal and license restoration requirements. The Agency's targeted date for transmitting the draft rules to the Department of the Attorney General for review was November 2008. An update by the Agency has revealed that the rule revisions are complete and are expected to be provided to the Review Board by June 2009. The SBRRB is in concurrence and will follow-up with the Agency.

Final Commentary

A discussion with DCCA in 2018 has indicated that amendments to the rules are moving forward with revisions, which include amending Subchapter 5, Examination, by repealing reference to re-examination, identifying the provider of the exam to include language "or its successor itself, and making changes to the renew and forfeiture sections. The amendments are "at the initial AG memo stage of the process."

10. HAR Title 16 Chapter 86 – Motor Vehicle Dealers and Salesmen

Agency's Justification

The purpose of the rules is to implement licensing and regulation of motor vehicle dealers and salesmen under the department's regulatory authority; they are necessary as they facilitate licensing and enforcement. The rules were established in 1981 and amended in 1993.

2006 Recommendation

The rules were last amended 13 years old. Full analysis and update should be performed.

Response from Agency

Because the rules were last amended 13 years ago, the SBRRB recommended that a full analysis and update be performed. The Agency does not envision submitting proposed rules sooner than December 2008 due to pending issues for the Motor Vehicle Industry Licensing Board requiring further research and analysis.

However, matters that are likely to be included in the proposed rules are intended to clarify areas relating to "dealer" (issues such as wholesale, retail, more than two vehicle sales per year, etc.), "premise" (issues such as approved zoning), "salesperson" (the effects of disclosure relating to criminal conviction), "consumer consultant," and "bond".

An update from the Agency revealed that the rule revisions are actively being worked on every other month when the board meets; a draft is expected to be provided to the Review Board by December 2009. The SBRRB is in concurrence and will follow-up with the Agency.

Final Commentary

To date, Chapter 16-86 Motor Vehicle Dealers and Salesmen has not been updated.

11. HAR Title 16 Chapter 87 – Motor Vehicle Repair Dealers and Mechanics

Agency's Justification

The purpose of the rules is to implement licensing and regulation of motor vehicle repair dealers and mechanics under the department's regulatory authority. The rules are necessary as they facilitate licensing and enforcement. The rules were established in 1976 and amended in 1989.

2006 Recommendation

The rules were last amended 15 years ago. Full analysis and update should be performed.

Response from Agency

Because the rules were last amended 15 years ago, the SBRRB recommended that a full analysis and update be performed. The Agency does not anticipate submitting proposed rules sooner than November 2008 due to pending issues for the Motor Vehicle Repair Industry Board requiring further research and analysis. However, matters that are likely to be included in the proposed rules are intended to clarify areas relating to "mechanic" (license types, motorcycle examination and experience requirements, etc.), "repair dealer" (requirements for place of business), "written estimate required and waiver of estimate," and "supervisory mechanic or head mechanic."

An update from the Agency revealed that the rule revisions are expected to be provided to the SBRRB by December 2009.

The SBRRB is in concurrence and will follow-up with the Agency.

Final Commentary

To date, Chapter 16-87, Motor Vehicle Repair Dealers and Mechanics has not been updated.

12. HAR Title 16 Chapter 101 – Veterinarians

Agency's Justification

The purpose of the rules is to implement licensing and regulation of veterinarians under the department's regulatory authority. The rules are necessary as they facilitate licensing and enforcement. The rules were established in 1967 and amended in 1986.

2006 Recommendation

The rules were last amended 20 years ago. Full analysis and update should be performed.

Response from Agency

Because the rules were last amended 20 years ago, the SBRRB recommended that a full analysis and update be performed. The Agency intends to align the rules with changes that have been made to licensing qualifications on the national level relating to

the: (1) content and format of the national licensing examination; (2) nationally-recognized foreign graduate program; and (3) qualifications of graduates of veterinary medical programs at schools outside of the U.S. and those that are not approved by the American Veterinary Medical Association. The Agency's targeted date for transmitting the draft rules to the Department of the Attorney General for review was December 2007.

An update from the Agency revealed that the rule revisions are expected to be provided to the SBRRB by December 2009. The SBRRB is in concurrence and will follow-up with the Agency.

Final Commentary

To date, Chapter 16-101 Veterinarians has not been updated.

13. HAR Title 16 Chapter 106 – Timesharing

Agency's Justification

The purpose of the rules is to implement licensing and regulation of timesharing under the department's regulatory authority. The rules are necessary as they facilitate licensing and enforcement. The rules were established in 1980 and amended in 1990.

2006 Recommendation

The rules are necessary to protect the general; the rules were last amended 16 years ago. Full Analysis and update should be performed.

Response from Agency

Because the rules were last amended 16 years ago, the SBRRB recommended that a full analysis and update be performed. The Agency plans to propose amendments that will: (1) simplify requirements (e.g. repeal certain renewal requirements such as submitting a title report for developers); (2) repeal unnecessary requirements (e.g. no longer require the filing of advertising and promotional materials); and (3) delete requirement that were repealed in the statute. The Agency's targeted date for transmitting the draft rules to the Department of the Attorney General for review was August 2008.

An update from the Agency revealed that the rules are actively being worked on with the industry and that rule revisions are expected to be provided to the SBRRB by June 2009. The SBRRB is in concurrence and will follow-up with the Agency

Final Commentary

A discussion with DCCA in 2018 has indicated that the amendments of the rules were stalled but currently the industry concerns have been resolved. The amendment is expected to be finalized, but no date has been given.

14. HAR Title 16 Chapter 117 – Activity Providers and Activity Desks

Agency's Justification

The rules implement licensing and regulate the activity providers and activity desks under the department's regulatory authority. They are necessary as they facilitate licensing and enforcement; the rules were established in 1995.

2006 Recommendation

There is substantial small business impact largely due to fraud in the industry. Full analysis and update should be performed.

Response from Agency

The SBRRB expressed concerns that there is substantial small business impact largely due to fraud in the industry. Consequently, the SBRRB recommended that a full analysis and update be performed. The Agency has reviewed the rules and determined that no substantive amendments are necessary at this time. The Agency has received an average of 18 complaints a year (there are approximately 325 registered activity desks) over the past four years. (Note: in 2007, of the current 54 complaints, six are against licensed activity desks and 48 are for unlicensed activity, mostly against one company).

The SBRRB is in concurrence with the Agency at this time. Although the Agency determined there to be no substantive changes in 2008, due to the noted substantial fraud in the industry, the Agency will, again, be approached by the SBRRB.

Final Commentary

A discussion with DCCA in 2018 indicated that these rules are not in the process of being amended. They will be reviewed in the near future; at that time, a determination will be made if modifications are warranted.

Public Utilities Commission

15. HAR Title 6 Chapter 62 – Motor Carrier Rules and Classification of Property and Passenger Carriers

Agency's Justification

Pursuant to HRS Chapter 271, the rules are necessary to administer, execute, and enforce the intent of the motor carrier laws, particularly the policies set forth under HRS Section 271-1. The rules were established in 1992.

2006 Recommendation

Since the rules have been established, there have been many changes to the industry. Full analysis and update should be performed.

Response from Agency

In response to the SBRRB's request, the Commission solicited proposals for amendments to HAR Chapter 6-62, "Motor Carrier Rules and Classification of Property and Passenger Carriers," and HAR Chapter 6-63, "Motor Carrier Tariffs and Schedules" from motor carrier industry professional organizations. Hawaii Tourism Authority (HTA) proposed a change to 6-62-20, Motor Vehicle Marking.

Under HTA's recommendation, motor carriers that are subject to State and Federal motor carrier safety regulations would mark their motor vehicles pursuant to the federal rules on marking of commercial motor vehicles. Those that are not subject to the motor carrier safety regulations would have the option to follow the Commission's existing rules on motor vehicle marking. No other comments or recommendations were submitted for the Commission's consideration.

Upon review and analysis of HAR chapters 6-62 and 6-63 and the response from HTA, the Commission has decided that: (a) Suggested revisions to HAR Chapter 6-62 are not required at this time but will be considered in any subsequent rulemaking proceedings; and (b) HAR Chapter 6-63 does not currently require any revisions. Except for HTA, the organizations appear to be satisfied with the existing rules.

With respect to HTA's proposed modification, the recommendation is not substantively critical for effective motor carrier regulation at this time. The recommendation, as described above, does not call for a substantial change to the existing section except to apply the federal rules on marking of commercial motor vehicles to certain motor carriers.

The SBRRB is not in agreement with the Agencies' response and justification. Therefore, a full analysis of this rule with a draft to be provided to the SBRRB by December 2009 is requested. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

Final Commentary

The rules are to be moved from Title 6 to Title 16 per Act 108, SLH 2014; review required; amendments likely.

16. HAR Title 6 Chapter 63 – Motor Carrier Tariffs and Schedules

Agency's Justification

As required by HRS Chapter 271, the rules are necessary to govern the form and content of tariffs and schedules of common and contract carriers by motor vehicles; specifically, those tariffs and schedules described under HRS §§ 271-20, 271-21, and 271-22. The rules were established in 1994.

2006 Recommendation

Rules are twelve years old. Full analysis and update should be performed.

Response from Agency

In response to the SBRRB's request, the Commission solicited proposals for amendments to HAR Chapter 6-62, "Motor Carrier Rules and Classification of Property and Passenger Carriers" and HAR Chapter 6-63, "Motor Carrier Tariffs and Schedules," from motor carrier industry professional organizations. Hawaii Tourism Authority (HTA) proposed a change to 6-62-20, Motor Vehicle Marketing.

Under HTA's recommendation, motor carriers that are subject to State and Federal motor carrier safety regulations would mark their motor vehicles pursuant to the federal rules on marking of commercial motor vehicles. Those that are not subject to the motor carrier safety regulations would have the option to follow the Commission's existing rules on motor vehicle marking. No other comments or recommendations were submitted for the Commission's consideration.

Upon review and analysis of HAR chapters 6-62 and 6-63 and the response from HTA, the Commission has decided that: (a) Suggested revisions to HAR Chapter 6-62 are not required at this time but will be considered in any subsequent rulemaking proceedings; and (b) HAR Chapter 6-63 does not currently require any revisions. Except for HTA, the organizations appear to be satisfied with the existing rules.

With respect to HTA's proposed modification, the recommendation is not substantively critical for effective motor carrier regulation at this time. The recommendation, as described above, does not call for a substantial change to the existing section except to apply the federal rules on marking of commercial motor vehicles to certain motor carriers.

The SBRRB is not in agreement with the Agencies' response and justification. Therefore, a full analysis of this rule with a draft to be provided to the SBRRB by December 2009 is requested. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

Final Commentary

The rules are to be moved from Title 6 to Title 16 per Act 108, SLH 2014, substantially as-is.

17. HAR Title 6 Chapter 65 – Water Carriers

Agency's Justification

As required by HRS Chapter 271G, the rules are necessary to govern the following: (1) Form and content of tariffs of water carriers of property and passengers, and the information and data to be submitted for the establishment of new or revised rates, fares, or charge; and (2) Filing of financial and statistical information by water carriers of property and passengers. It appears the rules have not been amended since first promulgated in 1976.

2006 Recommendation

Rules are over 30 years old; full analysis and update should be performed.

Response from Agency to Review Board's Recommendation

The Commission has determined that HAR Chapter 6-65, "Water Carriers" do not require revisions at this time, as they were last revised in 1999. Thus, the assumption noted as a concern that the "rules are over 30 years old" is an incorrect assumption. The SBRRB is not in agreement with the Agencies' response and justification. Therefore, a full analysis of this rule with a draft to be provided to the SBRRB by December 2009 is requested. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

Final Commentary

The rules are to be moved from Title 6 to Title 16 per Act 108, SLH 2014, substantially as-is.

Department of Health

Medical Division

18. Chapter 11-89 – Services for Developmental Disabilities Domiciliary Homes

Agency's Justification

The rules establish minimum requirements for the certification and licensure of developmental disabilities domiciliary homes for adult individuals with developmental disabilities. §333 F-2(c) (4), HRS, requires that developmental disabilities domiciliary establish a continuum of residential alternatives in the community which includes the provision of domiciliary homes for adult individuals with developmental disabilities.

These rules set standards and provides for the regulation of such homes through certification and licensure. This is needed to ensure the health and safety of this vulnerable population. The rules were established in 1992.

2006 Recommendation

Standards have changed, and enforcement of the rules is different since the rules were established in 1992. Therefore, some provisions should be deleted. Re-analysis and update of rules should be performed. *Note:* Agency's website indicates rules are pending amendment and compilation.

Response from Agency

On March 20, 2008, correspondence from Health Director Fukino, M.D., indicated that Office of Health Care Assurance will continue to keep in mind the SBRRB's recommendations as efforts continue regarding administrative rule analysis and revision.

