

19
August 19, 2013 ~ SBRRB Meeting Checklist

Member Attendance

	Airline Preference	From	Details	Attend
Chu Lan Shubert-Kwock ✓	NA	Oahu	Parking Pass	OK X
Howard Lum No	NA	Oahu	Parking Pass	No
Craig Takamine	OKAY HA	Hawaii	Parking Pass	X
Barbara Bennett No	HA	Kauai	Parking Pass	NA
Kyoko Kimura ✓	HA	Maui	Parking Pass	OK No
Mary Alice Evans ✓	NA	Oahu	NA	No OK
Anthony Borge ✓	OKAY NA	Oahu	Parking Pass	X
Leslie Mullens No	NA	Maui	Parking Pass	No NA

Pre Meeting Checklist

Conference Room #436 (Confirm each month) <i>See attached (in 8-19-13)</i>	✓ X
Make 12+ copies of rule packages for board packets - continuous	✓
Poll board attendance	✓
Prepare TAF for Director's approval - ASAP <i>Jill</i>	✓
Airline booking ASAP - Jill <i>Kyoko ✓ Craig</i>	✓
Draft Agenda to Chair	✓
Post approved agenda on SBRRB website & State Calendar & Lte. Governor's Office <i>+ BS</i>	✓ ✓
Send Agendas to those people who requested it	✓
Mail approved agenda to board members, M. Ahn	✓
Mail board packets Tues or Wed. Aug. 13th or 14th	✓
3-4 Days prior to meeting, send DAGS an email (or fax) re: Board members parking and attending SBRRB meeting - IMPORTANT	✓

STAFF

Margaret Ahn				X
Dori Palcovich				X

Post Meeting Checklist

Visitors Sign-in-Sheet - Small Business Regulatory Review Board - August 19, 2013

	Name	Title	Organization	Email	Phone
1	DREWITT THURMAN	Director	DEPT. of LABOR	drewitt.thurman@hawaii.gov	586-6850
2	Bill Kunstman	Asst. Dir		william.g.kunstman	60745
3	Ron Grackler MD	med chief	Kaiser Perm OHS	Ronald Grackler@kp.org	590 5061
4	RON KIENITZ DO	EMP	CONCENTRA	dr.dakine@hawaiianet.net	831-3000
5	KEITH YAMAMOTO	ASST. ADMNSTR.	ATTORNEY GENERAL CS&A	KEITH.M.YAMAMOTO@hawaii.gov	692-7000
6	Lauren Zirbel	GR	HMA	laurenzirbel@gmail.com	294-9908
7	Cathy Wilson	Reg. Director	WIMAH	Cwilson@ahcs.com	737 1676
8	Deborah Lockett	VPres	WORK*STAR	deblockett@hawaii.vr.com	389-3881
9	Christopher Flanders	Ex Dir	ITMD	cflanders@hna-asthma.org	536-7702
10	MAVIS MOSABI	Planner	HHPD	mavis.m.mosabi@hawaii.gov	587-0636
11	Teasee Waikele	EX Dir	WIMAH	WIMAH_EXDIR@hawaii.gov	383-0436
12	DANTURCELL		PUBLIC-SELF		
13	Kalzen bin Coopsk	CEO/pres	Chunnet.com	THAPAN@CHUNNET.COM	
14	Candace Ito	Exec Officer	DECA	NATUROPATHY@deca.hawaii.gov	986-2704
15	Jayna Penn	PHOTO		jpenn@proton.com	597-0100
16	Darvin Ueki	Finance Manager	HFFDC	darvin.ukeki@hawaii.gov	587-0567

Don's

Small Business Regulatory Review Board Meeting

Monday, August 19, 2013

9:30 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
No. 1 Capitol District Bldg., 250 South Hotel St. 5th Fl., Honolulu, HI 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Tel 808 586-2594
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DEPUTY GOVERNOR'S
OFFICE

AGENDA - 9 19:00

Monday, August 19, 2013 ★ 9:30 a.m.

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

Neil Abercrombie
Governor

Richard C. Lim
Director, DBEDT

Mary Alice Evans
Deputy Director, DBEDT

Members

Chu Lan Shubert-Kwock
Chairperson
Oahu

Anthony Borge
Vice Chair
Oahu

Leslie Mullens
Second Vice Chair
Maui

Howard Lum
Oahu

Barbara Bennett
Kauai

Kyoko Y. Kimura
Maui

Craig Takamine
Hawaii

Richard C. Lim
Director, DBEDT
Voting Ex Officio

I. Call to Order

II. Approval of June 19, 2013 Meeting Minutes

III. New Business

- A. Amendments to Hawaii Administrative Rules (HAR) Title 12 Chapter 15-90 Hawaii Worker's Compensation Medical Fee Schedule and Exhibit A (Department of Labor and Industrial Relations) – Exhibit 1
- B. Proposed HAR Title 11 Chapter 50 Food Safety Code, and Repeal of Chapter 12 Food Establishment Sanitation (Department of Health) – Exhibit 2
- C. Amendments to HAR Title 16 Chapter 88 Naturopaths (Department of Commerce and Consumer Affairs) – Exhibit 3
- D. Amendments to HAR Title 5 Chapter 31 Child Support (Department of the Attorney General) – Exhibit 4
- E. Proposed HAR Title 13 Chapter 95.1 Island-Based Fisheries Rules (Department of Land and Natural Resources) – Exhibit 5
- F. Amendments to HAR Title 15 Chapter 315 Mortgage Credit Certificate Program (Department of Business, Economic Development and Tourism/Hawaii Housing Finance and Development Corporation) – Exhibit 6

IV. Administrative Matters

- A. Review third draft of Board's proposed Brochure and Evaluation Survey
- B. Recommendation and approval of an investigative task force to write a report regarding this Board's immediate clerical and budgetary needs for submission to to the Governor and Legislature

V. Adjournment

VI. Next Meeting: Scheduled for Wednesday, September 18, 2013, at 9:30 a.m., Conference Room 436, Capitol District Building, Honolulu, Hawaii

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) 586-2594 at least three (3) business days prior to the meeting so arrangements can be made.

II. Approval of June 19, 2013 Meeting Minutes

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING - DRAFT

June 19, 2013

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

I. **CALL TO ORDER:** Ms. Shubert-Kwock called the meeting to order at 9:33 a.m., with a quorum present.

MEMBERS PRESENT:

- Chu Lan Shubert-Kwock
- Barbara Bennett
- Leslie Mullens
- Howard Lum
- Kyoko Kimura
- Anthony Borge
- Craig Takamine
- Mary Alice Evans

ABSENT MEMBERS:

- None

STAFF: DBEDT
Dori Palcovich

Office of the Attorney General
Margaret Ahn

II. ELECTION OF A TEMPORARY CHAIR

Mr. Borge made a motion for Ms. Shubert-Kwock to be the Temporary Chair for today's board meeting. Ms. Kimura seconded the motion, and the Board members unanimously agreed.

III. APPROVAL OF MAY 15, 2013 MEETING MINUTES

Ms. Evans made a motion to adopt the May 15, 2013 minutes, as amended. Mr. Borge seconded the motion, and the Board members unanimously agreed.

IV. OLD BUSINESS

- A. Small Business Statement After Public Hearing for HAR Title 16 Chapter 115 Professional Engineers, Architects, Surveyors and Landscape Architects (DCCA)

Ms. Kyoko Kimura stated that the architects were all in favor the amendments.

Ms. Kimura made a motion to send the rules to the Governor for approval. Mr. Lum seconded the motion, and the Board members unanimously agreed.

V. NEW BUSINESS

- A. Proposed Amendments to HAR Title 13 Chapter 231 Operations of Boats, Small Boat Harbors, and Permits, Chapter 251 Waikiki and Ka'anapali Ocean Waters, Chapter 253 Registration and Permit Fees, Section 13-256-3 Commercial Operator Permit

Requirements, and Section 13-256-4 Commercial Vessel and Water Sports Equipment Registration Requirements (DLNR)

Acting Chair Shubert-Kwock noted that the board received quite a bit of written testimony on these proposed rules and introduced Mr. Ed Underwood, Administrator from DLNR's Division of Boating and Recreation (DOBOR). He explained that these rules and other related rules have been in the rule-making process since 2006; the proposed amendments will clarify all the definitions, amend the rules through lawsuits and will treat every commercial operator in Hawaii the same in terms of all operators paying the same commercial use permits and fees. The proposed commercial use permit fee is either \$200 or three percent (3.0%) of gross receipts per month, whichever is greater. There is a need to limit boat ramps due to the over abundance of usage resulting in health and safety issues and due to people parking their vehicles in prohibited areas.

Mr. Underwood confirmed that in terms of limiting the total number of permits that can be given out at specific places, it would cap the boat limit. No permits are being taken away, but grandfathered in, and if a business is sold, that permit would transfer with it. Although the rules have been amended to treat each of the commercial operators the same, Ms. Bennett noted that she would rather see the rules customized for "across the board" regulations and compliances for the neighbor island operators to relate specifically to the neighbor island's individual boating challenges. Mr. Underwood explained that during the rule-making process, DLNR had over fifty outreach meetings with the neighbor islands, where the stakeholders were involved and aware of the proposed rules and processes. Although it would be possible to go to each site and perform an environmental assessment, since DOBOR is a state-wide facility the rules essentially mirror statewide. He also noted that it is very difficult to accommodate each special interest group, and that DOBOR's main focus is on the natural resources. Ms. Mullens noted that even though each individual company is being treated the same in terms of how many permits they may have, there was a study conducted for each individual harbor which customizes per island, per ramp, and per harbor. Mr. Borge stated that the limit of the two permits is per business and it is transferred with the company, however, that language is currently not in the rules. Mr. Underwood responded that the language will be incorporated into the rules prior to going out to public hearing.

In regards to the written testimonies, Ms. Bennett requested that Mr. Underwood explain the testimony from Ms. Jherrie Rubeyiat. He stated that Ms. Rubeyiat is one of the recreational tenants in Wailua and Sweetie Pie is the name of her boat. Further, the \$500,000 liability insurance is mandated by DAGS's risk management for all state facilities. Thus, it would likely increase the premium by about \$10 a year, resulting in a total premium of \$100 per year. Regarding Captain Zodiac's written testimony, which referred to setting a maximum for ramp permits at two (2) per business entity or sole proprietor, Mr. Underwood stated that whatever the amount of ramp permits this company will have when the rules become effective will be grandfathered into the rules; although the rules did not include this verbiage, the rules will be changed to reflect this prior to going out to public hearing. Ms. Mullens stated that the testimonies appeared to be a misunderstanding in the proposed rules, and she suggested that DOBOR provide the stake-holders with a one-page summary of the rule changes so there would be a better understanding and clarification as to what the rules are proposing.

Mr. Underwood stated that two more chapters of rules will be forthcoming to this Board; one involves fees. Acting Chair Shubert-Kwock reminded Mr. Underwood about the after public hearing report regarding these rules.

Ms. Mullens made a motion to recommend to the Governor that the proposed rules go to public hearing. Ms. Evans seconded the motion, and the Board members unanimously agreed.

B. Proposed Amendments to HAR Title 17 Chapter 1700 Overview through HAR Title 17 Chapter 1745 Funeral Payments Program (DHS)

Ms. Kookie Moon-Ng, DHS's Administrator of Med-QUEST's Policy & Program Office, introduced Med-QUEST's program specialists, Ms. Evelyn Yamamoto, who is the "lead" specialist on the proposed rule package, and Ms. Aileen Befitel, who regularly comes before this board with proposed Med-QUEST rules. Ms. Moon-Ng explained that the proposed rules are the result of the Affordable Care Act (ACA), also known as Obamacare, which expands Medicaid coverage for millions of low-income Americans; whereas currently the coverage is limited to only certain populations. ACA represents the most significant government and regulatory expansion of the United States healthcare system since the Congressional passage of Medicare and Medicaid in 1965. Overall, ACA will raise Medicaid income requirements, provide new coverage populations, and insure health coverage for all citizens through a health insurance marketplace.

It was explained that Hawaii is considered to be an "early adopter state," as it is expected to adopt the ACA rules by October 1, 2013. This will allow the State to provide access and coverage to its citizens who are not currently covered. As a result, the Med-QUEST Division has been challenged with the goal of completing the rules. Upon completing and complying with the federal rules, it will result in the continued receipt of federal funding totaling approximately \$800 million. Therefore, being an "early adopter" will allow those who enroll on October 1, 2013 to receive coverage on the same day rather than wait three or four months, which is the current process.

Specifically, the proposed rules represent twenty-two chapters to be repealed and incorporated into newly promulgated chapters. Seventeen proposed chapters, which are affected by ACA will remove definitions, delete references to obsolete programs, repeal certain chapters, and other housekeeping measures. Another twenty-six newly-created chapters will align the current Medicaid program with the provisions of ACA by adopting a simplified approach to increase public understanding and access to the program.

The impact of the proposed rules is both congressional and federal. The rules contain categorical, financial, and resource eligibility requirements, freedom of choice, enrollment, benefits and disenrollment, appeal and notice mandates of ACA. Ms. Moon-Ng believed there is no negative small business impact but a positive affect because once the rules are in place, more people will be covered and thus expand upon the venue for business interests. Further, the small business medical providers are very satisfied with the proposed amendments. With the implementation of these rules, the physician providers need not go into ten different chapters based upon what program a patient is enrolled in to see what services are provided; they only need to go into one chapter.

Ms. Evans stated that based on the small business impact statements provided to this board, which essentially shows no small business impact but are to comply with the federal law, they did not have to come before this Board. Ms. Moon-Ng explained that her division will always come to this board because she believes this board is very important to the Med-QUEST Division. As long as she is in the division, all of the rules will come to this board because there is input from this board that the division does not want to miss. Ms. Bennett stated the presentation to this board was incredible and applauded the Med-QUEST Division, Ms. Mullens stated it was a herculean effort and thanked Ms. Moon-Ng, and Ms. Evans stated that the division did an amazing job. Acting Chair Shubert-Kwoc believed providing the proposed rules to this board is an opportunity to learn and to share back with the community so it is very productive for public relations purposes and very fruitful.

Ms. Evans made a motion to recommend that the Board approve the request to go out to public hearing. Ms. Bennett seconded the motion, and the Board members unanimously agreed.

VI. ADMINISTRATIVE MATTERS

- A. Consultation with Board's attorney concerning the board's powers, duties, immunities, privileges and liabilities regarding discussions during board meeting recesses (An executive session may be called, pursuant to Section 92-5(4), Hawaii Revised Statutes

A motion was made by Ms. Bennett, seconded by Mr. Borge, and passed by the Board to go into executive session under the provision of Section 92-5(4), Hawaii Revised Statutes. The Board went into executive session at 11:11 a.m.; the executive session ended at 11:31 a.m.

- B. Review second draft of Board's proposed Brochure and Evaluation Survey
The members reviewed the proposed third draft brochure and second draft evaluation survey. Several changes were proposed for both items, and the members' picture was taken for the brochure. Subsequent drafts will be presented to the members at the next board meeting.

- C. Board member discussion leader assignments for the State Departments and Counties' administrative rule review

The members reviewed and updated the list of discussion assignments for the State Departments.

- D. Recommendation and approval of an investigation task force to write a report regarding this Board's immediate clerical and budgetary needs for submission to the Governor and Legislature

Deputy Attorney General Ahn explained that if this Board wants to create an investigative taskforce, a motion to appoint certain members in needed with less than a quorum, or up to four, and the tasks must be specific. This item was deferred until the next meeting.

- E. Discussion of HAR Title 3 Chapter 10 Travel Rules, as applied to Board members (DAGS)
Acting Chair Shubert-Kwock indicated this item was placed on the agenda as it relates to the expectation of neighbor island members to do board business and to complete the agenda items, instead of arbitrarily running off to another meeting that is not board-related.
- F. Leslie Mullens to facilitate discussion: 1) Meeting etiquette; 2) Guiding principles and values as an advisory board; and 3) Questions to consider in decision-making

This item will no longer be discussed.

VII. ELECTION 201M-5(d), HRS, AND ELECTION OF VICE CHAIR AND SECOND VICE CHAIR

Mr. Borge made a motion to nominate Ms. Shubert-Kwock as Chair, and Ms. Bennett seconded. Ms. Bennett, Mr. Lum, Mr. Borge, Mr. Takamine, and Ms. Shubert-Kwock voted in favor. Ms. Kimura made a motion to nominate Ms. Mullens as Chair, and Ms. Evans seconded. Ms. Kimura and Ms. Evans voted in favor, and Ms. Mullens abstained. Upon voting, the motion for Ms. Shubert-Kwock to become Chair was passed.

Ms. Shubert-Kwock made a motion to nominate Mr. Borge as Vice Chair, and Mr. Takamine seconded. Ms. Shubert-Kwock, Mr. Takamine, Mr. Lum, Ms. Mullens, and Mr. Borge voted in favor of the motion. Ms. Bennett made a motion to nominate Ms. Mullens as Vice Chair, and Mr. Lum seconded. Upon voting, the motion for Mr. Borge to become Vice Chair was passed.

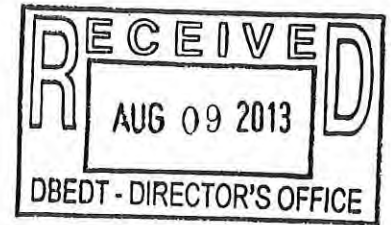
Mr. Takamine made a motion to nominate Ms. Mullens as Second Vice Chair, and Mr. Lum seconded. Mr. Takamine, Mr. Lum, Ms. Bennett, Ms. Evans, and Ms. Kimura voted in favor of the motion. Ms. Shubert-Kwock made a motion to nominate Ms. Bennett as Second Vice Chair, and Mr. Borge seconded. Upon voting, the motion for Ms. Mullens to become Second Vice Chair was passed.

- X. **ADJOURNMENT** – Ms. Mullens made a motion to adjourn the meeting at 12:45 p.m., Mr. Borge seconded the motion, and the Board members unanimously agreed.
- IX. **NEXT MEETING** – Scheduled for 9:30 a.m., Wednesday, July 17, 2013, Conference Room 436, 250 South Hotel Street, Honolulu, HI.

III. New Business

- A. Amendments to HAR Title 12 Chapter 15-90
Hawaii Worker's Compensation Medical Fee
Schedule and Exhibit A (DLIR)

Small Business Impact Statement
(Revised 8/9/13)



Department of Labor and Industrial Relations
Disability Compensation Division
Walter B. Kawamura, Administrator
Phone: 586-9151

Description: Hawaii Administrative Rules, relating to Chapter 15, Title 12
(Hawaii Workers' Compensation Medical Fee Schedule and Exhibit A)

Amendments to §12-15-90, and Exhibit A.

New Rule: No; Repeal of Rule: No; Amendments to rules: Yes

B-1. Exact Changes.

- a. We are proposing to amend Section 12-15-90 of the Workers' Compensation Medical Fee Schedule Administrative Rules, in Title 12, Chapter 15, and billing codes in Exhibit A of the Workers' Compensation Supplemental Medical Fee Schedule, pursuant to section 386-21(c), Hawaii Revised Statutes ("HRS") which requires the director to update the schedules every three years or annually, as required. The proposed change to the administrative rules in Section 12-15-90, HAR, changes the effective date of Exhibit A, Workers' Compensation Supplemental Medical Fee Schedule, to January 1, 2014. Our previous request to DCCA had the effective date of November 1, 2013. The effective date has been changed from November 1, 2013 to January 1, 2014 in accordance with DCCA's recommendation.
- b. A comprehensive survey was done from January 2013 to March 2013 to determine if the reimbursements of Current Procedural Terminology (CPT) codes for workers' compensation were adequate. Based on the survey results, the proposed 2014 Exhibit A will contain a total of 1,067 codes (961 CPT codes plus 106 CDT (Current Dental Terminology) codes). The current 2011 Exhibit A has 1,355 codes, leaving a difference of 288 codes less in the proposed 2014 Exhibit A. The changes to each section in Exhibit A are as follows:
 1. Evaluation and Management: Retained 7 codes, which represent a 9.8 average percent increase in fees between the 2011 and the proposed 2014 Medical Fee Schedule. Deleted 3 codes, Added 11 codes.
 2. Surgery: Retained 381 codes of which represents an 8.6 average percent increase in fees between the 2011 and the proposed 2014 Medical Fee Schedule. Deleted 207 codes, Added 47 new codes.
 3. Radiology: Retained 360 codes, representing a 0 percent change. Deleted 70 codes.

4. Medicine: Retained 120 codes, which represent a 0.4 average percent increase in fees between the 2011 and the proposed 2014 Medical Fee Schedule. Deleted 100 codes, Added 35 new codes.
5. Dental Services: Retained 106 codes, representing a 0 percent change in fees. Deleted one code.

B-2. Reasons for the Changes.

- a. The amendments to Section 12-15-90 of the Workers' Compensation Medical Fee Schedule Administrative Rules, in Title 12, Chapter 15, and billing codes in Exhibit A of the Workers' Compensation Supplemental Medical Fee Schedule, are proposed pursuant to section 386-21(c), Hawaii Revised Statutes ("HRS") which requires the director to update the schedules every three years or annually, as required.
- b. The Director met with Doctors and Interested Parties in January 2013 to discuss increasing fees for frequently used procedure codes. This WC Medical Fee Schedule (WC MFS) Group included Ronald Kienitz, DO, Linda Rasmussen, MD, D. Scott McCaffrey, MD, Mr. David Griffith, Ms. Cathy Wilson, Mr. George Waialeale, Arthur Lum, PT, and Derrick Ishihara, PT. The Department of Labor and Industrial Relations (DLIR) also received a request from Ms. Jean Thompson of Hawaiian Rehabilitation Services, Inc. requesting the inclusion of one CPT code to the supplemental fee schedule.
- c. In determining whether to amend the fee schedule, the DLIR's Research and Statistics Office conducted a survey in January 2013 of the major prepaid health care plan contractors including Hawaii Medical Service Association (HMSA), Hawaii-Western Management Group (HWMG) formerly known as Hawaii Management Alliance Association (HMAA), Kaiser Foundation Health Plan and the University Health Alliance (UHA). They surveyed the codes in the 2011 Workers' Compensation Medical Fee Schedule (which is comprised of CPT and CDT codes), 281 CPT codes requested by the WC MFS Group, and Ms. Thompson's single code.
- d. In March 2013, the DLIR's Research and Statistics Office completed their survey of all the above codes. Based on analysis of these codes the proposed 2014 "Exhibit A" will contain a total of 1,067 codes (961 CPT codes plus 106 CDT codes), which is 288 codes less than the 1,355 codes in the 2011 Exhibit A. Included in the 961 CPT codes are 247 codes proposed by the WC MFS Group, which also includes the request from Ms. Thompson. The fees for 714 CPT codes will remain unchanged in the proposed Exhibit A. The overall average percentage change for all CPT codes between the 2011 Medical Fee Schedule and the proposed 2014 Medical Fee Schedule, excluding dental codes, is an increase of 3.9%. The breakdown by sections is as follows:

Evaluation & Management	9.8%
Medicine	0.4%
Radiology	0.0%
Surgery	8.6%
Dental	0.0%

- e. On 4/18/13, a letter was sent to DCCA and the Insurance Commissioner requesting an assessment by the National Council of Compensation Insurance (NCCI) and review by their actuary regarding the proposed 2014 Exhibit A. By response dated 8/5/13, DCCA reported that NCCI estimates that the proposed impact will result in an overall increase in workers' compensation costs of 1.6% . The DCCA consulting actuary, Oliver Wyman, concurred with NCCI's analysis of an increase in workers' compensation costs of 1.6%. The actuary was also asked to comment on the effect the proposed changes will have on motor vehicle insurance since the personal injury protection benefits ("PIP") under motor vehicle insurance is tied to the workers' compensation fee schedule. The actuary's analysis indicates that if NCCI's assumptions for medical costs are applied to PIP, then the maximum impact on PIP will be an increase of 3.2%.

