

Small Business Regulatory Review Board Meeting

Wednesday, May 16, 2018

10:00 a.m.

No. 1 Capitol District Building

250 South Hotel Street, Honolulu, HI

Conference Room 436



SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)
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AGENDA

Wednesday, May 16, 2018 ★ 10:00 a.m.

No. 1 Capitol District Building
250 South Hotel Street - Conference Room 436

David Y. Ige
Governor

Luis P. Salaveria
DBEDT Director

Members

Anthony Borge
Chairperson
Oahu

Robert Cundiff
Vice Chairperson
Oahu

Garth Yamanaka
2nd Vice Chairperson
Hawaii

Harris Nakamoto
Oahu

Nancy Atmospera-Walch
Oahu

Kyoko Kimura
Maui

Reg Baker
Oahu

Mary Albitz
Maui

William Lydgate
Kauai

Director, DBEDT
Voting Ex Officio

I. Call to Order

II. Approval of April 18, 2018 Meeting Minutes

III. New Business

- A. Discussion and Action on Proposed Amendments to Hawaii Administrative Rules (HAR) Title 4 Chapter 66, **Pesticides**, promulgated by Department of Agriculture – **Discussion Leader Garth Yamanaka**

IV. Old Business

- A. Discussion and Action on Proposed Amendments to HAR Title 19 Chapter 20.1, **Commercial Services at Public Airports**, promulgated by Department of Transportation – **Discussion Leader Kyoko Kimura**

V. Administrative Matters

- A. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, Hawaii Revised Statutes (HRS)
- B. Voting and Action on Board Chair, pursuant to Section 201M-5(c), HRS, and Voting and Action on Vice Chair and Second Vice Chair

VI. **Next Meeting:** Scheduled for Wednesday, June 20, 2018, at 10:00 a.m., Capitol District Building, Conference Room 436, Honolulu, Hawaii

VII. Adjournment

If you require special assistance or auxiliary aid and/or services to participate in the public hearing process (i.e., sign language, interpreter, wheelchair accessibility, or parking designated for the disabled), please call (808) 586-2399 at least three (3) business days prior to the meeting so arrangements can be made.

II. Approval of April 19, 2018 Meeting Minutes

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING - Draft

April 18, 2018

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

- I. **CALL TO ORDER:** Chair Borge called the meeting to order at 10:13 a.m., with a quorum present.

MEMBERS PRESENT:

- Anthony Borge, Chair
- Robert Cundiff, Vice Chair
- Garth Yamanaka, 2nd Vice Chair
- Kyoko Kimura
- Reg Baker
- Nancy Atmospera-Walch
- Mark Ritchie / Carl Nagasako

ABSENT MEMBERS:

- Harris Nakamoto

STAFF: DBEDT

Dori Palcovich
Arthur Mori

Office of the Attorney General

Jennifer Waihee-Polk

II. **APPROVAL OF MARCH 21, 2018 MINUTES**

Vice Chair Cundiff made a motion to accept the March 21, 2018 minutes, as amended. Second Vice Chair Yamanaka seconded the motion, and the Board members unanimously agreed.

III. **NEW BUSINESS**

- A. Discussion and Action on Proposed Amendments to HAR Title 15 Chapter 218, Kakaako Reserved Housing Rules, promulgated by Department of Business, Economic Development and Tourism / Hawaii Community Development Authority (HCDA)

Discussion leader Mark Ritchie reminded the members that the proposed rule amendments previously came before this board and the board voted to send them to public hearing. The Governor, however, returned the rules back to HCDA recommending that the buy-back period be changed from 30 to 10 years.

Mr. Garrett Kamemoto, HCDA Interim Executive Director, perceives no new small business impact due to the new rule changes. He noted that the Governor was concerned that the original proposed 30-year period would negatively stifle construction development and prevent adequate financing.

Mr. Ritchie made a motion to pass the rules onto the Governor for public hearing. Vice Chair Cundiff seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Proposed New HAR Title 13 Chapter 60.9, Mo'omomi Community-Based Subsistence Fishing Area, Molokai, promulgated by Department of Land and Natural Resources (DLNR)

Discussion leader Mr. Ritchie stated that the proposed new rules represent a classic over-fishing of resources. Mr. David Sakuda, Program Manager at DLNR's Division of Aquatic Resources, explained that the rules prohibit commercial fishing within the Mo'omomi community-based subsistence fishing area with exceptions for commercial bottom fishing for deep 7 bottom fish and commercial trolling.

Additional changes to the rules were subsequently submitted to the Board, as follows, "it is unlawful for any person to engage in operating a vessel or any other activity that may otherwise disturb the marine environment within the Kawa'aloa Bay Protected Area, except as permitted by federal law."

Business impact relates to the commercial fishers as they will no longer be allowed to commercially fish for nearshore species within the area. The reported value of commercial catch, excluding deep 7 bottom fish and pelagic species, averages \$2,246 per year. Mr. Ritchie added that OHA (Office of Hawaiian Affairs) submitted testimony in strong support of the proposed rules.

Mr. Ritchie made a motion to pass the rules onto the Governor for public hearing. Second Vice Chair Yamanaka seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on Proposed Amendments to HAR Title 11, Chapter 55, Water Pollution Control, promulgated by Department of Health (DOH)

Mr. Alec Wong, Branch Manager of DOH's Clean Water Branch, explained that most of the rule changes are federal requirements for water pollution permits of NPDES (National Pollutant Discharge Elimination System), as well as housekeeping measures. One of the federal permitting requirements reflect a major change to small business regarding construction activities; there are nearly 1,000 of these permits outstanding, mostly to contractors.

Chair Borge stated the rules are going to public hearing and understands that the timing of the public hearing is critical for the permitting process. Mr. Wong added that the contractors and sub-contractors are fully aware of the permitting changes. Chair Borge appreciates that the Clean Water Branch consistently reaches out to the stakeholders and Vice Chair Cundiff articulated that it appears most of the small businesses would be in support of the rules; Mr. Wong concurred.

Vice Chair Cundiff made a motion to pass the rules onto public hearing. Mr. Reg Baker seconded the motion, and the Board members unanimously agreed.

D. Discussion and Action on Proposed Amendments to HAR Title 19 Chapter 20.1 Commercial Services at Public Airports, promulgated by Department of Transportation (DOT)

Discussion leader Ms. Kimura commented that this Board reviews rules that impact small business and not airport security or consumer protection. Ms. Rosemary Neilson-Nenezich, Operations Manager at DOT Airports Division, and DOT's Deputy Attorney General John Price, explained the rule changes.

Deputy Attorney General Price stated that to pick up passengers at the airports, the rules require businesses; i.e., taxi cab operators, to have either a PUC (Public Utility Commission) license or authorization from an appropriate governmental agency; i.e., City and County of Honolulu. Over a year ago, the City and County of Honolulu recognized a new type of transportation service, Transportation Network Company (TNC). As a result, the rules are being modified to account for this new authorized type of ground transportation for issuance of permits and to serve the public at the airports.

The rule changes are intended to be non-intrusive and non-disruptive to accommodate the TNCs. Trade dress (i.e., logo) will suffice for the TNCs rather than a numbered decal currently being used. In regard to the expense, there is no new change in fees as the 7.0% of revenues that is currently charged is the same for the TNCs as well as the existing pre-arranged ground transportation companies; 3.0% is required at the other state airports. In addition, a \$100 annual fee is required.

Ms. Neilson-Nenezich explained that DOT's pilot program began December 1, 2017 for three months; in the middle of February 2018, it was extended for an additional six months so it can be assessed and to see what, if any, accommodations are needed to be made. To date, many of the issues are operational in nature. However, once the pilot program is over, DOT is unsure as to how the final nature of the program will play out.

The rules are governed state-wide for all the airports. In response to Chair Borge's question about the equality of the playing field in terms of all service operators, Deputy Attorney General Price stated that all operators are required to pay the annual permit fee and a percentage of revenue.

Ms. Neilson-Nenezich clarified that there are two different types of business operators at the airport, one is the on-demand taxi provider, managed by a taxi cab company, which stays in the staging area and waits to be dispatched. The other type of service is the ground transportation provider, which can be a taxi, a limousine service, or a bus company. Uber and Lyft operators are now being treated as "ground transportation" providers versus on-demand taxi providers. There are currently two locations at the Honolulu airport, separate from other pick-up areas, where Uber and Lyft drivers pick up passengers.

Regarding insurance requirements, TNCs have various conditions on the vehicles; for example, when a driver is not working or available for an assignment, the driver is on his/her own personal insurance. When a driver logs into work, Uber or Lyft is required to cover the driver with a blanket policy. As soon as a customer is in the vehicle, the insurance goes up to \$1 million until the passenger is dropped off at the destination.

Testifier, Mr. Robert DeLuz, owner of Robert's Taxi for the past 28 years, does not believe that a level playing field exists. He stated that the state requires that each of Mr. DeLuz's vehicles must have \$300,000 insurance coverage and that each pay the 7% of revenues. He also believes that the parking facilities for taxis is anemic compared to parking for Uber and Lyft drivers, and that while taxis are required to have permits/stickers on their cars, Uber and Lyft drivers are not. Ms. Neilson-Nenezich responded that the parking for Uber and Lyft drivers is different in order to gauge how the system works; the Uber and Lyft drivers utilize about 100 feet on the second level of the airport as well as in the interisland terminal.

Testifier, Ms. Dale Evans, President and CEO of Charlie's Taxi, summarized her written testimony and distributed a supplement handout. While she believes in competition she also believes that DOT has been unfair to local small business taxi drivers, and discussed confusion with the fee payments. Ms. Neilson-Nenezich clarified that the fees are paid by all permittees, i.e., Uber, Lyft and Charlie's Taxi. Deputy Attorney General Price confirmed that Uber, Lyft and the taxi cab operators were paying the exact same fee. He also mentioned that any limitations or mandates by the City and County of Honolulu on what taxi drivers must pay is beyond the scope of the state rules.

Testifier, Ms. Tabitha Choy, Senior Operations Manager for Uber in Hawaii, explained that Uber does not own any vehicles or employ drivers but partners with local independent drivers and taxi cab drivers. She is in support of the proposed amendments in order to enhance the businesses of these drivers. A Lyft consultant stated that Lyft's testimony and its operating systems mirror Uber's; many of the drivers drive for both Uber and Lyft

Uber and Lyft drivers are not regulated by the PUC as are other taxi and limousine drivers. Also, transponders are not required for Uber and Lyft drivers while other drivers are required to have transponders in their vehicles. Ms. Choy explained that this is because Uber has a very robust data system with information down to the latitude/longitude coordinates regarding where the pick-up request came in, where the passenger was picked-up, and where it ended, with the number of trips reported to the state. She added that transponders were likely required because the technology hadn't yet existed in regard to the modern up-to-date technology which makes transponders unnecessary.

Ms. Choy also added that the nature of the Uber drivers is very part-time and somewhat seasonal. In the past month, there have been thousands of independent Uber drivers actively driving. Uber disseminates to the drivers that they should have signs, where to place them and noting that this rule is under enforcement. Regarding insurance, Ms. Choy indicated that as soon as an Uber rider gets into a car, the liability insurance is \$1 million, but that each individual driver needs a \$300,000 liability policy. When a vehicle's "app" is turned, on another policy is in place, which is a little lower than the \$1 million. Uber and Lyft are both open and willing to what the airport deems appropriate and best for its operations about pick-up points at the airport.

Testifier, Arthur Hughes, owner of Island Limo, explained that due to the pilot program, his company is operating at 17% below normal airport gross revenue, and because there is no demand for his service, his company is down from eleven to five drivers and is financially struggling.

Testifier, Kenn Chang, owner of a small taxi cab company, complimented this Board for its questions and interest; he stands by Ms. Evans' and Mr. Hughes' sentiments. He stated that UberX is a \$7 billion international company but is restricted by many countries and believes Uber has disseminated the taxi industry.