As the population regarding developmental disabilities domiciliary homes is growing and identified in the community, it is recommended that the Agency address the needs of the population and bring these rules and regulations regarding services to this population current. The SBRRB strongly recommends that these rules are amended with a first draft delivered to this Board by December 2009. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

Final Commentary

As of the printing of this report, DOH's website states that **under Chapter 11-89, Services for Developmental Disabilities Domiciliary Homes, the rules are "pending amendment & compilation."**

19. Chapter 11-95 – Freestanding Surgical Outpatient Facilities

Agency's Justification

The rules establish minimum requirements for the protection of the health, welfare and safety of patients, personnel, and the public in freestanding surgical outpatient facilities; in all instances where other agencies of government have similar regulations, the stricter rules shall apply.

These rules contain state licensure requirements. Such licensure ensures that the federal and medical standards for health facilities are being met. Thus, licensure is a pre-requisite for federal reimbursement. Without licensure, the health and safety of patients, employees and the public will be compromised and federal reimbursement will not be realized. The rules were established in 1986.

2006 Recommendation

Better defined guidelines and standards are needed, especially with safety standards. The rules are too vague and are 20 years old. Re-analysis and update of rules should be performed. *Note:* Agency's website indicates rules are pending amendment and compilation.

Response from Agency

On March 20, 2008, correspondence from Health Director Fukino, M.D., indicated that Office of Health Care Assurance will continue to keep in mind the Small Business Regulatory Review Board's recommendations as efforts continue regarding administrative rule analysis and revision.

The SBRRB will monitor these rules for updates from the Agency.

Updated/Current Commentary

As of the printing of this report, DOH's website states that under Chapter 11-95, Freestanding Surgical Outpatient Facilities rules are "pending repeal and replacement by Chapter 92."

20. Chapter 11-96 – Freestanding Adult Day Health Centers

Agency's Justification

The rules establish minimum requirements for the protection of health, welfare, and safety of clients and the public in adult day care centers. These rules contain state licensure requirements. Licensures of these settings are critical to ensure provision of care is within current federal and medical standards to ensure the health and safety of patients, employees and the public. The rules were established in 1991.

2006 Recommendation

The Agency has indicated that the rules need revisions; rules are 15 years old. The SBRRB agrees with the Agency that these rules should be reviewed and revised.

Response from Agency

On March 20, 2008, correspondence from Health Director Fukino, M.D., indicated that Office of Health Care Assurance will continue to keep in mind the Small Business Regulatory Review Board's recommendations as efforts continue regarding administrative rule analysis and revision.

These are essential rules and must be clear and separate as well as distinguished from other adult programs because the centers are freestanding. The SBRRB concurs.

Final Commentary

To date, Chapter 11-96 Freestanding Adult Day Health Centers has not been updated.

21. Chapter 11-97 – Home Health Agencies

Agency's Justification

These rules outline licensing requirements for Home Health Agencies (HHA) and defines penalty for those who violate this chapter. HHA has the option of being Medicare/Medicaid certified to receive reimbursement, and there is an increasing interest for HHA's that receive private funding, to be licensed, to be reimbursed by private insurance and/or long-term care insurance. Such licensing not only insures the health and safety of patients, employees and the public, but also looks toward reducing the abuse and exploitation of the elderly. The rules were established in 1982.

2006 Recommendation

Agency indicated the rules need revisions; rules are 25 years old and exhibit inconsistent standards – standards and accreditation need to be in place. The SBRRB agrees with the Agency that these rules should be reviewed and revised.

Response from Agency

On March 20, 2008, correspondence from Health Director Fukino, M.D., indicated that Office of Health Care Assurance will continue to keep in mind the Small Business Regulatory Review Board's recommendations as efforts continue regarding administrative rule analysis and revision.

Currently, procedures are being enforced that are not reflected in the rules. If enforcement is being sought, those procedures should be incorporated in the rules. The SBRRB strongly recommends that these rules are amended with a first draft delivered to the SBRRB by December 2009. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

Final Commentary

To date, Chapter 11-97 Home Health Agencies has not been updated.

22. Chapter 11-99 – Intermediate Care Facilities for the Mentally Retarded

Agency's Justification

The rules establish minimum requirements for the protection of the health, welfare, and safety of patients, personnel, and the public in small intermediate care facilities for the mentally retarded. In all instances where other agencies of government have similar regulations, the stricter rules shall apply.

The Intermediate Care Facility/Mentally Retarded population is the most vulnerable of the disabled population. These regulations provide for assurance of their safety and welfare. The state licensure regulations are mandatory to provide at least minimal assurance for safety and oversight of such individuals who otherwise are not able to care for themselves. The rules were established in 1985.

2006 Recommendation

Agency has indicated that the rules need revisions; rules are over 20 years old. The SBRRB agrees with Agency that these rules should be reviewed and revised.

Response from Agency

On March 20, 2008, correspondence from Health Director Fukino, M.D., indicated that Office of Health Care Assurance will continue to keep in mind the SBRRB's recommendations as efforts continue regarding administrative rule analysis and revision.

It is very important that these rules are updated because there is a greater population within the community so the resources are limited to them. The SBRRB strongly recommends that these rules be reviewed and amended with a first draft delivered to the SBRRB by December 2009. A memorandum will be sent to the Agency outlining this request with a copy sent to the Governor.

Final Commentary

To date, Chapter 11-99 Intermediate Care Facilities for the Mentally Retarded Agency's Justification has not been updated.

Environmental Division

Noise, Radiation and Indoor Air Quality Branch

23. Chapter 11-39 – Air Conditioning & Ventilation System

Agency's Justification

The rules are required for core public health. The rules implement §321-11 (13), HRS for the public health and safety respecting any place or building where noisome, noxious trades and manufacturing are carried on, or intended to be carried on by seeking to assure adequate and healthful design, construction, installation and operation of comfort air conditioning and ventilating systems; and provide minimum ventilating requirements.

Public health and safety are adversely impacted in the absence of regulating mechanical ventilation systems providing outside air, supply air, return air, and exhaust air. Inappropriate and inadequate ventilation can lead to carbon monoxide poisoning in parking garages, indoor air problems, and other detrimental health effects. The rules were established in 1983.

2006 Recommendation

The rules need updating. Re-analysis and update of rules should be performed. *Note:* Agency's website indicates rules are pending repeal and replacement by chapter 48.

Response from Agency

HAR Chapter 11-48, the replacement for HAR Chapter 11-39, has been completed and reviewed by the program's assigned deputy attorney general. An informational meeting on the proposed rule was held on February 8, 2008. Over fifty individuals representing mechanical engineering, architecture, state and county government, property managers, were in attendance. The agency is in the process of implementing a small business review committee for the new rule and expected to complete the small business impact statement by the end of October 2008.

Final Commentary

As of the printing of this report, DOH's website states that **under Chapter 11-39, Air Conditioning & Ventilating rules are "pending repeal/replacement by Chapter 48."**

24. Chapter 11-44 – Radiologic Technology Board and Radiologic Technology Rules Agency's Justification

The purpose of the rules is required for public health and safety. The rules establish minimum state standards of education, training and experience for persons who apply x-rays to human beings for diagnostic purposes or ionizing radiation to human beings for therapeutic purposes, or radiopharmaceuticals to human beings for diagnostic and therapeutic purposes.

Unlicensed and untrained personnel can cause unnecessary exposure of ionizing radiation to medical providers, patients, and the public. Ionizing radiation is a known carcinogen. This rule is necessary to ensure only properly trained and qualified individuals practice radiologic technology. The rules were established in 1989.

2006 Recommendation

These rules need updating. Re-analysis and update of rules should be performed.

Response from Agency

A small business committee was created to review proposed revisions for this rule. The SBRRB reviewed these amended rules in June 2008 and recommended that they proceed to public hearing.

Final Commentary

To date, Chapter 11-44 Radiologic Technology Board and Radiologic Technology Rules has not been updated.

25. Chapter 11-45 – "Radiation Control"

Agency's Justification

The rules are required for core public health. The rules set minimum standards for all

persons and facilities that receive, possess, use, transfer, own or acquire any source of radiation, all persons who install and service sources of radiation, and all persons who provide radiation services.

Controlling the use of ionizing radiation from x-ray systems and non-NRC radioactive materials is essential in minimizing unnecessary exposure to medical providers, patients, and the public. Ionizing radiation is a known carcinogen. Following the stochastic theory, any amount of ionizing radiation exposure may cause long term effects. The rules were established in 1999.

2006 Recommendation

The rules need updating. Re-analysis and update of rules should be performed.

Response from Agency

This rule is currently being revised to reflect current national standards and the Suggested State Regulations for the Control of Radiation developed by the Conference of Radiation Control Program Directors, Inc. Due to the volume of technical changes, a draft revision is not expected before January 2009.

The SBRRB is in concurrence of the proposed modifications to the rules and will follow-up with the agency.

Final Commentary

As of the printing of this report, DOH's website states that under Chapter 11-45, Radiation Control, the rules are "pending amendment & compilation."

Department of Transportation

Harbors Division

26. Chapter 19-43 - Motor Vehicles

Agency's Justification

These rules govern the applicability of statutes, traffic codes and ordinances; jurisdiction of harbor master over vehicles; licensing, safety inspection and insurance; operation of vehicles; traffic controls; parking fees and charges; removal of vehicles; ground transportation; admittance into cargo storage areas; speed limits; emergency type vehicles; vehicles classified as cargo; parking stalls; reserved parking stalls; tow zone or tow-away zone; authority to remove illegally parked cars; parking prohibitions; curb markings; traffic lane markings; parking zones; restricted or special parking; parking meter zone; designation of parking meter stalls; placement of parking meters; method of parking; meter operating hours; operation of parking meters; reserved parking zone; parking time limits; and parking by permit; violations. The rules were established in 1974.

The rules authorize the collection of parking fees and charges, towing and impounding of vehicles, and permits for operating vehicles, which could result in significant economic impacts to small businesses operating in commercial harbors.

2006 Recommendation

The rules are 32 years old. Rules should be reviewed and updated.

Response from Agency

This rule authorizes the collection of parking fees and charges, towing and impounding of vehicles, and permits for operating vehicles, which could result in significant economic impacts to small businesses operating in commercial harbors.

These rules also governing applicability of statutes, traffic codes and ordinances; jurisdiction of harbor master over vehicles; licensing, safety inspection and inspection; operation of vehicles; traffic controls; parking fees and charges; removal of vehicles; ground transportation; admittance into cargo storage areas; speed limits; emergency type vehicles; vehicles classified as cargo; parking stalls; reserved parking stalls; tow zone or tow-away zone; authority to remove illegally parked cars; parking prohibitions; curb markings; traffic lane markings; parking zones; restricted or special parking; parking meter zone; designation of parking meter stalls; placement of parking meters; method of parking; meter operating hours; operation of parking meters; reserved parking zone; parking time limits; parking by permit; and violations.

A meeting held on November 30, 2007 with Director Barry Fukunaga, revealed that these rules will be updated regarding implications due to security in 1 – 2 years. The SBRRB is in concurrence and will follow-up with the Agency for the status of the amendments.

Final Commentary

In 2018, DOT indicated “there have been no plans to initiate the formal procedures to update Chapter 19-43.” However, DOT is currently preparing draft rule amendments for a series of sections of the rules, including several in Chapter 19-43.

Highways Division

27. Chapter 19-105 - Accommodation and Installation of Utilities on State Highways and Federal Aid County Highways

Agency’s Justification

The purpose of the rules is to necessitate compliance with state and federal requirements by issuing a permit which is a costly item. The rules were established in 1981. The rules impact small business and are federally mandated by 23 CFR Chapter 1, Part 645.

2006 Recommendation

The rules are 25 years old. Rules should be reviewed and updated.

Response from Agency

This rule will have an impact on small business. It is necessary to follow state and federal regulations; permit is issued to do work which is a costly item. This rule is to be amended; no target date has been set. The SBRRB is in concurrence and will follow-up with the Agency for the status of the amendments.

Final Commentary

In 2018, DOT indicated “there are no plans currently to change or modify Chapter 19-105. The content regarding this chapter has not changed since it was approved in 1981.”

COUNTY DEPARTMENTS – JUSTIFICATION OF RULES AND RULES EXPECTED TO BE AMENDED OR REPEALED BASED ON ANY NEW, AMENDED OR REPEALED STATUTE

Hawaii County

The following is a list of rules that affect small business that were approved during the period of July 1, 2015 through June 30, 2017, and include reasons justifying the rules' continued implementation:

Office of the Prosecuting Attorney

1. Hawaii County Charter Article IX, Chapter 28 - HRS 28-1

Justification – The Office of the Prosecuting Attorney is the legal agency responsible for prosecuting all violations of State and County laws, ordinances, rules and/or regulations on behalf of the Big Island Community.