B-3. Nature of Proposed Changes.

- a. Are the proposed rules authorized by a federal or state law or statute that does not require an agency to interpret or describe the requirements of the law or statute?

No.

- b. Are the proposed rules an emergency regulation?

No.

- c. Will the proposed rules affect small business because it:

1. Will apply to a for-profit enterprise consisting of fewer than 100 full-time or part-time employees?

Yes. The changes to Exhibit A, Workers' Compensation Supplemental Medical Fee Schedule, may have an impact on small business if the increase in allowable fees translates into higher premium costs. It should be noted that from 2005 - 2013, Workers' Compensation premium levels have cumulatively decreased by over 50% (see chart below). This trend of decreasing premiums may be reversing, however, as evidenced by the slight rise in premium costs last year and the approval by the Insurance Commissioner for a 5.2% increase this year.

Year	Premium Level Change (%)
2005	-3.0
2006	-18.2

2007	-12.3
2007	3.9
2008	-19.3
2009	-11.6
2010	-4.1
2011	0.0
2012	3.6
2013	5.2
Total Decrease: 55.8%	

Moreover, it should also be noted that many of the medical professionals allowed to charge higher fees are also either small businesses or part of small business that would benefit from the changes to Exhibit A.

Based on the survey results, the overall average percentage change in fees for all CPT codes surveyed between the 2011 Medical Fee Schedule and the proposed 2014 Medical Fee Schedule is an increase of 3.9%. In general, fees for evaluation and management codes will increase by 9.8%, medicine fees will increase by .4%, and surgery fees will increase by 8.6%. Fees for radiology services and dental services will remain the same with no change. Workers' compensation providers of service may see a slightly greater reimbursement for their services.

Overall, some employers may have to pay a higher premium cost for workers' compensation and no fault coverages, though some small businesses in the medical subsector may be positively affected.

2. Will cause a direct and significant economic burden upon a small business?

The Hawaii Workers' Compensation Medical Fee Schedule is based on the Medicare Fee Schedule. When the Medicare rates drop or increase, there is a corresponding drop or increase in the workers' compensation rates. It should be noted that the reimbursement rates of medical providers have failed to keep pace with the higher costs of medical care, leading some physicians to opt out of providing treatment to injured workers in the workers' compensation system. The chart below illustrates the relative

decrease in Medicare reimbursement rates compared to the increase in the Consumer Price Index from 1995-2012.

CPT Sections	1995 Medicare Average	2012 Medicare Average	Percentage Change	CPI-U ³ Change 1995-2011	CPI-U Medical Costs ⁴ 1995-2011
Surgery	\$522.38	\$548.17	5%	+45%	+55%
Radiology	\$208.60	\$171.00	-18%		
Medicine	\$178.89	\$133.62	-25%		
Eval & Mgmt	\$50.07	\$51.92	4%		
All CPT	\$355.25	\$347.36	-2%		

However, the proposed fees in the Workers' Compensation Supplemental Medical Fee Schedule Exhibit A in general do continue to reimburse at a higher rate than Medicare, as is the intent of the statute, that reads in part, "If the director determines that an allowance under the medicare program is not reasonable or if a medical treatment, accommodation, product, or service existing as of June 29, 1995, is not covered under the medicare program, the director, at any time, may establish an additional fee schedule or schedules not exceeding the prevalent charge for fees for services actually received by providers of health care services, to cover charges for that treatment, accommodation, product, or service. (HRS, 386-21)

The purpose of the Workers' Compensation Law is to ensure the provision of medical treatment to injured workers and the amendments to Exhibit A are designed to help ensure that medical treatment. The statutory language providing for the amendments to Exhibit A reads, in part, "The rates or fees provided for in this section shall be adequate to ensure at all times the standard of services and care intended by this chapter to injured employees." (HRS, 386-21)

The National Council of Compensation Insurance (NCCI) and the DCCA consulting actuary estimate that the proposed impact will result in an overall increase in workers' compensation costs of 1.6%. The actuary's analysis also opines that there will be an increase of 3.2% in the no fault personal injury protection costs.

There may be an impact on small business if workers' compensation and no fault premiums increase, but we are unable to determine what impact that may have on premiums, especially as there are other factors involved.

3. Is directly related to the formation, operation, or expansion of a small business?

Yes, the general increase in fees for providers of services of the injured workers may encourage more providers of services to treat injured workers. However, other small business owners may see a rise in their premium costs for workers' compensation and no fault insurance coverages.

B-4. Departmental Impact?

The changes to Exhibit A help the Department fulfill its statutory obligation to ensure that, "The rates or fees provided for in this section shall be adequate to ensure at all times the standard of services and care intended by this chapter to injured employees." (HRS 386-21)

B-5. Impact on General Public?

The proposed changes to the Medical Fee Schedule Exhibit A, resulting in slightly higher fee reimbursements to the workers' compensation providers of service, may have an impact on the injured workers. With higher reimbursement rates, there may be more providers of service willing to treat the injured workers for their industrial injury. However, small business owners may see a rise in their premium costs for workers' compensation and no fault insurance coverages. These increases in premium costs may be passed down to the consumers.

B-6. Impact on state economy?

Yes, there may be an impact on the state economy if there is an increase in the workers' compensation and no fault insurance premium costs and if these costs are passed down to the consumers. However, we are unable to determine to what extent the impact may be. Moreover, there may be a positive impact on the medical subsector of the economy as providers of medical treatment will have more incentive to treat injured workers under the Workers' Compensation Law.

B-7. Final result anticipated from the proposed rule changes.

The amendments to the Workers' Compensation Medical Fee Schedule Administrative Rules, in Title 12, Chapter 15, and billing codes in Exhibit A of the Workers' Compensation Supplemental Medical Fee Schedule, will update the

fee schedule as required by section 386-21(c), Hawaii Revised Statutes ("HRS") and reflects the current reimbursable amount for medical services.

B-8. Other alternatives explored to carry out the statutory purpose other than rulemaking.

The amendments are being made as required by section 386-21(c), HRS.

Small Business Impact Statement:

B-9. Is there a new or increased fee or fine?

No, there are no fees or fines proposed.

B-10. Will the proposed rules affect small business?

The proposed Medical Fee Schedule changes in Exhibit A may affect small businesses, namely physicians and other providers of services who treat the injured workers.

Based on the survey results, there is an overall average percentage increase of 3.9% for all CPT codes between the 2011 Medical Fee Schedule and the proposed 2014 Medical Fee Schedule, excluding dental codes. The average percent change in major categories show increases to the Evaluation & Management, Medicine, and Surgery categories. The fees for 714 CPT codes, including radiology and dental codes, will remain unchanged in the proposed Exhibit A.

Evaluation & Management	9.8%
Medicine	0.4%
Radiology	0.0%
Surgery	8.6%
Dental	0.0%

The Hawaii Small Business Regulatory Flexibility Act (Chapter 201M) requires an assessment of the impact on small business. Assessments such as these were conducted in coordination with the National Council of Compensation Insurance (NCCI) and reviewed by Oliver Wyman, the DCCA's consulting actuary. NCCI estimates the impact of the changes to the Hawaii Workers' Compensation Supplemental Medical Fee Schedule proposed to be effective January 1, 2014, would result in an increase of 1.6% in overall workers' compensation system costs in Hawaii. The consulting actuary concurs with the NCCI analysis and adds that the maximum impact on personal injury protection costs will be an increase of 3.2%.

B-11. Small businesses or organizations who were consulted during drafting of the proposed rules.

The Department received input from Ronald Kienitz, DO, Linda Rasmussen, MD, D. Scott McCaffrey, MD, Mr. David Griffith, Ms. Cathy Wilson, Mr. George Waialeale, Arthur Lum, PT, Derrick Ishihara, PT, and Ms. Jean Thompson of Hawaiian Rehabilitation Services, Inc. regarding fee schedule codes they wanted to survey. The major prepaid health care plan contractors including Hawaii Medical Service Association (HMSA), Hawaii-Western Management Group (HWMG) formerly known as Hawaii Management Alliance Association (HMAA), Kaiser Foundation Health Plan and the University Health Alliance (UHA) were surveyed to determine their reimbursement rate for the fee schedule codes.

We request the approval of the Small Business Regulatory Review Board for our proposed amendments to Chapter 15, Title 12 relating to the Workers' Compensation Medical Fee Schedule so we may proceed to public hearing. If you have any questions, you may contact Clyde Imada at the Disability Compensation Division at 587-8782. Thank you for your assistance in this matter.



DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

Proposed Amendments to Chapter 12-15
Hawaii Administrative Rules
Workers' Compensation Medical Fee Schedule

August 05, 2013

1. Section 12-15-90, Hawaii Administrative Rules, is amended to read as follows:

"§12-15-90 Workers' compensation medical fee schedule. (a) Charges for medical services shall not exceed one hundred ten per cent of participating fees prescribed in the Medicare Resource Based Relative Value Scale System fee schedule (Medicare Fee Schedule) applicable to Hawaii or listed in exhibit A, located at the end of this chapter and made a part of this chapter, entitled "Workers' Compensation Supplemental Medical Fee Schedule", dated [January 1, 2011] January 1, 2014. The Medicare Fee Schedule in effect on January 1, 1995 shall be applicable through June 30, 1996. Beginning July 1, 1996 and each calendar year thereafter, the Medicare Fee Schedule in effect as of January 1 of that year shall be the effective fee schedule for that calendar year.

(b) If maximum allowable fees for medical services are listed in both the Medicare Fee Schedule and the Workers' Compensation Supplemental Medical Fee Schedule, dated [January 1, 2011] January 1, 2014, located at the end of this chapter as exhibit A, charges shall not exceed the maximum allowable fees allowed under the Workers' Compensation Supplemental Medical Fee Schedule, dated [January 1, 2011] January 1, 2014, located at the end of this chapter as exhibit A.

(c) If the charges are not listed in the Medicare Fee Schedule or in the Workers' Compensation

Supplemental Medical Fee Schedule, dated [January 1, 2011] January 1, 2014, located at the end of this chapter as exhibit A, the provider of service shall charge a fee not to exceed the lowest fee received by the provider of service for the same service rendered to private patients. Upon request by the director or the employer, a provider of service shall submit a statement to the requesting party, itemizing the lowest fee received for the same health care, services, and supplies furnished to any private patient during the one-year period preceding the date of a particular charge. Requests shall be submitted in writing within twenty calendar days of receipt of a questionable charge. The provider of service shall reply in writing within thirty-one calendar days of receipt of the request. Failure to comply with the request of the employer or the director shall be reason for the employer or the director to deny payment.

(d) Fees listed in the Medicare Fee Schedule shall be subject to the current Medicare Fee Schedule bundling and global rules if not specifically addressed in these rules. The Health Care Financing Administration Common Procedure Coding System (HCPCS) alphabet codes adopted by Medicare will not be allowed, except for injections and durable medical equipment, unless specifically adopted by the director. The director may defer to a fee listed in the Medicare HCPCS Fee Schedule when a fee is not listed in the Workers' Compensation Supplemental Medical Fee Schedule, Exhibit A.

[(c)](e) Providers of service will be allowed to add the applicable Hawaii general excise tax to their billing." [Eff 1/1/96; am 1/1/97; am 11/22/97; am 12/17/01; am 12/13/04; am 11/6/06; am 12/14/07; am 2/28/11; am] (Auth: HRS §§386-21, 386-26, 386-72) (Imp: HRS §§386-21, 386-26)

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

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

4. These amendments to Title 12, Chapter 15, Hawaii Administrative Rules, relating to the Hawaii Workers' Compensation Medical Fee Schedule shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on August 5, 2013 and filed with the Office of the Lieutenant Governor.

Director

APPROVED AS TO FORM:

Deputy Attorney General

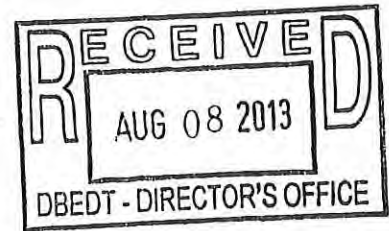


EXHIBIT A

**Chapters 12-15
Hawaii Administrative Rules**

**WORKERS' COMPENSATION SUPPLEMENTAL
MEDICAL FEE SCHEDULE**

January 1, 2014

The codes in the Workers' Compensation Supplemental Medical Fee Schedule are obtained from the American Medical Association, the American Dental Association or the State Department of Labor and Industrial Relations.

The five character codes included in the Workers' Compensation Supplemental Medical Fee Schedule are obtained from Current Procedural Terminology (CPT®), copyright 2013 by the American Medical Association (AMA). CPT is developed by the AMA as a listing of descriptive terms and five character identifying codes and modifiers for reporting medical services and procedures performed by physicians.

The responsibility for the content of the Workers' Compensation Supplemental Medical Fee Schedule is with DLIR and no endorsement by the AMA is intended or should be implied. The AMA disclaims responsibility for any consequences or liability attributable or related to any use, nonuse or interpretation of information contained in the Workers' Compensation Supplemental Medical Fee Schedule. Fee schedules, relative value units, conversion factors and/or related components are not assigned by the AMA, are not part of CPT, and the AMA is not recommending their use. The AMA does not directly or indirectly practice medicine or dispense medical services. The AMA assumes no liability for data contained or not contained herein. Any use of CPT outside of the Workers' Compensation Supplemental Medical Fee Schedule should refer to the most current CPT codes and descriptive terms. Applicable FARS/DFARS apply.

CPT is a registered trademark of the American Medical Association

The five character codes starting with the letter "D" included in the Workers' Compensation Supplemental Medical Fee Schedule are obtained from Current Dental Terminology 2013, copyright 2012 by the American Dental Association (ADA). CDT is developed by the ADA to achieve uniformity, consistency and accurate reporting of dental treatment.

The calculated "value of one unit" is \$33.54. The fee for each procedure should be computed by multiplying its "unit value" by \$33.54.

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Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
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SURGERY

Integumentary System

Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
10060	4.7		12017	9.7		13152	23.6	
10061	8.2		12018	12.1		13153	7.6	
10120	6.2		12031	10.9		14000	27.9	
10121	11.6		12032	14.5		14001	35.9	
11000	2.3		12034	14.1		14020	31.0	
11001	0.9		12035	16.4		14021	40.0	
11010	21.0		12041	10.5		14040	33.4	
11043	9.3		12042	13.6		14041	44.1	
11044	12.7		12044	15.9		14060	34.7	
11720	1.4		12045	17.5		14061	48.2	
11730	4.3		12051	11.5		15120	30.8	
11740	2.2		12052	12.9		15121	9.2	
11750	10.0		12053	15.7		15220	34.6	
11760	9.4		12054	16.9		15221	5.8	
12001	4.9		13100	13.3		15260	42.6	
12002	5.4		13101	18.0		15740	44.6	
12004	6.4		13102	4.5		15750	42.8	
12005	8.0		13120	13.9		16000	2.8	
12006	9.5		13121	18.8		16020	3.4	
12007	10.8		13122	5.0		16025	6.0	
12011	5.4		13131	15.3		16030	7.3	
12013	6.0		13132	24.4		16035	7.9	
12014	7.0		13133	6.9		16036	3.4	
12015	8.5		13150	16.6		17003	0.3	
12016	10.1		13151	18.3				

Musculoskeletal System

20520	8.2		20550	2.4		20553	2.5	
20525	22.1		20551	2.4				
20526	2.7		20552	2.2				

Code	Description	Unit Value
20560*	Acupuncture, initial 15 minutes (inclusive of evaluation and supplies).....	1.0
20561*	each additional 15 minutes.....	0.4

Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
20600	2.3		20937	6.8		21338	32.6	
20605	2.7		20974	2.8		21339	39.2	
20610	3.1		21310	5.3		21385	30.1	
20612	2.2		21315	12.1		22326	51.9	
20660	8.7		21320	12.0		22327	51.3	
20822	79.4		21325	22.1		22548	66.7	
20900	17.8		21330	26.3		22551	74.3	
20902	17.5		21335	31.6		22552	16.5	
20920	14.1		21336	29.9		22554	53.6	
20924	17.8		21337	18.3		22556	69.5	

Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
22558	63.9		25110	13.6		26727	20.0	
22585	13.5		25111	12.0		26735	25.9	
22590	55.8		25112	13.9		26750	7.7	
22595	53.3		25115	31.0		26755	14.2	
22600	45.6		25118	14.2		26765	20.4	
22610	44.9		25230	16.1		26770	11.0	
22612	60.1		25248	16.5		27087	22.0	
22614	15.6		25250	18.6		27096	9.2	
22630	57.9		25260	26.4		27125	41.3	
22840	27.8		25270	21.4		27130	61.1	
22842	32.1		25272	22.9		27132	71.1	
22845	27.8		25274	27.3		27134	72.9	
22851	16.5		25505	22.9		27235	33.7	
23035	24.8		25515	24.5		27244	45.7	
23040	26.2		25525	31.3		27245	49.6	
23076	19.7		25545	23.6		27246	13.6	
23100	17.9		25574	24.1		27248	27.8	
23101	16.4		25605	24.7		27267	17.0	
23105	24.6		25607	26.2		27301	27.7	
23130	22.9		25608	29.9		27345	17.2	
23184	27.1		25609	38.0		27380	21.5	
23332	31.8		25628	25.4		27385	24.2	
23350	5.4		25645	21.5		27405	24.7	
23410	35.9		25652	22.8		27422	28.8	
23412	31.2		25695	22.8		27425	16.8	
23415	26.5		25800	27.6		27430	26.9	
23420	42.5		25825	28.9		27447	65.3	
23430	31.5		26025	15.0		27487	66.2	
23450	35.0		26034	18.9		27501	18.1	
23455	42.6		26037	21.5		27506	56.4	
23460	42.2		26055	23.5		27517	24.1	
23462	39.7		26075	11.6		27524	31.9	
23465	41.0		26115	20.4		27530	13.3	
23466	42.7		26130	16.6		27535	34.5	
23470	44.8		26200	17.0		27570	5.4	
23472	54.2		26230	17.9		27603	22.1	
23480	29.2		26320	12.5		27606	10.8	
23485	35.1		26340	12.9		27620	17.0	
23650	12.4		26350	30.6		27650	29.0	
23655	17.5		26356	50.8		27652	27.4	
24105	12.5		26370	32.6		27654	26.5	
24300	16.2		26372	31.5		27680	15.8	
24341	33.2		26410	24.2		27698	24.8	
24342	28.6		26418	24.8		27704	20.6	
24343	26.0		26426	22.5		27705	28.4	
24345	28.3		26485	28.9		27759	38.8	
24357	18.1		26540	28.1		27766	24.0	
24358	21.1		26548	26.9		27767	10.6	
24359	26.3		26600	12.2		27792	27.8	
24575	27.6		26607	16.1		27814	33.3	
24600	14.8		26608	17.2		27822	37.0	
24605	21.1		26650	17.0		27823	37.3	
24666	26.8		26670	11.9		27827	41.3	
24800	29.3		26720	8.1		27828	47.9	
25000	13.5		26725	13.9		27880	32.6	

Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
28405	13.7		29805	16.9		29866	38.9	
28420	44.2		29806	45.0		29867	45.5	
28445	38.0		29807	43.9		29871	18.6	
28455	10.0		29819	22.8		29873	19.1	
28465	21.6		29820	21.1		29874	20.8	
28475	9.4		29821	23.2		29875	19.2	
28476	12.7		29822	22.4		29876	24.8	
28485	18.6		29823	26.7		29877	26.4	
28666	7.1		29824	24.9		29879	28.1	
28810	16.9		29825	21.7		29880	27.3	
29065	4.2		29826	7.7		29881	25.8	
29075	3.8		29827	42.6		29882	26.5	
29105	3.8		29828	38.9		29883	30.3	
29125	3.0		29830	16.3		29884	23.4	
29130	1.8		29834	17.8		29885	26.6	
29345	5.9		29838	21.4		29888	41.8	
29405	3.6		29844	18.0		29889	42.8	
29425	3.7		29846	19.4		29894	18.5	
29440	1.7		29848	18.1		29898	22.0	
29515	3.1		29855	29.1		29900	18.8	
29800	18.3		29863	30.8				

Respiratory System

30140	20.4		30903	8.6		30930	5.4	
30520	29.5		30905	11.3		31231	8.8	
30901	4.1		30906	12.2				

Cardiovascular System

35207	27.6		36600	1.2		37618	14.9	
36410	0.7		37202	14.1				

Digestive System

40654	26.1		49505	18.2		49585	15.6	
45378	14.7		49520	22.2		49650	15.4	

Nervous System

61154	52.7		63042	44.9		64484	5.6	
61312	85.4		63047	42.3		64510	4.8	
61313	82.0		63048	8.5		64550	0.7	
62000	42.2		63075	57.6		64614	6.7	
62005	56.0		63076	10.2		64704	13.0	
62010	63.1		63081	67.4		64708	17.9	
62287	20.2		63090	71.1		64718	21.0	
62319	8.0		63650	15.9		64719	14.9	
63012	42.6		64400	5.3		64721	18.1	
63020	49.0		64405	3.7		64722	12.8	
63030	40.8		64450	4.4		64776	14.3	
63035	8.1		64483	10.3		64831	24.1	

Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
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Eye and Ocular Adnexa

65205	2.4		65426	29.0		67412	35.8	
65210	2.9		65435	3.2		67700	11.5	
65222	3.0		66850	32.7		67875	7.0	
65235	30.1		66982	43.9		67911	24.7	
65260	43.2		66984	31.5		67966	32.6	
65265	49.4		67101	31.3		67973	39.2	
65280	27.9		67107	50.5		67974	39.1	
65285	49.1		67108	66.0		68320	32.5	
65286	31.3		67110	34.7				

Auditory System

69005	9.5		69210	2.2		69436	7.1	
69200	5.7		69433	8.8		69610	17.6	

Operating Microscope

69990	8.2							
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RADIOLOGY

Fees include both the technical and professional components. In the absence of any prior agreement, the professional component shall be thirty-five percent of the scheduled fee.

