

 EXECUTIVE CHAMBERS

 HONOLULU

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| DAVID IGEGOVERNOR |  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://hawaiioimt.sharepoint.com/sites/gov/adminrules/>

Prior to all submittals, the department must obtain the Attorney General’s approval “as to form”.

1. **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:

* 1. Complete Small Business Impact Statement
		1. See HRS Section 201M-2
	2. Submit Small Business Impact Statement and proposed rules to the Small Business Regulatory Review Board
1. **Public Hearing Approval**

In the request to conduct public hearing, the department will provide response to the following:

* 1. Summary of changes
		1. Why is this section of Hawaii Administrative Rules being amended?
		2. What problem is the rule change meant to solve?
		3. List all changes that are being made.
	2. Impact of changes
		1. How does this rule change address the problem?
		2. Who are the stakeholders? Positive and negative.
		3. What are the potential problems with the rule change?
		4. What is the fiscal impact?
		5. What is the economic impact to the State?
	3. Consequences if changes are not made
		1. What are the consequences if the rule change does not get adopted, amended or repealed?
1. **Public Hearings**

Upon approval of public hearing request, the department must enter all public hearing dates, times, and locations into HARPS.

* 1. The department must be considerate of all parties being affected and schedule public hearings to allow for adequate feedback.
	2. The department must accept written testimony from all parties who are unable to attend the public hearing.
	3. 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.
1. **Final Rule**

In the request for approval of Final Rule, the department will provide response to the following:

* 1. Changes in Final Rule
		1. What changes were made in the Final Rule?
		2. Why were these changes made?
	2. Other
		1. Describe how the department has worked with stakeholders to gain support for the rule?
		2. Have potential problems been addressed? Do the same problems exist with the Final Rule?
		3. Does the Office of the Governor staff need to meet with any people/organizations before the Governor signs this Final Rule?
1. **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.

1. **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:

* 1. BUF will be required to provide response if the proposed rule has fees or other fiscal impacts.
	2. BED will be required to provide response if the proposed rule has economic impact or affects small business.

Procedure:

1. See attached PowerPoint