The purpose of this chapter is to seek accountability for those who violate the law in our county, provide assistance to those impacted by criminal conduct, and work with the community to solve crime related problems.

Department of Liquor Control

2. Hawaii County Charter Chapter 13-7 / HRS 281 Intoxicating Liquor

Justification – Rules and regulations of the Liquor Commission of the Department of Liquor Control of the County of Hawaii, State of Hawaii. Rules and Regulations of the Liquor Control Adjudication Board of the Department of Liquor Control of the County of Hawaii.

Post prohibition government regulation for the responsible and safe manufacture, distribution and sale of intoxicating liquor.

Parks & Recreation

3. Rule 16 – Rules Relating to Mauna Kea Recreation Area – Section 5

Justification – Regulation of stargazing activity.

Police Department

4. Article 34, Section 2-171 through Section 2-175.1

Justification – Fees and charges for special duty services of the Hawaii County Police Department.

Environmental Management

5. Hawaii County Code Relating to Refuse, Chapter 20

Justification – A majority of the Code section is applicable due to public health and safety.

6. Hawaii County Code Relating to Sewers, Chapter 21

Justification – A majority of the Code section is applicable due to public health and safety.

Research & Development

7. Hawaii County Code, Article 8, Section 2.37

Justification – Research & Development does not currently have a Sustainability Committee.

Department of Water Supply (DWS)

8. Charter 8-2, HRS Chapter 54-51, 54-63

Justification – Permits Boards to establish rates and manage operation of waterworks. Centralizes control of limited resource for public health and safety.

9. Charter 8-2, HRS Chapter 54

Justification – Rule 3-1(2) pertaining to establishment of capital assessment fees. Obligation to make public waterworks self-supporting.

10. Charter 8-2, HRS Chapter 54

Justification – Rule 3-2(2) pertaining to conservation measures. DWS can shut water off if wasteful use occurs. Protection of limited resource for public health and safety.

11. Charter 8-2, HRS Chapter 54

Justification – Rule 3-3; 3-21. Elevation agreement and backflow prevention. Ensures distribution of water to all requisite consumers, health and safety compliance.

12. Charter 8-2, HRS Chapter 54

Justification – Rule 3-4. \$150 deposit requirement for credit purposes. Obligation to make public waterworks self-supporting.

Justification – Rule 3-5. Charge for service lateral at cost determined by board, connection to shut off valve to be borne by applicant. Obligation to make public waterworks self-supporting.

Justification – Rule 3-5. DWS to shut off in emergency at expense of customer. Prevent loss of resources, i.e., can't get in touch with consumer who has leak.

Justification – Rule 3-6. Facilities charge, when applicable. Defray costs of capital expenditures for public water system and debt service payments on bonds.

Justification – Rule 3-8. Payment of Bills – Now 21 days to pay bill, if not within 30 days and possible discontinuance. Late penalty at 1% per month. Obligation to make public waterworks self-supporting and discourage late payments.

Justification – Rule 3-11. Water service may be discontinued for nonpayment, noncompliance with rules, and wasteful use, among other things. Preservation and conservation of limited public resource.

Justification – Rule 3-12. Restoration of water service. Customer responsible for reinstallation charges, labor, etc. Obligation to make public waterworks self-supporting and sufficient for maintenance and operation.

Justification – Rule 3-14. Customer responsible for damage to DWS' property, meters. Dissuade public from damaging DWS property.

Justification – Rule 3-23. Fees for harbor facilities providing water service. Obligation to make public waterworks self-supporting and sufficient for maintenance and operation.

Justification – Rule 3-29. Agricultural use rates, establishment of an application fee. Support farming practices, standards for lower ag rates.

Justification – Rule 4-1. Capital assessment fee for required improvements in proposed development. Obligation to make public waterworks self-supporting and sufficient for maintenance and operation.

Justification – Rule 4-2 and 4-3. Developer to bear cost of onsite and offsite water system requirements. Obligation to make public waterworks self-supporting and sufficient for maintenance and operation.

Justification – Rule 4-5. Private water system inspection costs – DWS to review, developer to pay for. Public health and safety compliance, obligation to make system self-supporting.

Justification – Rule 4-6. Facilities charge and capital assessment fees for developers. Public health and safety compliance, obligation to make system self-supporting.

Justification – Rule 4-7. Developers to pay for connection to storage tanks and installation. Public health and safety compliance, obligation to make system self-supporting.

Justification – Rule 4-12. Requirement to have developer bond water system improvements. Public health and safety compliance, obligation to make system self-supporting.

Justification – Rule 4-13. Establishes water commitment fee at \$150 per lot. Public health and safety compliance, obligation to make system self-supporting.

Finance Department

13. HRS 103D - Rule 4 – Purpose of Materials, Supplies, Equipment and Services

Justification – Required for compliance with HRS 103D. Promote fair procurement practices.

14. HRS 103D - Rule 5 – Value Engineering Incentive

Justification – Required for compliance with HRS 103D. Provide savings to the County.

15. HRS 286, Part VI – Rule 11 – Motor Vehicle Driver Licensing

Justification – Required for compliance with HRS 286. Provide licensing procedures.

16. HRS 287, Rule 12 – Motor Vehicle Responsibility Act

Justification – Required for compliance with HRS 287. Insure drivers have financial responsibility.

17. HRS 286-51, Rule 13 – Motor Vehicle Registrations

Justification – Required for compliance with HRS 286-51. Provide vehicle registration schedule.

- 18. HRS 286 and 249 - Rule 14 – License Plates**
Justification – Required for compliance with HRS 286-53 and 249. Provide issuance procedures.
- 19. HRS 249-9.1 and 249-9.2 – Rule 15 & 16 – Special License Plates**
Justification – Required for compliance with HRS 249. Provide issuance procedures.
- 20. Hawaii County Code, Chapter 18 – Rule 17 - Taxicabs**
Justification – Required for compliance with Hawaii County Code 18. Public safety.
- 21. HRS 286-53.5, 53.6 – Rule 18 – Registration of Fleet Vehicles**
Justification – Required for compliance with HRS 286-53.5, 53.6. Provide issuance procedures.
- 22. HRS 289-7 - Rule 19 – Licenses for Businesses Engaged in Purchasing or Selling Used Vehicle Parts, Vehicle Salvage, etc.**
Justification – Provide requirements and procedures.
- 23. Hawaii County Code 19-60 - Rule 30 – Real Property Tax Dedicated Agricultural Use**
Justification – Required for compliance with HCC 19-60. Provide requirements and procedures.
- 24. Hawaii County Code 19-57 – Rule 34 – Real Property Tax Non-Dedicated Agricultural Use**
Justification – Required for compliance with HCC19-57. Provide requirements and procedures.
- 25. Hawaii County Code, Chapter 19 – Rule 35 – Real Property Tax Exemption for Certain Improvements**
Justification – Required for compliance with HCC Chapter 19. Provide requirements and procedures.
- 26. Hawaii County Code, Chapter 19 – Rule 38 – Real Property Tax Designation as Wasteland Development Property**
Justification – Required for compliance with HCC Chapter 19. Provide requirements and procedures.

Hawaii Fire Department

- 27. Hawaii County Code – Chapter 26 – Article 1, Hawaii County Fire Code**
Justification – Government regulation of the sale, distribution, standby, maintenance, permitting, access, notification requirements of structures, private and commercial.
- 28. Hawaii County Code – Chapter 26 – Article 2, Fireworks Code**
Justification – Government regulation of the sale, distribution, storage, licensure, and prohibitions attributed to fireworks.
- 29. Hawaii County Code – Chapter 132 – Fire Protection**
Justification – Government regulation regarding powers of the Fire Chief, investigation rights, entry, duties of owners, penalties, submission of building plans.

30. Hawaii County Code – 132D – Fireworks

Justification – Government regulation regarding the permission and prohibitions of fireworks use, sale, distribution, permitting, storage, display fireworks, pyrotechnics, and liabilities.

The following outlines rules to be amended or repealed, based upon any new, amended or repealed statute:

Environmental Management

31. Hawaii County Code Relating to Refuse, Chapter 20

Justification – Section 20-46, Disposal Fees – Article 6, Polystyrene.

32. Hawaii County Code Relating to Sewers, Chapter 21

Justification – Chapter 21, Article 4 – Anticipate amending Article 4, Section 21-36.1.

Research & Development

33. Hawaii County Code, Article 8 Section 2.37

Justification – None.

Department of Water Supply

34. Chapter 8-2, Rule 3-8, HRS 54-51

Justification – Reduces bill payable time from 30 to 21 days. Supports obligation to establish rates and fees for furnishing of water service necessary to make water system self-supporting.

35. Chapter 8-2, Rule 3-10, HRS 54-51

Justification – Caps leak adjustment to half the average above prior three bills (previously 6) and limits leak adjustment to one every 3 years. Sets adjustment to less than 50% of bill if due to 3P criminal act. Supports obligation to establish rates and fees for furnishing of water service necessary to make water system self-supporting.

36. Chapter 8-2, Rule 3-11(2)(e)

Justification – DWS can shut off water if service detrimental to others or exceeds usage allotted to consumer. Previously required both. Policy to continue to protect valuable resource for public health and safety reasons.

37. Chapter 8-2, Rule 3-21(6)

Justification – For temporary meter installations, shifts burden from DWS to consumer to install reduced pressure principle backflow preventer. Public health and safety reasons, supports obligation to make water system self-supporting.

City and County of Honolulu

The following is a list of rules that affect small business that were approved during the period of July 1, 2015 through June 30, 2017, and include reasons justifying the rules' continued implementation:

Board of Water Supply (BWS)

- 1. BWS Rules and Regulations Chapter I – V; City Charter (2017) Article VII Section 7-101-119; Chapter 54, HRS**

Justification – Permits the Board to manage, control, and operate the waterworks and all property thereof, for supplying water to the public; and shall collect, receive, expend, and account for all sums of money derived from the operation thereof and all other moneys provided for the use or benefit of the waterworks and all property used for or held in connection therewith.

Centralizes control of the BWS water resource for public health and safety, reliability, affordability and sustainability. Provides the BWS full and complete authority to manage, control and operate the water systems/properties used or useful about such systems.

2. BWS Rules and Regulations Charter 7-105-109; HRS CH. 54

Justification – Under the general requirements of this section of the rules, extensions from and connections to the public water system shall be approved by the BWS where pressure conditions permit; provided that the water meters are within the service limit except as provided for in Sec. 2-217, Elevation Agreement of the rules. The developer will be required to pay for and install, in accordance with these rules and regulations and the standards of the BWS, adequate water system facilities for the development.

Funds growth-related capacity expansions; Equitably reimburses existing rate payers for their investment in oversizing of infrastructure to accommodate future customers.

3. BWS Rules; Charter 7-105-109; HRS CH. 54

Justification – A WSFC shall be levied against all new developments requiring water supplies from the BWS system or additional water supplies from the existing services. The WSFC will not be levied in developments where the developer has installed as hit cost a complete water system.

Obligation to make public waterworks self-supporting.

4. Rules; Charter 7; HRS CH. 54

Justification – When the developer is required to install a larger size main to provide for the existing or future services beyond the boundaries of a development. The eligible portion of cost reimbursement shall be left to the discretion of the BWS.

Funds growth-related capacity expansions; Equitably reimburses existing rate payers for their investment in oversizing of infrastructure to accommodate future customers.

5. BWS Rules; Charter 7-109; HRS CH. 54

Justification – Permits the Board to fix and adjust reasonable rates and charges for the furnishing of water and for water services so that revenues derived therefrom shall be sufficient to make the BWS self-supporting. Rules Chapter 11-§2-201. Application for Water Service. The BWS may require a deposit from any consumer or prospective consumer to guarantee payment of bills for service or other obligations to the BWS. There may be applicable waivers to be determined by the BWS.

Obligation to make public waterworks self-supporting. Such revenues shall be sufficient to meet all necessary expenditures, including expenditures for a) operating and maintenance; b) repairs, replacements, additions and extensions; c) accident reserve, pension charges and compensation insurance; d) payment of principal and interest on all bonds, including reserves therefor, issued for the acquisition or construction of

waterworks and extensions thereto, and e) reserve funds under Section 7-112 of the charter.

6. Rules; Charter 7; HRS CH. 54

Justification – Installation charge(s) (lateral and meter) to the applicant shall be based on the cost of Installation as established by the BWS. In addition, a water system facilities charge shall be levied against all new water service connections to the system or connections requiring additional water supplies from existing water services.

Defray costs of operating and maintenance, capital costs for public water system and debt service payments on bonds.