Diagnostic Radiology (Diagnostic Imaging)

70010	9.1		70360	1.2		71100	1.5	
70015	5.9		70370	3.2		71101	1.8	
70030	1.2		70371	5.0		71110	1.9	
70100	1.4		70373	3.9		71111	2.4	
70110	1.7		70380	1.7		71120	1.6	
70120	1.5		70390	4.4		71130	1.7	
70130	2.4		70450	10.3		71250	12.7	
70134	2.1		70460	13.0		71260	15.6	
70140	1.4		70470	15.8		71270	19.0	
70150	2.0		70481	15.6		71555	23.7	
70160	1.4		70482	18.1		72010	3.0	
70170	2.4		70487	14.6		72020	1.1	
70190	1.6		70488	17.6		72040	1.6	
70200	2.0		70490	11.9		72050	2.3	
70210	1.4		70491	14.5		72052	2.9	
70220	1.9		70492	17.5		72069	1.5	
70240	1.3		71010	1.2		72070	1.6	
70250	1.6		71015	1.4		72072	1.8	
70260	2.3		71020	1.5		72074	2.1	
70300	0.7		71021	1.8		72080	1.7	
70328	1.3		71022	2.1		72090	2.0	
70330	2.1		71023	2.7		72100	1.7	
70332	4.4		71030	2.1		72110	2.4	
70350	1.0		71034	4.0		72114	3.1	
70355	1.2		71035	1.5		72120	2.2	

Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
72125	12.2		73600	1.2		75630	20.9	
72126	15.6		73610	1.4		75658	19.4	
72127	18.6		73615	4.8		75705	21.4	
72128	12.2		73620	1.2		75710	19.2	
72129	15.6		73630	1.4		75716	20.2	
72130	18.6		73650	1.2		75726	19.1	
72131	12.2		73660	1.2		75731	19.3	
72132	15.6		73700	11.4		75733	20.5	
72133	18.6		73701	14.3		75736	19.2	
72147	25.5		73702	17.5		75741	19.0	
72170	1.3		73725	23.7		75743	20.0	
72190	1.7		74000	1.3		75746	18.9	
72192	12.1		74010	1.6		75756	19.4	
72193	15.1		74020	1.8		75774	16.7	
72194	18.2		74022	2.1		75801	11.5	
72200	1.3		74150	12.1		75803	12.5	
72202	1.6		74160	15.9		75805	13.0	
72220	1.4		74185	23.7		75810	25.3	
72240	8.9		74190	3.4		75822	6.0	
72255	8.2		74210	3.2		75825	18.5	
72265	7.9		74220	3.6		75827	18.5	
72270	12.2		74230	3.8		75831	18.6	
72275	5.1		74240	4.6		75833	19.7	
72285	12.6		74241	4.8		75840	18.6	
72295	11.5		74245	7.2		75842	19.7	
73000	1.3		74246	5.2		75860	18.8	
73010	1.3		74249	7.7		75870	18.7	
73020	1.1		74250	4.1		75872	19.3	
73030	1.4		74305	2.4		75885	19.3	
73040	5.0		74320	6.1		75887	19.4	
73050	1.6		74327	5.4		75889	18.6	
73060	1.4		74328	7.4		75891	18.6	
73070	1.2		74330	7.7		75893	17.3	
73080	1.5		74340	6.0		75894	46.3	
73085	4.7		74355	6.5		75896	40.6	
73090	1.3		74360	7.1		75898	5.6	
73100	1.3		74400	4.6		75945	9.2	
73110	1.5		74410	5.1		75960	20.4	
73115	4.4		74415	5.6		75962	21.3	
73120	1.2		74420	5.7		75964	11.8	
73130	1.4		74425	3.2		75966	23.2	
73200	11.4		74430	3.2		75968	11.8	
73201	14.3		74440	3.5		75970	22.6	
73202	17.5		74445	4.6		75978	21.2	
73500	1.2		74450	3.4		75980	13.0	
73510	1.6		74455	4.0		75984	5.2	
73520	1.8		74470	3.5		75989	7.4	
73525	4.7		74475	7.1		76001	6.3	
73530	1.6		74480	7.1		76080	3.0	
73550	1.4		74485	6.2		76098	1.0	
73560	1.3		74710	2.3		76101	6.9	
73562	1.5		74740	3.4		76120	3.2	
73564	1.7		75600	16.8		76125	2.1	
73580	5.8		75605	18.9				
73590	1.3		75625	18.8				

Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
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Diagnostic Ultrasound

76511	4.8		76705	4.4		76873	7.6	
76512	4.6		76770	5.6		76930	4.4	
76513	4.5		76775	4.5		76932	4.4	
76516	3.5		76800	5.3		76950	3.4	
76519	3.6		76830	5.0		76965	10.0	
76529	3.7		76831	5.0		76975	4.6	
76604	3.8		76856	5.0		76977	1.2	
76700	5.9		76870	5.0				

Radiation Oncology

77261	3.1		77326	6.5		77431	4.1	
77262	4.6		77327	9.4		77432	17.6	
77263	6.8		77328	13.2		77470	18.0	
77280	8.3		77331	2.8		77750	14.2	
77285	13.8		77332	3.6		77761	14.6	
77290	20.1		77333	4.1		77762	20.3	
77295	45.6		77334	7.9		77763	28.7	
77300	3.5		77336	4.2		77776	16.6	
77305	4.1		77370	6.0		77777	24.7	
77310	5.5		77401	2.3		77778	35.0	
77315	7.4		77417	0.9		77790	3.6	
77321	7.4		77427	7.6				

Nuclear Medicine

78016	11.9		78264	11.2		78607	15.9	
78018	13.3		78270	3.5		78610	7.0	
78020	4.0		78271	3.6		78700	7.3	
78103	8.9		78272	4.5		78701	8.7	
78104	10.4		78300	7.0		78707	10.7	
78111	4.9		78305	9.5		78708	9.8	
78120	3.9		78306	10.6		78709	14.1	
78121	5.4		78320	12.4		78710	11.6	
78122	7.7		78428	7.9		78725	4.4	
78130	6.8		78457	7.8		78730	3.6	
78140	7.7		78458	9.4		78761	8.5	
78191	11.9		78468	9.6		78800	8.1	
78202	8.1		78469	11.8		78801	10.4	
78205	11.7		78472	12.2		78802	13.5	
78206	14.2		78473	17.4		78803	15.5	
78215	7.6		78481	11.2		78805	8.1	
78216	7.0		78483	16.3		78806	14.8	
78231	6.5		78494	15.4		78807	14.2	
78232	6.9		78496	9.4		79200	8.4	
78258	8.7		78600	7.4		79440	8.1	
78261	10.1		78601	8.6				
78262	10.2		78605	8.2				

Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
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MEDICINE

Fees include both the technical and professional components. In the absence of any prior agreement, the professional component shall be thirty-five percent of the scheduled fee.

Vaccines, Toxoids

90715	1.4							
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Psychiatry

90832	2.2		90846	3.4		90853	1.2	
90837	4.4		90847	4.3				
90845	3.2		90849	1.3				

Biofeedback

90901	1.5							
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Dialysis

90935	2.6		90937	4.1		90997	3.6	
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Ophthalmology

92002	3.3		92020	1.1		92235	4.4	
92004	6.0		92071	1.3		92326	1.7	
92012	3.3		92072	4.7				
92014	4.8		92230	2.5				

Special Otorhinolaryngologic Services

92508	1.3		92545	1.5		92568	0.6	
92541	2.0		92547	0.7		92577	0.8	
92542	2.0		92548	4.2		92584	3.1	
92543	0.9		92557	1.8		92587	1.8	
92544	1.6		92567	0.8		92588	2.6	

Cardiovascular

92953	0.5		93005	0.6		93226	2.8	
92970	6.5		93010	0.3		93227	1.1	
92971	3.5		93015	4.0		93268	9.6	
92975	14.1		93017	2.5		93270	1.4	
92977	8.4		93018	0.6		93272	1.0	
92978	10.0		93024	4.3		93278	1.8	
92979	5.8		93040	0.5		93303	8.1	
92997	24.1		93042	0.3		93307	7.3	
92998	12.1		93224	5.6		93308	4.0	
93000	0.9		93225	1.7		93312	11.4	

Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
93313	2.0		93600	7.1		93620	36.7	
93316	1.6		93602	5.7		93623	13.2	
93320	3.3		93603	6.7		93640	17.6	
93321	1.7		93609	14.7		93641	22.3	
93325	2.4		93610	7.8		93642	19.2	
93503	4.7		93612	8.2		93650	21.1	
93561	1.7		93615	2.2		93660	7.5	
93562	0.8		93618	14.3		93724	11.2	
93571	11.1		93619	26.0				

Noninvasive Vascular Diagnostic Studies

93980	7.1		93981	5.7	
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Pulmonary

94014	1.8		94662	1.2		94761	0.4	
94015	1.1		94680	2.4		94762	1.3	
94016	0.9		94681	3.1		94770	1.6	
94070	3.7		94690	2.1				
94620	3.6		94760	0.2				

Allergy and Clinical Immunology

95052	0.3		95071	3.2		95117	0.6	
95070	2.5		95115	0.5		95170	0.4	

Neurology and Neuromuscular Procedures

95805	18.7		95885	2.6		95909	6.4	
95806	8.9		95887	3.2		95910	8.5	
95851	0.7		95905	3.2		95911	10.2	
95861	6.7		95907	4.4		95912	11.9	
95863	8.1		95908	4.7		95913	13.8	

Central Nervous System Assessments/Tests (eg, Neuro-Cognitive, Mental Status, Speech Testing)

96101	2.9				
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Hydration, Therapeutic, Prophylactic, Diagnostic Injections and Infusions, and Chemotherapy and Other Highly Complex Drug or Highly Complex Biologic Agent Administration

96360	2.4		96405	3.3		96542	5.8	
96361	0.7							

Photodynamic Therapy

96570	2.1		96571	1.0	
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Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
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Physical Medicine and Rehabilitation

97001	3.0		97016	0.72		97124	1.0	
97002	1.6		97032	0.7		97140	1.1	
97003	3.3		97110	1.3		97530	1.4	
97012	0.6		97112	1.3				
97014	0.5		97116	1.1				

Code	Description	Unit Value
97545A	Work hardening, per hour, maximum 4 hours.....	1.5

Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
97750	1.2		97760	1.5	

Chiropractic Manipulative Treatment

98940	0.9
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Special Services, Procedures and Reports

99070	HAR	99080	2.6
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DENTAL SERVICES

Diagnostic

D0210	2.6	D0230	0.4	D0272	0.9
D0220	0.5	D0240	1.0	D0330	2.4

Restorative

D2140	2.0	D2530	16.9	D2910	1.9
D2150	2.5	D2710	14.5	D2920	2.1
D2160	3.0	D2720	16.5	D2931	4.5
D2161	3.7	D2740	21.9	D2932	4.4
D2330	2.2	D2750	21.4	D2950	4.8
D2331	3.3	D2751	18.1	D2951	1.1
D2332	4.3	D2752	19.4	D2952	6.8
D2335	5.2	D2790	19.8	D2954	5.3
D2510	12.3	D2791	16.4	D2961	13.9
D2520	14.1	D2792	18.4	D2962	20.9

Endodontics

D3220	2.9	D3353	3.5	D3426	1.1
D3310	10.7	D3410	8.0	D3430	2.0
D3320	13.9	D3421	8.6	D3450	9.4
D3330	17.8	D3425	9.7		

Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
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Periodontics

D4210	11.7		D4260	21.9		D4910	3.8	
D4211	6.5		D4341	4.5				

Prosthodontics, Removable

D5110	26.6		D5281	15.0		D5660	5.5	
D5120	26.6		D5510	3.5		D5730	7.1	
D5130	27.9		D5520	3.5		D5731	7.1	
D5140	27.9		D5610	3.7		D5740	6.6	
D5211	23.0		D5620	5.7		D5741	6.6	
D5212	23.0		D5630	5.5		D5751	10.2	
D5213	27.1		D5640	3.6		D5760	9.7	
D5214	27.1		D5650	4.7		D5761	9.7	

Prosthodontics, Fixed

D6210	18.3		D6251	13.3		D6780	19.4	
D6211	15.6		D6252	14.7		D6790	19.8	
D6212	17.4		D6545	6.4		D6791	16.4	
D6240	19.5		D6720	16.5		D6792	18.4	
D6241	17.1		D6750	21.4		D6930	3.5	
D6242	18.9		D6751	18.1				
D6250	14.6		D6752	19.4				

Oral and Maxillofacial Surgery

D7140	2.4		D7310	6.3		D7970	8.0	
D7210	5.4		D7320	8.1		D7971	4.1	
D7250	6.5		D7510	3.5				
D7270	9.3		D7960	5.7				

Adjunctive General Services

D9110	2.2							
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EVALUATION AND MANAGEMENT

Office or Other Outpatient Services

99201	1.9		99205	8.1		99214	4.1	
99202	3.0		99211	0.8		99215	5.7	
99203	4.5		99212	1.8				
99204	6.5		99213	2.7				

Hospital Inpatient Services

99232	2.4							
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Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days	Code	Unit Value	Follow-up Days
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Emergency Department Services

99281	1.5		99283	3.3		99285	6.8	
99282	2.1		99284	4.9				

Special Evaluation and Management Services

Code	Description	Unit Value
99456A*	Complex consultation pursuant to Section 386-79, HRS - work related or medical disability examination by other than the treating physician that includes: <ul style="list-style-type: none"> ▪ completion of a medical history commensurate with the patient's condition; ▪ performance of an examination commensurate with the patient's condition; ▪ formulation of a diagnosis, assessment of capabilities and stability, and calculation of impairment; ▪ development of future medical treatment plan; ▪ completion of necessary documentation/certificates and report; and ▪ review of records relating to the patient's condition. 	6.0
99456B*	Each additional 30 minute increment (an increment must be at least 30 minutes.)	3.0

*Department of Labor Code

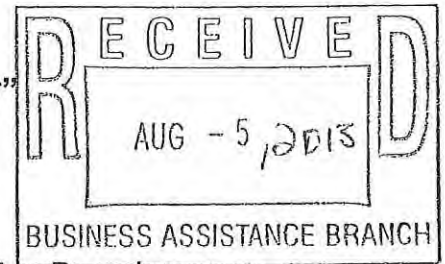
Bundled Services: Certain codes, such as telephone calls, are considered by the Health Care Financing Administration (HCFA) to be "bundled" services. Bundled services are not payable, nor should they be billed, when performed incident to or in conjunction with another service even if the other service is performed on a different day. When services that are designated as bundled are denied, the physician may not collect from the patient.

HAR: Use pertinent Hawaii Administrative Rule.

III. New Business

- B. Proposed HAR Title 11 Chapter 50 Food Safety Code, and Repeal of Chapter 12 Food Establishment Sanitation (DOH)

"SMALL BUSINESS IMPACT STATEMENT"
RULE MAKING CHECKLIST
(SEC 201M-2, HRS)



DEPARTMENT OR AGENCY: Department of Health/EHSD/Sanitation Branch

Relevant HRS Chapter, Administrative Rule Chapter and Title: or Section:
Hawaii Administrative Rule, Title 11, Chapter 12, Food Establishment Sanitation is being repealed, and being replaced by Title 11, Chapter 50, Food Safety Code.

Name: Peter Oshiro Title: Environmental Health Program Manager

Phone Number: 586-8020 Email Address: peter.oshiro@doh.hawaii.gov

A. Provide the following information described in Section 201M-2(b), HRS and in Governor's Administrative Directive No. 09-01:

B. RULE DESCRIPTION:

1. New Repeal Amendment Recompile

2. Nature of Proposed Changes:

- a. Is the proposed rule authorized by a federal or state law or statute that does not require an agency to interpret or describe the requirements of the law or statute? Yes No
- b. Is the proposed rule an emergency regulation? Yes No
- c. Will the proposed rule affect small business because it:
 - 1) Will apply to "small business" defined as a for-profit enterprise with fewer than 100 full-time or part-time employees? Yes No
 - 2) Will cause a direct and significant economic burden upon a small business? Yes No
 - 3) Is directly related to the formation, operation, or expansion of a small business? Yes No

3. Summarize the proposed rule(s) and reasons for the proposed rule(s):

The proposed rule is an update of the existing rules governing food establishments in the State of Hawaii based on the 2009 FDA Model Food Code.

The main reason for the proposed rule is to better protect the health of the residents and visitors to the State of Hawaii through the adoption of the most current, science based, and nationally recognized food safety regulations. The old version of the food rules are based on outdated science and technologies and have not been substantially updated in over a decade. The new rules are also a direct result of the passage of Act 176/June 2010 which allows the Sanitation Branch to use monies deposited into the Sanitation and Environmental Health Special Fund for the operational costs of the food safety program. The resulting modest fee increases would finally allow the food safety program to have adequate staffing levels needed to protect public health through increased frequencies of inspections that produce consistent and lasting compliance with food safety regulations designed to lessen the risk of severe hospitalizations and death from contracting food-borne or other communicable diseases. The new rules will also create a transparent, web-based, publicly accessible food establishment inspection system, and to create a high profile food establishment placarding system designed to reduce the amount of repeat inspections by the State DOH, provide greater consistency in adhering to food safety regulations that directly impact the public health risk of dining at Hawaii's food establishments, and to inform the public regarding the food safety status of their favorite dining establishments.

C. Small Business Impact Statement pursuant to 201M-2(b):

If the proposed rule does affect small business, the agency shall consider creative, innovative, or flexible methods of compliance for small businesses. They will also prepare a small business impact statement to be submitted with the proposed rules to the departmental advisory committee on small business (if any), and the Small Business Regulatory Review Board, as soon as the proposed rule is reasonably complete. The statement shall provide a reasonable determination of the following:

1. The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules and how they may be adversely affected.

All food establishments that are required to have a valid permit from the Department of Health. These include restaurants, lunch-wagons, markets, bakeries, convenience stores, temporary food sales, etc.

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

Same as 1) above. Annual fee increases would average \$50 to \$150 per year.

3. In dollar amounts, the overall aggregate 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, and other costs associated with compliance.

The only cost for small businesses would be the same as 2) above.

4. The probably monetary cost and benefits to the implementing agency and other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees or penalties and the manner in which the moneys will be used.

The estimated revenue generated would be around \$900,000 one year after implementation of the rules and will rise to and remain at ~ \$1.8 million annually. In FY'11 the fund generated ~\$445,000 in food permit fees. All monies must be deposited into the Sanitation and Environmental Health Special Fund per HRS. The primary use of the money would be to contract with an IT vendor to create a fully electronic web-based food safety inspection system to more efficiently manage fee collections, billings and payment, and to increase staffing levels in order to inspect food establishments at a frequency that would ensure lasting and consistent compliance with food safety regulations to prevent severe illnesses and fatalities associated with the regulated food industry.

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

The DOH tiered the fee structure to ensure that small scale businesses and food establishments were charged fees that are approximately one third of what is paid by their larger competitors. We not only took into account the physical size of the establishment, but we also looked at the complexity of their food operations, and further scaled the fees so that small businesses with low complexity paid fees at a rate of one third to two thirds less than their larger counterparts.

E.g. A small mom and pop restaurant or store which is < 1000 Sq ft in size with a simple menu would pay a fee of \$100/year. A large restaurant >1000 sq ft with a complicated menu, or a large supermarket would pay a fee of \$400/year.

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

Representation by a member of the restaurant industry, the food manufacturing industry, and the food service industry, all of which includes small food establishments, is mandated by HRS §321-4.6 Advisory council on food protection practices. This group meets quarterly and input has been sought since the inception of creating the new food rules since June 2010. Drafts of the new fee schedule were disseminated early in 2011. Throughout 2012 and into 2013, the DOH has had numerous meetings (see attached) with the following industry groups to specifically address the proposed new Administrative Rule; Hawaii Restaurant Association (HRA), Hawaii Food Manufacturers Association (HFMA), Hawaii Food Industry Association (HFIA), Hawaii Lodging and Tourism Association, and the Hawaii Aquaculture and Aquaponics Association. Many of these meetings were also open to the public, and were held on all major neighbor islands (Kauai, Maui, Big Island).

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

The new rules are slightly more stringent due to science based prevention techniques to halt the occurrence of emerging diseases of concern that were rare or non-existent 10 years ago. These diseases have now become more common place and have been identified as the root cause for numerous outbreaks that have resulted in deaths and severe, permanently debilitating illnesses throughout the United States including Hawaii. The new rules are designed to directly lessen the occurrence of food-borne illness risk factors that are identified by the Centers for Disease Control (CDC) and the FDA as being the root cause of food contamination and the resulting life threatening illnesses.

- D. Are there new or increased fees or fines? Yes No
If yes, provide the following information:

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

The Food Establishment permit fees have not been increased for 15 years, since 1996. The current fee for all food establishments now averages \$46 annually (Fee Range from \$50, \$100, or \$150 every two years). At present, the 10,000+ food facilities statewide, generate approx \$445,000 annually in revenue. Existing permits are good for 2 years, and we will be changing to annual permits.

2. Amount of the proposed fee or fine and percentage increase.

The new fee proposal would average \$200 annually for all food establishments with a range from \$100 to \$600 annually. Plan review fees for small businesses less than 1000 Sq ft in area remain unchanged. Plan review fees for large food establishments above 1000 square ft. will be increase from \$200 to \$300. The 9000+ food facilities statewide will generate approx \$1.8 million annually at an average annual permit fee of \$200, when the rule is fully implemented.

3. Reason for new or increased fee or fine.

- 1) Act 176/June 2010 recognized the need for the Food Safety program to increase staffing levels in order to conduct inspections at a frequency that will produce consistent and lasting compliance to food safety regulations that prevent illnesses and deaths.
- 2) Move to a web-based, IT management system to automate fee collection, renewal, and as a data management tool to systematically collect, analyze and use data to improve public health functions

4. Will fee revert to general fund? If not, specify where and how monies will be allocated.

Act 176/June 2010 requires that all fees be placed into the Sanitation and environmental health special fund. Reference – see HRS §321-27. The cap on the fund is \$1.5 million annually, amounts in excess of that go into the General Fund.

5. Criteria used to determine amount of fee or fine. (Example: Cost of specific services, general overhead or overall program cost, or no relationship to cost).

The fee was determined based on time and effort spent on inspection of the establishment, the size of the facility, and the complexity of the food preparation practices.

E. Did the agency consult small businesses, departmental advisory committees, or were other small businesses organizations consulted during the drafting of the proposed rule? Yes No

If no, why not?

If yes, were the recommendations, if any, incorporated into the proposed rule(s)? Yes No

We received no formal comments from the departmental advisory committees at this point. The DOH held numerous industry meetings to engage small and large

businesses (see attached list of meetings) and has agreed not to increase fees on value added farm products and to not charge any fees for benevolent or non-profit temporary food sale permits. The industry and the community's ability to comment will also be done through the public hearings process.

If no, why not?

If yes, explain See Above.

- F. Other alternatives or less stringent measures proposed by affected businesses to reduce direct or indirect costs and, if proposed, why those proposals were not adopted.

N/A

- G. Departmental Impact (i.e. fiscal, personnel, program)?