Testifier, Bob Toyofuku, who works in governmental affairs for Uber, explained that since 2016, it is mandated by state law that TNC's are insured. Testifier, David Frankle, disagreed with Mr. Toyofuku and believes that DOT is allowing Uber and Lyft to have a lower insurance coverage.

Ms. Neilson-Nenezich confirmed that transponders are installed by the state but under the pilot program Uber and Lyft drivers are not required to install transponders, nor do they have permit/decals, whereas decals are required for all pre-arranged ground transportation. Vice Chair Cundiff stated that the administrative rules, which are written for a class of businesses, should be equal. Chair Borge added that the drivers must operate on the same platform for transponders and permits as well as insurance coverage, and suggested that DOT engage the stakeholders to review these concerns.

Chair Borge made a motion to defer action on this measure so DOT may engage the stakeholders to address concerns in clarifying the transponders and permitting process of the vehicles, and a requirement to maintain adequate insurance. Ms. Atmospera-Walch seconded the motion and the Board members unanimously agreed.

Subsequently, Vice Chair Cundiff made a motion to generate a letter for clarification purposes of the Board's expectations to confirm such items as the director of DOT not requiring additional insurance requirements and that the 7% collection of gross sales is consistent among all groups. Ms. Atmospera-Walch seconded the motion and the Board members unanimously agreed.

E. Discussion and Action on Proposed Repeal of HAR Title 11 Chapter 281, and Adoption of HAR Title 11 Chapter 280.1, Underground Storage Tanks, promulgated by DOH

Ms. Noa Klein, Planner at DOH's Solid & Hazardous Waste Division, explained that this proposal repeals an existing chapter as well as the adopts a new/amended chapter. The State's underground storage tank program, which is part of a federal EPA (Environmental Protection Agency) program, requires state rules to be at least as stringent as the federal rules; the proposal reflects the EPA's changes made in 2015. Ms. Klein provided a brief description of the overall federal mandates and noted that the deadline for adhering to the rules is October 2018.

The one "state-initiated" rule change that impacts small business, not required under the federal program, is to remediate older underground tanks that have single-walled, secondary containment prior to August 2013, within ten years of the adoption of this rule proposal. Of the approximately 400 signal-walled tanks in Hawaii, up to 52 facilities are small businesses that own 150 singled-walled tanks, and includes 12 tanks that are temporarily closed. About 22 of these small businesses will need to replace single-walled tanks only and 30 will need to replace both single-walled tanks and piping.

The average cost to remediate varies widely and depend on a number of items including the number and size of tanks, the amount of piping and location variables. Two local contractors performing this type of remediation work have estimated the cost of removing three 10,000-gallon single-walled tanks and installing three 10,000 gallon tanks with a secondary containment, from \$350,000 to \$750,000. The cost of replacing piping for an average gas station site is estimated at \$25,000 to \$42,000, without remediation costs.

Mr. Ward Hargrove, Deputy Attorney General for DOH, stated that the impacted small businesses are aware of the remediation requirements. He believes that DOH's community outreach to the impacted businesses has been very good. In response to the suggestion posed by Chair Borge about providing tax credits, it was noted that tax credits were considered but DOH is unable at this time to coordinate the funds/credits.

Second Vice Chair Yamanaka made a motion to pass the rules onto public hearing. Mr. Baker seconded the motion, and the Board members unanimously agreed.

IV. LEGISLATIVE MATTERS

A. Update on House Bill 2753, "Relating to the Small Business Regulation Review Board"

Chair Borge announced that this measure died because it was not scheduled for a hearing by the House Judiciary Committee.

B. Update on Governor's Message 675 Submitting for Consideration the Gubernatorial Nomination of Mary Albitz to the Small Business Regulatory Review Board for a term to expire June 20, 2020

This measure was confirmed.

C. Update on Governor's Message 673 and 674 Submitting for Consideration the Gubernatorial Nomination of Will Lydgate to the Small Business Regulatory Review Board for a term to expire June 20, 2018 and June 30, 2022, respectively

These measures were confirmed.

D. Update on Governor's Message 513 and 514 Submitting for Consideration the Gubernatorial Nomination of Reg Baker to the Small Business Regulatory Review Board for a term to expire June 30, 2018 and June 30, 2022, respectively

These measures were confirmed.

E. Update on Senate Bill 2059 "Relating to Public Accountancy"

This measure died. Mr. Baker explained that the way the bill went through was good, but during the process it changed so dramatically that it lost the support from the CPA society.

V. ADMINISTRATIVE MATTERS

A. Discussion and Action on the Board's Investigative Taskforce's Final Recommendation for the Redesign of the existing Website, in accordance with Section 92-2.5(b)(1)(C), HRS

Mr. Baker made a motion to approve the Investigative Taskforce's final recommendation for the redesign of the Board's existing website, of approximately \$18,000 to \$20,000 and an additional monthly maintenance fee. Mr. Yamanaka 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

Chair Borge announced that the Board's 20th anniversary is this year, and solicited suggestions from the members as to how to celebrate. Responses included having the Governor announce a proclamation, and attending various chambers of commerce to promote the Board.

Mr. Baker explained that every year a conformity bill will pass through the legislature that allows for the state taxes to be approved into the federal taxes. However, this is the first time in several years that this will not occur. The state of Hawaii's taxes will be status quo with the 2017 rules while the federal government will be using the new 2018 rules. This is expected to create real issues for small businesses.

VI. NEXT MEETING – The next meeting is scheduled for Wednesday, May 16, 2018, in Conference Room 436, 250 South Hotel Street, Honolulu, Hawaii at 10:00 a.m.

VII. ADJOURNMENT – Vice Chair Cundiff made a motion to adjourn the meeting and Ms. Kimura seconded the motion; the meeting adjourned at 1:32 p.m.

III. New Business

A. Discussion and Action on Proposed Amendments
to HAR Title 4, Chapter 66, **Pesticides**,
promulgated by DOAg

DAVID Y. IGE
Governor

DOUGLAS S. CHIN
Lt. Governor



SCOTT E. ENRIGHT
Chairperson, Board of Agriculture

PHYLLIS SHIMABUKURO-GEISER
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

April 18, 2018

Small Business Regulatory Review Board
State of Hawaii
Department of Business, Economic Development & Tourism

Statement of Topic

The Hawaii Department of Agriculture, Pesticides Branch, starting in January 2015, began the process of revising the Hawaii Administrative Rules, Chapter 4-66, governing the registration, licensing, and use of pesticides in the State of Hawaii. The last time that the Pesticide Rules were revised and implemented was in 2006. Between 2006 and the present time there were Federal Rule changes as presented in the Code of Federal Regulations, Title 40, Chapter 1, Subchapter E – Pesticide Programs.

The revision of Hawaii's Pesticide Rules were undertaken, in part, to align State Rules with Federal Rules on the use of pesticides. As a result of the process there were a number of revisions that were made that addressed pesticide use and the environment, pesticide exposure and human health, pesticide enforcement, pesticide licensing and dealer fees, certification fees, and wholesale adoption of Federal pesticide rules that were incorporated into the fabric of Chapter 4-66 Pesticide Rules.

Included as part of the proposed Pesticide Rules revisions is a document that explains the revisions and what passages were replaced or what wording and phrasing within an existing passage was modified to reflect changes in Title 40 or in the enabling federal statute known as the Federal Insecticide Fungicide and Rodenticide Act (FIFRA), which is the overall governing law for pesticide use in the U.S. After being vetted by the Governor's Advisory Committee on Pesticides, and several presentations at meetings of the Board of Agriculture, the proposed Pesticides Rules revisions were approved by the Board of Agriculture on February 27, 2018 and are being presented to the Small Business Regulatory Review Board for review and consideration as a pre-public hearing requirement.



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

Department or Agency: Department of Agriculture, Pesticides Branch

Administrative Rule Title and Chapter: Title 4, Subtitle 6, Chapter 66

Chapter Name: Pesticides

Contact Person/Title: John McHugh, Program Manager

Phone Number: 808-973-9404

E-mail Address: john.mchugh@hawaii.gov **Date:** April 19, 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☺)

<http://hdoa.hawaii.gov/meetings-reports/proposedar/> Rules may be viewed in person at the Hawaii Department of Agriculture offices at 1428 S. King St, Honolulu, HI 96814

(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.

Affected small businesses: Licensees of pesticides and nonchemical devices, persons applying to be applicators of restricted use pesticides, and restricted use pesticide dealers. All fees addressed in 4-66 are proposed to be increased

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.

licensing pesticides: from \$330 every 3 years to \$930/ 3 years. Nonchemical devices: new one time fee of \$330. Pesticide Dealers: from \$250 principal outlet and \$100 per branch to \$500 principal outlet and \$200 per branch. Exam fees: From \$25 per exam to \$50 per exam. Applicator's and Dealer's certificate from \$50 to \$100. Training fees from \$25 to \$50. Head may waive or reduce fee upon demonstrated need.

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.

Pesticide licensing fee was last increased in 2006 rule change, taking final effect January 1, 2009. Current fee is \$330. Nonchemical devices currently have no fee. Pesticide Dealers have a fee of \$250 for the principal outlet and \$100 per branch outlet. Exam fees are \$25 per exam Applicator's and Dealer's certificate are \$50. Training fees are \$25. These fees were last increased in 2006.

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

Dealer outlet fees, exams for applicators and dealer, certificates for dealers and applicators, and training fees are increasing 100%, pesticide licensing fees are increasing 280%. Nonchemical devices are getting a new fee.

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

The last increase was in 2006. Increased fees will increase revenue to the pesticide revolving fund established by 149A-13.5 making more funds available for training and educational programs, including programs to help applicators learn to safely and legally apply pesticides. Compared to other states, even doubling the current rates Hawaii licensing prices remain low.

- d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).

Consumer Price Index and Inflation rate since 2006.

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.

Funds will go into the pesticide revolving fund, which is used only as allowed by 149A-13.5. These funds go to benefit the users of pesticides, including additional training, education, compliance assistance, and environmental monitoring.

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.

Included the ability of head to waive fees due to hardship

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

Head may waive fees due to hardship.

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.

Head may waive fees due to hardship.

7. How the agency involved small business in the development of the proposed rules.

Rules spent two years in draft state before the Board of Agriculture accepted them to be open to public comment. During this time at several board meetings the rules were discussed and the public was able to attend and submit comment. Rule changes were also presented for public input at the meeting of the Governor's Pesticide Advisory Committee on June 13, 2017.

- 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.

There were recommendations for definitions and amendments to the rules from organizations that represent small businesses, such as Hawaii Pest Control Associations and the Farm Bureau. Almost all comments were included into changes before the rules were accepted by the Board of Agriculture. No comments were received regarding the fee increases.

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.

No, the proposed amendments are intended to more closely align with current federal regulations.

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

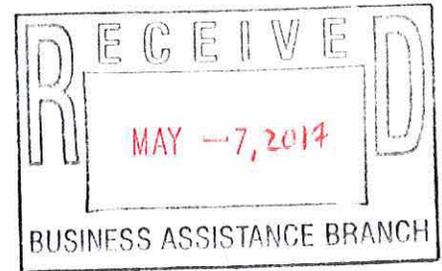
Email: DBEDT.sbrrb.info@hawaii.gov

This Statement may be found on the
SBRRB Website at:

<http://dbedt.hawaii.gov/sbrrb/small-business-impact-statements-pre-and-post-public-hearing>

State of Hawai'i
Department of Agriculture
Plant Industry Division
Pesticide Branch

January 23, 2018



Board of Agriculture
Honolulu, Hawai'i

SUBJECT: Request for: (1) Preliminary Approval of Proposed Amendments to the State List of Restricted Use Pesticides, currently maintained in section 4-66-32, *Hawai'i Administrative Rules*; (2) Authorization for the Chairperson to Schedule Public Hearing(s); and (3) Appoint a Hearings Officer in Connection with the Proposed Amendments to Chapter 4-66, *Hawai'i Administrative Rules*.