7. Rules; Charter 7; HRS CH. 54

Justification – All water supplied by the BWS will be measured by means of suitable meters registering in gallons. If a meter cannot be read, an estimated bill will be rendered, said bill to be calculated whenever possible on prior consumption.

Obligation to make public waterworks self-supporting.

8. Rules; Charter 7; HRS CH. 54

Justification – All bills shall be payable within 30 days after the date of the bill; after 30 days the bill shall be deemed delinquent. Water service may be discontinued five business days after written notice is given to customer. A late payment charge at one percent (1%) for each month or fraction thereof against the delinquent balance payable to the BWS.

Obligation to make public waterworks self-supporting and discourage late payments.

9. Rules; Charter 7; HRS CH. 54

Justification – Water service may be discontinued for nonpayment, noncompliance with rules and regulations, unauthorized use of water, wasteful use of water, among other things. Prior to the proposed shut-off, the BWS shall give the consumer at least five (5) business days' notice.

Obligation to make public waterworks self-supporting.

10. Rules; Charter 7; HRS CH. 54

Justification – Before water is restored, all outstanding accounts must be paid by the consumer. A reinstatement charge based on the cost of turning on the water service must be paid by the consumer; said charge shall be as established by the BWS.

Obligation to make public waterworks self-supporting.

11. Rules; Charter 7; HRS CH. 54

Justification – If a meter fails to register due to any cause except nonuse of water, an average bill may be rendered and subject to equitable adjustment, considering all factors before, during, and after the period of said bill.

Obligation to make public waterworks self-supporting.

12. Rules; Charter 7; HRS CH. 54

Justification – Any consumer who questions the accuracy of the meter serving his premises, may request a test of the meter. If the meter is found to register more than 2% fast under conditions of normal operation, the BWS will refund to the consumer the overcharge based on past consumption under the conditions stated in the rules. Underground leak adjustments may be granted.

Caps leak adjustment to one-half (1/2) of the excess consumption over a normal bill and will be granted only when repairs are made within two weeks after the consumer has been notified of the underground leak. For good cause shown to the BWS, an extension of time to make repairs may be granted.

13. Rules Chapter II - III; Charter 7-105; HRS CH. 54

Justification – BWS can shut water off if wasteful use of water exists on any premises. The BWS may restrict the use of water by any means or method of control whenever special conservation measures are, in the opinion of the BWS, advisable.

Protection of limited resource for public health and safety. To achieve water conservation and water resource sustainability.

14. BWS Rules Chapter II - III; Charter 7-105, 109; HRS CH. 54

Justification – When the pressure of the BWS' supply is higher than that for which individual fixtures are designed, the consumer shall protect such fixtures by installing and maintaining pressure reducing and relief valves. The BWS shall not be liable for damage due to pressure conditions caused by or arising out of the failure or defective condition of such pressure regulators and relief valves or for damage that may occur through the installation, maintenance, or use of such equipment.

Protection of limited resource for public health and safety. To achieve water conservation and water resource sustainability.

15. Rules; Charter 7; HRS CH. 54

Justification – The consumer shall be liable for any damage to a meter or other equipment or property owned by the BWS caused by the consumer or his tenants, agents, employees, contractors, licensees or permittees, and the BWS shall be promptly reimbursed by the consumer for any such damage upon presentation of a bill therefor.

Discourage or dis-usage consumer or public from damaging BWS property.

16. Rules; Charter 7-105; HRS CH. 54

Justification – To comply with federal and state rules and regulations, the BWS prohibits certain connections and installations as described in this section of the rules. Failure on the part of the consumer to comply with the BWS requirements relative to cross-connections and backflow prevention will be sufficient reason for discontinuing water services.

Ensure distribution of water to all requisite consumers; health and safety compliance; and be compliant with the applicable statutes, rules and regulations of the United States Environmental Protection Agency (EPA).

17. Rules; Charter 7-105; HRS CH. 54

Justification – Fire service will be furnished as a public service only where adequate provision is made to prevent diversion of water through such service for other purposes. The fire connection shall be paid for by the consumer. Any water lost through leakage or used in violation of the conditions shall be paid by the consumer at the regular schedule of water rates and charges.

Protection of limited resource for public health and safety. To achieve water conservation and water resource sustainability.

18. Rules; Charter 7-105; HRS CH. 54

Justification – Any use of a fire hydrant for purposes other than fire protection is prohibited. Damage to hydrant or property shall be paid for by the person or legal entity responsible for the damage. The BWS must give prior approval for a change in location of a hydrant and such cost of all labor, material, equipment, etc. are paid by the person requesting the change. The consumer shall, at his own expense, test periodically and maintain in good and safe working condition all private hydrants under his control and not under the jurisdiction of the BWS.

Public health and safety compliance. Prevent loss of resources.

19. Rules; Charter 7-105; HRS CH. 54

Justification – Under the provisions of this section of the rules, the consumer shall permit the BWS to inspect the installation of the water system for compliance with BWS requirements and shall enter into an agreement with the BWS agreeing to accept such water service as the system is able to provide and to hold the BWS harmless for all claims due to any inadequacy of water supply.

Public health and safety compliance, obligation to make system self-supporting.

20. Rules; Charter 7; HRS CH. 54

Justification – BWS to shut off water service for emergencies at expense to the customer.

Public health and safety compliance.

21. Rules; Charter 7-105; HRS CH. 54

Justification – Special rates and charges may apply during a critical low groundwater condition period.

Prevent loss of resources.

County of Maui

The following is a list of rules that affect small business that were approved during the period of July 1, 2015 through June 30, 2017, and include reasons justifying the rules' continued implementation:

Department of Public Works

- 1. Maui County Code 18.20.130A; Rules for the Design of Storm Drainage Facilities in the County of Maui, Title MC-15, Subtitle 01, Chapter 4**
Justification – These rules govern the design of storm drainage facilities in the County of Maui. No effect on small businesses.
- 2. Maui County Code 16.26B.3900, and 18.20.135; Rules for the Design of Storm Water Treatment Best Management Practices, Title MC-15, Subtitle 01, Chapter 111**
Justification – These rules establish controls on the timing and rate of discharge of storm water runoff to reduce storm water runoff pollution from private property over one acre in size. No effect on small businesses.
- 3. Maui County Code 18.20.060; Street Lighting Standards, Title MC-15, Subtitle 02, Chapter 201**
Justification – These rules provide standards for outdoor lighting to provide a level of safety for the vehicular and pedestrian traffic while not excessively interfering with nighttime viewing nor trespass onto private property. No effect on small business.
- 4. Maui County Code 18.32.030; Rules for Flexible Design Standards, Title MC-15, Subtitle 01, Chapter 107**
Justification – These rules establish a process for approving flexible design standards in certain developments when deviation from normal subdivision standards is appropriate to encourage and implement smart growth principles. No effect on small business.
- 5. Maui County Code 16.26B.105.3.3; Rules Pertaining to Plan Review Waiver Building Permits, Title MC-15, Subtitle 01, Chapter 101**
Justification – These rules set forth the procedures for obtaining plan review waiver building permits. These rules have a positive effect on small business as these rules are often used for tenant improvements so businesses can get started faster.

County of Kauai

As of the printing of this report, the County of Kauai has not submitted information in response to the SBRRB's request.



Small Business Regulatory Review Board

No. 1 Capitol District Building

250 South Hotel Street, 5th Floor

Honolulu, Hawaii 96813

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VI. Administrative Matters

- A. Discussion and Action on the Board's *2018 Annual Report Summary* for Submission to the Hawaii State Legislature under Section 201M-5(f), HRS



**HAWAII SMALL BUSINESS
REGULATORY REVIEW BOARD
ANNUAL REPORT SUMMARY**

Results for Calendar Year 2018 – DRAFT

**Recommendations and Review
of Administrative Rules, Legislation
and**

**Requests from Small Business Owners for Review
of Any Rule Adopted by a State Agency**

**In Compliance with
Chapter 201M, Hawaii Revised Statutes**

**HAWAII SMALL BUSINESS REGULATORY REVIEW BOARD
ANNUAL REPORT SUMMARY 2018**

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SECTION I

DRAFT



SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)
No. 1 Capitol District Building, 250 S. Hotel Street, Fifth Floor, Honolulu, HI 96813
Mailing Address: P.O. Box 2359, Honolulu, HI 96804
Email: dbedt.sbrb.info@hawaii.gov
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MESSAGE FROM THE CHAIR

David Y. Ige
Governor

Members

Anthony Borge
Chairperson
O'ahu

Robert Cundiff
Vice Chairperson
O'ahu

Garth Yamanaka
2nd Vice Chairperson
Hawai'i

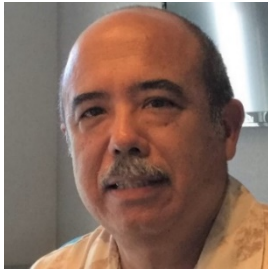
Harris Nakamoto
O'ahu

Nancy Atmospera-Walch
O'ahu

Mary Albitz
Maui

William Lydgate
Kaua'i

Director, DBEDT
Voting Ex Officio



Anthony Borge, Chair, 2018

We continue to be blessed to have an outstanding team of volunteer Board members who persevere toward our mission of enabling a regulatory environment that encourages and supports the vitality of small business in Hawaii. This year, we welcomed two new members, Ms. Mary Albitz from Maui County and Mr. William Lydgate from Kauai County, whom we are happy to have on our team. The Board consistently meets every month to address, collaborate, and provide timely responses to the Governor, State and County agencies, and small businesses.

On behalf of all the Small Business Regulatory Review Board members, I once again, would like to extend a big Mahalo to Governor David Ige, for his steadfast support, the State Legislature, and all those State and County Agencies that come before this Board to discuss proposed and amended regulations that have a potential to negatively impact small business.

A big Mahalo also goes out to each Board member who continue to donate unselfish hours and time away from their families and businesses, to share their invaluable business knowledge to improve and enhance the growth and success of small businesses throughout the State of Hawaii.

Finally, I extend a very big Mahalo to Luis Salaveria during his tenure at DBEDT for his support of this Board and wish him well in his new endeavor.

OVERVIEW

The Small Business Regulatory Review Board is pleased to provide the Annual Report Summary for the period covering January 2018 through December 2018. Pursuant to the Hawaii Small Business Regulatory Flexibility Act, Chapter 201M, Hawaii Revised Statutes, the annual summary is based on the following:

[201M-5] Small business regulatory review board; powers

(f) The board shall submit an annual report to the legislature twenty days prior to each regular session detailing any requests from small business owners for review of any rule adopted by a state agency, and any recommendations made by the board to an agency or the legislature regarding the need for a rule change or legislation. The report shall also contain a summary of the comments made by the board to agencies or the legislature regarding its review of any proposed new or amended rules.

ANNUAL SUMMARY

SMALL BUSINESS REGULATORY FLEXIBILITY ACT

The year 2018 marked the twentieth anniversary of the Small Business Regulatory Review Board. It was established on July 1, 1998, with the passage of the Small Business Regulatory Flexibility Act, pursuant to Act 168 and subsequently the role of the Board was codified in Chapter 201M, Hawaii Revised Statutes (HRS), as amended. (Appendix 1)

Statutorily, the Board is comprised of eleven members, ten current or former owners or officers of businesses from across the State and the Director of Business, Economic Development, and Tourism (DBEDT) or the Director's designated representative who serves as an "ex officio" voting member. The Board is administratively attached to DBEDT and has responsibility for providing recommendations to State agencies on new and amended administrative rules that directly impact small business. The Board is also charged with reviewing existing rules upon the request from small business owners or at the Board's initiative. For requests regarding County ordinances, the Board may make recommendations to County Council or the Mayors for appropriate action.

In addition to reviewing rules and regulations, members volunteer their time performing outreach activities to small business organizations, such as the local Chambers of Commerce and testifying on legislation. The Board also has the power to solicit testimony from the public regarding any reports submitted by State departments.

As an effective and efficient means of review, each member is assigned to one or more State department as a "discussion leader" and is responsible for the initial review of the

administrative rules of that department prior to consideration by the full Board. As of December 2018, the Board was operating with nine? members.

ADMINISTRATIVE RULE REVIEW

During 2018, the Board reviewed and made recommendations on XX new and amended rules to State and County Agencies, both pre- and post-public hearing.