Yes No

The special fund will be critical in providing funding for up to 17 new sanitarian positions in the State, in order to drastically improve our inspectional frequency of food establishments on Oahu and Maui. Oahu has recently seen rodent infestations in our food establishments and recent closures of restaurants due to foodborne illness outbreaks and recalls due to improperly manufactured foods. All of these events were preventable if the DOH inspected food establishments 3-4 times a year (per FDA recommendation) instead of the present frequency of once every 2 1/2 years. The staffing level on Oahu is now at 600+ establishments per sanitarian. There are only 9 seasoned sanitarians responsible for nearly 6000 food establishments on Oahu at present. (The FDA recommended level is 150 establishments per inspector for those inspectors that do ONLY food. The State of Hawaii - Dept of Health sanitarians also are responsible for disaster relief (shelter, food, water), swimming pools, tattoo shops, barber and beauty parlors, massage establishments, mortuaries, embalmers, all schools, and a myriad of other environmental health responsibilities.

- H. Impact on General Public (i.e. individuals, consumers, and large businesses)?

Yes No

For an average restaurant that is open 5 days a week and serves 100 meals per day, the cost equates to 100 times 260 days times (0.6) CENTS equals \$156, which is more than the \$150 increase in their annual fee.

If the food establishment passes 100% of the fee increase down to the consumer, it will cost the consumer 6/10th of a cent per meal which will mean the net cost to the food establishment will be 0\$.

I. Impact on state economy?

Yes No

As Hawaii is often labeled as a world class food destination, we can ill afford the recent high publicity events like the Chinatown rodent infestation in food establishments, and highly publicized restaurant closures due to food borne illnesses (Peppah's Korean Restaurant, Sekiya's etc) and now the huge recall and permit suspension of locally manufactured dressings and sauces produced at First Commercial Kitchen. All of these events were completely preventable if the DOH had the necessary staffing which would have lead to inspection frequencies that would have provided consistent compliance with food safety regulations.

The tourism industry is at great risk if these highly publicized events ever leak into Waikiki or Lahaina and appear on the National news scene warning people not to come to Hawaii due to a food safety program not being up to par with other municipalities which means increased risks of exposure to foodborne illness risk factors. The sanitation branch is also responsible for ensuring that swimming pool water is adequately chlorinated to prevent diseases, even though we stopped annual routine inspections years ago in order to prioritize our food safety program. The press may already be able to make the claim that Hawaii has a food safety program that has a lot to be desired, if we do not immediately address this core program shortfall of sanitarians and the resulting poor inspection frequencies for all establishments under our purview.

J. Final result anticipated from the proposed rule change.

Since the passage of HB2688 HD1 SD2 CD1 in the 2010 legislative session and the subsequent signing of Act 176 by the Governor on 6/25/10 placing the bill into law, the DOH can now use the funds for operating costs of the Sanitation Branch. This bill was introduced to alleviate the extreme funding shortfalls for the program responsible for keeping the State of Hawaii's food supply safe from contamination and to prevent communicable disease and foodborne illness transmission within the State.

The web-based inspection system will result in a transparent food safety regulatory program that will allow the Department to systematically collect, analyze and use data to improve public health outcomes which are designed to reduce the occurrence of food borne illness risk factors in food establishments which are directly implicated as the major cause of severe and sometimes fatal food borne illnesses.

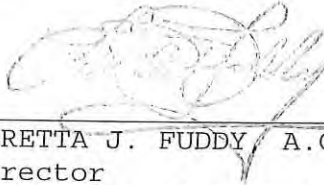
K. Alternatives explored to carry out the statutory purpose other than rulemaking.

There are no other non-statutory changes to increase revenue for the food safety program

DEPARTMENT OF HEALTH

The repeal of chapter 11-12 and the adoption of chapter 11-50, Hawaii Administrative Rules, on the summary page dated _____ were adopted on _____ following public hearings held on Oahu on _____, on Hawaii on _____, on Kauai on _____, on Maui on _____ after public notice was given in the Hawaii State and County Public Notices on _____.

The repeal of chapter 11-12 and the adoption of chapter 11-50 shall take effect ten days after filing with the Office of the Lieutenant Governor.



LORETTA J. FUDDY, A.C.S.W., M.P.H.
Director
Department of Health

APPROVED:

NEIL ABERCROMBIE
GOVERNOR
STATE OF HAWAII

Dated: _____

Filed: _____

APPROVED AS TO FORM:

Deputy Attorney General

DEPARTMENT OF HEALTH

Adoption of Chapter 11-50
Hawaii Administrative Rules

SUMMARY

1. Chapter 11-12, Hawaii Administrative Rules, entitled "Food Establishment Sanitation", is repealed.
2. Chapter 11-50, Hawaii Administrative Rules, entitled "Food Safety Code", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 50

FOOD SAFETY CODE

Subchapter 1 General Provisions

§11-50-1	Purpose
§11-50-2	Definitions
§11-50-3	Permits
§11-50-4	Permit application and supporting documentation
§11-50-5	Special provisions regarding temporary food establishments
§11-50-6	Responsibilities of the permit holder
§11-50-7	Fees
§11-50-8	Inspection and correction of violations
§11-50-9	Placarding
§11-50-10	Embargo and detention
§11-50-11	Prevention of foodborne disease transmission by employees
§11-50-12	Permit suspension
§11-50-13	Variances
§11-50-14	Penalties and remedies
§11-50-15	Severability
§§11-50-16 to 11-50-19	(Reserved)

Subchapter 2 Personnel

§11-50-20	Supervision
§11-50-21	Employee health
§11-50-22	Personal cleanliness
§11-50-23	Hygienic practices
§§11-50-24 to 11-50-29	(Reserved)

Subchapter 3 Food

§11-50-30	Characteristics
§11-50-31	Source, specifications for receiving, original containers and records
§11-50-32	Protection from contamination after receiving
§11-50-33	Destruction of organisms of public health concern
§11-50-34	Limitation of growth of organisms of public health concern
§11-50-35	Food identity, presentation, and on-premises labeling
§11-50-36	Contaminated food
§11-50-37	Special requirements for highly susceptible populations
§§11-50-38 to	11-50-44 (Reserved)

Subchapter 4 Equipment, Utensils, and Linens

§11-50-45	Materials for construction and repair
§11-50-46	Design and construction
§11-50-47	Numbers and capacities
§11-50-48	Location and installation
§11-50-49	Maintenance and operation
§11-50-50	Cleaning of equipment and utensils
§11-50-51	Sanitization of equipment and utensils
§11-50-52	Laundrying
§11-50-53	Protection of clean items
§§11-50-54 to	11-50-59 (Reserved)

Subchapter 5 Water, Plumbing, and Waste

§11-50-60	Water
§11-50-61	Plumbing system
§11-50-62	Mobile water tank and mobile food establishment water tank
§11-50-63	Sewage, other liquid waste, and rainwater
§11-50-64	Refuse, recyclables, and returnables
§§11-50-65 to	11-50-69 (Reserved)

Subchapter 6 Physical Facilities

§11-50-70	Materials for construction and repair
§11-50-71	Design, construction, and installation
§11-50-72	Numbers and capacities
§11-50-73	Location and placement
§11-50-74	Maintenance and operation
§§11-50-75 to 11-50-79	(Reserved)

Subchapter 7 Poisonous or Toxic Materials

§11-50-80	Labeling and identification
§11-50-81	Operational supplies and applications
§11-50-82	Stock and retail sale
§§11-50-83 to 11-50-84	(Reserved)

Subchapter 8 Mobile Food Establishments

§11-50-85	General requirements
§11-50-86	Approved food establishment requirements
§11-50-87	Food supplies, storage, display and service
§11-50-88	Single-service restrictions
§11-50-89	Water system
§11-50-90	Wastewater system
§11-50-91	Other requirements
§§11-50-92 to 11-50-94	(Reserved)

Subchapter 9 Temporary Food Establishments

§11-50-95	General requirements
§11-50-96	Special requirements
§11-50-97	Approved food establishment requirements
§11-50-98	Single-service restrictions
§11-50-99	Handwashing facilities
§11-50-100	Wastewater disposal
§11-50-101	Other facilities and operations
§§11-50-102 to 11-50-104	(Reserved)

Historical Note: Chapter 11-50, Hawaii Administrative Rules is based substantially on Chapter 11-12, Food Establishment Sanitation, Department of Health, State of Hawaii. [Eff 11/22/96; comp 3/15/99; comp 6/15/2007;
R]

SUBCHAPTER 1

GENERAL PROVISIONS

§11-50-1 Purpose. The purpose of this chapter is to provide minimum requirements for the protection of the life, health, safety, and welfare of the general public.

- (1) This chapter applies to all food establishments, or portions thereof, used, designed, or intended to be used as a food establishment or food operation within the State;
- (2) The minimum requirements established herein shall not be construed as lowering the standards established by local ordinances or rules;
- (3) Whenever local requirements contain more stringent provisions than any of the minimum requirements of this chapter, the more stringent requirements shall govern; and
- (4) No ordinance, rules, ruling, or decision of any municipal body or officer of authority of any county shall repeal, amend, modify, or dispense with any of the minimum requirements provided in this chapter. [Eff _____] (Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-2 Definitions. As used in this chapter:

"Adulterated" has the meaning stated in section 402 of the Federal Food, Drug, and Cosmetic Act.

"Approved" means acceptable to the department based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.

"Asymptomatic" means without obvious symptoms; not showing or producing indications of a disease or other medical condition, such as an individual infected with a pathogen but not exhibiting or producing any signs or symptoms of vomiting, diarrhea, or jaundice. Asymptomatic includes not showing symptoms because symptoms have resolved or subsided, or because symptoms never manifested.

"A_w" means water activity which is a measure of the free moisture in a food, is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature, and is indicated by the symbol A_w.

"Balut" means an embryo inside a fertile egg that has been incubated for a period sufficient for the embryo to reach a specific stage of development after which it is removed from incubation before hatching.

"Beverage" means a liquid for drinking, including water.

"Bottled drinking water" means water that is sealed in bottles, packages, or other containers and offered for sale for human consumption, including bottled mineral water.

"Casing" means a tubular container for sausage products made of either natural or artificial (synthetic) material.

"Certification number" means a unique combination of letters and numbers assigned by a shellfish control authority to a molluscan shellfish dealer according to the provisions of the National Shellfish Sanitation Program.

"CFR" means Code of Federal Regulations. Citations in this chapter to the CFR refer sequentially to the Title, Part, and Section numbers, such as, 40 CFR 180.194 refers to Title 40, Part 180, Section 194.

"CIP" means cleaned in place by the circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse, and sanitizing solution onto or over equipment surfaces that require cleaning, such as the method used, in part, to clean and sanitize a frozen dessert machine. The term does not include the cleaning of equipment such as band saws, slicers, or mixers that are subjected to in-place manual cleaning without the use of a CIP system.

"Color additive" has the meaning stated in the Federal Food, Drug, and Cosmetic Act, section 201(t) and 21 CFR 70.3(f).

"Comingle" means:

- (1) To combine shellstock harvested on different days or from different growing areas as identified on the tag or label; or
- (2) To combine shucked shellfish from containers with different container codes or different shucking dates.

"Comminuted" means reduced in size by methods including chopping, flaking, grinding, or mincing. Comminuted includes fish or meat products that are reduced in size and restructured or reformulated such as gefilte fish, gyros, ground beef, and sausage; and a mixture of two or more types of meat that have been reduced in size and combined, such as sausages made from two or more meats.

"Conditional employee" means a potential food employee to whom a job offer is made, conditional on responses to subsequent medical questions or examinations designed to identify potential food employees who may be suffering from a disease that can be transmitted through food and done in compliance with Title 1 of the Americans with Disabilities Act of 1990.

"Confirmed disease outbreak" means a foodborne disease outbreak in which laboratory analysis of appropriate specimens identifies a causative agent and epidemiological analysis implicates the food as the source of the illness.

"Consumer" means a person who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food establishment or food processing plant, and does not offer the food for resale.

"Corrosion-resistant material" means a material that maintains acceptable surface cleanability characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions, and other conditions of the use environment.

"Counter-mounted equipment" means equipment that is not portable and is designed to be mounted off the floor on a table, counter, or shelf.

"Critical control point" means a point or procedure in a specific food system where loss of control may result in an unacceptable health risk.

"Critical limit" means the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to minimize the risk that the identified food safety hazard may occur.

"Cut leafy greens" means fresh leafy greens whose leaves have been cut, shredded, sliced, chopped, or torn. The term "leafy greens" includes iceberg lettuce, romaine lettuce, leaf lettuce, butter lettuce, baby leaf lettuce (i.e., immature lettuce or leafy greens), escarole, endive, spring mix, spinach, cabbage, kale, arugula, and chard. The term "leafy greens" does not include herbs such as cilantro or parsley.

"Dealer" means a person who is authorized by a shellfish control authority for the activities of shellstock shipper, shucker-packer, repacker, reshipper, or depuration processor of molluscan shellfish according to the provisions of the National Shellfish Sanitation Program.

"Department" means the department of health, State of Hawaii.

"Director" means the director of health of the department of health, State of Hawaii, or an authorized representative.

"Disclosure" means a written statement that clearly identifies the animal-derived foods which are, or can be ordered, raw, undercooked, or without otherwise being processed to eliminate pathogens, or items that contain an ingredient that is raw, undercooked, or without otherwise being processed to eliminate pathogens.

"Drinking water" means water that meets criteria as specified in 40 CFR 141, entitled "National primary drinking water regulations", and is traditionally known as "potable water". Drinking water includes the term "water" except where the term used connotes that the water is not potable, such as "boiler water", "mop water", "rainwater", "wastewater", and "nondrinking" water.

"Dry storage area" means a room or area designated for the storage of packaged or containerized bulk food that is not potentially hazardous (time/temperature control for safety food) and dry goods such as single-service items.

"Easily cleanable" means a characteristic of a surface that:

- (1) Allows effective removal of soil by normal cleaning methods;
- (2) Is dependent on the material, design, construction, and installation of the surface; and
- (3) Varies with the likelihood of the surface's role in introducing pathogenic or toxigenic agents or other contaminants into food based on the surface's approved placement, purpose, and use.
- (4) Easily cleanable includes a tiered application of the criteria that qualify the surface as easily cleanable as specified in paragraph (1) to different situations in which varying degrees of cleanability are required such as:
 - (A) The appropriateness of stainless steel for a food preparation surface as opposed to the lack of need for stainless steel to be used for floors or for tables used for consumer dining; or
 - (B) The need for a different degree of cleanability for a utilitarian attachment or accessory in the kitchen as opposed to a

decorative attachment or accessory in the consumer dining area.

"Easily movable" means:

- (1) Portable; mounted on casters, gliders, or rollers; or provided with a mechanical means to safely tilt a unit of equipment for cleaning; and
- (2) Having no utility connection, a utility connection that disconnects quickly, or a flexible utility connection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and adjacent area.

"Egg" means the shell egg of avian species such as chicken, duck, goose, guinea, quail, ratites, or turkey.

(1) Egg does not include:

- (A) A balut;
- (B) The egg of reptile species such as alligator; or
- (C) An egg product.

"Egg product" means all, or a portion of, the contents found inside eggs separated from the shell and pasteurized in a food processing plant, with or without added ingredients, intended for human consumption, such as dried, frozen, or liquid eggs. The term does not include food which contains eggs only in a relatively small proportion such as cake mixes.

"Employee" means the permit holder, person in charge, food employee, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a food establishment.

"Enterohemorrhagic Escherichia Coli" (EHEC) means E. Coli which cause hemorrhagic colitis, meaning bleeding enterically or bleeding from the intestine. The term is typically used in association with E. Coli that has the capacity to produce Shiga toxins and to cause attaching and effacing lesions in the intestine. EHEC is a subset of STEC, whose members produce additional virulence factors. Infections with EHEC may be asymptomatic but are classically associated with bloody diarrhea (hemorrhagic colitis) and hemolytic uremic syndrome (HUS) or thrombotic thrombocytopenic purpura (TTP). Examples of serotypes of EHEC include: E. Coli O157:H7; E. Coli O157:NM; E. Coli O26:H11; E. Coli O145:NM; E. Coli O103:H2; or E. Coli O111:NM. See also Shiga toxin-producing E. Coli.

"EPA" means the U.S. Environmental Protection Agency.

"Equipment" means an article that is used in the operation of a food establishment such as a freezer, grinder, hood, ice maker, meat block, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, vending machine, or warewashing machine.

"Equipment" does not include apparatuses used for handling or storing large quantities of packaged foods that are received from a supplier in a cased or overwrapped lot, such as hand trucks, forklifts, dollies, pallets, racks, and skids.

"Exclude" means to prevent a person from working as an employee in a food establishment or entering a food establishment as an employee.

"FDA" means the U.S. Food and Drug Administration.

"Fish" means fresh or saltwater finfish, crustaceans and other forms of aquatic life (including alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals) other than birds or mammals, and all mollusks, if such animal life is intended for human consumption. Fish includes an edible human food product derived in whole or in part from fish, including fish that have been processed in any manner.

"Food" means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

"Food additive" has the meaning stated in the Federal Food, Drug, and Cosmetic Act, section 201(s) and 21 CFR 170.3(e) (1).

"Food-contact surface" means:

- (1) A surface of equipment or a utensil with which food normally comes into contact; or
- (2) A surface of equipment or a utensil from which food may drain, drip, or splash:
 - (A) Into a food; or
 - (B) Onto a surface normally in contact with food.

"Food employee" means an individual working with unpackaged food, food equipment or utensils, or food-contact surfaces.

"Food establishment" means:

- (1) Any place or portion thereof, maintained, used, or operated for the purpose of storing, preparing, serving, manufacturing, packaging,

transporting, or otherwise handling food at the retail or wholesale level;

- (2) Any place used for cleaning food equipment or utensils in support of another food establishment; and
- (3) Any operation that is conducted in or in conjunction with a mobile, stationary, temporary, or permanent facility or location where food is served or provided to the public, with or without charge, regardless of whether the food is consumed on or off the premises.

"Food processing plant" means a commercial operation that manufactures, packages, labels, or stores food for human consumption, and provides food for sale or distribution to other business entities such as food processing plants or food establishments.

"Game animal" means an animal, the products of which are food, that is not classified as livestock, sheep, swine, goat, horse, mule, or other equine in 9 CFR 301.2, entitled "Definitions", or as poultry, or fish.

- (1) Game animals includes mammals such as reindeer, elk, deer, antelope, water buffalo, bison, rabbit, squirrel, opossum, raccoon, nutria, or muskrat, and nonaquatic reptiles such as land snakes.
- (2) Game animals does not include ratites.

"General use pesticide" means a pesticide that is not classified by EPA for restricted use as specified in 40 CFR 152.175, entitled "Pesticides classified for restricted use".

"Grade A standards" means the requirements of the United States Public Health Service/FDA "Grade A Pasteurized Milk Ordinance" with which certain fluid and dry milk and milk products comply.

"HACCP" means Hazard Analysis and Critical Control Point.

"HACCP plan" means a written document that delineates the formal procedures for following the hazard analysis and critical control point principles developed by The National Advisory Committee on Microbiological Criteria for Foods.

"Handwashing sink" means a lavatory, a basin or vessel for washing, a wash basin, or a plumbing fixture especially placed for use in personal hygiene and designed for the washing of the hands. A handwashing sink includes an automatic handwashing facility.

"Hazard" means a biological, chemical, or physical property that may cause an unacceptable consumer health risk.

"Health practitioner" means a physician licensed to practice medicine, or if allowed by law, a nurse practitioner, physician assistant, or similar medical professional.

"Hermetically sealed container" means a container that is designed and intended to be secure against the entry of microorganisms and, in the case of low acid canned foods, to maintain the commercial sterility of its contents after processing.

"Highly susceptible population" means persons who are more likely than other people in the general population to experience foodborne disease because they are:

- (1) Immunocompromised; preschool age children, or older adults; and
- (2) Obtaining food at a facility that provides services such as custodial care, health care, or assisted living, such as a child or adult day care center, kidney dialysis center, hospital or nursing home, or nutritional or socialization services such as a senior center.

"HRS" means Hawaii Revised Statutes.

"Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on:

- (1) The number of potential injuries; and
- (2) The nature, severity, and duration of the anticipated injury.

"Injected" means manipulating meat to which a solution has been introduced into its interior by processes that are referred to as "injecting", "pump marinating", or "stitch pumping".

"Juice" means the aqueous liquid expressed or extracted from one or more fruits or vegetables, purées of the edible portions of one or more fruits or vegetables, or any concentrates of such liquid or purée. The term does not include, for purposes of HACCP, liquids, purées, or concentrates that are not used as beverages or ingredients of beverages.

"Kitchenware" means food preparation and storage utensils.

"Law" means applicable local, state, and federal statutes, regulations, rules, and ordinances.

"Linens" means fabric items such as cloth hampers, cloth napkins, table cloths, wiping cloths, and work garments including cloth gloves.

"Major food allergen":

(1) Means:

(A) Milk, egg, fish (such as bass, flounder, cod, and including crustacean shellfish such as crab, lobster, or shrimp), tree nuts (such as almonds, pecans, or walnuts), wheat, peanuts, and soybeans; or

(B) A food ingredient that contains protein derived from a food as specified in subparagraph (A);

(2) Major food allergen does not include:

(A) Any highly refined oil derived from a food specified in paragraph (1)(A) and any ingredient derived from such highly refined oil; or

(B) Any ingredient that is exempt under the petition or notification process specified in the Food Allergen Labeling and Consumer Protection Act of 2004 (Public Law 108-282).

"Meat" means the flesh of animals used as food including the dressed flesh of cattle, swine, sheep, or goats and other edible animals, except fish, poultry, and wild game animals as specified in section 11-50-31(g)(1)(C).

"Mechanically tenderized" means manipulating meat with deep penetration by processes which may be referred to as "blade tenderizing", "jaccarding", "pinning", "needling", or using blades, pins, needles or any mechanical device. The term does not include processes by which solutions are injected into meat.

"Menu change" means a modification of a food establishment's menu that would require a change in the food establishment's food preparation methods, equipment, or storage capacity previously approved by the department. These changes may include but are not limited to, the addition of potentially hazardous foods to a menu, installation of new food preparation or storage equipment, or increasing storage capacity.

"mg/L" means milligrams per liter, which is the metric equivalent of parts per million (ppm).

"Mobile food establishment" means a vehicle-mounted food establishment capable of being readily moved that operates in conjunction with an approved food establishment. This includes but is not limited to, licensed trailer-type vehicles, push carts, lunchwagons, tour cruise boats and peddlers.

"Molluscan shellfish" means any edible species of fresh or frozen oysters, clams, mussels, and scallops or edible portions thereof, except when the scallop product consists only of the shucked adductor muscle.

"Natural disaster" means any disaster such as a tsunami, hurricane, volcanic eruption, typhoon, earthquake, or flood.

"Non-continuous cooking" means the cooking of food in a food establishment using a process in which the initial heating of the food is intentionally halted so that it may be cooled and held for complete cooking at a later time prior to sale or service. The term does not include cooking procedures that only involve temporarily interrupting or slowing an otherwise continuous cooking process.