INTRODUCTION

Pesticide products are classified by the Environmental Protection Agency (EPA) as either general use or restricted use. *See* section 156.10, title 40, *Code of Federal Regulations* ("CFR"). Any pesticide product that is classified by the EPA as a restricted use pesticide is also classified by the State of Hawai'i as a State restricted use pesticide product. *See* section 4-66-32(a), *Hawai'i Administrative Rules* ("HAR") (2006). Pesticide products that are classified by the EPA as general use pesticides may be classified in Hawai'i as either State restricted use, or nonrestricted use. *See* HAR section 4-66-32(b) (2006).

General use or nonrestricted use pesticides are available for purchase by the general public. Restricted use pesticides may only be purchased and applied by certified applicators, or those persons operating under the direct supervision of a certified applicator. *See* section 149A-11(b)(5), *Hawai'i Revised Statutes* ("HRS"). HDOA requires restricted use pesticide purchasers and applicators to be certified, or operating under the direct supervision of a certified applicator, due to the potential for restricted use pesticides to cause adverse effects to the environment. The specialized knowledge gained through the certification process, and the use of any other added precautions deemed necessary, allow these riskier pesticides to be applied without causing unreasonable adverse effects.

BACKGROUND

Before being licensed for sale in Hawai'i, pesticide products undergo thorough review by the Hawai'i Department of Agriculture ("HDOA"). If, as a result of this internal review, the pesticide product is found to be potentially hazardous to Hawaii's environment, the pesticide product may be prohibited from sale in Hawai'i, or may be placed on the State restricted use pesticide list. Placement on the State restricted use list means HDOA has found the pesticide can safely be applied through the use of special handling, further restriction, packaging, or equipment. *See* HAR section 4-66-32(c) (2006).

Currently, the list of State restricted use pesticide products available for purchase by certified applicators is maintained in HAR section 4-66-32 (2006). A rule amendment is required to add or delete a pesticide product from the State restricted use pesticide list. Utilizing rule amendment as a way of adding or deleting pesticide products from the State restricted use pesticide list has proven to be a management problem. Due to the complexity of the rule amendment process it can take years to add or remove a pesticide from the list. See HRS chapter 91 and HAR section 4-1-23 to 4-1-30. In some cases, producers of agricultural commodities have been denied the use of safer and less expensive pesticide products due to the lengthy rule amendment process.

HAR section 4-66-32 (2006) currently states:

"§4-66-32 Restricted use pesticides.

(a) A pesticide or pesticide use classified for restricted use under FIFRA shall be classified as a restricted use pesticide.

(b) Any pesticides or pesticide uses meeting or exceeding any of the following criteria shall be a candidate for State restricted use classification:

- (1) Pesticides in toxicity categories I and II as defined in section 4-66-18;
- (2) Pesticides or pesticide uses which are determined to be a health hazard for one or more reasons including but not limited to toxicity, body storage, oncogenicity, mutagenicity, and teratogenicity or other reproductive effects;
- (3) Pesticides or pesticide uses which can reasonably be anticipated to result in contamination of groundwater or significant reductions in nontarget organisms, or fatality to members of endangered species; and
- (4) Pesticides or pesticide uses authorized under section 18, of FIFRA.

(c) The head may classify a pesticide or pesticide use meeting or exceeding the criteria set forth in section 4-66-32(b) for nonrestricted use if it is determined that measures such as packaging, type of formulation, or method of application eliminate or reduce hazards associated with the pesticide or its use.

(d) The head, in consultation with the advisory committee, shall determine those pesticides or pesticide uses meeting or exceeding the criteria set forth in section 4-66-32(b) and submit a list of those pesticides and pesticide uses for adoption by the board.

(e) The following pesticides, pesticide formulations, or pesticide products for reasons based on the criteria set forth in section 4-66-32(b) are classified as restricted use pesticides:

<u>Restricted Use Pesticides</u>	<u>Restricted Concentration</u>
Alachlor	All
Atrazine	All

Bromacil	All
Chlorine gas (effective January 1, 2008)	All
Chloropicrin	All
Including its use as an irritant or warning agent when used with any pesticide	
Cyanazine	All
Hexazinone	All
Metolachlor and its isomers	All
Paraquat	All above 0.2% cation
Picloram	All
Simazine	All".

The Pesticide Branch seeks Board approval, in conjunction with the requested amendments of the Pesticide Rules (HAR chapter 4-66 (2006)), to pursue adoption of the additional pesticide products as State Restricted Use Pesticides:

<u>"Restricted Use Pesticides</u>	<u>Restricted Concentration</u>
Amicarbazone	All Concentrations
Chlorantraniliprole	All Concentrations
Chlorpyrifos	All Concentrations
Cyantraniliprole	All Concentrations
Fludioxonil	All Concentrations".

The Pesticide Branch also seeks Board approval to pursue amendment of the restricted concentration of Paraquat from "All above 0.2% cation" to "All Concentrations."

PESTICIDE ADVISORY COMMITTEE REVIEW

On January 16, 2015, the Pesticide Advisory Committee, after review of materials provided by the licensee, and internal review by HDOA, was asked to approve the addition of Chlorantraniliprole, Fludioxonil, and Amicarbazone to the State Restricted Use Pesticide List. The internal review by HDOA raised groundwater contamination concerns. Following discussion, the Pesticide Advisory Committee recommended that Chlorantraniliprole (8/0), Fludioxonil (7/1), and Amicarbazone (8/0) be approved for addition to the State Restricted Use Pesticide List. *See* attached minutes from the January 16, 2015 meeting.

Chlorpyrifos and Cyantraniliprole have not undergone formal review by the Pesticide Advisory Committee.

RECOMMENDATION

As part of the HAR chapter 4-66 (2018) rule revision, the Pesticide Branch proposes that HAR chapter 4-66 be amended to require the State restricted use pesticides list be maintained on-line and at the Office of the Chairperson rather than continue to maintain the State

restricted use pesticides list in the administrative rules. The Pesticide Branch recommends that HAR section 4-66-32 be amended to read as follows:

"§4-66-32 Restricted use pesticides.

(a) A pesticide or pesticide use classified for restricted use under FIFRA shall be classified as a State restricted use pesticide.

(b) Any pesticides or pesticide uses that meet or exceed any of the following criteria shall be a candidate for State restricted use classification:

- (1) Pesticides in toxicity categories I and II as defined in section 4-66-18 (40 CFR sections 156.62, 156.64, 156.66, and 156.68 (2017));
- (2) Pesticides or pesticide uses that are determined by the head, in consultation with the director of the department of health, to be a health hazard for one or more reasons including, but not limited to, toxicity, body storage, oncogenicity, mutagenicity, and teratogenicity or other reproductive effects;
- (3) Pesticides or pesticide uses that can reasonably be anticipated to result in contamination of groundwater or significant reductions in non-target organisms, or fatality to members of endangered species; and
- (4) Pesticides or pesticide uses authorized under section 18, the Emergency Exemption provision, of FIFRA.

(c) Any pesticide, pesticide formulation, pesticide product, or pesticide use that meets or exceeds the criteria set forth in section 4-66-32(b) shall be subjected to an internal review process by the department prior to being presented to the board for adoption as a State restricted use pesticide.

(d) The head, in consultation with the advisory committee, shall determine which pesticides, pesticide formulations, pesticide products, or pesticide uses meet or exceed the criteria set forth in section 4-66-32(b) and shall submit those items for review by the department.

(e) Once the review process under section 4-66-32(c), or if applicable, an evaluation under section 4-66-32.1(c), has been completed, the head shall submit a list of those pesticides, pesticide formulations, pesticide products, and pesticide uses deemed appropriate for classification as State restricted use for adoption by the board.

(f) The head may classify a pesticide or pesticide use meeting or exceeding the criteria set forth in section 4-66-32(b) for nonrestricted use if during the department's review process it is determined that measures such as packaging, type of formulation, or method of application eliminate or reduce hazards associated with the pesticide or its use.

(g) The board, upon adoption of those pesticides, pesticide formulations, pesticide products, or pesticide uses recommended for classification as a State restricted use pesticide, shall maintain a list of all State restricted use pesticides at the department Office of the Chairperson. The list of State restricted use pesticides shall also be posted on the department's website."

The Pesticide Branch proposes that the list of State restricted use pesticides to be maintained on-line, and at the HDOA Office of the Chairperson, read as follows:

**"STATE OF HAWAII
LIST OF RESTRICTED USE PESTICIDES**

The following pesticides, pesticide formulations, pesticide products, and pesticide uses are classified as restricted use pesticide:

<u>Restricted Use Pesticides</u>	<u>Restricted Concentration</u>
(1) Any pesticide or pesticide use classified for restricted use under FIFRA shall be classified as a State restricted use pesticide.	
(2) Alachlor	All Concentrations
(3) Amicarbazone	All Concentrations
(4) Atrazine	All Concentrations
(5) Bromacil	All Concentrations
(6) Chlorantraniliprole	All Concentrations
(7) Chlorine gas	All Concentrations
(8) Chloropicrin	All Concentrations
Including its use as an irritant or warning agent when used with any pesticide.	
(9) Chlorpyrifos	All Concentrations
(10) Cyanazine	All Concentrations
(11) Cyantraniliprole	All Concentrations
(12) Fludioxonil	All Concentrations
(13) Hexazinone	All Concentrations
(14) Metolachlor and its isomers	All Concentrations
(15) Paraquat	All Concentrations
(16) Picloram	All Concentrations
(17) Simazine	All Concentrations".

The Pesticides Branch of HDOA Plant Industry Division seeks Board approval to pursue adoption of the above listed pesticide products as State restricted use pesticides in conjunction with the current HAR chapter 4-66 rule amendments (2018).

JOHN McHUGH
Pesticide Branch Manager

CONCURRED:

Administrator, Plant Industry

APPROVED FOR SUBMISSION:

SCOTT E. ENRIGHT
Chairperson, Board of Agriculture

EXPLANATION OF REVISIONS

HAWAII ADMINISTRATIVE RULES

TITLE 4

DEPARTMENT OF AGRICULTURE

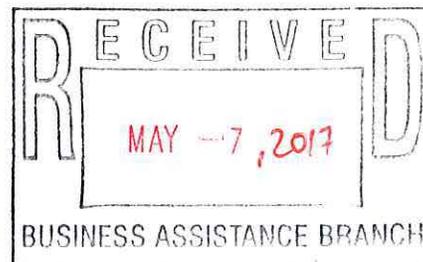
SUBTITLE 6

DIVISION OF PLANT INDUSTRY

CHAPTER 66

PESTICIDES

(2018 VERSION)



TITLE AND CHAPTER ANALYSES SECTION (aka Table of Contents)

NONSUBSTANTIVE CHANGES

To correct and update.

Historical Note:

NO CHANGE

§4-66-1 Objectives.

NONSUBSTANTIVE CHANGE

Added the acronym "HRS" for clarity and consistency throughout the rules.

§4-66-2 Definitions.

SUBSTANTIVE CHANGES

Definitions section amended to aid in rule interpretation.

Definition of "Attractant" and reference to "attractant" in the definition of "pesticide" have been deleted as unnecessarily restrictive (i.e. peanut butter is an attractant used in ant bait) and to accurately reflect the FIFRA and HRS section 149A-2 definitions of "pesticide", which do not include reference to "attractant".

Definition of "Board" added for clarity and consistency throughout the rules.

Definition of "Drift" or "pesticide spray drift" added for clarity throughout the rules.

Definition of "Enclosed space production" or "greenhouse production" added for clarity and consistency throughout the rules. To incorporate statutory language from the Worker Protection Standard into the rules.

Definition of "Environment" added for clarity and consistency throughout the rules.

Definition of "License" amended to incorporate definition from HRS section 149A-2.

Definition of "Licensee" added for clarity and to incorporate definition from HRS section 149A-2.

Definition of "Permittee" added to distinguish "licensee" and "permittee" as used in HRS sections 149A-17, 149A-18, 149A-19, and 149A-33.