Since its inception, the Board reviewed a total of XX sets of proposed new and amended administrative rules. (Appendix 2)

Department / County	Chapter / Section Number	Title	Proceed to Public Hearing (Pre-Public Hearing)	Proceed to Adoption (Post Public Hearing)	Other Recommendation(s)
Department of Accounting & General Services – Title 3					
Department of Agriculture – Title 4	162	Food Safety Certification Costs Grant Program	X	X	
	66	Pesticides	X		The Board agreed to encourage the Department of Agriculture and the stakeholders, prior to going to public hearing, to arrive at a mutually acceptable timeframe for the submission of a speaker’s biography and break-out presentation, under Section 4-66-60(c)(1), HRS, regarding continuing education requirements.
	66	Pesticides	X		
	186	Petroleum Products Accounting and Inspection	X	X - ?	
	71	Plant and Non-Domestic Animal Quarantine, Non-Domestic Animal Import Rules / Tilapia and Crickets		X	
	71	Plant and Animal Non-Domestic Quarantine, Non-Domestic Animal Import rules / Wild Animals		X - ?	
	70	Plant and Non-Domestic Animal Quarantine, Plant Import Rules / Subchapter 15, “Introduction of Myrtaceae” (Myrtle Family Plants and Plant Parts)	X		
Department of Business, Economic Development & Tourism – Title 15					
	37	Solar Water Heater Variance		X	
	15	Land Use Commission Rules	X		

	218	Kaka'ako Reserved Housing Rules	X	X	
Department of Commerce and Consumer Affairs – Title 16	17	Captive Insurance Companies	X		No action was taken due to lack of meeting quorum.
Department of Health – Title 11	Repeal 200;	Environmental Impact	X		
	New 200.1	Statement Rules	X		
	55	Water Pollution Control	X		The SBRRB members commended DOH's Clean Water Branch for its pro-active streamlining of the rule amendments.
	281 / 280.1	Underground Storage Tanks	X	X	
	178	Clean and Sober Homes Registry	X		
Department of Labor & Industrial Relations – Title 12	Subtitle 8, Hawaii Occupational Safety and Health Division	Part 1, General Legal and Administrative Provisions for Occupational Safety and Health	X		Before public hearing, the Board recommended that HIOSH continue the ongoing discussions with the small business stakeholders' concerns, and to move forward with the public hearing.
		Chapter 50, General Provisions and Definitions Chapter 52.1, Recording and Reporting Occupational Injuries and Illnesses Chapter 56, Program Fees and Library Policies, General Safety and Health Requirements Part 2, General Legal and Administrative Provisions for Occupational Safety and Health Chapter 60, General Safety and Health Requirements Part 3, Construction Standards Chapter 110, General Safety and Health Requirements Part 5, Occupational Safety and Health Standards for Shipyard Employment Chapter 180, Shipyards Part 6, Marine Terminals Chapter 180, Marine Terminals Part 7, Safety and Health Regulations for Longshoring Chapter 190, Longshoring Part 8, Other Safety and Health Standards Chapter 208, Other Safety and Health Standards		X	After public hearing, the Board recommended the rules proceed to the Governor for adoption.
	Chapter 22	Wage Determinations and the Administration and Enforcement of Chapter 104, Hawaii Revised Statutes		X	
	Chapter 44.1	Testing, Certifying, and Credentialing Individuals Who Perform Maintenance and Testing of Portable Fire		X	

		Extinguishers, Fire Protection Systems and Fire Alarm Systems		
	Chapter 229	General, Administrative and Legal Provisions		X - ?
	Chapter 230.1	Elevators, Escalators, Dumbwaiters, Moving Walks, and Material Lifts and Dumbwaiters with Automatic Transfer Devices; and		X - ?
	Chapter 240	Elevator Requirements for Individuals with Disabilities		X - ?
Department of Land & Natural Resources – Title 13				
	Chapter 167	Rules of Practice and Procedure for the Commission on Water Resources Management		X
	Chapter 168	Water, Use Wells, and Stream Diversion Works		X
	Chapter 169	Protection of Instream Uses of Water		X
	Chapter 104	Rules Regulating Activities Within Forest Reserves	X	
	Chapter 60.9	Mo’omomi Community-Based Subsistence Fishing Area, Molokai	X	
	Subtitle 11	Ocean Recreation and Coastal Areas Part I Small Boat Harbors – Chapter 234 Fees and Charges	X	
		Part III Ocean Waters, Navigable Streams and Beaches – Chapter 253 Catamaran Registration Certificate, Other Registration, and Commercial Use Permit Fees	X	
Department of Public Safety – Title 23				
Department of Taxation – Title 18				
	Chapter 37	County Surcharge		X
	Section 8.6			
	New Section 29.53	Exported Services		X
	Chapter 237	General Excise Tax		X
	Chapter 235	Income Tax Law	X	
		Section 98 – Returns; form, verification and authentication, time of filing		
		Section 1.14 (d) “Substantial gainful business or occupation”, defined		
	Chapter 237	General Excise Tax	X	X - ?
	Section 34-13	Persons with a material interest in a tax return		
	Chapter 237D	Transient Accommodations Tax	X	X - ?
	Section 4-01	Certificate of Registration		X - ?
		Display of Registration Certificate		
	Repeal Sections 4-03 to 4-07			Title X - ?
	New Sections 4-08 to 4-35			X - ?

Department of Transportation – Title 19	Chapter 20.1	Commercial Services at Public Airports	X /X /X	X	The Board recommended that DOT-Harbors Division make an effort to engage Hawaii small businesses that will be impacted by the proposed fee increases through the outreach of business organizations and trade associates, such as the Chamber of Commerce of Hawaii.
University of Hawaii	Chapter 26	Public and Commercial Activities on Mauna Kea Lands	X		
City and County of Honolulu	Chapters I – V, Board of Water Supply rules and Regulations	In compliance with Section 54-26, HRS, for the Adoption of New Water Rates and Charges	X	X	
County of Kauai		Rules of Practice and Procedure of the Kauai Historic Preservation Review Commission:			
	I.	1) General Provisions	X		
	II.	Organization & Parliamentary Rules	X		
	III.	Public Records, Inspection and Availability	X		
		Rule Adoption, Amendment, or Repeal Procedures	X		
	Chapter 8, 9, 10	Kauai County Code (1987) Enforcement of KPAR 8-19, Chapter 8, Article 17, Relating to Transient Vacation Rentals of the Kauai County Code	X		
	Title 1, Rules of Practice and Procedure of the Kauai County Planning Commission (Modified 2014)	Chapter 9, Appeals from Actions of the Planning Director	X		
		Chapter 6, Agency Hearing Procedures	X		
	Kauai County Code Section 18-65.3 Department of Public Works	Revocable Permits to Vend within County Right-of-Ways	X		
	Part VI	Rules and Regulations Governing the Operation of Commercial Food Truck Concessions in County Parks	X		
County of Maui	Title 8 Chapter 101	Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui	X - ?		

LEGISLATIVE ACTIVITY

Since its inception, the Board has supported legislation by submitting testimony on bills of interest to small business. See “Legislative Review” at the end of this report for specific legislation the Board followed during the 2018 session.

SMALL BUSINESS IMPACT STATEMENT *and* GOVERNOR’S ADMINISTRATIVE DIRECTIVE (AD) NO. 18-02

In 2018, AD 18-02 was issued and updated the policy and procedures by which State departments and agencies request Governor’s approval for a public hearing of any proposed adoption, amendment, or repeal of administrative rules developed under Chapter 91, HRS. (Appendix 3). It is believed that the Board was instrumental in encouraging Governor Ige to amend AD 09-01 to reflect changes made to Chapter 201-M, HRS in 2017.

Under Section 201M-2, HRS, State agencies that want to adopt new or modified administrative rules that have an impact on small business are required to submit to the Board a small business impact statement showing the economic impact on those businesses. As a result, the Board reviews the small business impact statements and the AD 18-02, while working with the rule-drafting agencies on behalf of the small business community.

CHAIRPERSON / BOARD MEMBERS

Under Section 201M-5 (c), “a majority of the board shall elect the chairperson. The chairperson shall serve a term of not more than one year, unless removed earlier by a two-thirds vote of all members to which the board is entitled.” At the May 2018 board meeting, Mr. Anthony Borge was again elected Chair, Mr. Robert Cundiff re-elected Vice Chair, and Mr. Garth Yamanaka was re-elected Second Vice Chair.

The Board member nomination process, under Section 201M-5, HRS, provides “the Board shall consist of eleven members, who shall be appointed by the governor pursuant to section 26-34; provided that: (1) Three members shall be appointed from a list of nominees submitted by the president of the senate; (2) Three members shall be appointed from a list of nominees submitted by the speaker of the house of representatives; (3) Two members shall be appointed from a list of nominees submitted by the board; (4) Two members shall be appointed by the governor; (5) The director of business, economic development, and tourism, or the director’s designated representative, shall serve as an ex officio voting member of the board; (6) The appointments shall reflect representation of a variety of businesses in the State; (7) No more than two members shall be representatives from the same type of business; and (8) There shall be at least one representative from each county.”

In addition, “nominations shall be solicited from small business organizations, state and county chambers of commerce, and other interested business organizations. Except for the ex officio member, all members of the board shall be either a current or former owner or officer of a business and shall not be an officer or employee of the federal, state, or county government.”

During 2018, the Board members welcomed three new board members, Mr. Reg Baker, Ms. Mary Albitz, and Mr. William Lydgate. The Board members also bid fond farewells to Ms. Kyoko Kimura, representative from Maui County who has been a member since 2012 and Mr. Baker, who moved to a new state with his family.

At the end of December 2018, the Board was comprised of the following xx members:

- 1) Mary Albitz, FocalPoint, representing the County of Maui
- 2) Nancy Atmospera-Walch, Advantage Health Care Provider, Inc., and AIM Health Institute, representing the City and County of Honolulu

- 3) Anthony Borge, RMA Sales, representing the City and County of Honolulu
- 4) Robert Cundiff, representing the City and County of Honolulu
- 5) Harris Nakamoto, Kaiser Permanente, representing the City and County of Honolulu
- 6) William Lydgate, Steelgrass Farm, representing the County of Kauai
- 7) Garth Yamanaka, Yamanaka Enterprises, Inc., representing Hawaii County
- 8) DBEDT Director, Voting Ex Officio Member

ACTIVITIES AND PROJECTS

The following activities and projects were achieved in 2018:

- **Hawaii Business with Reg Baker** – In January, Anthony Borge and Reg Baker were on ThinkTechhawaii.com show, “Hawaii Business with Reg Baker.” The link to the show can be found at: <https://youtu.be/5ula2xsEDu0?t=26>
- **Hawaii Small Business Conference** - sponsored by Maui Economic Development Board, on May 2 and 3, DBEDT staff attended this well-received small business conference for outreach purposes.
- **e-Newsletter** – The Board continues to send out monthly e-Newsletters to small business organizations, chambers of commerce and State Legislators.
- **Facebook and Twitter** – The Board regularly sends out notices on Facebook and Twitter to enhance its outreach efforts.
- **Website Development** – The Board created an investigative taskforce, consisting of board member Mr. Cundiff and DBEDT staff, to assist in crafting the development and redesign of the Board’s existing website. In accordance with Section 92-2.5(b) (1), HRS, the taskforce approached the Board with its findings and recommendations, and in April 2018, the Board

approved the proposed budget for the Website. Subsequently, Phase I of the website, which consists of creating a design prototype was accomplished. Phase II is currently in process.

- **Hawaii Public Radio (HPR)** – At the April board meeting, members reviewed proposed changes to Hawaii Administrative Rules, Chapter 18-20.1, Commercial Services at Public Airports, with regards to the State Department of Transportation’s pilot program requiring Uber and Lift drivers to conduct pick-up service at Hawaii airports.

The next day, April 19, 2018, a segment of the board meeting discussing the proposed rules was highlighted on HPR (Hawaii Public Radio). To hear this show, go to:

<http://hawaiipublicradio.org/post/tension-high-over-airport-rideshare-pilot-program>.

- **Articles and Press Releases**

- 1) On May 17, 2018, The *Star Advertiser*, posted an article entitled “DOT Tweaking Airport Rules for Ride-Hailing Operators” that discussed DOT redrafting HAR Chapter 20.1, and cancelling the scheduled public hearings to include concerns posed by the Board to account for changes at the airports that include “ride-hailing” operators.
- 2) On May 23, 2018, DBEDT distributed a press release announcing the 2018 to 2019 Board officers, Anthony Borge, Chair; Robert Cundiff, Vice Chair; Garth Yamanaka, Second Vice Chair as well as the newly appointed board members, Ms. Mary Albitz, Mr. Reg Baker and Mr. William Lydgate.
- 3) On July 31, 2018, DBEDT distributed a press release announcing, “Small Business Regulatory Review Board Commemorates 20th Anniversary”
- 4) On August 1, 2018, *Hawaii Free Press* picked up the Board’s press release announcing the 20th Anniversary of the Small Business Regulatory Review Board

REQUESTS FROM SMALL BUSINESS FOR REVIEW
OF ANY RULE ADOPTED BY A STATE AGENCY /
REGULATION REVIEW CARD

In accordance with Section 201M-5, HRS, the following outlines requests from small business owners for review of any rule adopted by a state agency, and recommendations made by the board to an agency.