"Packaged" means bottled, canned, cartoned, securely bagged, or securely wrapped, whether packaged in a food establishment or a food processing plant. The term does not include a wrapper, carry-out box, or other nondurable container used to containerize food with the purpose of facilitating food protection during service and receipt of the food by the consumer.

"Permit" means the document issued by the department that authorizes a person to operate a food establishment.

"Permit holder" means the entity that:

- (1) Is legally responsible for the operation of the food establishment such as the owner, the owner's agent, or other person; and
- (2) Possesses a valid permit to operate a food establishment.

"Person" means an association, a corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency.

"Personal care items" means items or substances that may be poisonous, toxic, or a source of contamination and are used to maintain or enhance a person's health, hygiene, or appearance. Personal care items include medicines; first aid supplies; and other items such as cosmetics, and toiletries such as toothpaste and mouthwash.

"Person in charge" means the individual present at a food establishment who is responsible for the operation at the time of inspection.

"pH" means the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution. Values between zero and seven indicate acidity and values between seven and fourteen indicate alkalinity. The value for pure distilled water is seven, which is considered neutral.

"PHF" means potentially hazardous food.

"Physical facilities" means the structure and interior surfaces of a food establishment including accessories such as soap and towel dispensers and attachments such as light fixtures and heating or air conditioning system vents.

"Plumbing fixture" means a receptacle or device that:

- (1) Is permanently or temporarily connected to the water distribution system of the premises and demands a supply of water from the system; or
- (2) Discharges used water, waste materials, or sewage directly or indirectly to the drainage system of the premises.

"Plumbing system" means the water supply and distribution pipes; plumbing fixtures and traps; soil, waste, and vent pipes; sanitary and storm sewers and building drains, including their respective connections, devices, and appurtenances within the premises; and water-treating equipment.

"Poisonous or toxic materials" means substances that are not intended for ingestion and are included in four categories:

- (1) Cleaners and sanitizers, which include cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;
- (2) Pesticides, except sanitizers, which include substances such as insecticides and rodenticides;
- (3) Substances necessary for the operation and maintenance of the establishment such as nonfood grade lubricants and personal care items that may be deleterious to health; and
- (4) Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.

"Potentially hazardous food (time/temperature control for safety food)" means a food that requires

time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation.

- (1) Potentially hazardous food includes:
 - (A) An animal food that is raw or heat treated; a plant food that is heat treated or consists of raw seed sprouts, cut melons, cut leafy greens, cut tomatoes or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation, or garlic-in-oil mixtures that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation; and
 - (B) Except as specified in paragraph (2)(D), a food that because of the interaction of its A_w and pH values is designated as Product Assessment Required (PA) in Table 2-1 or Table 2-2:

Table 2-1 Interaction of pH and A_w for control of spores in food heat-treated to destroy vegetative cells and subsequently packaged

A_w values	pH values		
	4.6 or less	> 4.6 to 5.6	> 5.6
≤ 0.92	non-PHF/non-TCS food	non-PHF/non-TCS food	non-PHF/non-TCS food
>0.92 to 0.95	non-PHF/non-TCS food	non-PHF/non-TCS food	PA
>0.95	non-PHF/non-TCS food	PA	PA

Table 2-2 Interaction of pH and A_w for control of vegetative cells and spores in food not heat-treated or heat-treated but not packaged

A_w values	pH values			
	< 4.2	4.2 to 4.6	> 4.6 to 5.0	> 5.0
<0.88	non-PHF/non-TCS food	non-PHF/non-TCS food	non-PHF/non-TCS food	non-PHF/non-TCS food
0.88 to 0.90	non-PHF/non-TCS food	non-PHF/non-TCS food	non-PHF/non-TCS food	PA
>0.90 to 0.92	non-PHF/non-TCS food	non-PHF/non-TCS food	PA	PA
>0.92	non-PHF/non-TCS food	PA	PA	PA

- (2) Potentially hazardous food does not include:
- (A) An air-cooled hard-boiled egg with shell intact, or an egg with shell intact that is not hard-boiled, but has been pasteurized to destroy all viable salmonellae;
 - (B) A food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of non-refrigerated storage and distribution;
 - (C) A food that because of its pH or A_w value, or interaction of A_w and pH values, is designated as a non-PHF/non-TCS food in Table 2-1 or Table 2-2 of this definition;
 - (D) A food that is designated as Product Assessment Required (PA) in Table 2-1 or Table 2-2 of this definition and has undergone a Product Assessment showing that the growth or toxin formation of pathogenic microorganisms that are reasonably likely to occur in that food is precluded due to:
 - (i) Intrinsic factors including added or natural characteristics of the food such as preservatives, antimicrobials, humectants, acidulants, or nutrients;
 - (ii) Extrinsic factors including environmental or operational factors that affect the food such as

- packaging, modified atmosphere such as reduced oxygen packaging, shelf life and use, or temperature range of storage and use; or
- (iii) A combination of intrinsic and extrinsic factors; or
 - (E) A food that does not support the growth or toxin formation of pathogenic microorganisms in accordance with one of the paragraph (2)(A), (2)(B), (2)(C), or (2)(D) of this definition even though the food may contain a pathogenic microorganism or chemical or physical contaminant at a level sufficient to cause illness or injury.

"Poultry" means:

- (1) Any domesticated bird (chickens, turkeys, ducks, geese, guineas, ratites, or squabs), whether live or dead, as defined in 9 CFR 381.1; and
- (2) Any migratory waterfowl or game bird, pheasant, partridge, quail, grouse, or pigeon, whether live or dead, as defined in 9 CFR 362.1.

"Premises" means:

- (1) The physical facility, its contents, and the contiguous land or property under the control of the permit holder; or
- (2) The physical facility, its contents, and the land or property not described in paragraph (1) if its facilities and contents are under the control of the permit holder and may impact food establishment personnel, facilities, or operations, and a food establishment is only one component of a larger operation such as a health care facility, hotel, motel, school, recreational camp, or prison.

"Primal cut" means a basic major cut into which carcasses and sides of meat are separated, such as a beef round, pork loin, lamb flank, or veal breast.

"Public water system" has the meaning stated in 40 CFR 141, entitled "National primary drinking water regulations".

"Ratite" means a flightless bird such as an emu, ostrich, or rhea.

"Reduced oxygen packaging":

- (1) Means:

- (A) The reduction of the amount of oxygen in a package by removing oxygen; displacing oxygen and replacing it with another gas or combination of gases; or otherwise controlling the oxygen content to a level below that normally found in the atmosphere (approximately twenty-one per cent at sea level); and
 - (B) A process as specified in subparagraph (A) that involves a food for which the hazards *Clostridium botulinum* or *Listeria monocytogenes* require control in the final packaged form;
- (2) Reduced oxygen packaging includes:
- (A) Vacuum packaging, in which air is removed from a package of food and the package is hermetically sealed so that a vacuum remains inside the package;
 - (B) Modified atmosphere packaging, in which the atmosphere of a package of food is modified so that its composition is different from air but the atmosphere may change over time due to the permeability of the packaging material or the respiration of the food. Modified atmosphere packaging includes reduction in the proportion of oxygen, total replacement of oxygen, or an increase in the proportion of other gases such as carbon dioxide or nitrogen;
 - (C) Controlled atmosphere packaging, in which the atmosphere of a package of food is modified so that until the package is opened, its composition is different from air, and continuous control of that atmosphere is maintained, such as by using oxygen scavengers or a combination of total replacement of oxygen, nonrespiring food, and impermeable packaging material;
 - (D) Cook chill packaging, in which cooked food is hot filled into impermeable bags which have the air expelled and are then sealed or crimped closed. The bagged food is rapidly chilled and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens; or

- (E) Sous vide packaging, in which raw or partially cooked food is placed in a hermetically sealed, impermeable bag, cooked in the bag, rapidly chilled, and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens.

"Refuse" means solid waste not carried by water through the sewage system.

"Regulatory authority" means the local, state, or federal enforcement body or authorized representative having jurisdiction over the food establishment.

"Reminder" means a written statement concerning the health risk of consuming animal foods raw, undercooked, or without otherwise being processed to eliminate pathogens.

"Re-service" means the transfer of food that is unused and returned by a consumer after being served or sold and in the possession of the consumer, to another person.

"Restrict" means to limit the activities of a food employee so that there is no risk of transmitting a disease that is transmissible through food and the food employee does not work with exposed food, clean equipment, utensils, linens, or unwrapped single-service or single-use articles.

"Restricted egg" means any check, dirty egg, incubator reject, inedible, leaker, or loss as defined in 9 CFR 590.

"Restricted use pesticide" means a pesticide product that contains the active ingredients specified in 40 CFR 152.175, entitled "Pesticides classified for restricted use" and that is limited to use by or under the direct supervision of a certified applicator.

"Risk" means the likelihood that an adverse health effect will occur within a population as a result of a hazard in a food.

"Safe material" means:

- (1) An article manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food;
- (2) An additive that is used as specified in section 409 of the Federal Food, Drug, and Cosmetic Act; or
- (3) Other materials that are not additives and that are used in conformity with applicable regulations of the Food and Drug Administration.

"Sanitization" means the application of cumulative heat or chemicals on cleaned food-contact surfaces that,

when evaluated for efficacy, is sufficient to yield a reduction of five logs, which is equal to a 99.999 per cent reduction, of representative disease microorganisms of public health importance.

"Sealed" means free of cracks or other openings that allow the entry or passage of moisture.

"Service animal" means an animal that meets the criteria as specified in 28 CFR 36, entitled "Nondiscrimination on the basis of disability in public places and commercial facilities".

"Servicing area" means an operating base location to which a mobile food establishment or transportation vehicle returns regularly for such things as vehicle and equipment cleaning, discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food.

"Sewage" means liquid waste containing animal or vegetable matter in suspension or solution and may include liquids containing chemicals in solution.

"Shellfish control authority" means a state, federal, foreign, tribal, or other government entity legally responsible for administering a program that includes certification of molluscan shellfish harvesters and dealers for interstate commerce.

"Shellstock" means raw, in-shell molluscan shellfish.

"Shiga toxin-producing Escherichia Coli" (STEC) means any E. Coli capable of producing Shiga toxins (also called verocytotoxins or "Shiga-like" toxins). Examples of serotypes of STEC include both O157 and non-O157 E. Coli. Also see Enterohemorrhagic Escherichia Coli.

"Shucked shellfish" means molluscan shellfish that have one or both shells removed.

"Single-service articles" means tableware, carry-out utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one time, one person use after which they are intended for discard.

"Single-use articles" means utensils and bulk food containers designed and constructed to be used once and discarded. Single-use articles include items such as wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and number 10 cans which do not meet the materials, durability, strength, and cleanability specifications in sections 11-50-45(a) and 11-50-46(a) and (c) for multiuse utensils.

"Slacking" means the process of moderating the temperature of a food such as allowing a food to gradually increase from a temperature of minus ten degrees Fahrenheit to twenty-five degrees Fahrenheit in preparation for deep-fat frying or to facilitate even heat penetration during the cooking of previously block-frozen food such as shrimp.

"Smooth" means:

- (1) A food-contact surface having a surface free of pits and inclusions with a cleanability equal to or exceeding that of (100 grit) number 3 stainless steel;
- (2) A nonfood-contact surface of equipment having a surface equal to that of commercial grade hot-rolled steel free of visible scale; and
- (3) A floor, wall, or ceiling having an even or level surface with no roughness or projections that renders it difficult to clean.

"State" means the State of Hawaii.

"Tableware" means eating, drinking, and serving utensils for table use such as flatware including forks, knives, and spoons; hollowware including bowls, cups, serving dishes, and tumblers; and plates.

"TCS food" means time/temperature control for safety food.

"Temperature measuring device" means a thermometer, thermocouple, thermistor, or other device that indicates the temperature of food, air, or water.

"Temporary food establishment" means any food establishment which operates at a fixed location for a limited period of time and does not exceed twenty days in any one hundred twenty day period and does not sell products to other food establishments.

"USDA" means the U.S. Department of Agriculture.

"Utensil" means a food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware that is multiuse, single-service, or single-use; gloves used in contact with food; temperature sensing probes of food temperature measuring devices; and probe-type price or identification tags used in contact with food.

"Variance" means a written document issued by the department that authorizes a modification or waiver of one or more requirements of this chapter if, in the opinion of the department, a health hazard or nuisance will not result from the modification or waiver.

"Vending machine" means a self-service device that, upon insertion of a coin, paper currency, token, card, or key, or by optional manual operation, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

"Vending machine location" means the room, enclosure, space, or area where one or more vending machines are installed and operated and includes the storage areas and areas on the premises that are used to service and maintain the vending machines.

"Water activity" means the measure of the free moisture in a food, is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature, and is indicated by the symbol A_w .

"Whole-muscle, intact beef" means whole muscle beef that is not injected, mechanically tenderized, reconstructed, or scored and marinated, from which beef steaks may be cut.

"Warewashing" means the cleaning and sanitizing of utensils and food-contact surfaces of equipment. [Eff
] (Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-3 Permits. (a) A person may not operate a food establishment without a valid permit to operate issued by the department. A permit shall be valid for one year after the date of issuance as indicated by the expiration date printed on the permit, after which the permit becomes null and void.

- (b) To qualify for a permit, an applicant shall:
- (1) Be an owner of the food establishment or an officer of the legal ownership;
 - (2) Acknowledge that application for an issuance of a permit is in agreement to be familiar with and operate in compliance with the requirements of the chapter;
 - (3) As specified in section 11-50-8(c), agree to allow access to the food establishment and to provide any requested information reasonably necessary to determine compliance with this chapter; and
 - (4) Pay the applicable permit fees at the time the application is submitted.
- (c) A permit is not required for:

- (1) An establishment that offers only prepackaged foods that are not potentially hazardous food (time/temperature control for safety food) manufactured and packaged in an approved food establishment;
- (2) A food establishment offers for sale only whole, uncut fresh fruits and vegetables;
- (3) A kitchen in a private home, operating as a small family child-care provider, or a bed-and-breakfast operation that prepares and offers only not potentially hazardous food (time/temperature control for safety food) to guests if the home is owner occupied, the number of guests does not exceed six, and the consumer is informed by statements contained in published advertisements, mailed brochures, and placards posted at the registration area that the food is prepared in a kitchen that is not regulated and inspected by the department;
- (4) Food establishments that are inspected by another federal or Hawaii state or county regulatory agency, provided that a memorandum of understanding or a memorandum of agreement has been filed with the department and the agency assumes regulatory responsibility for the establishment;
- (5) A producer of hand-pounded poi, where the producer:
 - (A) Sells hand-pounded poi directly to the consumer;
 - (B) Has available a permanent or temporary hand-wash sink and adequate soap and disposable hand towels supplied, within ten feet of the operating area;
 - (C) Labels each container of poi with the name and contact information of the producer;
 - (D) Labels each container of poi with a prominent and clear label stating that "This hand-pounded poi was not prepared in a Department of Health approved facility, and consuming this product may increase your risk of contracting a foodborne illness";
 - (E) Attends a department of health approved food safety workshop and pass the food safety certification exam;

- (F) Complys with any and all other measures authorized by the director of health to protect public health and safety with respect to hand-pounded poi;
- (6) A food establishment that offers only pre-packaged frozen confections produced in an approved food establishment or food processing plant;
- (7) A establishment that offers only not potentially hazardous hot beverages (such as coffee or hot tea) served directly into sanitary single-service articles;
- (8) A establishment that offers only dry, not potentially hazardous, not ready-to-eat foods (such as dry beans, dry grains, coffee beans, tea leaves, or herbs for tea); or
- (9) Vending machines dispensing only pre-packaged food manufactured and packaged in an approved food establishment. [Eff]
(Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-4 Permit application and supporting documentation. (a) A permit to operate a food establishment shall not be issued unless and until the department receives a complete application on the forms provided by the department, as well as all necessary plans, menus, operating procedures, the required fee, other information deemed necessary to access the operations of the proposed food establishment, and the preoperational inspection(s) specified in subsection (k) has been completed.

(b) For new or converted food establishments the applicant shall submit to the department:

- (1) A completed application for food establishment permit;
- (2) The plans and specifications of the food establishment with an application for plan review, if requested by the department;
- (3) A list of food items to be offered by the food establishment;
- (4) A HACCP plan if requested by the department; and
- (5) Other information that may be required by the department to assure proper handling of food.

(c) For existing food establishments, the department may renew a permit after:

- (1) A statement for renewal is submitted;
- (2) The required fee is submitted; and
- (3) If a significant operational or menu change has occurred, an inspection shows that the establishment is in compliance with this chapter.

(d) For changes of ownership of food establishments, the department may issue a permit to a new owner of an existing establishment after:

- (1) A completed application for food establishment is submitted;
- (2) The required fee is submitted; and
- (3) An inspection shows that the establishment is in compliance with this chapter.

(e) The department shall not act upon nor consider any incomplete application for a food establishment permit. An application shall be deemed complete only when all required and requested information, including the application form, plans, specifications, and other information have been timely submitted.

(f) Every application shall be signed a person with authority and shall constitute an acknowledgement and agreement that the applicant will comply with all the terms and conditions of this chapter.

(g) The department may require the submission of additional information after the application has been submitted, and may ensure that, if an application is incomplete or otherwise deficient, processing of the application shall not be completed until such time as the applicant has supplied all required information or otherwise corrected the deficiency.

(h) The failure of the department to act on a completed application within one hundred eighty days of the receipt of the application shall be deemed an approval of the application; provided that the applicant acts consistently with the application process and has submitted all requested information.

(i) The department may request that an application for a food establishment permit be accompanied by plans and specifications including but not limited to:

- (1) Intended menu;
- (2) Anticipated volume of food to be stored, prepared, and sold or served;
- (3) Proposed layout, mechanical schematics, constructions materials, and finish schedules;

- (4) Proposed equipment types, manufactures, model numbers, locations, dimensions, performance capacity, and installation specifications;
- (5) Evidence that standard procedures that ensure compliance with the requirements of this chapter are developed or are deemed developed;
- (6) A wastewater generation statement if the food establishment will be connected to an individual wastewater system;
- (7) Window and door schedules for naturally ventilated food establishments; and
- (8) Other information that may be required by the director for the proper review of the proposed construction, conversion, or modification, and procedures for operating a food establishment.
- (j) Hazard Analysis and Critical Control Point (HACCP) plan.
 - (1) A HACCP plan shall accompany an application for a food establishment permit when:
 - (A) A variance is required as specified in section 11-50-33(a)(4)(D), 11-50-34(j), or 11-50-46(w)(2);
 - (B) A variance is requested;
 - (C) The department determines that a food preparation or processing method requires a variance based on information submitted pursuant to an application for permit; or
 - (D) Circumstances discovered during an inspection indicate the need for a HACCP plan.
 - (2) For a food establishment that is required to have a HACCP plan, the plans and specifications shall indicate:
 - (A) A categorization of the types of potentially hazardous foods (time/temperature control for safety foods) that are specified in the menu such as soups and sauces, salads, and bulk, solid foods such as meat roasts, or of other foods that are specified by the department;
 - (B) A flow diagram by specific food or risk category type identifying critical control points and providing information on the following:

- (i) Ingredients, materials, and equipment used in the preparation of that food; and
- (ii) Formulations or recipes that delineate methods and procedural control measures that address the food safety concerns involved;
- (C) Food employee and supervisory training plan that addresses the food safety issues of concern;
- (D) A statement of standard operating procedures for the plan under consideration including clearly identifying:
 - (i) Each critical control point;
 - (ii) The critical limits for each critical control point;
 - (iii) The method and frequency for monitoring and controlling each critical control point by the food employee designated by the person in charge;
 - (iv) The method and frequency for the person in charge to routinely verify that the food employee is following standard operating procedures and monitoring critical control points;
 - (v) Action to be taken by the person in charge if the critical limits for each critical control point are not met; and
 - (vi) Records to be maintained by the person in charge to demonstrate that the HACCP plan is properly operated and managed; and
- (E) Additional scientific data or other information, as required by the department, supporting the determination that food safety is not compromised by the proposal.

(k) The department shall conduct one or more preoperational inspections to verify that the food establishment is constructed and equipped in accordance with the approved plans and approved modifications of those plans, has established standard operating procedures as specified in section 11-50-4(i)(5), and is in compliance with this chapter and other laws. [Eff]
 (Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-5 Special provisions regarding temporary food establishment. (a) Any person may operate a temporary food establishment if:

- (1) A completed application for a temporary food establishment permit is submitted to the department and processed;
- (2) That person has a temporary food establishment permit or a copy of an application recognized as a temporary food establishment permit that has been approved and signed by the director;
- (3) The temporary food establishment permit or the copy of the signed application is kept at the site of the temporary operation and shall be made available to any member of the public upon request; and
- (4) The temporary operation does not exceed twenty days in any one hundred twenty day period;

(b) The completed application for a temporary food establishment permit shall be submitted at least ten business days prior to the opening date of the event. If this requirement is not met, the application for permit may not be reviewed and processed;

(c) When a temporary food establishment extends operation beyond twenty days in any one hundred twenty day period, the requirements for a fixed food establishment shall be met and any continued operation without first obtaining for a fixed shall constitute the operation of a food establishment without a permit and a violation of this chapter.

(d) All persons who intend to operate a temporary food establishment shall apply to the department of health to allow a hazard evaluation of the product and proposed operation (or at least to make an informed decision as to whether the food is potentially hazardous food or non-potentially hazardous food). If the food is non-potentially hazardous and there are no specific hazards which must be addressed, no permit will be required.

[Eff] (Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-6 Responsibilities of the permit holder.

Upon acceptance of the permit issued by the department, the permit holder in order to retain the permit shall:

- (1) Post the permit in a location in the food establishment that is conspicuous to consumers;

- (2) Comply with the provisions of this chapter including the conditions of a granted variance as specified in section 11-50-13(i), and approved plans as specified in section 11-50-4(i);
- (3) If a food establishment is required in section 11-50-4(j)(1) and (2) to operate under a HACCP plan, comply with the plan as specified in section 11-50-13(i);
- (4) Immediately discontinue operations and notify the department if an imminent health hazard may exist as specified in section 11-50-8(i);
- (5) Allow representatives of the department access to the food establishment as specified in section 11-50-8(c);
- (6) Replace existing facilities and equipment with facilities and equipment that comply with this chapter if:
 - (A) The department directs the replacement because the facilities and equipment constitute a public health hazard or nuisance or no longer comply with the criteria upon which the facilities and equipment were accepted;
 - (B) The department directs the replacement of the facilities and equipment because of a change of ownership; or
 - (C) The facilities and equipment are replaced in the normal course of operation;
- (7) Comply with directives of the department including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives issued by the department in regard to the permit holder's food establishment or in response to community emergencies;
- (8) Accept notices issued and served by the department according to law; and
- (9) Be subject to the administrative, civil, and injunctive remedies authorized in law for failure to comply with this chapter or a directive of the department, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives. [Eff
] (Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-7 Fees. (a) Each application for issuance or renewal of a food establishment permit shall be accompanied by the payment of a fee.

(b) No food establishment permit shall be issued or renewed unless all fees required by this chapter are paid.