Definition of "Person" added for clarity and consistency throughout the rules and to incorporate definition from HRS section 149A-2.

Definition of "Personal Protective Equipment" (PPE) added to incorporate statutory language from the Worker Protection Standard into the rules.

Definition of "Pesticide" amended by incorporating definitions from FIFRA and HRS section 149A-2.

Definition of "Reasonable" added to provide clarity and consistency throughout the rules when interpreting the terms "reasonable" and "unreasonable".

Definition of "Runoff" added to provide clarity. See HAR section 4-66-57.

Definition of "Surface water" added for purposes of providing clarity. See HAR section 4-66-57 and 4-66-58. To incorporate definition from the state water code, HRS section 174C-3, into the rules.

Definition of "Under the direct supervision of a certified applicator" amended for clarity and consistency and to incorporate statutory language from 40 CFR section 171.201 (May 22, 2018).

Definition of "Use" amended for clarity and consistency and to incorporate statutory language from 40 CFR section 171.3 (May 22, 2018).

NONSUBSTANTIVE CHANGES

To correct grammar "which" replaced with "that".

("Which" is a non-restrictive pronoun that provides additional information about the subject or object; the information being nonessential to the meaning of the sentence; generally follows a comma.)

("That" is a restrictive pronoun that is essential to the meaning of the sentence; specifically identifies the subject; usually not set off by a comma.)

"§" to "section" for consistency throughout the rules and comply with the Administrative Rules Drafting Manual.

To correct punctuation (no period after "et").

"Man" replaced with the more inclusive term "human".

"Administrative" added to the definition of "head" to correspond with the actual title of the Plant Industry Administrator.

To clarify that a "licensed sales outlet" or "dealer" must get an "annual permit" as specified in HRS section 149A-17, as well as meet the requirements in HAR section 4-66-52.

To clarify that a "dealer" and "dealer representative" must obtain a "permit" (not license) as specified in HRS section 149A-17 and HAR section 4-66-52.

"Nematicide" added as an alternative spelling for "Nematocide" to conform to industry terminology.

Quotation marks added to "private applicator" to correct omission from prior amendment.

§4-66-3 Administration, enforcement, and penalty.

NONSUBSTANTIVE CHANGE

"This rule" replaced with "these rules" for consistency throughout the rules.

INCORPORATION OF FEDERAL LABELING STANDARDS

Pesticide labeling requirements are regulated by the EPA. States may not impose any requirements for labeling or packaging that are different from those required by the EPA. See 7 USC section 136v

(b), which states: "Such State shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under this subchapter."

HAR sections 4-66-4 to 4-66-31 (2006) were taken directly from 40 CFR Part 156, but in some instances State requirements were added that were different from those required by the EPA. For example, HAR 4-66-21(b)(3) states: "The **head** determines that it is not necessary for the directions to appear on the label." (Emphasis added.) According to 40 CFR section 156.10(i)(1)(ii)(C) and (i)(1)(iii)(A)(4), among others, the "Administrator" is the person who determines what directions shall appear on the label. The Administrator means the "Administrator of the Environmental Protection Agency."

In recognition of federal authority in this area, the department seeks to adopt and incorporate the federal labeling regulations into the rules. For ease of reference, a copy of 40 CFR part 156 (2017), entitled "Labeling requirements for pesticides and devices" shall be appended to the end of HAR chapter 4-66 as Appendix "B". The adoption and incorporation of the federal regulations will be accomplished as follows:

§4-66-4 Incorporation of 40 CFR part 156 (2017); Contents of the pesticide label; generally.

SUBSTANTIVE CHANGE

40 CFR section 156.10(a)(1) (2017) incorporated by reference.

§4-66-5 Label; name, brand, or trademark.

SUBSTANTIVE CHANGE

40 CFR section 156.10(b)(1) (2017) incorporated by reference. State terms "Administrator" and "Registration" added for clarity.

§4-66-6 Label; name and address of producer, registrant, or person for whom produced.

SUBSTANTIVE CHANGE

40 CFR section 156.10(c) (2017) incorporated by reference.

§4-66-7 Label; net weight or measure of contents.

SUBSTANTIVE CHANGE

40 CFR section 156.10(d) (2017) incorporated by reference.

§4-66-8 Label; product registration number.

SUBSTANTIVE CHANGE

40 CFR section 156.10(e) (2017) incorporated by reference.

§4-66-9 Label; producing establishment registration number.

SUBSTANTIVE CHANGE

40 CFR section 156.10(f) (2017) incorporated by reference.

§4-66-10 Label; ingredient statement; generally.

SUBSTANTIVE CHANGE

40 CFR section 156.10(g)(1) (2017) incorporated by reference.

§4-66-11 Label; position of ingredient statement.

SUBSTANTIVE CHANGE

40 CFR section 156.10(g)(2)(i) to (ii) (2017) incorporated by reference.

§4-66-12 Label; names to be used in ingredient statement.

SUBSTANTIVE CHANGE

40 CFR section 156.10(g)(3) (2017) incorporated by reference.

§4-66-13 Label; statements of percentages.

SUBSTANTIVE CHANGE

40 CFR section 156.10(g)(4) (2017) incorporated by reference.

§4-66-14 Label; accuracy of stated percentages.

SUBSTANTIVE CHANGE

40 CFR section 156.10(g)(5) (2017) incorporated by reference.

§4-66-15 Label; deterioration.

SUBSTANTIVE CHANGE

40 CFR section 156.10(g)(6) (2017) incorporated by reference.

§4-66-16 Label; inert ingredients.

SUBSTANTIVE CHANGE

40 CFR section 156.10(g)(7) (2017) incorporated by reference.

§4-66-17 Label; warning and precautionary statements; generally.

SUBSTANTIVE CHANGE

40 CFR section 156.60 (2017) incorporated by reference.

§4-66-18 Label; required front panel statements.

SUBSTANTIVE CHANGE

40 CFR sections 156.62, 156.64, 156.66, and 156.68 (2017) incorporated by reference.

§4-66-19 Label; other required warnings and precautionary statements.

SUBSTANTIVE CHANGE

40 CFR sections 156.70 and 156.78 (2017) incorporated by reference.

§4-66-20 Label; directions for use; generally.

SUBSTANTIVE CHANGE

40 CFR section 156.10(i)(1)(i) (2017) incorporated by reference.

§4-66-21 Label; placement of directions for use.

SUBSTANTIVE CHANGE

40 CFR section 156.10(i)(1)(ii) (2017) incorporated by reference.

§4-66-22 Label; exception to requirement for directions for use.

SUBSTANTIVE CHANGE

40 CFR section 156.10(i)(1)(iii)(A) to (C) (2017) incorporated by reference.

§4-66-23 Label; contents of directions for use.

SUBSTANTIVE CHANGE

40 CFR section 156.10(i)(2) (2017) incorporated by reference.

§4-66-24 Label; statement of use classification; generally.

SUBSTANTIVE CHANGE

40 CFR section 156.10(j) (2017) incorporated by reference.
Federal term "general use" replaced with the State term
"nonrestricted" for clarity and consistency.

§4-66-25 Repealed. [R 12/16/06]

NONSUBSTANTIVE CHANGE

To comply with the Administrative Rules Drafting Manual
(2016).

§4-66-26 Label; restricted use classification.

SUBSTANTIVE CHANGE

40 CFR section 156.10(j)(2) (2017) incorporated by reference.
40 CFR section 156.10(j)(2)(i)(B) will be replaced with
provisions that allow the head to add restrictions to
licensed State restricted use pesticide products as necessary
for the protection of the public.

§4-66-27 Label; prominence and legibility.

SUBSTANTIVE CHANGE

40 CFR section 156.10(a)(2) (2017) incorporated by reference.
State terms "Act" and "Rule" added for clarity.

§4-66-28 Label; language to be used.

SUBSTANTIVE CHANGE

40 CFR section 156.10(a)(3) (2017) incorporated by reference.
State term "Head" added for clarity.

§4-66-29 Label; placement.

SUBSTANTIVE CHANGE

40 CFR section 156.10(a)(4)(i) to (ii) (2017) incorporated by
reference. State term "Act" added for clarity.

§4-66-30 Label; false or misleading statements.

SUBSTANTIVE CHANGE

40 CFR section 156.10(a)(5) (2017) incorporated by reference. State terms "Act", "Rule" and "nonchemical pest control device" added for clarity.

§4-66-31 Label; final printed form.

SUBSTANTIVE CHANGE

40 CFR section 156.10(a)(6)(i) to (ii) (2017) incorporated by reference. State terms "head", "license" and "text.PDF or similar format" added for clarity.

§4-66-32 Restricted use pesticides.

SUBSTANTIVE CHANGES

Currently the rules do not specify exactly how pesticides or pesticide uses are evaluated for classification as State restricted use when pesticides are suspected of causing health hazards. The proposed amendment requires the head to consult with the director of the State department of health when evaluating a pesticide for classification. The department of health is the entity responsible for monitoring potential chemical health hazards in Hawaii and has the knowledge, resources, and expertise necessary to make such a determination. See HRS sections 321-1 and 149A-4.

Utilizing rule amendment as a way of adding or deleting pesticide products from the list of State Restricted Use pesticides has proven to be problematic due to the complexity of the rule amendment process. It can take years to add or remove a pesticide from the list. In some instances, producers of agricultural commodities have been denied the use of safer and less expensive pesticide products due to the lengthy rule amendment process.

The department proposes to remove the State Restricted Use Pesticides list from the administrative rules and maintain the list on-line and at the Office of the Chairperson. Any additions to or deletions from the list will continue to undergo thorough internal review by the department using review processes that meet or exceed the EPA standards and those standards set forth in sections 4-66-32 and 4-66-32.1.

The head, in consultation with the pesticide advisory committee, will continue to be responsible for selecting those pesticide products to undergo internal review. The department's internal review process includes, among other things, a scientific review of all available data and information, review of the formula, active

ingredients, labeling, materials submitted by the licensee, and any other information requested by the head. The process is generally set forth below:

HAWAI'I DEPARTMENT OF AGRICULTURE
INTERNAL REVIEW PROCESS

1. Purpose

For use in the determination of State restricted use pesticides in conjunction with section 4-66-32, *Hawai'i Administrative Rules* ("HAR") (2018).

2. Scope

These procedures should be followed to ensure all pesticides being considered, or re-considered, as a candidate for State restricted use classification do not adversely impact human health, animal health, or the environment, by thorough and complete review in accordance with state and federal statutes, rules, regulations, and policy.

3. Procedures

a. New active ingredient.

An active ingredient is "new" if it is not found in a pesticide product currently registered in Hawai'i. All applications for licensing of a new active ingredient shall be reviewed with the objective of preventing unreasonable adverse effects on the environment.

The licensee shall submit an application on a form prescribed by the department.

The licensee shall submit a detailed cover letter that contains:

- The name and address of the licensee;
- The name and address of the name that will appear on the label, if different from the licensee;
- The name of the pesticide;
- EPA registration number (if applicable);
- The reason for the submission (new product, new end-use, etc.);
- A complete copy of the labeling accompanying the pesticide;
- A statement of all claims made for the pesticide;
- The directions for use; and
- A full description of all tests made and the results thereof.

The licensee shall submit all environmental fate information as requested, including but not limited to, distribution coefficient (K_d); sorption coefficient (K_{oc}) and its standard deviation; aerobic soil metabolism half-life and its standard deviation; and hydrolysis half-life.

The licensee shall submit a preliminary ground water review. If preliminary ground water review indicates likely to leach, the department shall submit the new active ingredient for full groundwater review.

An evaluation of all materials submitted by the licensee shall be reviewed by State of Hawai'i personnel qualified to conduct such an evaluation.