1. At year-end 2017, Ms. Dale Evans, CEO of Charley's Taxi and Limousine, representing the small business taxi industry, requested assistance from the Board for updated rules and regulations that provide transportation services at the Honolulu International Airport (HIA) from the State Department of Transportation (DOT) that are fair, equitable, and level the playing field for small businesses, drivers of taxi cabs, Uber, and Lyft.

Action: In response, correspondence was sent to DOT and Governor Ige, requesting that DOT explain what administrative rules, if any, would apply to Uber and Lyft operations at HIA and to respond to the concerns that DOT is not providing fair and equitable treatment to all small businesses allowed to operate at HIA.

Subsequently, the following actions were taken:

- A letter was sent to Governor Ige his review of Ms. Evans' concerns
- At three consecutive board meetings, DOT presented proposed amendments designed to bring fairness to the small business drivers
- The Board recommended that the proposed administrative rules proceed to public hearing and upon reviewing the small business statement after public hearing recommended that the proposal proceed to the Governor for adoption.

Result: Final rules for HAR Chapter 20.1 Commercial Services at Public Airports became effective August 24, 2018.

2. In October 2018, Mr. Wesley Moore submitted to the Board a Regulation Review Card under Section 13-231-50 through 70, requesting that “caps” be placed on commercial permits, specifically at the Keauhou boat ramp.

Action:

Result:

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SECTION II

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LEGISLATIVE REVIEW

The Board submitted testimony on the following measures during the 2018 legislative session.

1. House Bill 2235 – Relating to the Small Business Regulatory Review Board

Background: This measure clarifies the intent of the Small Business Regulatory Review Board’s powers when reviewing state and county administrative rules that impact small business.

Recommendation: The Board supported this measure.

Result: The measure passed second reading, was referred to the Finance Committee, and did not cross over.

2. House Bill 2326 – Relating to the Small Business Regulatory Review Board

Background: This measure clarifies the intent of the Small Business Regulatory Review Board’s powers when reviewing state and county administrative rules that impact small business.

Recommendation: The Board supported this measure.

Result: The measure was not heard.

3. Senate Bill 2753 – Relating to the Small Business Regulatory Review Board

Background: This Administration measure, companion to House Bill 2326, clarifies the intent of the Small Business Regulatory Review Board’s powers when reviewing state and county administrative rules that impact small business.

Recommendation: The Board supported this measure.

Result: The measure was passed in the Senate, crossed over to the House, approved in the Committee on Economic Development & Business, and then was not heard in the House Judiciary Committee.

4. **Senate Bill 2885 – Relating to the Small Business Regulatory Review Board**

Background: This Administrative measure clarifies the intent of the Small Business Regulatory Review Board’s powers when reviewing state and county administrative rules that impact small business.

Recommendation: The Board supported this measure.

Result: The measure passed in the Senate and did not cross over.

5. **Senate Bill 2059 – Relating to Public Accountancy**

Background: Specifies who may be granted a temporary permit to practice public accountancy. Specifies the requirements that must be met prior to obtaining a temporary permit to practice. Requires a person to obtain a temporary permit to practice from the board of public accountancy prior to commencing public accountancy services in Hawaii. Specifies a time frame for the temporary permit to practice. Requires that persons who are granted a temporary permit to practice to consent to and certify various obligations, including being under the authority of the board of public accountancy and paying all applicable taxes to the State. Makes conforming amendments to the laws relating to public accountancy; takes effect on 1/1/2019.

Recommendation: The Board monitored this measure

Result: The measure passed in the Senate, crossed over but did not pass.

6. **Governor's Message No. 513 and 514** - Submission for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Reg Baker, for a term to expire June 30, 2018 and June 30, 2022.

Background: The Board supported this measure.

Recommendation and Result: In April, the recommendation by the Senate Committee on Economic Development, Environment and Technology to Advise and Consent to Mr. Baker's nomination was confirmed. On April 13, 2018, Mr. Baker was confirmed as a member by the Senate.

7. **Governor's Message No. 673 and 674** - Submission for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Will Lydgate, for a term to expire June 30, 2018, and June 30, 2022, respectively.

Background: The Board supported this measure.

Recommendation and Result: In April, the recommendation by the Senate Committee on Economic Development, Environment and Technology to Advise and Consent to Mr. Lydgate's nomination was confirmed. On April 13, 2018, Mr. Lydgate was confirmed by the Senate.

8. **Governor's Message No. 675** - Submission for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Mary Albitz, for a term to expire June 30, 2020.

Background: The Board supported this measure.

Recommendation and Result: In April, the recommendation by the Senate Committee on Economic Development, Environment and Technology to Advise and Consent to Ms.

Albitz's nomination was confirmed. On April 13, 2018, Ms. Albitz was confirmed as a member by the Senate.

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Appendix

1. Chapter 201M, Hawaii Revised Statutes
2. Administrative Rules Reviewed Matrix
3. Administrative Directive No. 18-02

1. Chapter 201M, Hawaii Revised Statutes

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CHAPTER 201M

SMALL BUSINESS REGULATORY FLEXIBILITY ACT

Section

- 201M-1 Definitions
- 201M-2 Determination of small business impact;
small business impact statement
- 201M-3 Small business statement after public hearing
- 201M-4 Advisory committee on small business;
consultation process for proposed rules
- 201M-5 Small business regulatory review board; powers
- 201M-6 Petition for regulatory review
- 201M-7 Periodic review; evaluation report
- 201M-8 Waiver or reduction of penalties
- 201M-9 Executive order

§201M-1 Definitions. As used in this chapter, unless the context clearly requires otherwise:

"Advisory committee" means an advisory committee on small business as established in section 201M-4.

"Affected small businesses" or "affects small business" means any potential or actual requirement imposed upon a small business through an agency's proposed or adopted rule that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business.

"Agency" means each state or county board, commission, department, or officer authorized by law to make rules, except those in the legislative or judicial branches.

"Board" means the small business regulatory review board.

"Rule" shall have the same meaning as in section 91-1.

"Small business" means a for-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that:

- (1) Is domiciled and authorized to do business in Hawaii;
- (2) Is independently owned and operated; and
- (3) Employs fewer than one hundred full-time or part-time employees in Hawaii. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §§2, 5; am L 2007, c 217, §2]

§201M-2 Determination of small business impact; small business impact statement. (a) Prior to submitting proposed rules for adoption, amendment, or repeal under section 91-3, the agency shall determine whether the proposed rules affect small business, and if so, the availability and practicability of less

restrictive alternatives that could be implemented. This section shall not apply to emergency rulemaking.

(b) If the proposed rules affect small business, the agency shall consider creative, innovative, or flexible methods of compliance for small businesses and prepare a small business impact statement to be submitted with the proposed rules to the departmental advisory committee on small business and the board when the rules are essentially complete and before the rules are submitted to the governor for approval for public hearing. The statement shall provide a reasonable determination of the following:

- (1) The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules;
- (2) Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected;
- (3) In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance;
- (4) The probable monetary costs and benefits to the implementing agency and other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used;
- (5) The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or any other mitigating techniques;
- (6) How the agency involved small business in the development of the proposed rules; and
- (7) Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

(c) When a proposed rule includes provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, the agency shall, in

addition to the information required by subsection (b), include in the small business impact statement information comparing the costs and benefits of the standard set by the proposed rule to the costs and benefits of the standard under the comparable or related federal, state or county law. The agency shall also include an explanation of its decision to impose the higher standard. The agency's comparison and justification shall include:

- (1) A description of the public purposes to be served by imposing the standard under the proposed rule;
- (2) The text of the related federal, state, or county law, including information about the purposes and applicability of the law;
- (3) A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes and of the standards and their application and administration;
- (4) A comparison of the monetary costs and benefits to the implementing agency and other agencies directly affected, of imposing the proposed standard, with the costs and benefits of imposing or deferring to the related federal, state or county standard, as well as a description of the manner in which any additional fees derived from imposition of the proposed standard are to be used; and
- (5) A comparison of the adverse effects on small businesses of the standard imposed by the proposed rule, with the adverse effects on small business of the related federal, state, or county standard.

(d) This chapter shall not apply to proposed rules adopted by an agency to implement a statute or ordinance that does not require an agency to interpret or describe the requirements of the statute or ordinance, such as federally-mandated regulations that afford the agency no discretion to consider less restrictive alternatives. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2007, c 217, §3; am L 2008, c230, §3]

[\$201M-3] Small business statement after public hearing. (a) For any proposed rule that affects small business, the agency shall also submit a small business statement to the small business regulatory review board and the departmental advisory committee on small business after the public hearing is held. This section shall not apply to emergency rules. The small business statement required by this section shall provide the following information:

- (1) A description of how opinions or comments from affected small business were solicited, a summary of the public and small business comments, and a summary of the agency's response to those comments;
- (2) The number of persons who:
 - (A) Attended the public hearing;
 - (B) Testified at the hearing; and
 - (C) Submitted written comments; and
- (3) If there was a request to change the proposed rule at the hearing in a way that affected small business, a statement of the reasons for adopting the proposed rule, the reason why a requested change was not made, and the problems or negative result the change would provide if adopted.

(b) If the small business regulatory review board finds that a statement provided pursuant to subsection (a) (3):

- (1) Indicates inconsistency with any of the agency's determinations under section 201M-2(b); or
- (2) Does not address the concerns of public input, the board with good cause may request a written response from the agency explaining the rationale used to deny the public concerns within ten working days of receipt of the small business statement after public hearing. The agency shall respond in writing to the board's concerns within ten working days.

(c) The written response from an agency required in subsection (b), at a minimum, shall:

- (1) Specifically address each issue and concern raised in the board's request for a written response; and
- (2) Affirmatively state that the agency has considered all written and oral testimony received at the agency's public hearing and has addressed all issues or concerns raised in the written or oral testimony. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2012, c 241, §2]

[\$201M-4] Advisory committee on small business; consultation process for proposed rules. (a) There may be established within and administratively attached to every department of the State or county whose rules affect small business activities, an advisory committee on small business. The advisory committee shall consist of three or more odd number of members appointed by the department and may advise more than one department. The department shall have the authority to appoint members to the advisory committee and to fill any vacancies. The members shall serve on a volunteer basis and have experience or knowledge of the effect of

regulation by those departments on the formation, operation, or expansion of a small business. No person shall serve on the small business regulatory review board and an advisory committee on small business concurrently. The advisory committees shall not be subject to the requirements of chapter 91.

(b) When the agency is proposing rules that affect small business, the agency may consult with the administratively attached departmental advisory committee on small business regarding any matter related to the proposed rules prior to complying with the rulemaking requirements provided in chapter 91. Each agency shall develop its own internal management procedures for soliciting comments during the drafting of proposed rules from affected small businesses. The agency may develop creative procedures for the solicitation of comments from affected small businesses during the drafting or development of proposed rules.

(c) If necessary, any group or members of affected small businesses may also be consulted by the agency to formulate the relevant language, develop criteria, and provide any other expertise to ensure that the proposed rules will be drafted in a manner that will protect the public health, welfare, and safety without placing an undue and significant burden upon small business. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5]

§201M-5 Small business regulatory review board; powers. (a) There shall be established within the department of business, economic development, and tourism, for administrative purposes, a small business regulatory review board to review any proposed new or amended rule. If the board determines that a proposed rule will not have a significant economic impact on a substantial number of small businesses, the board shall submit a statement to that effect to the agency that sets forth the reason for the board's decision. If the board determines that the proposed rule will have a significant economic impact on a substantial number of small businesses, the board may submit to the agency suggested changes in the proposed rule to minimize the economic impact of the proposed rule, or may recommend the withdrawal of the proposed rule. The board may also consider any request from small business owners for review of any rule adopted by a state agency and to make recommendations to the agency or the legislature regarding the need for a rule change or legislation. For requests regarding county ordinances, the board may make recommendations to the county council or the mayor for appropriate action.

(b) The board shall consist of eleven members, who shall be appointed by the governor pursuant to section 26-34; provided that:

- (1) Three members shall be appointed from a list of nominees submitted by the president of the senate;
- (2) Three members shall be appointed from a list of nominees submitted by the speaker of the house of representatives;
- (3) Two members shall be appointed from a list of nominees submitted by the board;
- (4) Two members shall be appointed by the governor;
- (5) The director of business, economic development, and tourism, or the director's designated representative, shall serve as an ex officio voting members of the board;
- (6) The appointments shall reflect representation of a variety of businesses in the State;
- (6) No more than two members shall be representative from the same type of business; and
- (8) There shall be at least one representative from each county. For purposes of paragraphs (1) and (2),

nominations shall be solicited from small business organizations, state and county chambers of commerce, and other interested business organizations.