(c) If an establishment fails to qualify for issuance or renewal of a food establishment permit, no part of the fee will be refunded to the applicant.

(d) A renewal fee for each food establishment shall be paid to the department before the permit expiration date.

(e) The fees shall be based on the following permit categories shown in Table 7-1. The permit categories are based on the total number of food operations within the establishment. These food operations include the following:

- (1) Receiving;
- (2) Cold storage, holding, preparation, and thawing;
- (3) Hot storage, holding, and preparation;
- (4) Thermal processing;
- (5) Transportation;
- (6) Cooling;
- (7) Reheating; and
- (8) Display.

(g) The following permit risk categories are as follows:

- | | | |
|-----|------------|---|
| (1) | Category 1 | Any six to eight of the food operations noted in subsection (e); |
| (2) | Category 2 | Any three to five of the food operations noted in subsection (e); |
| (3) | Category 3 | Any zero to two of the food operations noted in subsection (e); |

(h) Annual and renewal permit fees are as specified in Table 7-1.

Table 7-1 ANNUAL AND RENEWAL PERMIT FEES SCHEDULE

FOOD ESTABLISHMENT TYPE	s.f. ¹ (size)	Risk Category	ANNUAL/RENEWAL FEE
Catering	-	1	\$400
Catering	-	2	\$300
Catering	-	3	\$200
Convenience store	≤1,000	1	\$300
Convenience store	≤1,000	2	\$200
Convenience store	≤1,000	3	\$100
Food Manufacturer - small	≤1,000	1	\$300
Food Manufacturer - small	≤1,000	2	\$200
Food Manufacturer - small	≤1,000	3	\$100
Food Manufacturer - large	>1,000	1	\$400
Food Manufacturer - large	>1,000	2	\$300
Food Manufacturer - large	>1,000	3	\$200
Food Warehouse - small	≤1,000	-	\$100
Food Warehouse - large	>1,000	-	\$300
Hotel Main Kitchen/ Banquet/Convention	-	1	\$600
Hotel Main Kitchen/ Banquet/Convention	-	2	\$500
High Risk Institutional Kitchens (pre-schools, elementary schools, hospitals, other high-risk populations)	-	1	\$400
Institutional Kitchens (schools, adult/child day care facilities, prisons, etc.)	-	1	\$400
Institutional Kitchens (schools, adult/child day care facilities, prisons, etc.)	-	2	\$300
Institutional Kitchens (schools, adult/child day care facilities, prisons, etc.)	-	3	\$100
Market - small	≤1,000	1	\$300
Market - small	≤1,000	2	\$200
Market - small	≤1,000	3	\$100
Market - large	>1,000	1	\$400
Market - large	>1,000	2	\$300
Market - large	>1,000	3	\$200
Mobile Lunchwagons, Trailers, Boats	-	1	\$300

Mobile Lunchwagons, Trailers, Boats	-	2	\$200
Mobile Lunchwagons, Trailers, Boats	-	3	\$100
Mobile Push Cart	-	1	\$150
Mobile Push Cart	-	2	\$100
Mobile Push Cart	-	3	\$50
Mobile Unit Support Kitchen	-	1	\$300
Mobile Unit Support Kitchen	-	2	\$200
Mobile Unit Support Kitchen	-	3	\$100
Restaurant - small	≤1,000	1	\$300
Restaurant - small	≤1,000	2	\$200
Restaurant - small	≤1,000	3	\$100
Restaurant - large	>1,000	1	\$400
Restaurant - large	>1,000	2	\$300
Restaurant - large	>1,000	3	\$200
Service Area - limited food prep	-	-	\$100
Service Area - no food prep	-	-	\$50
Temporary Food Sale: 1-5 days	-	-	\$50
Temporary Food Sale: 6-10 days	-	-	\$75
Temporary Food Sale: 11-20 days	-	-	\$100
Temporary Food Sale: Value added farm products	-	-	\$25
Temporary Food Sale (applicants such as youth groups, schools, hospitals, religious groups, community service organizations, athletic groups, and other charitable or benevolent organizations)	-	-	\$0

¹s.f. means square feet

(i) All permit fees are non-transferable and non-refundable and must be fully paid prior to the issuance of any new or renewed permit.

(j) Food establishment renewal fees that are received by the department after the expiration date will be subject to an additional late fee equal to twenty per cent of the annual permit fee.

(k) Plan review fees are as specified in Table 7-2.

(d) Removal of the placard is a violation of this chapter and may result in the suspension of the food establishment permit, and may be subject to daily fines as specified in section 321-20, HRS.

(e) A placard shall remain valid from the time of issuance until a new placard is issued at the completion of a regular inspection, follow-up inspection, or change of ownership.

(f) Placard color coding:

(1) A green placard shall be posted when:

(A) Zero or one critical violation was observed during the regular inspection, and the critical violation was corrected or mitigated during the inspection; or

(B) A follow-up inspection verifies correction of all critical violations;

(2) A yellow placard shall be posted when one violation as described in paragraph (1) (A) remains uncorrected or when two or more critical violations were observed during a regular inspection or foodborne illness inspection:

(A) Follow-up inspections will be conducted within two business days to ensure all critical violations are corrected or mitigated and remain corrected;

(B) The yellow placard shall remain posted until all critical violations are corrected or mitigated and verified;

(3) A red placard shall be posted when there is:

(A) Closure of the facility due to immediate danger to public health, such as but not limited to:

(i) Epidemiological evidence of foodborne illness or disease transmission connected to the food establishment;

(ii) An employee of the food establishment who is a carrier of a communicable disease working in a capacity whereby the disease may be transmitted through food;

(iii) Hot or cold water not available as required;

(iv) No power available to operate refrigeration or cooking equipment;

(v) Rodent or vermin infestation;

- (vi) Sewage overflow or flooding within the establishment;
- (vii) Any other condition that poses an immediate danger to public health;
- (B) Suspension of the food establishment permit;
- (g) Critical violations may include, but are not limited to:
 - (1) Employees with communicable diseases, wounds, and rashes;
 - (2) An employee has discharge from the eyes, nose, or mouth;
 - (3) Hands not clean and not properly washed, gloves not used properly;
 - (4) Handwashing facilities not provided, not supplied, not properly operating, or inaccessible;
 - (5) Improper temperature control of potentially hazardous foods;
 - (6) PHF (time/temperature control for safety food) not properly labeled when using time as a public health control;
 - (7) PHF (time/temperature control for safety food) improperly cooled;
 - (8) Improper cooking time and temperatures not adhered to;
 - (9) Improper reheating procedures for hot holding not adhered to;
 - (10) Re-service of returned food;
 - (11) Food contaminated or adulterated;
 - (12) Food-contact surfaces not cleaned and sanitized as required;
 - (13) Improper warewashing procedure;
 - (14) Non-compliance with proper shellfish handling and service;
 - (15) Non-compliance with HACCP plans, specialized process, and variances;
 - (16) Prohibited food offered to highly susceptible population;
 - (17) Hot or cold water not available as required;
 - (18) Sewage and wastewater not properly disposed of;
 - (19) Rodents, insects, birds, or prohibited animals within establishment;
 - (20) Food not protected from cross contamination;
 - (21) Restrictions on eating and the use of tobacco; and

- (22) Improper storage or use of poisonous or toxic materials. [Eff] (Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-10 Embargo and detention. (a) Based upon inspection findings or other evidence, the director may embargo or detain any food determined to be a potential health hazard.

- (1) The director may attach a tag or other appropriate marking to food determined to be a potential health hazard. The marking shall be removed only by the director following verification that the condition has been corrected;
 - (2) Food embargoed or detained pursuant to this subsection shall not be moved or used unless the embargo or detainment has been rescinded;
 - (3) Within seventy-two hours of the embargo or detainment, the director shall:
 - (A) Inform the establishment of the potential health hazard and supporting evidence justifying the action;
 - (B) Extend the holding period for a specified period of time needed to complete testing or research to determine the safety of the food being held; or
 - (C) Rescind the action.
- (b) If the director determines the food to be a potential health hazard, the director shall:
- (1) State in writing, the specific reasons for which the food has been determined to be a potential health hazard; and
 - (2) Offer an opportunity for a hearing to a person whose food has been determined to be a potential health hazard, provided a written request for a hearing is filed with the director by the permit holder within twenty days after receipt of the notice as specified in subsection (a)(3)(A);
 - (A) If a written request is filed within twenty days, an opportunity for a hearing with the director or the director's designated representative shall be provided;
 - (B) If no written request is filed within the twenty day period, the permit holder shall properly dispose of the embargoed or

detained food. [Eff]
(Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-11 Prevention of foodborne disease transmission by employees. (a) The department shall act when it has reasonable cause to believe that a food employee or conditional employee has possibly transmitted disease; may be infected with a disease in a communicable form that is transmissible through food; may be a carrier of infectious agents that cause a disease that is transmissible through food; or is affected with a boil, an infected wound, or acute respiratory infection, by:

- (1) Securing a confidential medical history of the food employee or conditional employee suspected of transmitting disease or making other investigations as deemed appropriate; and
- (2) Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected food employee or conditional employee.

(b) Based on the findings of an investigation related to a food employee or conditional employee who is suspected of being infected or diseased, the department may issue an order to the suspected food employee, conditional employee, or permit holder instituting one or more of the following control measures:

- (1) Restricting the food employee or conditional employee;
- (2) Excluding the food employee or conditional employee; or
- (3) Closing the food establishment by summarily suspending a permit to operate pursuant to section 11-50-12(c).

(c) Based on the findings of the investigation as specified in subsection (a) and to control disease transmission, the department may issue an order of restriction or exclusion to a suspected food employee or the permit holder without prior warning, notice of a hearing, or a hearing if the order:

- (1) States the reasons for the restriction or exclusion that is ordered;
- (2) States the evidence that the food employee or permit holder shall provide in order to demonstrate that the reasons for the restriction or exclusion are eliminated;

Table 7-2 PLAN REVIEW FEE TABLE

PLAN REVIEW TYPE	SUB-TYPE	FEE
Food Establishment, Liquor Establishment, Mobile Unit	1,000 s.f. or less	\$200
Food Establishment, Liquor Establishment, Mobile Unit	>1,000 s.f.	\$300
Prepackaged Only	Mobile or fixed	No Fee

¹s.f. means square feet

[Eff] (Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-8 Inspection and correction of violations.

- (a) Establishing inspection interval.
- (1) The department may inspect a food establishment at a frequency based upon the risk of foodborne illness transmission as determined by the department. Inspections shall also be conducted in response to a complaint or an epidemiological investigation of an alleged foodborne illness outbreak;
 - (2) The director shall be permitted to examine the records of the establishment to get pertinent information regarding food, supplies, and services purchased, received, or used and persons employed.
- (b) The department may prioritize, and conduct more frequent inspections based upon its assessment of a food establishment's history of compliance with this chapter and the establishment's potential as a vector of foodborne illness by evaluating:
- (1) Past performance, for nonconformance with this chapter or HACCP plan requirements that are critical items;
 - (2) Past performance, for numerous or repeat violations of this chapter or HACCP plan requirements that are noncritical items;
 - (3) Past performance, for complaints investigated and found to be valid;
 - (4) The hazards associated with the particular foods that are prepared, stored, or served;

- (5) The type of operation including the methods and extent of food storage, preparation, and service;
- (6) The number of people served; and
- (7) Whether the population served is a highly susceptible population.

(c) After the director presents official credentials and provides notice of the purpose of, and an intent to conduct an inspection, the person in charge shall allow the director to determine if the food establishment is in compliance with this chapter by allowing access to the establishment, allowing inspection, and providing information and records specified in this chapter and to which the department is entitled according to law, during the food establishment's hours of operation and other reasonable times.

(d) An inspection report or other electronic record shall be used to document observed violative conditions or other deviations from this chapter that require correction by the permit holder that may include the following:

- (1) Nonconformance with requirements of this chapter;
- (2) Failure of the appropriate food employees to demonstrate their knowledge of, and ability to perform in accordance with, the procedural, monitoring, verification, and corrective action practices required by the department as specified in section 11-50-13(i);
- (3) Failure of the person in charge to provide records required by the department for determining conformance with a HACCP plan as specified in section 11-50-4(j)(2)(D)(vi); and
- (4) Nonconformance with critical limits of a HACCP plan.

(e) The director shall specify on the inspection report form the time frame for correction of the violations as specified in subsections (i), (k), and (m).

(f) At the conclusion of the inspection, the director shall request a signature by the person in charge acknowledging receipt of the inspectional findings.

(g) Refusal to sign acknowledgment of inspectional findings will not affect the permit holder's obligation to correct the violations noted in the inspection report within the time frames specified.

(h) The director shall treat the inspection report as a public document and shall make the report available for disclosure to a person who requests the report as provided in law.

- (i) Ceasing operation and report - Imminent health hazard.
 - (1) Except as specified in paragraph (2), a permit holder shall immediately discontinue operations and notify the department if an imminent health hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, natural disaster, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross insanitary occurrence or condition, or other circumstance that may endanger public health;
 - (2) A permit holder may not be required to discontinue operations in an area of an establishment that is unaffected by the imminent health hazard.
- (j) Resumption of operations. If operations are discontinued as specified in subsection (i) or otherwise according to law, the permit holder shall obtain approval from the department before resuming operations.
 - (k) Timely correction - violation of critical item.
 - (1) Except as specified in paragraph (2), a permit holder shall at the time of inspection correct a critical violation of this chapter and implement corrective actions for a HACCP plan provision that is not in compliance with its critical limit;
 - (2) Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the director may agree to or specify a longer time frame after the inspection, for the permit holder to correct critical violations or HACCP plan deviations.
 - (1) Verification and documentation of correction.
 - (1) After observing at the time of inspection a correction of a critical violation or a HACCP plan deviation, the director shall enter the violation and information about the corrective action on the inspection report;
 - (2) As specified in subsection (k) (2), after receiving notification that the permit holder has corrected a critical violation or HACCP plan deviation, or at the end of the specified period of time, the director shall verify correction of the violation, document the information on an

inspection report, and enter the report in the department's records.

(m) Time frame for correction - other violations. The permit holder shall correct all other violations by a date and time agreed to or specified by the director.

(n) Upon request, the director shall provide a copy of the completed inspection report to the permit holder or person in charge.

(o) Time frame for correction - temporary food establishment. The permit holder shall correct all violations immediately. Failure to comply with this notice may result in immediate termination of the temporary authorization to operate. [Eff] (Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-9 Placarding. (a) Upon completion of a regular inspection or follow-up inspection, the director shall post at every food establishment a color coded placard indicating the compliance status of that establishment. The placard shall be posted clearly visible to the general public and patrons entering the food establishment.

(1) Clearly visible to the general public and patrons means:

- (A) Posted in the window of the food establishment within five feet of the main entrance to the establishment;
- (B) Posted in a display case (such as a menu box) mounted on the outside wall of the food establishment within five feet of the main entrance to the establishment; or
- (C) Posted in a location approved by the director to ensure proper notice to the general public and patrons.

(b) In the event that a food establishment is operated in the same building as a separately permitted or licensed business, or in the event that a facility shares common patron entrance with a separately permitted facility or licensed business, or in the event of both, the director shall post the placard in the initial patron contact area, or in a location approved by the director.

(c) The placard shall not be defaced, marred, camouflaged, hidden, or removed. It shall be unlawful to operate a food establishment unless the placard is posted in accordance with this chapter.

- (3) States that the suspected food employee or the permit holder may request an appeal hearing by submitting a timely request as provided in law; and
 - (4) Provides the name and address of the department representative to whom a request for an appeal hearing may be made.
- (d) The department shall release a food employee or conditional employee from restriction or exclusion according to law and the conditions specified in section 11-50-21(c). [Eff _____] (Auth: HRS §321-11)
(Imp: HRS §321-11)

§11-50-12 Permit suspension. (a) The department may suspend a permit whenever:

- (1) An inspection of the establishment reveals that the establishment has not corrected the violations in the required time; or
 - (2) The department is unable to conduct inspections in accordance with this chapter due to circumstances within the control of the permit holder or person in charge.
- (b) Permit suspension procedures.
- (1) The department shall notify the permit holder, or the person in charge in writing, when a permit is to be suspended;
 - (2) The department shall state in writing, specific reasons for which the permit is to be suspended;
 - (3) The department shall offer an opportunity for a hearing to a person whose permit is to be suspended, provided a written request for a hearing is filed with the department by the permit holder, not later than twenty calendar days after receipt of the notice;
 - (4) If a written request for a hearing is filed within twenty calendar days after the notice of suspension, an opportunity for a hearing with the department or the department's designated representative shall be offered;
 - (5) If no written request for a hearing is filed within twenty calendar days after the notice of suspension, the permit shall be suspended upon serving of the suspension notice;

- (6) The establishment shall be closed and shall remain closed until the permit has been reinstated;
 - (7) A person whose permit has been suspended may request an inspection, and the permit shall be reinstated if the inspection shows the correction of the violation that led to the suspension.
- (c) Notwithstanding subsections (a), where the department finds there exists in an establishment an imminent health hazard to the public health, unless the hazard is immediately corrected, the department may temporarily suspend the permit of the establishment without prior notice and hearing and order the establishment immediately closed by issuing an order in writing.
- (1) An imminent health hazard exists under conditions described in the definition of "Imminent health hazard" and section 11-50-9(f)(3)(A)(i) to (vii);
 - (2) The permit suspension shall be in effect until the opportunity for a hearing is given within twenty-four hours after the service of the suspension order. After the hearing, the department or the department's designated representative may affirm, modify, or rescind the order as appropriate.
- (d) In the event of a natural disaster, the department has the authority to order an establishment immediately closed if, in the opinion of the department, the establishment cannot operate in a safe and sanitary manner. The department shall decide under what conditions the establishment will be allowed to reopen.
- (e) All hearings shall comply with chapter 91, HRS, and the Hawaii Administrative Rules, chapter 11-1, entitled "Rules of Practice and Procedure". [Eff]
(Auth: HRS §321-11) (Imp: HRS §321-11)

11-50-13 Variances. (a) The department may grant a variance by modifying or waiving the requirements of this chapter if in the opinion of the department a health hazard or nuisance will not result from the variance. If a variance is granted, the department shall retain the information specified in subsection (b) in its records for the food establishment.

(b) Before a variance from a requirement of this chapter is approved, the information that shall be provided

by the person requesting the variance and retained in the department's file on the food establishment including:

- (1) A statement of the proposed variance of the chapter requirement citing relevant chapter section numbers;
 - (2) An analysis of the rationale for how the potential public health hazards and nuisances addressed by the relevant chapter sections will be alternatively addressed by the proposal; and
 - (3) A HACCP plan if required as specified in section 11-50-4(j)(1) that includes the information specified in section 11-50-4(j)(2) as it is relevant to the variance requested.
- (c) Every application for a variance shall be made on forms furnished by the department.
- (1) The department shall not act upon or consider any incomplete application for variance. An application shall be deemed complete only when all required and requested information, including the application form, plans, specifications, applicable fees, and other information have been timely submitted;
 - (2) Every application shall be signed by the applicant and shall constitute an acknowledgment and agreement that the applicant will comply with all the terms and conditions of the variance and this chapter;
 - (3) The department may require the submission of additional information, including challenge studies if applicable, after the application has been submitted, and may ensure that, if an application is incomplete or otherwise deficient, processing of the application shall not be completed until such time as the applicant has supplied all required information or otherwise corrected the deficiency. If the variance application requires a challenge study for pathogen inactivation or growth inhibition to determine if a food requires time/temperature control for safety, the study shall follow the guideline entitled "Parameters for Determining Inoculated Pack/Challenge Study Protocols" by the National Advisory Committee on Microbiological Criteria for Foods, adopted 20 March 2009, Washington D.C.;

- (4) The failure of the department to act on a completed application within one hundred eighty days of the receipt of such application shall be deemed an approval of such application provided that the applicant acts consistently with the application process and has submitted all required or requested information.
- (d) Any approved variance shall be granted for time periods and under conditions consistent with this chapter and within the following limitations:
 - (1) The department may issue a variance for a period not exceeding two years;
 - (2) The department may revoke the variance at any time if the variance becomes a threat to public health and safety.
- (e) Variance renewal. Any variance granted pursuant to this section may be renewed for periods not exceeding two years provided that:
 - (1) All of the conditions specified in the immediately preceding variance are complied with;
 - (2) Current food safety concerns and concerns addressed in the immediately preceding variance are addressed;
 - (3) A renewal application is submitted at least one hundred eighty days prior to expiration of the preceding variance; and
 - (4) A variance renewal fee of \$200 is paid to the department.
- (f) The department shall afford a hearing in accordance with chapter 91, HRS, in relation to an application for the denial of a variance.
- (g) No variance shall be construed to prevent or limit the application of any emergency provisions and procedures provided by law.
- (h) A non-refundable application processing fee of \$200 shall be made payable to the department for all new and renewal variance applications.
- (i) If the department grants a variance as specified in subsection (a), or a HACCP plan is otherwise required as specified in section 11-50-4(j)(1) and (2) the permit holder shall:
 - (1) Comply with the HACCP plans and procedures that are submitted as specified in section 11-50-4(j)(2) and approved as a basis for the modification or waiver;

- (2) Maintain and provide to the department, upon request, records specified in section 11-50-4(j)(2)(D) and (E) that demonstrate that the following are routinely employed:
 - (A) Procedures for monitoring the critical control points;
 - (B) Monitoring of the critical control points;
 - (C) Verification of the effectiveness of the operation or process; and
 - (D) Necessary corrective actions if there is failure at a critical control point; and
- (3) Provide any additional information and analyses deemed necessary by the department to eliminate or control public health hazards or nuisance.

[Eff _____] (Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-14 Penalties and remedies. Any person who violates any provision of this chapter or an order of the department thereunder, shall be subject to a fine as provided in section 321-20, HRS. Each and every violation is a separate offense. [Eff _____] (Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-15 Severability. If any provision of this chapter, or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of the provision to other persons or circumstances, and the remainder of this chapter, shall not be affected thereby. [Eff _____] (Auth: HRS §321-11) (Imp: HRS §321-11)

§§11-50-16 to 11-50-19 (Reserved).

SUBCHAPTER 2

PERSONNEL

§11-50-20 Supervision. (a) Except as specified in subsection (b), the permit holder shall be the person in charge or shall designate a person in charge and shall

ensure that a person in charge is present at the food establishment during all hours of operation.

(b) In a food establishment with two or more separately permitted departments that are the legal responsibility of the same permit holder and that are located on the same premises, the permit holder may, during specific time periods when food is not being prepared, packaged, or served, designate a single person in charge who is present on the premises during all hours of operation, and who is responsible for each separately permitted food establishment on the premises.