The evaluation shall include, but shall not be limited to:

- Summary of all materials provided by licensee;
- Summary of EPA registration review;
- Comparison of EPA approved label and labeling provided by licensee;
- Review of Confidential Statement of Formula;
- Data gaps shall be identified and resolved;
- Conduct risk assessment (human health, environment, endangered species);

- Draft results of investigation;

- Make draft results and evaluation materials available for public review and comment and specify response deadline (no less than 30 days);

- Request review by:

- Stakeholders

- (agriculture/structural/dealers/manufacturers/health, etc.);

- Pesticide Advisory Committee Members;

- Review comments received;

- Draft recommendation to the Board; include any risk mitigation efforts such as label modification or use restrictions.

b. New product licensing/renewal of license.

The licensee shall submit a new product/renewal application on forms prescribed by the department. If information received indicates environmental concerns, an evaluation of all materials submitted by the licensee shall be reviewed by State of Hawai'i personnel qualified to conduct such an evaluation. See paragraph 3a above.

4. References

Chapter 149A, *Hawai'i Revised Statutes* (2011 & Supp. 2016).

Chapter 4-66, *Hawai'i Administrative Rules* (as amended).

Parts 150 to 189 of Title 40, *Code of Federal Regulations* (2017).

EPA protocols will be used to evaluate the pesticides, along with other protocols developed specifically for use in Hawaii. The pesticide advisory committee, other knowledgeable individuals, and stakeholders will be asked to provide comments. A risk/benefit assessment will be conducted.

After the review process has been completed, the head will finalize the selection of pesticide products to be submitted to the board for adoption. The head is also responsible for preparing proposed findings and recommendations for the board's review. Public comment

on changes to the State restricted use pesticide list will be accepted at the board meetings.

NONSUBSTANTIVE CHANGES

To clarify that this section applies to State restricted use pesticides.

To correct grammar "which" replaced with "that".

Added punctuation.

Replaced "nontarget" with "non-target" for consistency throughout the rules and to comply with the Administrative Rules Drafting Manual (2016).

To clarify that Section 18 of FIFRA is commonly referred to as the "Emergency Exemption Provision". See HAR section 4-66-33.

§4-66-32.1 Evaluation of pesticides uses.

SUBSTANTIVE CHANGES

The scope of evaluation was expanded to include pesticide products proposed for licensing in addition to already licensed products.

A standard has been added ("to a reasonable degree of scientific certainty") that must be met before the head will be required to conduct an adverse effects evaluation.

Actions the Department may take in response to an adverse evaluation have been increased.

NONSUBSTANTIVE CHANGES

To comply with the Administrative Rules Drafting Manual (2016).

Replaced "nontarget" with "non-target" and "percent" with "percent" for consistency throughout the rules, and to comply with the Administrative Rules Drafting Manual (2016).

To correct grammar "which" replaced with "that".

To correct 2006 amendment, where the phrase "fish or wildlife hazard" was intended to be listed as circumstance number (4), but was inadvertently combined with circumstance (3), listed directly above.

§4-66-33 Pesticide licensing; exceptions.

SUBSTANTIVE CHANGES

The current rule allows persons conducting laboratory tests, enclosed space production tests, or field trials, unfettered access to unlicensed pesticides as long as the testing is conducted 1) on less than one-fourth of an acre; 2) to determine toxicity or other properties; and 3) the person does not expect to receive any benefit in pest control from its use.

As amended, researchers will still be able to test unlicensed pesticides under the conditions listed, as long as the head has been notified that unlicensed pesticide testing is being conducted. The amendment will enable the department to track what unlicensed pesticides are being brought into the State. Such knowledge will also permit the State to properly respond in the event of an emergency.

NONSUBSTANTIVE CHANGES

To correct grammar "which" replaced with "that".

To comply with the Administrative Rules Drafting Manual (2016) (use of pronouns).

"Man" replaced with the more inclusive term "human".

To clarify that Section 18 of FIFRA is commonly referred to as the "Emergency Exemption Provision". See HAR section 4-66-32.

Replaced the term "Greenhouse" with "enclosed space production" for clarity and consistency throughout the rules. To conform to EPA definition and incorporate statutory language from the Worker Protection Standard into the rules.

Added punctuation.

§4-66-34 Applications for licensing pesticides and for approval of nonchemical pest control devices.

NONSUBSTANTIVE CHANGES

Replaced "non-chemical" with "nonchemical pest control device" for consistency throughout the rules.

Replaced "provided" with "prescribed" for consistency throughout the rules.

Clarify that the thirty day time period is "calendar" days.

Specify quantity of printed labels to be provided.

Updated the method by which the label may be provided to the department.

To correct grammar "which" replaced with "that".

Corrected and added punctuation.

For consistency and clarity throughout the rules.

To correct grammar.

Deleted procedure no longer necessary due to amendment of HAR section 4-66-66, which adds a nonchemical pest control device evaluation fee.

§4-66-35 Pesticide licensing; effective date.

NONSUBSTANTIVE CHANGES

Added punctuation.

To comply with the Administrative Rules Drafting Manual (2016).

For clarity and consistency throughout the rules.

§4-66-36 Pesticide licenses; corrections.

SUBSTANTIVE CHANGES

Period of time that pesticide licensee has to make label changes has been extended from fifteen days to thirty days. Fifteen days has proven to be an insufficient amount of time for label changes to be made.

NONSUBSTANTIVE CHANGES

Added punctuation.

"This rule" replaced with "these rules" for consistency throughout the rules.

For clarity and consistency throughout the rules.

To correct grammar "which" replaced with "that".

To comply with the Administrative Rules Drafting Manual (2016).

§4-66-37 Special local need (SLN) registration.

NONSUBSTANTIVE CHANGES

Corrected punctuation.

For clarity and consistency throughout the rules.

§4-66-38 Special local need; unreasonable adverse effects.

NONSUBSTANTIVE CHANGES

For clarity and consistency throughout the rules.

To correct grammar "which" replaced with "that".

Added punctuation.

To comply with the Administrative Rules Drafting Manual (2016).

§4-66-39 Special local need; label, packaging and coloration requirements.

NONSUBSTANTIVE CHANGES

To conform to FIFRA.

To correct grammar "which" replaced with "that".

For clarity and consistency throughout the rules.

To correct citation (section 4-66-42 was repealed in 2006 and replaced with 4-66-42.1).

§4-66-40 Special local need; classification.

NONSUBSTANTIVE CHANGES

For clarity and consistency throughout the rules.

To correct "registered" to "restricted".

§4-66-41 Special local need; notification and submission of data to the Environmental Protection Agency (EPA).

NONSUBSTANTIVE CHANGES

To correct "or" to "of".

For clarity and consistency throughout the rules.

§4-66-42 Repealed. [R 12/16/06]

NONSUBSTANTIVE CHANGE

To comply with the Administrative Rules Drafting Manual (2016).

§4-66-42.1 Coloration of pesticides.

NONSUBSTANTIVE CHANGES

Updated statutory references (40 CFR 180.1001 & 180.2010 were replaced by 180.910 & 180.920).

Added citation to Federal Food, Drug and Cosmetic Act for clarity.

§4-66-43 Enforcement.

SUBSTANTIVE CHANGES

Clarified that entry onto property for investigative purposes must be lawful.

Replaced "shall" with "may" to give inspectors discretion on how evidentiary samples will be collected.

Clarified that chain-of-custody must be maintained for each sample once collected.

Adopted 20th edition of AOAC Official Methods of Analysis as preferred method for analysis of samples.

NONSUBSTANTIVE CHANGES

"Device" replaced with "nonchemical pest control device" for consistency throughout the rules.

"This rule" replaced with "these rules" for consistency throughout the rules.

For clarity and consistency throughout the rules.

To correct grammar "which" replaced with "that".

§4-66-44 Notice of enforcement action.

SUBSTANTIVE CHANGES

To enable the department to provide information to the public regarding final enforcement actions in addition to criminal or seizure court judgments.

NONSUBSTANTIVE CHANGES

"This rule" replaced with "these rules" for consistency throughout the rules.

§4-66-45 Experimental use permits; generally.

NONSUBSTANTIVE CHANGE

To correct grammar "which" replaced with "that".

§4-66-46 Experimental use permits; prohibitions.

NONSUBSTANTIVE CHANGES

To correct grammar "which" replaced with "that".

For clarity and consistency throughout the rules.

§4-66-47 Experimental use permits; exceptions.

SUBSTANTIVE CHANGES

The current rule allows research personnel to conduct laboratory tests, enclosed space production tests, or field trials on less than one-fourth of an acre without obtaining an experimental use permit as long as 1) the testing is to determine the value of the substance as a pesticide; 2) conducted by recognized research personnel; and 3) the research personnel do not expect to receive any benefit, other than the research, in pest control from its use.

As amended, researchers will still be able to conduct testing on one-fourth of an acre without obtaining an experimental use permit as long as the head has been notified that experimental pesticide testing is being conducted. This will enable the department to track what pesticide products are being brought into the state and allow the state to properly respond in the event of an emergency.

NONSUBSTANTIVE CHANGES

Replace the term "greenhouse" with "enclosed space production"

to conform to EPA definition and incorporate statutory language from the Worker Protection Standard into the rules.

For clarity and consistency throughout the rules.

The phrase "other than the research" was added to clarify the phrase "do not expect to receive any benefit".

"This rule" replaced with "these rules" for consistency throughout the rules.

§4-66-48 Experimental use permits; provisions for issuance.

SUBSTANTIVE CHANGES

To clarify that a shipper may be exempt from some application requirements at the head's discretion.

NONSUBSTANTIVE CHANGES

To correct grammar "which" replaced with "that".

Updated statutory references and added citations to the Federal Food, Drug and Cosmetic Act.

For clarity and consistency throughout the rules.

"Man" replaced with the more inclusive term "human."

To add punctuation.

To comply with FIFRA.

§4-66-49 Experimental use permits; restrictions.

SUBSTANTIVE CHANGES

Eliminates estimated length of experimental use permits ("usually one year").

Retains language informing permittee that permit is effective for specified time period.

Clarifies that the head will assign an appropriate time period for the permit.

To encourage early renewal, permits must be renewed at least thirty-days before the permit expiration date.

NONSUBSTANTIVE CHANGES

For clarity and consistency throughout the rules.

To comply with the Administrative Rules Drafting Manual (2016).

§4-66-50 Experimental use permits; reports.

NONSUBSTANTIVE CHANGES

For clarity and consistency throughout the rules.

To comply with the Administrative Rules Drafting Manual (2016).

§4-66-51 Experimental use permits; monitoring and revocation.

SUBSTANTIVE CHANGES

"Holder of permit" replaced with "permittee".

Identified the head as the person the permittee must immediately notify of any adverse effects.

Added advisement to permittee that penalties may result from failure to abide by permit conditions.

NONSUBSTANTIVE CHANGES

For clarity and consistency throughout the rules.

To comply with the Administrative Rules Drafting Manual (2016).

§4-66-52 Restricted use pesticide dealer and dealer representative.

SUBSTANTIVE CHANGES

Adds reference to "special permit to apply restricted use pesticides by aerial application" in support of new section added to the rules that separates aerial pesticide application from other mechanical pesticide application devices.

To encourage early permit renewals, the time period to renew the dealer and dealer representative permits must be accomplished thirty days before the permit expires on January 1st.

Adds language from HRS section 149A-11(a) & (b) to remind restricted use pesticide dealer's and dealer representative that only certified applicator's, or persons operating under the certified applicator's supervision, are allowed to obtain restricted use pesticides and that a penalty may result from

violation of statute.

Removed the penalty limitation caused by citing only HRS section 149A-41, and expanded available penalties to those allowed by law.

NONSUBSTANTIVE CHANGES

Rearranged subsections.

Added punctuation.

For clarity and consistency throughout the rules.

Replaced the term "license" with "permit" to accurately track statutory language. See HRS section 149A-17.

Adds "rules" as a topic for examination to acknowledge the difference between federal regulations and state rules.

"This rule" replaced with "these rules" for consistency throughout the rules.

To comply with the Administrative Rules Drafting Manual (2016).

§4-66-53 Dealers' records and reports.