(c) **Except for the ex officio member,** all members of the board shall be either a current or former owner or officer of a business and shall not be an officer or employee of the federal, state, or county government. A majority of the board shall elect the chairperson. The chairperson shall serve a term of not more than one year, unless removed earlier by a two-thirds vote of all members to which the board is entitled.

(d) A majority of all the members to which the board is entitled shall constitute a quorum to do business, and the concurrence of a majority of all the members to which the board is entitled shall be necessary to make any action of the board valid.

(e) In addition to any other powers provided by this chapter, the board may:

- (1) Adopt any rules necessary to implement this chapter;
- (2) Organize and hold conferences on problems affecting small business; and
- (3) Do any and all things necessary to effectuate the purposes of this chapter.

(f) The board shall submit an annual report to the legislature twenty days prior to each regular session detailing any requests from small business owners for review of any rule

adopted by a state agency, and any recommendations made by the board to an agency or the legislature regarding the need for a rule change or legislation. The report shall also contain a summary of the comments made by the board to agencies regarding its review of proposed new or amended rules. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §§3, 5; am L 2007, c 217, §4; am L 2012, c 241, §3]

§201M-6 Petition for regulatory review. (a) In addition to the basis for filing a petition provided in section 91-6, any affected small business may file a written petition with the agency that has adopted the rules objecting to all or part of any rule affecting small business on any of the following grounds:

- (1) The actual effect on small business was not reflected in, or significantly exceeded, the small business impact statement submitted prior to the adoption of the rules;
- (2) The small business impact statement did not consider new or significant economic information that reveals an undue impact on small business;
- (3) These impacts were not previously considered at the public hearing on the rules;
- (4) The rules create an undue barrier to the formation, operation, and expansion of small businesses in a manner that significantly outweighs its benefit to the public;
- (5) The rules duplicate, overlap, or conflict with rules adopted by another agency or violate the substantive authority under which the rules were adopted; or
- (6) The technology, economic conditions, or other relevant factors justifying the purpose for the rules have changed or no longer exist.

(b) Upon submission of the petition, the agency shall forward a copy of the petition to the board, as notification of a petition filed under this chapter. The agency shall promptly consider the petition and may seek advice and counsel regarding the petition from the appropriate departmental advisory committee on small business. Within sixty days after the submission of the petition, the agency shall determine whether the impact statement or the public hearing addressed the actual and significant impact on small business. The agency shall submit a written response of the agency's determination to the small business review board within sixty days after receipt of the petition. If the agency determines that the petition merits

the adoption, amendment, or repeal of a rule, it may initiate proceedings in accordance with section 91-3.

(c) If the agency determines that the petition does not merit the adoption, amendment, or repeal of any rule, any affected small business may seek a review of the decision by the board. The board shall promptly convene a meeting pursuant to chapter 92 for the purpose of soliciting testimony that will assist in its determination whether to recommend that the agency initiate proceedings in accordance with section 91-3. The board may base its recommendation on any of the following reasons:

- (1) The actual effect on small business was not reflected in, or significantly exceeded, the impact statement submitted prior to the adoption of the rules;
- (2) The impact statement did not consider new or significant economic information that reveals an undue impact on small business;
- (3) These impacts were not previously considered at the public hearing on the rules;
- (4) The rules create an undue barrier to the formation, operation, and expansion of small businesses in the State in a manner that significantly outweighs its benefit to the public;
- (5) The rules duplicate, overlap, or conflict with rules adopted by another agency or violate the substantive authority under which the rules were adopted; or
- (6) The technology, economic conditions, or other relevant factors justifying the purpose for the rules have changed or no longer exist.

(d) If the board recommends that an agency initiate rulemaking proceedings for any reason provided in subsection (c), it shall submit to the legislature an evaluation report and the agency's response as provided in subsection (b). The legislature may subsequently take any action in response to the evaluation report and the agency's response as it finds appropriate.

(e) If the board does not recommend that an agency initiate rulemaking proceedings, the board shall notify the small business of its decision and inform the small business that the small business may submit a complaint to the ombudsman pursuant to chapter 96 regarding the decision of the agency or board.

(f) Nothing in this section shall entitle an affected small business to a contested case hearing under chapter 91. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2007, c 217, §5]

§201M-7 Periodic review; evaluation report. (a) Each agency having rules that affect small business shall submit to the board by June 30 of each odd-numbered year, a list of those rules and a report describing the specific public purpose or interest for adopting the respective rules that affect small business and any other reasons to justify continue implementation of the rules; provided that, by June 30 of each year, each agency shall submit to the board a list of any rules to be amended or repealed, based upon any new, amended, or repealed statute that impacts small business.

(b) The board shall provide to the head of each agency a list of any rules adopted by the agency that affect small business and have generated complaints or concerns, including any rules that the board determines may duplicate, overlap, or conflict with other rules, or exceed statutory authority. Within forty-five days after being notified by the board of the list, the agency shall submit a written report to the board in response to the complaints or concerns. The agency shall also state whether the agency has considered the continued need for the rules and the degree to which technology, economic conditions, and other relevant factors may have diminished or eliminated the need for maintaining the rules.

(c) The board may solicit testimony from the public regarding any report submitted by the agency under this section at a public meeting held pursuant to chapter 92. Upon consideration of any report submitted by an agency under this section and any public testimony, the board shall submit an evaluation report to the legislature each even-numbered year. The evaluation report shall include an assessment as to whether the public interest significantly outweighs a rule's effect on small business and any legislative proposal to eliminate or reduce the effect on small business. The legislature may take any action in response to the report as it finds appropriate. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2007, c 217, §6; am L 2012, c 241, §4]

§201M-8 Waiver or reduction of penalties. (a) Except where a penalty or fine is assessed pursuant to a program approved, authorized, or delegated under a federal law, any agency authorized to assess civil penalties or fines upon a small business shall waive or reduce any penalty or fine as allowed by federal or state law for a violation of any statute, ordinance, or rules by a small business under the following conditions:

- (1) The small business corrects the violation within a minimum of thirty days after receipt of a notice of violation or citation; and
 - (2) The violation was unintentional or the result of excusable neglect; or
 - (3) The violation was the result of an excusable misunderstanding of an agency's interpretation of a rule.
- (b) Subsection (a) shall not apply:
- (1) When a small business fails to exercise good faith in complying with the statute or rules;
 - (2) When a violation involves willful or criminal conduct;
 - (3) When a violation results in serious health and safety impacts;
 - (4) To violations of chapters 6E, 180, 180C, 181, 182, 183, 183C, 183D, 186, 187A, 188, 188F, 189, 190, 190D, 195, 195D, 195F, 205, 205A, 340A, 340E, 341, 342B, 342C, 342D, 342E, 342F, 342G, 342H, 342I, 342J, 342L, and 342P;
 - (5) To violations of sections 200-9(b) and (c), 200-24(4), 200-37, and 200-38; or
 - (6) To violations of administrative rules promulgated pursuant to section 200-4(6); except for rules pertaining to matters listed in section 200-4(6) (A), (B), (C), and (D).
- (c) An agency may adopt rules to implement the requirements of this section. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2004, c 206, §1]

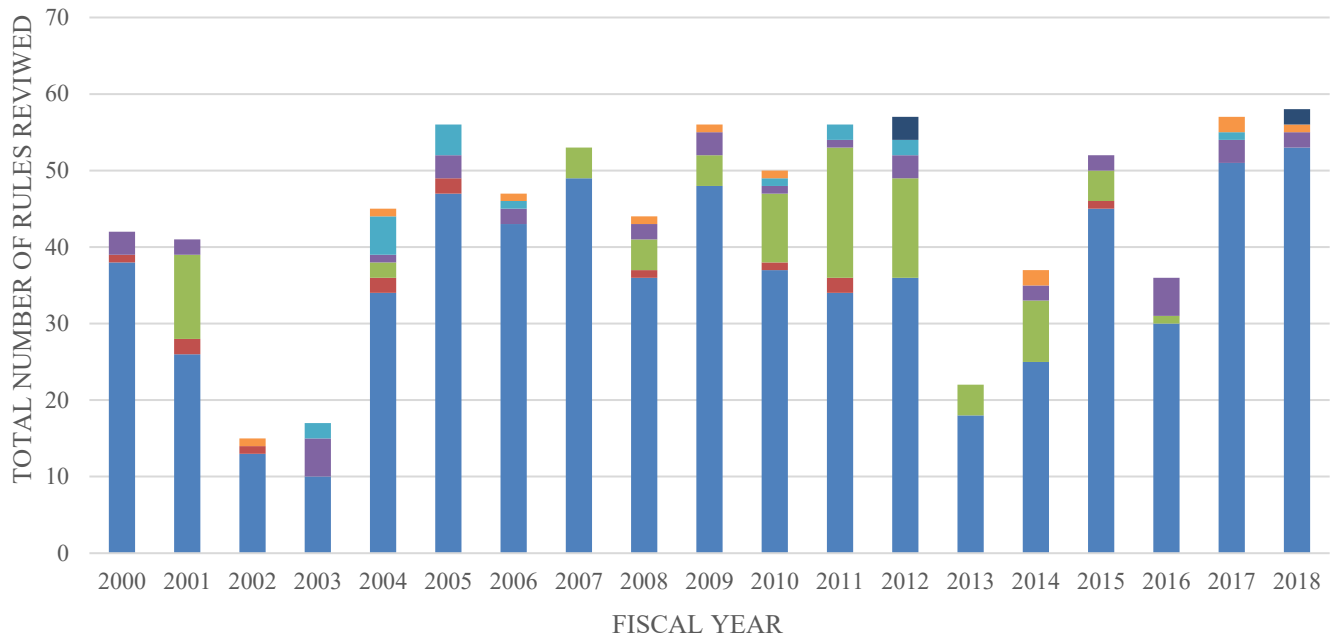
[\$201M-9] Executive order. The governor may execute any executive order, memorandum, or directive necessary to implement any provision of this chapter. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5]

2. Administrative Rule Review

2018 Administrative Rule Review

	Month/Year	Support	Oppose	No Comment/ No Action	Support W/ Rec. & Comments	Support w/ Reservations	Support/ Oppose	Pending/ Deferred
FY 2000 to FY 2017		620	13	81	38	18	10	0
FY 2018	Jul-17	5						
	Aug-17	5			1			
	Sep-17	2					1	
	Oct-17	12			1			
	Nov-17	6						
	Dec-17	2						
FY 2018	Jan-18	2						
	Feb-18	NA						
	Mar-18	9						
	Apr-18	4						1
	May-18	1						1
	Jun-18	5						
FY 2019	Jul -18	3						
	Aug-18	3						
	Sep-18	3						
	Oct-18	6						
	Nov-18	0						
	Dec-18	?						
	Total	673	13	81	40	18	11	NA

Administrative Rule Review Matrix



3. Administrative Directive No. 18-02



EXECUTIVE CHAMBERS
HONOLULU

DAVID IGE
GOVERNOR

January 1, 2018

ADMINISTRATIVE DIRECTIVE NO. 18-02

To: Department Directors

Subject: Policy and Procedure for the Adoption, Amendment, or Repeal of
Hawaii Administrative Rules

This administrative directive updates the policy and procedure by which departments or agencies shall request executive approval of any proposed adoption, amendment, or repeal of administrative rules. It replaces Administrative Directive No. 09-01, Policy and Procedure for the Adoption, Amendment, or Repeal of Administrative Rules, dated October 29, 2009.

Legal References:

1. Hawaii Revised Statutes Chapter 91
2. Hawaii Revised Statutes Chapter 201M, the "Hawaii Small Business Regulatory Flexibility Act," requires that if a proposed rule "affects small business," the department or agency shall submit a "small business impact statement" and a "small business statement" to the Small Business Regulatory Review Board. Chapter 201M does not apply to emergency rulemaking or rules adopted to comply with a federal requirement.

Policy:

1. All requests regarding Hawaii Administrative Rules must be submitted through Hawaii Administrative Rules Processing Site (HARPS).

<https://hawaiiomt.sharepoint.com/sites/gov/adminrules/>

Prior to all submittals, the department must obtain the Attorney General's approval "as to form".

2. Small Business Regulatory Flexibility Act

In accordance with Chapter 201M, the department must complete the following steps before submitting a request to conduct public hearing if the proposed rule affects small business:

- a. Complete Small Business Impact Statement
 - i. See HRS Section 201M-2
- b. Submit Small Business Impact Statement and proposed rules to the Small Business Regulatory Review Board

3. Public Hearing Approval

In the request to conduct public hearing, the department will provide response to the following:

- a. Summary of changes
 - i. Why is this section of Hawaii Administrative Rules being amended?
 - ii. What problem is the rule change meant to solve?
 - iii. List all changes that are being made.
- b. Impact of changes
 - i. How does this rule change address the problem?
 - ii. Who are the stakeholders? Positive and negative.
 - iii. What are the potential problems with the rule change?
 - iv. What is the fiscal impact?
 - v. What is the economic impact to the State?
- c. Consequences if changes are not made
 - i. What are the consequences if the rule change does not get adopted, amended or repealed?