(c) The person in charge shall ensure that:

- (1) Food establishment operations are not conducted in a private home or in a room used as living or sleeping quarters as specified in section 11-50-71(s);
- (2) Persons unnecessary to the food establishment operation are not allowed in the food preparation, food storage, or warewashing areas, except that brief visits and tours may be authorized by the person in charge if steps are taken to ensure that exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles are protected from contamination;
- (3) Employees and other persons such as delivery and maintenance persons and pesticide applicators entering the food preparation, food storage, and warewashing areas comply with this chapter;
- (4) Employees are effectively cleaning their hands, by routinely monitoring the employees' handwashing;
- (5) Employees are visibly observing foods as they are received to determine that they are from approved sources, delivered at the required temperatures, protected from contamination, unadulterated, and accurately presented, by routinely monitoring the employees' observations and periodically evaluating foods upon their receipt;
- (6) Employees are properly cooking potentially hazardous food (time/temperature control for safety food), being particularly careful in cooking those foods known to cause severe foodborne illness and death, such as eggs and comminuted meats, through daily oversight of the employees' routine monitoring of the cooking

- temperatures using appropriate temperature measuring devices properly scaled and calibrated as specified in sections 11-50-46(k) and 11-50-49(p) (2);
- (7) Employees are using proper methods to rapidly cool potentially hazardous foods (time/temperature control for safety foods) that are not held hot or are not for consumption within four hours, through daily oversight of the employees' routine monitoring of food temperatures during cooling;
 - (8) Consumers who order raw; or partially cooked ready-to-eat foods of animal origin are informed as specified in section 11-50-35(e) that the food is not cooked sufficiently to ensure its safety;
 - (9) Employees are properly sanitizing cleaned multiuse equipment and utensils before they are reused, through routine monitoring of solution temperature and exposure time for hot water sanitizing, and chemical concentration, pH, temperature, and exposure time for chemical sanitizing;
 - (10) Consumers are notified that clean tableware is to be used when they return to self-service areas such as salad bars and buffets as specified in section 11-50-32(o);
 - (11) Except when approval is obtained from the department as specified in section 11-50-32(a) (4), employees are preventing cross-contamination of ready-to-eat food with bare hands by properly using suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment;
 - (12) Employees are properly trained in food safety, including food allergy awareness, as it relates to their assigned duties; and
 - (13) Food employees and conditional employees are informed of their responsibility to report in accordance with law, to the person in charge, information about their health and activities as they relate to diseases that are transmissible through food, as specified in section 11-50-21(a) (1). [Eff _____] (Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-21 Employee health. (a) Responsibility of permit holder, person in charge, and conditional employees.

(1) The permit holder shall require food employees and conditional employees to report to the person in charge information about their health and activities as they relate to diseases that are transmissible through food. A food employee or conditional employee shall report the information in a manner that allows the person in charge to reduce the risk of foodborne disease transmission, including providing necessary additional information, such as the date of onset of symptoms and an illness, or of a diagnosis without symptoms, if the food employee or conditional employee:

(A) Has any of the following symptoms:

- (i) Vomiting;
- (ii) Diarrhea;
- (iii) Jaundice;
- (iv) Sore throat with fever; or
- (v) A lesion containing pus such as a boil or infected wound that is open or draining;

(B) Has an illness diagnosed by a health practitioner due to:

- (i) Norovirus;
- (ii) Hepatitis A virus;
- (iii) Shigella spp.;
- (iv) Enterohemorrhagic or Shiga toxin-producing Escherichia Coli; or
- (v) Salmonella Typhi;

(C) Had a previous illness, diagnosed by a health practitioner, within the past three months due to Salmonella Typhi, without having received antibiotic therapy, as determined by a health practitioner;

(D) Has been exposed to, or is the suspected source of, a confirmed disease outbreak, because the food employee or conditional employee consumed or prepared food implicated in the outbreak, or consumed food at an event prepared by a person who is infected or ill with:

- (i) Norovirus within the past forty-eight hours of the last exposure;

- (ii) Enterohemorrhagic or Shiga toxin-producing Escherichia Coli, or Shigella spp. within the past three days of the last exposure;
- (iii) Salmonella Typhi within the past fourteen days of the last exposure; or
- (iv) Hepatitis A virus within the past thirty days of the last exposure; or
- (E) Has been exposed by attending or working in a setting where there is a confirmed disease outbreak, or living in the same household as, and has knowledge about, an individual who works or attends a setting where there is a confirmed disease outbreak, or living in the same household as, and has knowledge about, an individual diagnosed with an illness caused by:
 - (i) Norovirus within the past forty-eight hours of the last exposure;
 - (ii) Enterohemorrhagic or Shiga toxin-producing Escherichia Coli, or Shigella spp. within the past three days of the last exposure;
 - (iii) Salmonella Typhi within the past fourteen days of the last exposure; or
 - (iv) Hepatitis A virus within the past thirty days of the last exposure;
- (2) The person in charge shall ensure that a conditional employee:
 - (A) Who exhibits or reports a symptom, or who reports a diagnosed illness as specified in subsection (a)(1)(A) to (C), is prohibited from becoming a food employee until the conditional employee meets the criteria for the specific symptoms or diagnosed illness as specified in subsection (c); or
 - (B) Who will work as a food employee in a food establishment that serves as a highly susceptible population and reports a history of exposure as specified in subsection (a)(1)(D) and (E), is prohibited from becoming a food employee until the conditional employee meets the criteria as specified in subsection (c)(9);
- (3) The person in charge shall ensure that a food employee who exhibits or reports a symptom, or

who reports a diagnosed illness or a history of exposure as specified in subsection (a)(1)(A) to (E) is:

- (A) Excluded as specified in subsection (b)(1) to (3), (4)(A), (5)(A), (6)(A), or (7)(A) and in compliance with the provisions specified in subsection (c)(1) to (7);
 - (B) Restricted as specified in subsection (b)(4)(B), (5)(B), (6)(B), (7)(B), or (8) or (9) and in compliance with the provisions specified in subsection (c)(4) to (9);
- (4) A food employee or conditional employee shall report to the person in charge the information as specified in paragraph (1);
- (5) A food employee shall:
- (A) Comply with an exclusion as specified in subsection (b)(1) to (3), and (4)(A), (5)(A), (6)(A), or (7)(A) and with the provisions specified in subsection (c)(1) to (7);
 - (B) Comply with a restriction as specified in subsection (b)(4)(B), (5)(B), (6)(B), (7)(B), or (8) or (9) and comply with the provisions specified in subsection (c)(4) to (9);
- (b) The person in charge shall exclude or restrict a food employee from a food establishment in accordance with the following:
- (1) Except when the symptom is from a noninfectious condition, exclude a food employee if the food employee is:
 - (A) Symptomatic with vomiting or diarrhea; or
 - (B) Symptomatic with vomiting or diarrhea and diagnosed with an infection from Norovirus, Shigella spp., or Enterohemorrhagic or Shiga toxin-producing E. Coli;
 - (2) Exclude a food employee who is:
 - (A) Jaundiced and the onset of jaundice occurred within the last seven calendar days, unless the food employee provides to the person in charge written medical documentation from a health practitioner specifying that the jaundice is not caused by hepatitis A virus or other fecal-orally transmitted infection;

- (B) Diagnosed with an infection from hepatitis A virus within fourteen calendar days from the onset of any illness symptoms, or within seven calendar days of the onset of jaundice; or
- (C) Diagnosed with an infection from hepatitis A virus without developing symptoms;
- (3) Exclude a food employee who is diagnosed with an infection from Salmonella Typhi, or reports a previous infection with Salmonella Typhi within the past three months as specified in subsection (a) (1) (C);
- (4) If a food employee is diagnosed with an infection from Norovirus and is asymptomatic:
 - (A) Exclude the food employee who works in a food establishment serving a highly susceptible population; or
 - (B) Restrict the food employee who works in a food establishment not serving a highly susceptible population;
- (5) If a food employee is diagnosed with an infection from Shigella spp. and is asymptomatic:
 - (A) Exclude the food employee who works in a food establishment serving a highly susceptible population; or
 - (B) Restrict the food employee who works in a food establishment not serving a highly susceptible population;
- (6) If a food employee is diagnosed with an infection from Enterohemorrhagic or Shiga toxin-producing E. Coli, and is asymptomatic:
 - (A) Exclude the food employee who works in a food establishment serving a highly susceptible population; or
 - (B) Restrict the food employee who works in a food establishment not serving a highly susceptible population;
- (7) If a food employee is ill with symptoms of acute onset of sore throat with fever:
 - (A) Exclude the food employee who works in a food establishment serving a highly susceptible population; or
 - (B) Restrict the food employee who works in a food establishment not serving a highly susceptible population;

- (8) If a food employee is infected with a skin lesion containing pus such as a boil or infected wound that is open or draining and not properly covered as specified in subsection (a) (1) (A) (v), restrict the food employee;
 - (9) If a food employee is exposed to a foodborne pathogen as specified in subsection (a) (1) (D) and (E), restrict the food employee who works in a food establishment serving a highly susceptible population.
- (c) The person in charge shall adhere to the following conditions when removing, adjusting, or retaining the exclusion or restriction of a food employee:
- (1) Except when a food employee is diagnosed with an infection from hepatitis A virus or Salmonella Typhi:
 - (A) Reinstate a food employee who was excluded as specified in subsection (b) (1) (A) if the food employee:
 - (i) Is asymptomatic for at least twenty-four hours; or
 - (ii) Provides to the person in charge written medical documentation from a health practitioner that states the symptom is from a noninfectious condition;
 - (B) If a food employee was diagnosed with an infection from Norovirus and excluded as specified in subsection (b) (1) (B):
 - (i) Restrict the food employee, who is asymptomatic for at least twenty-four hours and works in a food establishment not serving a highly susceptible population, until the conditions for reinstatement as specified in subsection (b) (4) (A) or (B) are met; or
 - (ii) Retain the exclusion for the food employee, who is asymptomatic for at least twenty-four hours and works in a food establishment that serves a highly susceptible population, until the conditions for reinstatement as specified in subsection (b) (4) (A) or (B) are met;

- (C) If a food employee was diagnosed with an infection from *Shigella* spp. and excluded as specified in subsection (b) (1) (B):
 - (i) Restrict the food employee, who is asymptomatic for at least twenty-four hours and works in a food establishment not serving a highly susceptible population, until the conditions for reinstatement as specified in paragraph (5) (A) or (B) are met; or
 - (ii) Retain the exclusion for the food employee, who is asymptomatic for at least twenty-four hours and works in a food establishment that serves a highly susceptible population, until the conditions for reinstatement as specified in subsection (b) (5) (A) or (B), or (5) (A) and (c) (1) (C) (i) are met;
- (D) If a food employee was diagnosed with an infection from Enterohemorrhagic or Shiga toxin-producing *E. Coli* and excluded as specified in subsection (b) (1) (B):
 - (i) Restrict the food employee, who is asymptomatic for at least twenty-four hours and works in a food establishment not serving a highly susceptible population, until the conditions for reinstatement as specified in subsection (b) (6) (A) or (B) are met; or
 - (ii) Retain the exclusion for the food employee, who is asymptomatic for at least twenty-four hours and works in a food establishment that serves a highly susceptible population, until the conditions for reinstatement as specified in subsection (b) (6) (A) or (B) are met;
- (2) Reinstatement of a food employee who was excluded as specified in subsection (b) (2) if the person in charge obtains approval from the department and one of the following conditions is met:
 - (A) The food employee has been jaundiced for more than seven calendar days;

- (B) The anicteric food employee has been symptomatic with symptoms other than jaundice for more than fourteen calendar days; or
 - (C) The food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of a hepatitis A virus infection;
- (3) Reinstate a food employee who was excluded as specified in subsection (b)(3) if:
- (A) The person in charge obtains approval from the department; and
 - (B) The food employee provides to the person in charge written medical documentation from a health practitioner that states the food employee is free from S. Typhi infection;
- (4) Reinstate a food employee who was excluded as specified in subsection (b)(1)(B) or (4)(A) who was restricted in subsection (b)(4)(B) if the person in charge obtains approval from the department and one of the following conditions is met:
- (A) The excluded or restricted food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of a Norovirus infection;
 - (B) The food employee was excluded or restricted after symptoms of vomiting or diarrhea resolved, and more than forty-eight hours have passed since the food employee became asymptomatic; or
 - (C) The food employee was excluded or restricted and did not develop symptoms and more than forty-eight hours have passed since the food employee was diagnosed;
- (5) Reinstate a food employee who was excluded as specified in subsection (b)(1)(B) or (5)(A) or who was restricted in subsection (b)(5)(B) if the person in charge obtains approval from the department and one of the following conditions is met:
- (A) The excluded or restricted food employee provides to the person in charge written medical documentation from a health

- practitioner stating that the food employee is free of a Shigella spp. infection based on test results showing two consecutive negative stool specimen cultures that are taken:
- (i) Not earlier than forty-eight hours after discontinuance of antibiotics; and
 - (ii) At least twenty-four hours apart;
- (B) The food employee was excluded or restricted after symptoms of vomiting or diarrhea resolved, and more than seven calendar days have passed since the food employee became asymptomatic; or
 - (C) The food employee was excluded or restricted and did not develop symptoms and more than seven calendar days have passed since the food employee was diagnosed;
- (6) Reinstate a food employee who was excluded or restricted as specified in subsection (b) (1) (B) or (b) (6) (A) or who was restricted in subsection (b) (6) (B) if the person in charge obtains approval from the department and one of the following conditions is met:
- (A) The excluded or restricted food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of an infection from Enterohemorrhagic or Shiga toxin-producing Escherichia Coli based on test results that show two consecutive negative stool specimen cultures that are taken:
 - (i) Not earlier than forty-eight hours after discontinuance of antibiotics;
 - (ii) At least twenty-four hours apart;
 - (B) The food employee was excluded or restricted after symptoms of vomiting or diarrhea resolved and more than seven calendar days have passed since the food employee became asymptomatic; or
 - (C) The food employee was excluded or restricted and did not develop symptoms and more than seven days have passed since the food employee was diagnosed;

- (7) Reinstate a food employee who was excluded or restricted as specified in subsection (b) (7) (A) or (B) if the food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee meets one of the following conditions:
 - (A) Has received antibiotic therapy for Streptococcus pyogenes infection for more than twenty-four hours;
 - (B) Has at least one negative throat specimen culture for Streptococcus pyogenes infection; or
 - (C) Is otherwise determined by a health practitioner to be free of a Streptococcus pyogenes infection;
- (8) Reinstate a food employee who was restricted as specified in subsection (b) (8) if the skin, infected wound, cut, or pustular boil is properly covered with one of the following:
 - (A) An impermeable cover such as a finger cot or stall and a single-use glove over the impermeable cover if the infected wound or pustular boil is on the hand, finger, or wrist;
 - (B) An impermeable cover on the arm if the infected wound or pustular boil is on the arm; or
 - (C) A dry, durable, tight-fitting bandage if the infected wound or pustular boil is on another part of the body;
- (9) Reinstate a food employee who was restricted as specified in subsection (b) (9) and was exposed to one of the following pathogens as specified in subsection (a) (1) (D) or (E):
 - (A) Norovirus and one of the following conditions is met:
 - (i) More than forty-eight hours have passed since the last day the food employee was potentially exposed; or
 - (ii) More than forty-eight hours have passed since the food employee's household contact became asymptomatic;
 - (B) Shigella spp. or Enterohemorrhagic or Shiga toxin producing Escherichia Coli and one of the following conditions is met:

- (i) More than three calendar days have passed since the last day the food employee was potentially exposed; or
 - (ii) More than three calendar days have passed since the food employee's household contact became asymptomatic;
- (C) S. Typhi and one of the following conditions is met:
- (i) More than fourteen calendar days have passed since the last day the food employee was potentially exposed; or
 - (ii) More than fourteen calendar days have passed since the food employee's household contact became asymptomatic.
- (D) Hepatitis A virus and one of the following conditions is met:
- (i) The food employee is immune to hepatitis A virus infection because of a prior illness from hepatitis A;
 - (ii) The food employee is immune to hepatitis A virus infection because of vaccination against hepatitis A;
 - (iii) The food employee is immune to hepatitis A virus infection because of IgG administration;
 - (iv) More than thirty calendar days have passed since the last day the food employee was potentially exposed;
 - (v) More than thirty calendar days have passed since the food employee's household contact became jaundiced; or
 - (vi) The food employee does not use an alternative procedure that allows bare hand contact with ready-to-eat food until at least thirty calendar days after the potential exposure, as specified in subsection (c) (9) (D) (iv) and (v), and the food employee receives additional training about hepatitis A symptoms and preventing the transmission of infection, proper handwashing procedures, and protecting ready-to-eat food from contamination introduced by bare hand contact. [Eff
] (Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-22 Personal cleanliness. (a) Food employees shall keep their hands and exposed portions of their arms clean.

- (b) Cleaning procedure.
 - (1) Except as specified in paragraph(4), food employees shall clean their hands and exposed portions of their arms, including surrogate prosthetic devices for hands or arms for at least twenty seconds, using a cleaning compound in a handwashing sink that is equipped as specified in sections 11-50-61(c) and 11-50-72(a) to (f);
 - (2) Food employees shall use the following cleaning procedure in the order stated to clean their hands and exposed portions of their arms, including surrogate prosthetic devices for hands and arms:
 - (A) Rinse under clean, running water;
 - (B) Apply an amount of cleaning compound recommended by the cleaning compound manufacturer;
 - (C) Rub together vigorously for at least ten to fifteen seconds while:
 - (i) Paying particular attention to removing soil from underneath the fingernails during the cleaning procedure;
 - (ii) Creating friction on the surfaces of the hands and arms or surrogate prosthetic devices for hands and arms, finger tips, and areas between the fingers;
 - (D) Thoroughly rinse under clean, running water; and
 - (E) Immediately follow the cleaning procedure with thorough drying using a method as specified in section 11-50-72(c);
 - (3) To avoid recontaminating their hands or surrogate prosthetic devices, food employees may use disposable paper towels or similar clean barriers when touching surfaces such as manually operated faucet handles on a handwashing sink or the handle of a restroom door;
 - (4) If approved and capable of removing the types of soils encountered in the food operations

involved, an automatic handwashing facility may be used by food employees to clean their hands or surrogate prosthetic devices.

(c) Food employees shall clean their hands and exposed portions of their arms as specified in section 11-50-22(b) immediately before engaging in food preparation including working with exposed food, clean equipment and utensils, and unwrapped single-service and single-use articles and:

- (1) After touching bare human body parts other than clean hands and clean, exposed portions of arms;
- (2) After using the toilet room;
- (3) After caring for or handling service animals or aquatic animals as specified in section 11-50-23(d)(2);
- (4) Except as specified in section 11-50-23(a)(2), after coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, eating, or drinking;
- (5) After handling soiled equipment or utensils;
- (6) During food preparation, as often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks;
- (7) When switching between working with raw food and working with ready-to-eat food;
- (8) Before donning gloves for working with food; and
- (9) After engaging in other activities that contaminate the hands.

(d) Food employees shall clean their hands in a handwashing sink or approved automatic handwashing facility and may not clean their hands in a sink used for food preparation or warewashing, or in a service sink or a curbed cleaning facility used for the disposal of mop water and similar liquid waste.

(e) Hand antiseptics.

(1) A hand antiseptic used as a topical application, a hand antiseptic solution used as a hand dip, or a hand antiseptic soap shall:

(A) Comply with one of the following:

- (i) Be an approved drug that is listed in the FDA publication "Approved Drug Products with Therapeutic Equivalence Evaluations" as an approved drug based on safety and effectiveness; or
- (ii) Have active antimicrobial ingredients that are listed in the FDA monograph

- for OTC Health-Care Antiseptic Drug Products as an antiseptic handwash;
- (B) Comply with one of the following:
 - (i) Have components that are exempted from the requirement of being listed in federal food additive regulations as specified in 21 CFR 170.39, entitled "Threshold of regulation for substances used in food-contact articles";
 - (ii) Comply with and be listed in 21 CFR 178, entitled "Indirect food additives: adjuvants, production aids, and sanitizers" as regulated for use as a food additive with conditions of safe use; or
 - (iii) Comply with and be listed in 21 CFR 182, entitled "Substances generally recognized as safe", 21 CFR 184, entitled "Direct food substances affirmed as generally recognized as safe", or 21 CFR 186, entitled "Indirect food substances affirmed as generally recognized as safe", for use in contact with food; and
 - (C) Be applied only to hands that are cleaned as specified in subsection (b);
- (2) If a hand antiseptic or a hand antiseptic solution used as a hand dip does not meet the criteria specified in paragraph (1)(B), use shall be:
- (A) Followed by thorough hand rinsing in clean water before hand contact with food or by the use of gloves; or
 - (B) Limited to situations that involve no direct contact with food by the bare hands;
- (3) A hand antiseptic solution used as a hand dip shall be maintained clean and at a strength equivalent to at least one hundred milligrams per liter of chlorine.
- (f) Fingernails maintenance.
- (1) Food employees shall keep their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough;
 - (2) Unless wearing intact gloves in good repair, a food employee may not wear

fingernail polish or artificial fingernails when working with exposed food.

(g) Except for a plain ring such as a wedding band, while preparing food, food employees may not wear jewelry including medical information jewelry on their arms and hands.

(h) Food employees shall wear clean outer clothing to prevent contamination of food, equipment, utensils, linens, and single-service and single-use articles. [Eff

] (Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-23 Hygienic practices. (a) Eating, drinking, or using tobacco.

(1) Except as specified in paragraph (2), an employee shall eat, drink, or use any form of tobacco only in designated areas where the contamination of exposed food; clean equipment, utensils, and linens; unwrapped single-service and single-use articles; or other items needing protection cannot result;

(2) A food employee may drink from a closed beverage container if the container is handled to prevent contamination of:

(A) The employee's hands;

(B) The container; and

(C) Exposed food, clean equipment, utensils, linens, unwrapped single-service, and single-use articles.

(b) Food employees experiencing persistent sneezing, coughing, or a runny nose that causes discharges from the eyes, nose, or mouth may not work with exposed food; clean equipment, utensils, and linens; or unwrapped single-service or single-use articles.

(c) Hair restraints effectiveness.

(1) Except as provided in paragraph (2), food employees may be required to wear hair restraints such as hats, hair coverings or nets, beard restraints, and clothing that covers body hair, that are designed and worn to effectively keep their hair from contacting exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles;

(2) This section does not apply to food employees such as counter staff who only serve beverages and wrapped or packaged foods, hostesses, and

wait staff if they present a minimal risk of contaminating exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

- (d) Animals handling prohibition.
- (1) Except as specified in paragraph (2), food employees may not care for or handle animals that may be present such as patrol dogs, service animals, or pets that are allowed as specified in section 11-50-74(o)(2)(B) to (E);
- (2) Food employees with service animals may handle or care for their service animals and food employees may handle or care for fish in aquariums or molluscan shellfish or crustacea in display tanks if they wash their hands as specified in section 11-50-22(b) and (c)(3). [Eff]
(Auth: HRS §321-11) (Imp: HRS §321-11)

§§11-50-24 to 11-50-29 (Reserved).

SUBCHAPTER 3

FOOD

§11-50-30 Characteristics. Food shall be safe, unadulterated, and, as specified in section 11-50-35(b), honestly presented. [Eff] (Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-31 Source, specifications for receiving, original containers and records. (a) Compliance with food law.