SUBSTANTIVE CHANGES

Add reference to "special permit to apply restricted use pesticides by aerial application" and "special permit" to accommodate new section added to the rules that makes aerial pesticide application a single application category, requiring a special permit, and requiring recordkeeping.

Added notice that penalty may be assessed for failure to submit sales records within fifteen calendar days after the end of each month.

NONSUBSTANTIVE CHANGES

To correct citation (HAR section 4-66-63 was repealed in 2006 and replaced with 4-66-63.1).

For clarity and consistency throughout the rule.

Replace "license" with "permit" to accurately track statutory language. See HRS section 149A-17.

To comply with the Administrative Rules Drafting Manual (2016).

§4-66-54 Storage, display, and sale of pesticides.

SUBSTANTIVE CHANGES

Subsection (d) added to comply with HRS section 149A-15.5, which was enacted in 2007, and required the department to adopt rules regarding retail pesticide warning signs.

NONSUBSTANTIVE CHANGE

To comply with the Administrative Rules Drafting Manual (2016).

§4-66-55 Disposal of pesticides and empty pesticide containers.

SUBSTANTIVE CHANGES

Update rules to meet current industry practices. (40 CFR sections 156.140 TO 156.156 require pesticide labels to specify disposal methods.)

Subsection (c) was added to comply with HRS section 149A-19(a)(7) that requires the department to adopt rules to establish procedures for the disposal of pesticides. Contact the pesticide branch for guidance is the established procedure.

NONSUBSTANTIVE CHANGES

To update citation for HAR Chapter 11-262 that was repealed in 2017 and replaced with 11-262.1.

For clarity and consistency throughout the rules.

To comply with the Administrative Rules Drafting Manual (2016).

§4-66-56 Certification of applicators.

§4-66-57 General standards for certification of applicators.

§4-66-58 Specific standards for certification of applicators.

§4-66-60 Certification procedures; certificate renewal.

SUBSTANTIVE CHANGES

The sections addressing certification of restricted use pesticide applicators (HAR sections 4-66-56, 4-66-57, 4-66-58, 4-66-60) have been updated to strengthen the applicator requirements in the interest of public safety. The proposed rule amendments were inspired by certification changes proposed by the EPA. The department recognizes that certified applicators of restricted use pesticides are the ones responsible for protecting human health

and the environment during application of these higher risk pesticide products.

The updated rules are far superior to the 2006 certification standards. Certified applicators are being held to the same standards as pest control operators. (See HRS section 460J-8.) Certification procedures have been clarified. Minimum age requirements have been established. Certification categories have been added or amended. Stricter certification examination procedures have been established. Safety training requirements have been strengthened and competency standards for certified applicators have been raised.

New requirements for direct supervision of non-certified applicators by certified applicators have been added. Applicants must demonstrate the ability to read and understand pesticide labeling to ensure compliance with state and federal label laws. Recordkeeping requirements have been expanded. Time for training class sponsor or provider to submit attendance records to the department have been increased to thirty days. Non-English Proficient Certification Procedures have been renamed Certification Under Special Circumstances to cover situations where the need for some accommodation may arise.

The department notes that these changes have become necessary to address significant irregularities in the certification process and the irresponsible conduct of certified applicators that have come to light over the last decade.

NONSUBSTANTIVE CHANGES

For clarity and consistency throughout the rules.

To comply with the Administrative Rules Drafting Manual (2016).

§4-66-59 Repealed. [R 12/16/06]

NONSUBSTANTIVE CHANGES

To comply with the Administrative Rules Drafting Manual (2016).

§4-66-60 Certification procedures; certificate renewal.

SUBSTANTIVE CHANGES

Increased the time period, from fourteen days to thirty days, in which a continuing education training provider must submit an application to the department for approval of certification credits. Allows the department to charge a fee for expedited review of application for certification credit approval (less than thirty days) to offset the increased time constraints imposed by expedited review.

§4-66-61 Conditions on the use of restricted use pesticides by non-certified applicator.

SUBSTANTIVE CHANGES

The department recognizes that certified applicators of restricted use pesticides are responsible for protecting human health and the environment caused by application of these higher risk pesticide products. The rule amendments were inspired by suggested changes to the certified applicator supervision requirements proposed by the EPA. The strengthening of certified applicator supervisory obligations has become necessary due to the increasingly lax supervision of non-certified applicators, which has become an enforcement problem. The amendments provide greater protection for the non-certified applicator and the public.

Subsection 6 added to provide notice to certified applicator that penalty may result from failure to properly supervise non-certified applicator.

NONSUBSTANTIVE CHANGES

For clarity and consistency throughout the rules.

"This rule" replaced with "these rules" for consistency throughout the rules.

To comply with the Administrative Rules Drafting Manual (2016).

§4-66-62 Certified pesticide applicator recordkeeping.

SUBSTANTIVE CHANGES

Added subsections (e), (f), and (g) to clarify that the commercial applicator must retain copies of records being provided to the agricultural employer for two years, and make these records available for copying by the department; to keep records in compliance with the newly implemented Worker Protection Standards (40 CFR Part 170 (2018)); and, to provide notice to certified applicators that penalty may result from failure to keep accurate records.

NONSUBSTANTIVE CHANGES

For clarity and consistency throughout the rules.

To comply with the Administrative Rules Drafting Manual (2016).

§4-66-63 Repealed. [R 12/16/06]

NONSUBSTANTIVE CHANGE

To comply with the Administrative Rules Drafting Manual (2016).

§4-66-63.1 Annual Use Permit.

SUBSTANTIVE CHANGES

Clarify that it is the Board's responsibility to determine what pesticide products require an annual use permit. The process used by the department to evaluate whether a pesticide product requires an annual use permit will remain the same.

Utilizing the rules as a way of listing pesticide products that require an annual use permit has proven to be a management problem due to the complexity of the rule amendment process. Rather than maintain the list in the rules, the department proposes to maintain the annual use permit pesticide list on-line and at the office of the chairperson.

Any change to the annual use permit list already requires board approval. The public will have the opportunity to provide comments on proposed list changes at the board meeting.

Subsection (e) added to provide notice to annual use permittees that penalty may result from failure to abide by the terms and conditions of the annual use permit.

NONSUBSTANTIVE CHANGES

For clarity and consistency throughout the rules.

To comply with the Administrative Rules Drafting Manual (2016).

§4-66-64 Conditions and limitations on aerial application of restricted use pesticides.

SUBSTANTIVE CHANGES

HAR section 4-66-64 currently combines application of restricted use pesticide by aircraft with application of any pesticide by mechanical means other than aircraft. As amended, the section has been divided into two sections: one addressing aerial application of restricted use pesticides (HAR section 4-66-64); and one addressing application of any pesticide by means other than aerial application (HAR section 4-66-64.1).

Terms "manned or unmanned" aircraft were added to incorporate pesticide application by drones or other unmanned application method.

Clarified that a "special permit" is required for aerial application.

Rewords the application process to eliminate the inference that the "applicant" must be the certified applicator.

Added requirement that equipment be properly inspected and maintained.

Compliance with FAA Regulations was added.

The head has been given the authority to add conditions to the special permit for aerial application as deemed necessary to protect the public.

Subsection (d) was amended to provide notice to certified applicator that penalty may result from failure to comply with permit conditions.

NONSUBSTANTIVE CHANGES

For clarity and consistency throughout the rules.

Added punctuation.

To comply with the Administrative Rules Drafting Manual (2016).

§4-66-64.1 Conditions and limitations on pesticide application by means other than aerial treatment.

SUBSTANTIVE CHANGES

Pesticide application methods by means other than aerial treatment was added to accommodate the separation of aerial applications from other mechanical application methods that were formerly combined in HAR section 4-66-64.

Clarified that all pesticides must be applied according to the label directions, and if applied by mechanical means, the equipment must be appropriate and well maintained.

NONSUBSTANTIVE CHANGES

For clarity and consistency throughout the rules.

To comply with the Administrative Rules Drafting Manual (2016).

§4-66-65 Repealed. [R 12/16/06]

NONSUBSTANTIVE CHANGE

To comply with the Administrative Rules Drafting Manual (2016).

§4-66-66 Fees.

SUBSTANTIVE CHANGES

The fee to license pesticide products for sale in Hawaii has been increased from \$330 to \$930 per product. All other fees have been doubled. The last fee increase was in 2006. By increasing the licensing fee, revenue to the Pesticide Use Revolving Fund established by HRS section 149A-13.5 will increase, making more funds available for training, education, and other programs. Even with tripling the current licensing rates, Hawaii licensing prices remain low compared to other states.

A onetime fee of \$330 has been added for assessment of nonchemical pest control devices.

Clarifies that copying fee applied to all documents, whether paper or electronic.

Allows the department to charge up to \$100 for expedited approval of requests for certification of training credits received less than thirty calendar days prior to the scheduled class.

Allows the department to hire independent contractors to proctor exams or conduct educational classes.

Allows the head to reduce or waive fees upon demonstrated need.

NONSUBSTANTIVE CHANGES

The term "license" replaced with "permit" to accurately track statutory language. See HRS section 149A-17.

For clarity and consistency throughout the rules.

Corrected and added punctuation.

To comply with the Administrative Rules Drafting Manual (2016).

§4-66-66.1 Enforcement action and penalty assessment schedule.

SUBSTANTIVE CHANGES

Changed mandatory use of enforcement action and penalty assessment schedule to discretionary use. Revised rule and enforcement action and penalty assessment schedule to reflect actual language of HRS sections 141-7, 149A-20, 149A-33, and 149A-41.

NONSUBSTANTIVE CHANGES

For clarity and consistency throughout the rules.

To comply with the Administrative Rules Drafting Manual (2016).

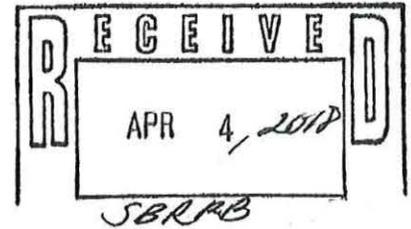
§4-66-67 Severability.

NO CHANGES

End of Explanation of Revisions.

IV. Old Business

A. Discussion and Action on HAR Title 19,
Chapter 20.1, **Commercial Services at Public
Airports**, promulgated by DOT



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

Department or Agency: Department of Transportation ~ Airports Division (DOT-A)

Administrative Rule Title and Chapter: 91-20.1

Chapter Name: Commercial Services at Public Airports

Contact Person/Title: Ross H. Higashi/DOT-A Deputy Director

Phone Number: 808-838-8602

E-mail Address: ross.higashi@hawaii.gov Date: April, 3, 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://hidot.hawaii.gov/airports/files/2018/04/DOT-A-Proposed-Admin-Rule-19-20.1-04-03-2018.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, 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.

Independent contractors using ride-sharing platforms will be required to conform to DOT-A rules and regulations and to pay fees for the use of State Airports in the same manner as other ground transportation providers.

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.

These independent contractors currently pay no fees to DOT-A for the use of the Airports. These users will now pay a fee based on a percentage of their revenues derived from the use of the Airports. It is believed that there should only be minimal increase in the level of indirect costs, related to reporting of activity for purposes of determining fees owed.

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.

These independent contractors currently pay no fee for the use of the State Airports.

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

7% of gross sales for any pick-ups from the Daniel K. Inouye International Airport and 3% of gross sales for any pick-ups at all other state airports within the State of Hawaii.

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

All State Airports ground transportation providers are required to pay a fee for access to pick up and drop off customers in designated areas and for the use of Airport roadways, curbside and facilities. These rules and regulations are for the purpose of treating this type of ground transportation provider equally with other ground transportation providers.

- d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).

The existing fee structure for other ground transportation providers at State Airports.

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.

The DOT-A will receive 7% of gross sales for any pick-ups from the Daniel K. Inouye International Airport and 3% of gross sales for any pick-ups at all other state airports within the State of Hawaii would be derived as a benefit. It is believed that there should only be minimal increase in the level of indirect costs, related to reporting of activity for purposes of determining fees owed.