4. Public Hearings

Upon approval of public hearing request, the department must enter all public hearing dates, times, and locations into HARPS.

- a. The department must be considerate of all parties being affected and schedule public hearings to allow for adequate feedback.
- b. The department must accept written testimony from all parties who are unable to attend the public hearing.
- c. The department will be responsible for transcribing the testimony from the public hearing into a public hearing summary document that will be required upon submittal of Final Rule.

5. Final Rule

In the request for approval of Final Rule, the department will provide response to the following:

- a. Changes in Final Rule
 - i. What changes were made in the Final Rule?
 - ii. Why were these changes made?
- b. Other
 - i. Describe how the department has worked with stakeholders to gain support for the rule?
 - ii. Have potential problems been addressed? Do the same problems exist with the Final Rule?
 - iii. Does the Office of the Governor staff need to meet with any people/organizations before the Governor signs this Final Rule?

6. Filing of Final Rule

Upon approval of Final Rule through HARPS, the Department will send 3 hard copies to Office of the Governor. When approved, these copies will be filed with the Office of the Lieutenant Governor. Rule will take effect 10 days after filing.

7. Department of Budget and Finance (BUF) and Department of Business, Economic Development and Tourism (BED)

BUF and BED will receive electronic notification upon submittal of public hearing request. Both departments will have the ability to submit comments and concerns through HARPS. Response will be due 10 business days after Final Rule is submitted. Comments will be optional unless the following applies:

- a. BUF will be required to provide response if the proposed rule has fees or other fiscal impacts.
- b. BED will be required to provide response if the proposed rule has economic impact or affects small business.



***No. 1 Capitol District Building
250 South Hotel Street
Honolulu, Hawaii 96813***

Telephone: (808) 586-2594

***Website: <http://dbedt.hawaii.gov/sbrb>
Email: DBEDT.sbrb.info@hawaii.gov***

VI. Administrative Matters

- B. Update on the Board's Upcoming Advocacy Activities and Programs in Accordance with the Board's Powers under Section 201M-5, HRS
 - a. Review of Board's Proposed PowerPoint Presentation for Outreach Purposes
 - b. Update and Discussion on the Board's Website Proposal
 - c. Review of Board's 2019 Meeting Schedule

Small Business Regulatory Review Board (SBRRB)

Department of Business, Economic Development and Tourism

Why Are Small Businesses Important?

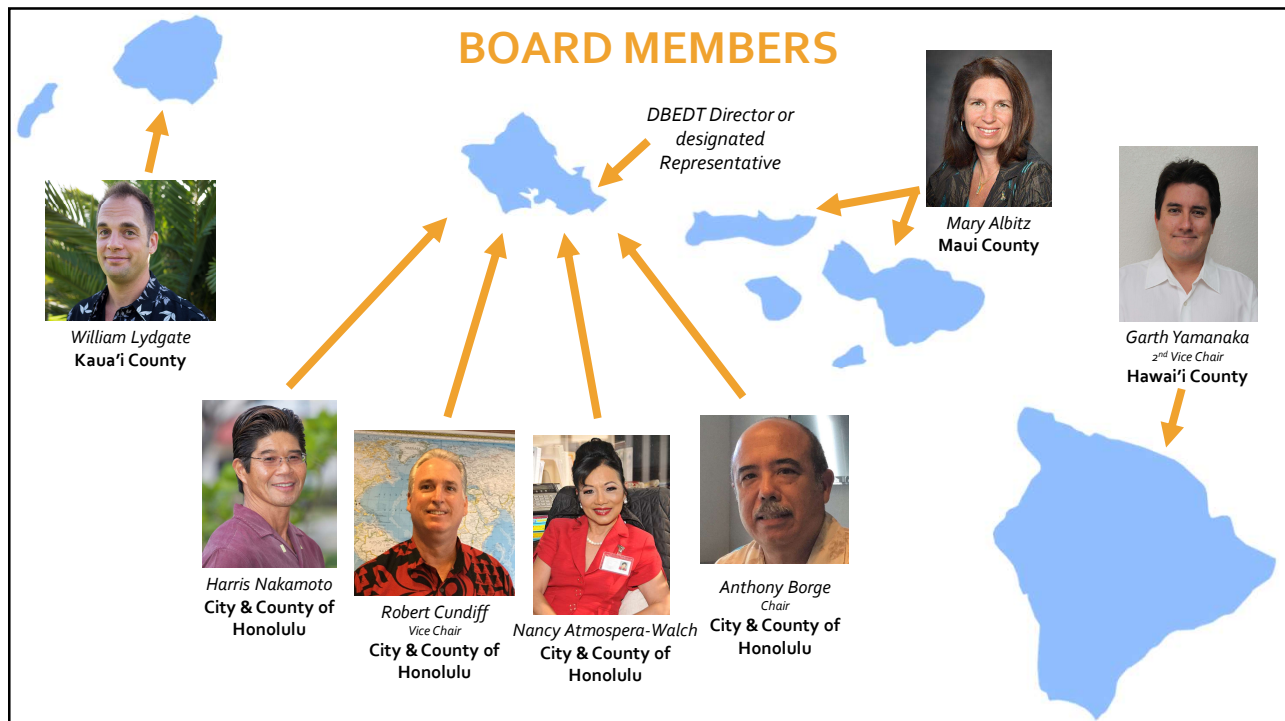
- Backbone of U.S. Economy / Federal Act
- Establishments with < 100 employees make up **98%** of all businesses in Hawaii*
- Employees working in small businesses make up **57%** of all employees in Hawaii*
- Hawaii Ranked:
 - **47th** - Overall Top States for Business in 2018**
 - **44th** – In Forbes' Best Ranked States for Business

* Census Bureau's "County Business Pattern" (CBP) data, 2016

** CNBC.com / Scorecard on State Economic Climate

What is the SBRRB?

- SBRRB consists of 11 members:
 - Volunteers
 - Advocate for small businesses & entrepreneurs
 - Small business defined as a “for profit” with fewer than 100 FT/PT employees, Sec. 201M-1, HRS
- Authority to comment, make recommendations on small business regulations & administrative rules



SBRRB's Vision and Mission

Vision

Make Hawai'i the most business-friendly state in the nation

Mission

Work toward a regulatory environment that encourages & supports the vitality of small business in Hawai'i

What Can the SBRRB Do for Small Businesses?

- Identify Burdensome Regulations
 - Recommend modifications to rules that unevenly impose burdens on small business
- Work with State and County agencies to avoid unnecessary burdens on small businesses during rule writing
- Respond to Small Business Complaints
 - *Regulation Review Card*
 - *Petition*

Recent Actions Taken by the SBRRB

- DOT – Commercial Services at Public Airports
 - Pilot Program: Uber & Lyft drivers
- DLIR - HIOSH Rules
 - Stakeholder meetings
- DOA - Non-Domestic Animal Import Rules
 - Animal rights / business impact



How YOU Can Help the SBRRB

The SBRRB wants to hear from you!

- Get involved as rules are being written
- Identify rules that are especially burdensome / suggest alternatives for compliance with necessary rules
- Submit a *Regulation Review Card* or *Petition*

How to
CONTACT
the SBRRB



dbedt.hawaii.gov/sbrrb



Small Business Resources



DBEDT.sbrrb.info@hawaii.gov



(808) 586-2594



Visit Monthly SBRRB meetings

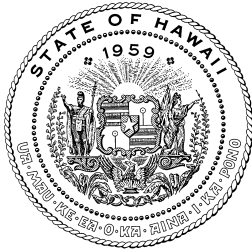
Leiopapa A Kamehameha - State Office Tower, Conference Room 405
235 South Beretania Street
Honolulu, HI 96813



@SBRRBHI

WEBSITE DESIGN - PHASE 1 and 2

Task Name	Duration	Start Date	End Date	Predecessors
Phase 1				
Analysis	30d	10/23/18	12/03/18	
SOW Signed	1d	10/23/18	10/23/18	
Internal Kick-Off Meeting	~0	12/03/18	12/03/18	
Design	76d	12/06/18	03/25/19	
Partner Kick-Off Meeting	1d	12/06/18	12/06/18	
Design Workshops	8w	12/07/18	02/04/19	6
Design Prototypes and Revisions	4w	02/05/19	03/04/19	7
Partner Signoff	15d	03/05/19	03/25/19	8
Await agency approval to move to phase 2	30d	03/27/19	05/07/19	9
Phase 2				
Development	55d	05/08/19	07/25/19	
Beta / Deploy Website to TEST	8w	05/08/19	07/03/19	10
Approval to Proceed	15d	07/05/19	07/25/19	14
Testing (TEST)	35d	07/05/19	08/22/19	
Testing, SBRRB Training and Review	4w	07/05/19	08/01/19	14
Approval of Testing - Sign Off	15d	08/02/19	08/22/19	17
Launch (PROD)	5d	08/23/19	08/29/19	
Deploy to PROD - Website Live!	5d	08/23/19	08/29/19	18
Post-Launch - Final payment due after 90d	90d	08/30/19	10/01/19	20



SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)
No. 1 Capitol District Building, 250 S. Hotel Street, Fifth Floor, Honolulu, HI 96813
Mailing Address: P.O. Box 2359, Honolulu, HI 96804
Email: dbedt.sbrrb.info@hawaii.gov
Website: dbedt.hawaii.gov/sbrrb

Tel: 808 586-2594

MEMORANDUM

David Y. Ige
Governor

Luis P. Salaveria
DBEDT Director

Members

Anthony Borge
Chairperson
O'ahu

Robert Cundiff
Vice Chairperson
O'ahu

Garth Yamanaka
2nd Vice Chairperson
Hawai'i

Harris Nakamoto
O'ahu

Nancy Atmospera-Walch
O'ahu

Mary Albitz
Maui

William Lydgate
Kaua'i

Director, DBEDT
Voting Ex Officio

TO: SBRRB Members

FROM: Dori Palcovich *Dori Palcovich*

DATE: November 14, 2018

SUBJECT: **2019 SBRRB Meeting Schedule – Room 405 at 10:00 a.m.**

Below are the 2019 SBRRB meeting dates. All meetings are scheduled for the 3rd Thursday of the month except **December 2019**.

January 17th

February 21st

March 21st

April 18th

May 16th

June 20th

July 18th

August 15th

September 19th

October 17th

November 21st

December 12th (2nd Thursday)

Board meetings will be held in the Leiopapa A Kamehameha building – State Office Tower, 235 South Beretania Street, Honolulu, HI 96813.

VII. Legislative Matters

- A. Update on the Legislative Proposal to Chapter 201M, HRS for the 2019 Hawaii Legislative Session

____.B. NO. _____

A BILL FOR AN ACT

RELATING TO THE SMALL BUSINESS REGULATORY REVIEW BOARD.

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

1 SECTION 1. Section 201M-5, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:
3 "(a) There shall be established within the department of
4 business, economic development, and tourism, for administrative
5 purposes, a small business regulatory review board to review any
6 proposed new or amended rule. If the board determines that a
7 proposed rule will not have a significant economic impact on a
8 substantial number of small businesses, the board shall submit a
9 statement to that effect to the agency that sets forth the
10 reason for the board's decision. If the board determines that
11 the proposed rule will have a significant economic impact on a
12 substantial number of small businesses, the board may submit to
13 the agency suggested changes in the proposed rule to minimize
14 the economic impact of the proposed rule, or may recommend the
15 withdrawal of the proposed rule. The board may also consider
16 any request from small business owners for review of any rule
17 proposed, amended, or adopted by a state agency and to make
18 recommendations to the agency or the legislature regarding the

.B. NO.

1 need for a rule change or legislation. For requests regarding
2 county [~~ordinances,~~ rules, the board may make recommendations
3 to the county council or the mayor for appropriate action."

4 SECTION 2. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 3. This Act shall take effect upon its approval.

7

8 INTRODUCED BY: _____

9

BY REQUEST

10

_____.B. NO._____

Report Title:

Small Business Regulatory Review Board

Description:

Clarifies the intent of the Small Business Regulatory Review Board's powers when reviewing state and county administrative rules that impact small business.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

VII. Legislative Matters

B. Discussion and Action on the Delegation of Authority to Board Member(s) and/or Staff to Submit Testimony and/or Testify on behalf of the Board during the 2019 Hawaii State Legislative Session