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.

Launched a pilot program that measures the efficiency and effectiveness of servicing the public's desire for a efficient, effective and economic ride-sharing customer experience by which the TNC's use a technology driven platform in delivering that experience.

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

The proposed rules do NOT include provisions that are more stringent than those already in effect for other forms of ground transportation providers at State Airports. The proposed rules are simply providing opportunity for a digital technology driven platform and equal opportunity in a business space that could not or did not foresee this type of platform being a choice of the public to experience.

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.

All Ground Transportation entities should consider utilizing a comparable digital ride-sharing platform.

7. How the agency involved small business in the development of the proposed rules.

The proposed rules were based on the adaptation of a new age digital ride-sharing platform that leverages technology in organizing and executing a cost-effective, efficient ride-sharing program, thus exercising the performance and customer service needs of the public through a pilot program.

- 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.

The proposed rule changes are merely amending the rules to be inclusive of a technology driven platform that was not thought of or existed when the original rules were developed, written and adopted.

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.

The proposed rules do NOT include provisions that are more stringent than those already in effect for other forms of ground transportation providers at State Airports. There are currently no federal rules and regulations that govern these type of businesses.

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.

Provides safe customer pick-up and drop-off zones; controls impacts on vehicle traffic and circulation on Airports' roadways and curbsfronts.

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

All State Airports ground transportation providers are required to pay a fee for access to pick up and drop off customers in designated areas and for the use of Airport roadways, curbsfronts and facilities. These rules and regulations are for the purpose of treating this type of ground transportation provider equally with other ground transportation providers.

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

These rules and regulations are for the purpose of treating this type of ground transportation provider equally with other ground transportation providers.

- 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.

The DOT-A will receive 7% of gross sales for any pick-ups from the Daniel K. Inouye International Airport and 3% of gross sales for any pick-ups at all other state airports within the State of Hawaii would be derived as a benefit. It is believed that there should only be minimal increase in the level of indirect costs, related to reporting of activity for purposes of determining fees owed.

- 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.

The implementation of the proposed rules will change the allocation of the current overall ridership usage of Ground Transportation programs and will be adjusted to accommodate the newly developed ride-sharing program that utilizes a digital technology driven platform. The overall ridership usage will not substantially increase, rather ridership usage will re-allocated across the Ground Transportation business spectrum.

* * *

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>



SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism
No. 1 Capitol District Bldg., 250 South Hotel St., 5th Fl., Honolulu, Hawaii 96813
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MEMORANDUM

David Y. Ige
Governor

Luis P. Salaveria
Director, DBEDT

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Oahu

Reg Baker
Oahu

Director, DBEDT
Voting Ex Officio

TO: Jade Butay, Director
Department of Transportation (DOT)

FROM: Anthony Borge, Chair *Anthony Borge*
Small Business Regulatory Review Board

DATE: April 26, 2018

SUBJECT: Proposed Amendments to Hawaii Administrative Rules (HAR)
Title 19 Chapter 20.1, Commercial Services at Public Airports

The Small Business Regulatory Review Board (SBRRB) provides recommendations to State and County agencies on proposed rules and proposed rule amendments pursuant to Chapter 201M, Hawaii Revised Statutes, and the Governor's Administrative Directive 18-02.

Please be advised that at the SBRRB's April 18, 2018 meeting, board members reviewed the above-captioned proposed amended administrative rules, submitted to the SBRRB before public hearing, and heard from Ms. Rosemary Neilson-Nenezich, Operations Manager at DOT's Airports Division and Deputy Attorney General John Price.

Upon review and after considering testimony presented to the SBRRB, the SBRRB unanimously agreed to defer taking action on this proposal so that DOT could engage the stakeholders and address concerns raised at the meeting. The purpose of this memorandum is to summarize the concerns the SBRRB would like DOT to address at the SBRRB's next board meeting, scheduled May 16, 2018.

- 1) Decals on permittee vehicles.
DOT proposes to revise the rules to allow certain permittees, subject to review and approval of the DOT Director, to place his/her own trade dress, logo, or company identifier on permittee vehicles in lieu of placing the DOT issued decal.

Jade Butay, Director, DOT
April 26, 2018
Page 2

Please confirm whether this substitution will be equally or fairly available to all permittees servicing the airports not only Transportation Network Company (TNC) operators, so long as DOT's objective requirements relating to the purposes of the decals are met.

If not, please explain.

- 2) Transponders currently required to be placed on permittee vehicles.
As explained to the SBRRB, DOT currently allows TNCs to come in and out of the airport without requiring placement of transponders on their vehicles, claiming that TNCs can account for and provide accurate readouts of such information to DOT.

Please confirm whether this exemption from responders will be equally and fairly available to other permittees that service the airports, so long as this requirement is met.

If not, please explain.

- 3) Insurance requirements.
If amended, permittees will be required to maintain adequate insurance, or as otherwise determined by the DOT Director.

Please confirm whether the DOT Director would require any additional insurance (outside of state or local insurance requirements) for any particular group or operator.

If so, please explain.

- 4) Collection of fees.
Fees are required to be paid as provided in HAR Section 19-20.1-56. DOT proposes to amend Section 19-20.1-56 to allow fees to be paid as required "or as otherwise approved by the director or as otherwise approved by the director."

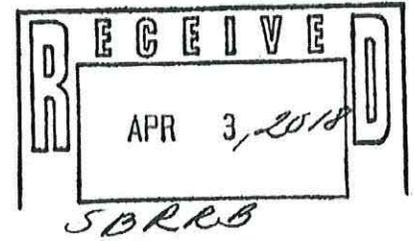
Please confirm whether DOT intends to collect the annual fees, monthly gross receipt percentages, etc., equally, consistently and fairly from all authorized persons. Also, please explain in what instances DOT expects to collect fees as approved by the DOT Director rather than as objectively set for in HAR Section 19-20.1-56 and why DOT believes it is necessary to make this amendment.

Jade Butay, Director, DOT
April 26, 2018
Page 3

We would appreciate DOT following up on these concerns for the SBRRB to properly assess and make recommendations on the proposed amendments. As these rules are moving forward, we would appreciate DOT's consideration of a sunset date for the on-going pilot project.

Thank you for your consideration on these concerns.

c: Governor David Y. Ige
Rosemary Neilson-Nenezich, Operations Managers, Airports Division, DOT
Kyoko Kimura, SBRRB Discussion Leader



TITLE 19

SUBCHAPTER 1 GENERAL PROVISIONS

§19-20.1-1 Applicability. This chapter shall apply to the following types of commercial services permitted at or in public airports:

- (1) Aircraft ground handling;
- (2) Baggage pickup and delivery;
- (3) Commercial photography;
- (4) Greeting services for hire;
- (5) In-flight catering;
- (6) Merchandise delivery;
- (7) Porter services; and
- (8) Prearranged ground transportation.

§19-20.1-2 Definitions. Unless the context clearly indicates otherwise, as used in this chapter:

"Aircraft" means airplanes, airships, dirigibles, helicopters, gliders, amphibians, seaplanes and any other contrivance now or hereafter used for the navigation of or flight in air space.

"Airline lessee means any aircraft operator that has entered into a lease with the department for the use of land or facilities at a public airport.

"Air operations area" means any portion of a public airport, from which access by the public is prohibited by fences or appropriate signs, and which is not leased or demised to anyone for exclusive use and includes runways, taxiways, all ramps, cargo ramps and apron areas, aircraft parking and storage areas, fuel storage areas; maintenance areas, and any other area of a public airport used or intended to be used for landing, takeoff, or surface maneuvering of aircraft or used for embarkation or debarkation of passengers.

"Department" means the department of transportation of the State.

"Director" means the director of the department of transportation or his duly authorized representative.

"Gross receipts" includes all moneys paid or payable to the person providing or facilitating by way of a digital network one of the commercial services, specified in section 19-20.1-1, at a public airport, regardless of whether the order, reservation or payment for the commercial service is made within or without the public airport. The term "gross receipts" excludes any general excise taxes, tips, or pass through-fees upon a consumer collected by the person providing or facilitating by way of a digital network the commercial service at a public airport. (For prearranged ground transportation services, the term "gross receipts" also excludes public service company taxes, commissions to travel agents, revenues from arrival sightseeing enroute to the hotel in excess of two hours or its equivalent, and receipts reportable under other commercial service permits, provided all such exclusions are segregated and identified in the accounting process of the person providing prearranged ground transportation services at a public airport.)

"Passenger" means any person who arrives or departs from a public airport aboard an aircraft except for persons comprising the flight crew of the aircraft.

"Permittee" means any person authorized to provide or facilitate by way of a digital network any of the commercial services, specified in section 19-20.1-1, in or at a public airport under a permit or other written authorization from the director.

"Person" means any individual, firm, partnership, corporation, trust, association, company, joint venture, or any other legal entity (including any assignee, receiver, trustee, employee, or similar representative).

"Public airport" means that area of land and water under governmental jurisdiction which is used for landing and

taking-off of aircraft, any appurtenant areas which are used for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

"Solicit" means to ask, implore, plead for; to endeavor to obtain by asking; to importune; to seek actively though silently; or to try to obtain.

"State" means the State of Hawaii.

§19-20.1-3 Permit or authorization required. Any person providing or facilitating by way of a digital network any of the commercial services specified in section 19-20.1-1 in or at a public airport shall do so only upon receipt of a permit or other written authorization from the director which shall be issued upon payment of the applicable fees. A permit shall not be assigned or otherwise transferred. A permit shall not be issued to applicants who are in arrears in the payment of taxes, fees or other charges to state agencies.

§19-20.1-4 Payment of fees.

(a) The required fees for each type of commercial services are specified in the applicable subchapter.

(b) Time of payment.

(1) Annual fees shall be paid annually in advance of providing or facilitating by way of a digital network commercial services at or in public airports; and

(2) Monthly fees (including percentage fees) shall be paid on or before the twentieth day of the succeeding month.

(c) Any amount payable which is not paid when due shall bear interest at the rate of one percent per month or the maximum rate of interest allowable by law.

(d) Payments due under this chapter shall be made at or sent to the airports division, department of transportation, Honolulu International Airport, Honolulu, Hawaii 96819; or any of its offices located at Hilo International Airport, Hilo, Hawaii 96720; Kona International Airport at Keahole, Kailua-Kona, Hawaii

96740; Kahului Airport, Kahului, Hawaii 96732; or Lihue Airport, Lihue, Hawaii 96766.

§19-20.1-5 Records; audit of records; reports.

(a) This section shall apply to permittees who are required to pay percentage fees.

(b) The permittee shall maintain up-to-date records and books in accordance with a recognized system of bookkeeping and such records and books shall reflect a segregation of airport revenue in the general ledger, reconciled and supported by original source documents.

Such records including original source documents shall be kept for three years in the state following the end of the permit year.

(c) The State shall be granted access, at all reasonable times, to all books, accounts, records and reports including gross income tax reports, showing daily receipts; and at any reasonable time on twenty-four hours' notice the permittee will permit a complete audit to be made by the State's accountant or by a certified public accountant of the permittee's entire business affairs and records relating to the business conducted at, from or in connection with the airport for the term of the permit. The permittee will cooperate fully in the making of any inspection, examination or audit. Should such audit by the State's accountant or by a certified public accountant disclose that fees have been underpaid by two percent or more for any period under examination, the State shall, in addition to the remedies provided in subsection (e) of this section, be entitled to reimbursement of the reasonable cost of any such audit in addition to the deficiency. If such audit by the State's accountant or by a certified public accountant shall disclose that fees have been underpaid by five percent or more for the period under examination, the state shall, in addition to the foregoing rights, have the right, upon ten days' notice, to revoke the authorization to conduct the applicable commercial service at public airports.

(d) The permittee shall, on or before the twentieth day of the succeeding month, file with the director, on forms prescribed by the director, a report of its gross receipts for the previous month certified to by a qualified representative of the permittee; the certifier shall state that it has examined the books, records, and other evidence of the gross receipts of the permittee for the period reported and that to its knowledge the statement is true and correct. The statement shall be in such form and contain such details and breakdowns as the State may require. Payment of requisite fees shall be submitted with the report. Any amount payable which shall not have been paid when due shall bear interest at the rate of one percent per month

(e) Without prejudice and in addition to any other remedies the State may have for such default, if the permittee shall fail to promptly furnish any monthly report, the State may have such report prepared by an accountant to be selected by the State, at the expense and on behalf of the permittee. The permittee shall furnish to such accountant all records requested for the purpose of preparing such reports, and the permittee shall pay to the State all expenses incurred by the State in securing such reports. Furthermore, the State may select procedures which would produce a reasonable gross receipts expectation, and assess percentage fees based upon gross receipts so computed. In the event that records have not been prepared and kept in accordance with this chapter, the State shall, in addition to all other payments required herein, be entitled to demand and receive an additional payment of ten percent of the gross receipt fee for the periods involved.

§19-20.1-6 Insurance.

(a) The permittee shall maintain and keep in force adequate insurance, as currently outlined in the applicable state or local insurance law, or as otherwise determined by the director to protect both the department and the permittee against claims for public

liability and property damage. The following types of insurance are required, as applicable:

(1) Automobile liability insurance. To provide coverage against all losses arising out of the person's operation of the registered vehicles, including motorized passenger carts, on airport premises and resulting in injury to persons or damage to property. (Commercial photography and greeting services for hire permittees are exempt from this requirement.)

(2) Comprehensive general liability policy; owners, landlords and tenants or manufacturers and contractors liability policy. To provide coverage against claims arising out of the person's operation on airport premises resulting in injury to persons or damage to property.

(b) The permittee shall provide the department with a certificate of insurance naming the permittee as the insured and the department as additional insured to the extent of liability arising out of the named insured's operations at the public airport with a thirty day advance notice of material changes in coverage or cancellation.

§19-20.1-7 Entry to air operations area. Except as may be authorized by the director, no person providing or facilitating commercial services at any public airport shall be permitted entry into the air operations area.

§19-20.1-8 Airport activity.

(a) Each permittee's activity shall be limited to the area designated by the director. The director may change the designated areas when such action is deemed necessary and in the best interest of safety to persons or property.

(b) The permittee or its independent contractors shall:

(1) Maintain its designated activity area in a safe and clean condition in compliance with

all applicable statutes, laws, ordinances, rules and regulations;

(2) Be liable for the fair value of any janitorial or maintenance service for cleaning or repairing airport premises necessitated by the permittee's failure to properly and adequately maintain its designated area;

(3) Conduct business in an orderly, courteous and businesslike manner;

(4) Be suitably dressed or uniformed, as applicable;

(5) Furnish service on a fair, equal and not unjustly discriminatory basis to all users thereof, and will charge fair, reasonable and not unjustly discriminatory prices for each unit of service; provided that the permittee may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers; and

(6) Wear the identification badge (issued under this chapter) in plain sight, while at the airport, as applicable.

(c) The following provisions shall apply to permittees issued a [~~who operate vehicles under~~] a permit under [~~authorized by~~] this chapter:

(1) The permittee or its independent contractors shall keep all vehicles and equipment used at any public airport in good mechanical condition, clean and suited for their designated use. The department may [~~disapprove~~] disapprove the use by the permittee of any vehicle or equipment which the department deems unsafe or unsuitable for its designated use.

(2) All vehicles operating under or in connection with a permit authorized by this chapter shall be licensed by the state public utilities commission or appropriate governmental regulatory agency, if so required, and at all times display a current safety inspection sticker and current

evidence of licensing as required by the applicable regulatory agency of the government.

(3) ~~{The department shall issue decals which shall be placed by the permittee on those vehicles utilized at a public airport that meet the requirements of the department.}~~ No vehicle shall be used to provide commercial services authorized by this chapter at any public airport without a decal issued by the department; provided that where the department has authorized all of the vehicles used by a permittee to operate under a permit authorized by this chapter, the permittee may, subject to review and approval by the director, use its own trade dress, logo, or company identifier which shall be placed on the vehicle. Vehicles operating under a permit authorized by this chapter shall be parked only at locations designated by the director for the permitted activity. Vehicles ~~[issued decals]~~ operating under a permit authorized by this chapter shall not be used at any public airport for any purpose other than the activity authorized by the permit.

§19-20.1-9 Revocation of permit; termination. A permit issued under this chapter may be revoked by the department for violation of this chapter, upon ten days prior written notice. The permit may be terminated without cause by the department or by the permittee upon thirty days prior written notice.

§19-20.1-10 Subordination to sponsor's assurance agreement. A permit shall be subordinate and subject to the terms and conditions of any sponsor's assurance agreement executed between the State and the United States of America, which is in force during the term of the permit.

§19-20.1-11 Indemnification and hold harmless.

The permittee shall indemnify, defend and hold harmless the department and the State from any third party action or

claim for compensation arising out of the use of the permit or the airport.

§19-20.1-12 Severability. The provisions of this chapter are declared to be severable and if any portion or the application thereof is held to be invalid for any reason, the validity of the remainder of this chapter shall not be affected.

§19-20.1-13 Enforcement. This chapter may be enforced by police officers or any person deputized pursuant to section 261-17, Hawaii Revised Statutes.

§19-20.1-14 Penalty. Penalties for violations of this chapter shall be as set forth in section 261-21, Hawaii Revised Statutes.

SUBCHAPTER 9 PREARRANGED GROUND TRANSPORTATION

§19-20.1-54 Scope. The special provisions set forth in this subchapter shall apply to prearranged ground transportation services at public airports.

§19-20.1-55 Definitions. Unless the context clearly indicates otherwise, as used in this chapter: "Hotel" includes motel.

"Operator" includes any person who is properly and physically qualified to operate and control any motor or other vehicle in connection with any ground transportation service provided at a public airport by a permittee or Transportation Network Company under this chapter. The operator may be a permittee itself or a qualified employee or independent contractor of the permittee.

"Prearranged ground transportation services" includes the providing or facilitating for hire of a motor vehicle, including off-airport rent-a-car vehicles, at any public airport for the purpose of transporting the hirer of, or passenger in, such motor vehicle and personal property where

such hire or transportation was contracted or arranged for by the hirer, passenger, or another on behalf of the hirer or passenger, in advance of the hirer or passenger's arrival at the public airport or, upon or after his arrival at the public airport, by communicating with an operator whose place of business is situated outside the public airport, for ground transportation services to be performed, at least in part, at the public airport.

Prearranged ground transportation services also include passenger transportation services, tours, and courtesy car services for customers and guests upon vehicles owned or leased by the operators even if the services are provided gratuitously or may be an incidental part of another service.

Prearranged ground transportation services do not include the right to solicit, offer, and provide ground transportation services for hire to any person other than to persons for which ground transportation services had been arranged in advance.

"Taxi or taxicab service" includes the service of providing a motor vehicle for hire by the public at, on, or upon a public airport, which motor vehicle shall have a driver other than the hirer and be used for the purpose of transporting the hirer and incidental personal property to a destination and over a route controllable by a hirer.

"Transportation Network Company" means a person or an entity that uses a digital network or software application service to connect passengers to transportation network company drivers; provided that the person or entity: (1) Does not own, control, operate, or manage the personal vehicles used by transportation network company drivers; and (2) Is not a taxicab company or a for-hire vehicle owner.

§19-20.1-56 Fees. Persons authorized to provide prearranged ground transportation services at public airports shall, in consideration of using state airport facilities for

conducting business, pay the following fees as applicable or as otherwise approved by the director:

(1) Off-airport rent-a-car service.

(A) An annual administrative expense fee of \$100 in advance.

(B) An annual fee of \$20 for each off-airport rent-a-car vehicle in the permittee's fleet as of October 1 of each year.

(C) An annual registration fee of \$250 for each courtesy vehicle used for transportation of customers to and from any public airport.

(2) Courtesy vehicle service other than off-airport rent-a-car or hotel firms.

(A) An annual administrative expense fee of \$250 in advance.

(B) An annual registration fee of \$250 for each courtesy vehicle used for transportation of customers to and from any public airport.

(3) Taxi, bus, limousine and stretch out.

(A) An annual administrative expense fee of \$100, in advance, per permittee providing these prearranged ground transportation services at any public airport.

(B) An amount equal to the following percentages of the monthly gross receipts which the operator derives from providing these prearranged ground transportation pickup services at the public airports listed below.

(i) Seven percent at Honolulu International Airport.

(ii) Three percent at public airports other than Honolulu International Airport.

(4) Hotel courtesy vehicles. Prearranged ground transportation services between a public airport and a hotel, provided by the hotel for its guests upon vehicles owned or leased by the hotel shall be charged:

(A) An annual administrative expense fee of \$250 in advance.

(B) An annual registration fee of \$250 for each courtesy vehicle used for transportation of customers to and from any public airport.

(C) An annual fee of \$2 per sleeping room for rental by the hotel.

(5) Transportation Network Company.

(A) An annual administrative expense fee of \$100.

(B) An amount equal to the following percentages of the monthly gross receipts which driver's using the operator's TNC network derives from providing prearranged ground transportation pickup services at the public airports listed below.

(i) Seven percent at Honolulu International Airport.

(ii) Three percent at public airports other than Honolulu International Airport.

§19-20.1-57 Exemptions. The director may, in the public interest, exempt all persons providing ground transportation services at certain public airports from the payment of the fees required under this subchapter.

§19-20.1-58 Taxi services. The director reserves the right to revoke any non-exclusive privilege of providing taxi service at any public airport, except prearranged taxi service, and grant an exclusive taxi service concession to prescribed by section any person in the manner 102-2, Hawaii Revised Statutes.

§19-20.1-59 Signs. No person shall display any sign that extends more than six inches above the roof, hood, or trunk of any motor vehicle used to provide ground transportation at public airports. Flashing lights and audible devices, other than that required by safety ordinances and regulations are prohibited. The display of any rates or fees on motor vehicles is also prohibited.

§19-20.1-60 Restrictions.

(a) Permittees and operators shall not solicit passengers or fares on airport premises. Pickup shall be limited to those passengers and clients who have made prior arrangement for the ground transportation service provided or facilitated by the permittee. The permittee, and its employees, agents and operators shall have evidence of such prior arrangements in the form of schedules, passenger manifests or other similar documentation which identifies the passengers and clients, available for inspection by the director at all times during the period the permittee is engaged in business activities at the public airport, including at the time of all pickups.

(b) Permittees shall not use dispatchers, agents, customer service assistants, operators, employees or any other persons who have a working arrangement with the permittee to engage in any effort to solicit or obtain ground transportation business on any public airport premises.

§19-20.1-61 Records of off-airport rent-a-car permittees. Permittees who provide off-airport rent-a-car ground transportation services in or at public airports shall be obligated to maintain a record and original source documents which shall account for all of the vehicles in the permittee's fleet as of October 1 each year, segregated by airport districts. The record, including original source documents, shall be kept for three years in the State following the end of the permit year. The State shall be granted access at all reasonable times to all such records and documents and may make or cause to be made a complete audit to verify the reasonableness of the reported number of vehicles in the permittee's fleet as of October each year. In the event that records and original source documents have not been kept in accordance with this provision, the State, shall in addition to other payments required by this chapter, be entitled to demand and receive an additional payment of ten percent of the total amount payable by the off-airport

rent-a-car ground transportation service permittee to the State under this subchapter.

Material to be repealed is bracketed. New material is underscored.

IV. New Business

A. Discussion and Action on HAR Title 4,
Chapter 66, **Pesticides**, promulgated by DOAg

V. Administrative Matters

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

Any handouts will be distributed at the Board Meeting

V. Administrative Matters

B. Voting and Action on Board Chair, pursuant to
Section 201M-5(c), HRS

§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 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.

For the 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; am L 2017, c 174, §3]

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