- (1) Food shall be obtained from sources that comply with law;
- (2) Food prepared in a private home may not be used or offered for human consumption in a food establishment;
- (3) Packaged food shall be labeled as specified in law, including 21 CFR 101, entitled "Food labeling"; 9 CFR 317, entitled "Labeling, marking devices, and containers", and 9 CFR 381 Subpart N

- entitled "Labeling and containers", and as specified in subsections (n) and (o);
- (4) Fish, other than those specified in section 11-50-33(e)(2), that are intended for consumption in raw or undercooked form and allowed as specified in section 11-50-33(a)(4), may be offered for sale or service if they are obtained from a supplier that freezes the fish as specified in section 11-50-33(e); or if they are frozen on the premises as specified in section 11-50-33(e) and records are retained as specified in section 11-50-33(f);
 - (5) Whole-muscle, intact beef steaks that are intended for consumption in an undercooked form without a consumer advisory as specified in section 11-50-33(a)(3) shall be:
 - (A) Obtained from a food processing plant that, upon request by the purchaser, packages the steaks and labels them, to indicate that the steaks meet the definition of whole-muscle, intact beef; or
 - (B) Deemed acceptable by the director based on other evidence, such as written buyer specifications or invoices, that indicates that the steaks meet the definition of whole-muscle, intact beef; and
 - (C) If individually cut in a food establishment:
 - (i) Cut from whole-muscle intact beef that is labeled by a food processing plant as specified in subparagraph (A) or identified as specified in subparagraph (B);
 - (ii) Prepared so they remain intact; and
 - (iii) If packaged for undercooking in a food establishment, labeled as specified in subparagraph (A) or identified as specified in subparagraph (B).
 - (6) Meat and poultry that is not a ready-to-eat food and is in a packaged form when it is offered for sale or otherwise offered for consumption, shall be labeled to include safe handling instructions as specified in law, including 9 CFR 317.2(1) and 9 CFR 381.125(b);
 - (7) Eggs that have not been specifically treated to destroy all viable Salmonellae shall be labeled

to include safe handling instructions as specified in law, including 21 CFR 101.17(h).

(b) Food in a hermetically sealed container shall be obtained from a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant.

(c) Fluid milk and milk products shall be obtained from sources that comply with Grade A Standards as specified in law.

(d) Fish.

(1) Fish that are received for sale or service shall be:

(A) Commercially and legally caught or harvested; or

(B) Approved for sale or service;

(2) Molluscan shellfish that are recreationally caught may not be received for sale or service.

(e) Molluscan shellfish.

(1) Molluscan shellfish shall be obtained from sources according to law or the requirements specified in the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish;

(2) Molluscan shellfish received in interstate commerce shall be from sources that are listed in the Interstate Certified Shellfish Shippers List.

(f) Wild mushrooms.

(1) Except as specified in paragraph (2), mushroom species picked in the wild shall be obtained from sources where each mushroom is individually inspected and found to be safe by an approved mushroom identification expert;

(2) This section does not apply to:

(A) Cultivated wild mushroom species that are grown, harvested, and processed in an operation that is regulated by the food regulatory agency that has jurisdiction over the operation; or

(B) Wild mushroom species if they are in packaged form and are the product of a food processing plant that is regulated by the

food regulatory agency that has jurisdiction over the plant.

- (g) Game animals. If game animals are received for sale or service they shall be:
 - (1) Commercially raised for food and:
 - (A) Raised, slaughtered, and processed under a voluntary inspection program that is conducted by the agency that has animal health jurisdiction; or
 - (B) Under a routine inspection program conducted by a regulatory agency other than the agency that has animal health jurisdiction; and
 - (C) Raised, slaughtered, and processed according to:
 - (i) Laws governing meat and poultry as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program; and
 - (ii) Requirements which are developed by the agency that has animal health jurisdiction and the agency that conducts the inspection program with consideration of factors such as the need for antemortem and postmortem examination by an approved veterinarian or veterinarian's designee;
 - (2) Under a voluntary inspection program administered by the USDA for game animals such as exotic animals (reindeer, elk, deer, antelope, water buffalo, or bison) that are "inspected and approved" in accordance with 9 CFR 352, entitled "Exotic animals and horses; voluntary inspection" or rabbits that are "inspected and certified" in accordance with 9 CFR 354, entitled "Voluntary inspection of rabbits and edible products thereof";
 - (3) As allowed by law, for wild game animals that are live caught:
 - (A) Under a routine inspection program conducted by a regulatory agency such as the agency that has animal health jurisdiction; and
 - (B) Slaughtered and processed according to:

- (i) Laws governing meat and poultry as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program; and
 - (ii) Requirements which are developed by the agency that has animal health jurisdiction and the agency that conducts the inspection program with consideration of factors such as the need for antemortem and postmortem examination by an approved veterinarian or veterinarian's designee; or
- (4) As allowed by law, for field-dressed wild game animals under a routine inspection program that ensures the animals:
- (A) Receive a postmortem examination by an approved veterinarian or veterinarian's designee; or
 - (B) Are field-dressed and transported according to requirements specified by the agency that has animal health jurisdiction and the agency that conducts the inspection program; and
 - (C) Are processed according to laws governing meat and poultry as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program.
- (h) Temperature when received.
- (1) Except as specified in paragraph (2), refrigerated, potentially hazardous food (time/temperature control for safety food) shall be at a temperature of forty-one degrees Fahrenheit or below when received;
 - (2) If a temperature other than forty-one degrees Fahrenheit for a potentially hazardous food (time/temperature control for safety food) is specified in law governing its distribution, such as laws governing milk and molluscan shellfish, the food may be received at the specified temperature;
 - (3) Raw eggs shall be received in refrigerated equipment that maintains an ambient air

- temperature of forty-five degrees Fahrenheit or less;
- (4) Potentially hazardous food (time/temperature control for safety food) that is cooked to a temperature and for a time specified in section 11-50-33(a) to (c) and received hot shall be at a temperature of one hundred thirty-five degrees Fahrenheit or above;
 - (5) A food that is labeled frozen and shipped frozen by a food processing plant shall be received frozen;
 - (6) Upon receipt, potentially hazardous food (time/temperature control for safety food) shall be free of evidence of previous temperature abuse.
- (i) Food may not contain unapproved food additives or additives that:
- (1) Exceed amounts specified in 21 CFR 170-180 relating to food additives;
 - (2) Generally recognized as safe or prior sanctioned substances that exceed amounts specified in 21 CFR 181-186;
 - (3) Substances that exceed amounts specified in 9 CFR Subpart C Section 424.21(b), entitled "Food ingredients and sources of radiation"; or
 - (4) Pesticide residues that exceed provisions specified in 40 CFR 180, entitled "Tolerances and exceptions for pesticide chemical residues in food".
- (j) Eggs shall be received clean and sound and may not exceed the restricted egg tolerances for U.S. Consumer Grade B as specified in United States Standards, Grades, and Weight Classes for Shell Eggs, AMS 56.200 et seq., administered by the Agricultural Marketing Service of USDA.
- (k) Eggs and milk products, pasteurized.
- (1) Egg products shall be obtained pasteurized;
 - (2) Fluid and dry milk and milk products shall:
 - (A) Be obtained pasteurized; and
 - (B) Comply with Grade A Standards as specified in law;
 - (3) Frozen milk products, such as ice cream, shall be obtained pasteurized as specified in 21 CFR 135, entitled "Frozen desserts".
 - (4) Cheese shall be obtained pasteurized unless alternative procedures to pasteurization are specified in the CFR, such as 21 CFR 133,

- entitled "Cheeses and related cheese products",
for curing certain cheese varieties.
- (1) Food packages shall be in good condition and protect the integrity of the contents so that the food is not exposed to adulteration or potential contaminants.
 - (m) Ice for use as a food or a cooling medium shall be made from drinking water.
 - (n) Shucked shellfish, packaging and identification.
 - (1) Raw shucked shellfish shall be obtained in nonreturnable packages which bear a legible label that identifies the:
 - (A) Name, address, and certification number of the shucker, packer, or repacker of the molluscan shellfish; and
 - (B) The "sell by" or "best if used by" date for packages with a capacity of less than one-half gallon or the date shucked for packages with a capacity of one-half gallon or more;
 - (2) A package of raw shucked shellfish that does not bear a label or which bears a label which does not contain all the information as specified in paragraph (1) shall be subject to a hold order, as allowed by law, or seizure and destruction.
 - (o) Shellstock identification.
 - (1) Shellstock shall be obtained in containers bearing legible source identification tags or labels that are affixed by the harvester or dealer that depurates, ships, or reships the shellstock, as specified in state rules or the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish, and:
 - (A) Except as specified in paragraph (3), the harvester's tag or label shall list the following information in the following order:
 - (i) The harvester's identification number that is assigned by the shellfish control authority;
 - (ii) The date of harvesting;
 - (iii) The most precise identification of the harvest location or aquaculture site that is practicable based on the system of harvest area designations that is in use by the shellfish control authority and including the

- abbreviation of the name of the state or country in which the shellfish are harvested;
- (iv) The type and quantity of shellfish; and
 - (v) The following statement in bold, capitalized type: "This tag is required to be attached until container is empty or retagged and thereafter kept on file for 90 days"; and
- (B) Except as specified in paragraph (4), each dealer's tag or label shall list the following information in the following order:
- (i) The dealer's name and address, and the certification number assigned by the shellfish control authority;
 - (ii) The original shipper's certification number including the abbreviation of the name of the state or country in which the shellfish are harvested;
 - (iii) The same information as specified for a harvester's tag in subparagraph (A)(ii) to (iv); and
 - (iv) The following statement in bold, capitalized type: "This tag is required to be attached until container is empty and thereafter kept on file for 90 days";
- (2) A container of shellstock that does not bear a tag or label or that bears a tag or label that does not contain all the information as specified in paragraph (1) shall be subject to a hold order, as allowed by law, or seizure and destruction in accordance with 21 CFR Subpart D, entitled "Specific administrative decisions regarding interstate shipments", Section 1240.60(d);
- (3) If a space is provided on the harvester's tag or label for a dealer's name, address, and certification number, the dealer's information shall be listed first;
- (4) If the harvester's tag or label is designed to accommodate each dealer's identification as specified in paragraph (1)(B)(i) and (ii),

individual dealer tags or labels need not be provided.

(p) When received by a food establishment, shellstock shall be reasonably free of mud, dead shellfish, and shellfish with broken shells. Dead shellfish or shellstock with badly broken shells shall be discarded.

(q) Juice treated. Pre-packaged juice shall:

- (1) Be obtained from a processor with a HACCP system as specified in 21 CFR Part 120, entitled "Hazard analysis and critical control (HACCP) systems"; and
- (2) Be obtained pasteurized or otherwise treated to attain a five-log reduction of the most resistant microorganism of public health significance as specified in 21 CFR Part 120.24, entitled "Process Controls".

(r) Molluscan shellfish, original container.

- (1) Except as specified in paragraphs (2) to (4), molluscan shellfish may not be removed from the container in which they are received other than immediately before sale or preparation for service;
- (2) For display purposes, shellstock may be removed from the container in which they are received, displayed on drained ice, or held in a display container, and a quantity specified by a consumer may be removed from the display or display container and provided to the consumer if:
 - (A) The source of the shellstock on display is identified as specified in subsection (o) and recorded as specified in subsection (s); and
 - (B) The shellstock are protected from contamination;
- (3) Shucked shellfish may be removed from the container in which they were received and held in a display container from which individual servings are dispensed upon a consumer's request if:
 - (A) The labeling information for the shellfish on display as specified in subsection (n) is retained and correlated to the date when, or dates during which, the shellfish are sold or served; and
 - (B) The shellfish are protected from contamination;

- (4) Shucked shellfish may be removed from the container in which they were received and repacked in consumer self service containers where allowed by law if:
 - (A) The labeling information for the shellfish is on each consumer self service container as specified in subsection (n) and section 11-50-35(c)(1) and (2)(A) to (E);
 - (B) The labeling information as specified in subsection (n) is retained and correlated with the date when, or dates during which, the shellfish are sold or served;
 - (C) The labeling information and dates specified in subparagraph (B) are maintained for ninety days; and
 - (D) The shellfish are protected from contamination.
- (s) Shellstock, maintaining identification.
- (1) Except as specified in paragraph (3)(B), shellstock tags or labels shall remain attached to the container in which the shellstock are received until the container is empty;
- (2) The date when the last shellstock from the container is sold or served shall be recorded on the tag or label;
- (3) The identity of the source of shellstock that are sold or served shall be maintained by retaining shellstock tags or labels for ninety calendar days from the date that is recorded on the tag or label, as specified in paragraph (2), by:
 - (A) Using an approved record keeping system that keeps the tags or labels in chronological order correlated to the date that is recorded on the tag or label, as specified in paragraph (2); and
 - (B) If shellstock are removed from its tagged or labeled container:
 - (i) Preserving source identification by using a record keeping system as specified in subparagraph (A); and
 - (ii) Ensuring that shellstock from one tagged or labeled container are not commingled with shellstock from another container with different certification numbers; different harvest dates; or different growing

areas as identified on the tag or label before being ordered by the consumer. [Eff]
(Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-32 Protection from contamination after receiving. (a) Preventing contamination from hands.

- (1) Food employees shall wash their hands as specified in section 11-50-22(b);
- (2) Except when washing fruits and vegetables as specified in subsection (g) or as specified in paragraph (4), food employees may not contact exposed, ready-to-eat food with their bare hands and shall use suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment;
- (3) Food employees shall minimize bare hand and arm contact with exposed food that is not in a ready-to-eat form;
- (4) Food employees not serving a highly susceptible population may contact exposed, ready-to-eat food with their bare hands if:
 - (A) The permit holder obtains prior approval from the department;
 - (B) Written procedures are maintained in the food establishment and made available to the department upon request that include:
 - (i) For each bare hand contact procedure, a listing of the specific ready-to-eat foods that are touched by bare hands;
 - (ii) Diagrams and other information showing that handwashing facilities, installed, located, equipped, and maintained as specified in sections 11-50-61(g), (l), (o) and 11-50-72(b), (c), and (e), are in an easily accessible location and in close proximity to the work station where the bare hand contact procedure is conducted;
 - (C) A written employee health policy that details how the food establishment complies with section 11-50-21(a), (b), and (c) including:

- (i) Documentation that food employees and conditional employees acknowledge that they are informed to report information about their health and activities as they relate to gastrointestinal symptoms and diseases that are transmittable through food as specified in section 11-50-21(a)(1);
 - (ii) Documentation that food employees and conditional employees acknowledge their responsibilities as specified in section 11-50-21(a)(5); and
 - (iii) Documentation that the person in charge acknowledges the responsibilities as specified in section 11-50-21(a)(2) to (4), (b), and (c);
- (D) Documentation that food employees acknowledge that they have received training in:
- (i) The risks of contacting the specific ready-to-eat foods with bare hands;
 - (ii) Proper handwashing as specified in section 11-50-22(b);
 - (iii) When to wash their hands as specified in section 11-50-22(c);
 - (iv) Where to wash their hands as specified in section 11-50-22(d);
 - (v) Proper fingernail maintenance as specified in section 11-50-22(f);
 - (vi) Prohibition of jewelry as specified in section 11-50-22(g); and
 - (vii) Good hygienic practices as specified in section 11-50-23(a) and (b);
- (E) Documentation that hands are washed before food preparation and as necessary to prevent cross contamination by food employees as specified in section 11-50-22(a), (b), (c), and (d) during all hours of operation when the specific ready-to-eat foods are prepared;
- (F) Documentation that food employees contacting ready-to-eat food with bare hands use two or more of the following control measures to provide additional

- safeguards to hazards associated with bare hand contact:
- (i) Double handwashing;
 - (ii) Nail brushes;
 - (iii) A hand antiseptic after handwashing as specified in section 11-50-22(e);
 - (iv) Incentive programs such as paid sick leave that assist or encourage food employees not to work when they are ill; or
 - (v) Other control measures approved by the department; and
- (G) Documentation that corrective action is taken when subparagraphs (A) to (F) are not followed.
- (b) A food employee may not use a utensil more than once to taste food that is to be sold or served.
- (c) Packaged and unpackaged food - separation, packaging, and segregation.
- (1) Food shall be protected from cross contamination by:
- (A) Except as specified in clause (iii), separating raw animal foods during storage, preparation, holding, and display from:
 - (i) Raw ready-to-eat food including other raw animal food such as fish for sushi or molluscan shellfish, or other raw ready-to-eat food such as fruits and vegetables; and
 - (ii) Cooked ready-to-eat food;
 - (iii) Frozen, commercially processed and packaged raw animal food may be stored or displayed with or above frozen, commercially processed and packaged, ready-to eat food;
 - (B) Except when combined as ingredients, separating types of raw animal foods from each other such as beef, fish, lamb, pork, and poultry during storage, preparation, holding, and display by:
 - (i) Using separate equipment for each type;
 - (ii) Arranging each type of food in equipment so that cross contamination of one type with another is prevented; or

- (iii) Preparing each type of food at different times or in separate areas;
 - (C) Cleaning equipment and utensils as specified in section 11-50-50(b)(1) and sanitizing as specified in section 11-50-51(c);
 - (D) Except as specified in section 11-50-34(e)(2)(B) and in paragraph (2), storing the food in packages, covered containers, or wrappings;
 - (E) Cleaning hermetically sealed containers of food of visible soil before opening;
 - (F) Protecting food containers that are received packaged together in a case or overwrap from cuts when the case or overwrap is opened;
 - (G) Storing damaged, spoiled, or recalled food being held in the food establishment as specified in section 11-50-73 (c); and
 - (H) Separating fruits and vegetables, before they are washed as specified in subsection (g) from ready-to-eat food;
- (2) Paragraph (1)(D) does not apply to:
- (A) Whole, uncut, raw fruits and vegetables and nuts in the shell, that requires peeling or hulling before consumption;
 - (B) Primal cuts, quarters, or sides of raw meat or slab bacon that are hung on clean, sanitized hooks or placed on clean, sanitized racks;
 - (C) Whole, uncut, processed meats such as country hams, and smoked or cured sausages that are placed on clean, sanitized racks;
 - (D) Food being cooled as specified in section 11-50-34(e)(2)(B); or
 - (E) Shellstock.

(d) Except for containers holding food that can be readily and unmistakably recognized, such as dry pasta, working containers holding food or food ingredients that are removed from their original packages for use in the food establishment, such as cooking oils, flour, herbs, potato flakes, salt, spices, and sugar shall be identified with the common name of the food.

(e) Pasteurized eggs or egg products shall be substituted for raw eggs in the preparation of foods such as Caesar salad, hollandaise or Béarnaise sauce,

mayonnaise, meringue, eggnog, ice cream, and egg-fortified beverages that are not:

- (1) Cooked as specified in section 11-50-33(a)(1)(A) or (B); or
- (2) Included in section 11-50-33(a)(4).
- (f) Protection from unapproved additives.
 - (1) Food shall be protected from contamination that may result from the addition of, as specified in section 11-50-31(i):
 - (A) Unsafe or unapproved food or color additives; and
 - (B) Unsafe or unapproved levels of approved food and color additives;
 - (2) A food employee may not:
 - (A) Apply sulfiting agents to fresh fruits and vegetables intended for raw consumption or to a food considered to be a good source of vitamin B1; or
 - (B) Except for grapes, serve or sell food specified in subparagraph (A) that is treated with sulfiting agents before receipt by the food establishment.
- (g) Washing fruits and vegetables.
 - (1) Except as specified in paragraph (2) and except for whole, raw fruits and vegetables that are intended for washing by the consumer before consumption, raw fruits and vegetables shall be thoroughly washed in water to remove soil and other contaminants before being cut, combined with other ingredients, cooked, served, or offered for human consumption in ready-to-eat form;
 - (2) Fruits and vegetables may be washed by using chemicals as specified in section 11-50-81(f).
- (h) After use as a medium for cooling the exterior surfaces of food such as melons or fish, packaged foods such as canned beverages, or cooling coils and tubes of equipment, ice may not be used as food.
 - (i) Storage or display of food in contact with water or ice.
 - (1) Packaged food may not be stored in direct contact with ice or water if the food is subject to the entry of water because of the nature of its packaging, wrapping, or container or its positioning in the ice or water;

- (2) Except as specified in paragraphs (3) and (4), unpackaged food may not be stored in direct contact with undrained ice;
- (3) Whole, raw fruits or vegetables; cut, raw vegetables such as celery or carrot sticks or cut potatoes; and tofu may be immersed in ice or water;
- (4) Raw poultry and raw fish that are received immersed in ice in shipping containers may remain in that condition while in storage awaiting preparation, display, service, or sale.
- (j) Food shall only contact surfaces of:
 - (1) Equipment and utensils that are cleaned as specified in section 11-50-50 and sanitized as specified in section 11-50-51; or
 - (2) Single-service and single-use articles.
- (k) During pauses in food preparation or dispensing, food preparation and dispensing utensils shall be stored:
 - (1) Except as specified in paragraph (2), in the food with their handles above the top of the food and the container;
 - (2) In food that is not potentially hazardous (time/temperature control for safety food) with their handles above the top of the food within containers or equipment that can be closed, such as bins of sugar, flour, or cinnamon;
 - (3) On a clean portion of the food preparation table or cooking equipment only if the in-use utensil and the food-contact surface of the food preparation table or cooking equipment are cleaned and sanitized at a frequency specified in sections 11-50-50(b) and 11-50-51(b);
 - (4) In running water of sufficient velocity to flush particulates to the drain, if used with moist food such as ice cream or mashed potatoes;
 - (5) In a clean, protected location if the utensils, such as ice scoops, are used only with a food that is not potentially hazardous (time/temperature control for safety food);
 - (6) In a container of water if the water is maintained at a temperature of at least one hundred thirty-five degrees Fahrenheit and the container is cleaned at a frequency specified in section 11-50-50(b) (4) (G); or
 - (7) In any other manner approved by the department.

- (1) Linens and napkins may not be used in contact with food unless they are used to line a container for the service of foods and the linens and napkins are replaced each time the container is refilled for a new consumer.
- (m) Wiping cloths, use limitation.
 - (1) Cloths in-use for wiping food spills from tableware and carry-out containers that occur as food is being served shall be:
 - (A) Maintained dry; and
 - (B) Used for no other purpose;
 - (2) Cloths in-use for wiping counters and other equipment surfaces shall be:
 - (A) Held between uses in a chemical sanitizer solution at a concentration specified in section 11-50-49(m); and
 - (B) Laundered daily as specified in section 11-50-52(b) (4);
 - (3) Cloths in-use for wiping surfaces in contact with raw animal foods shall be kept separate from cloths used for other purposes;
 - (4) Dry wiping cloths and the chemical sanitizing solutions specified in paragraph (2)(A) in which wet wiping cloths are held between uses shall be free of food debris and visible soil;
 - (5) Containers of chemical sanitizing solutions specified in paragraph (2)(A) in which wet wiping cloths are held between uses shall be stored off the floor and used in a manner that prevents contamination of food, equipment, utensils, linens, single-service, or single-use articles;
 - (6) Single-use disposable sanitizer wipes shall be used in accordance with EPA approved manufacturer's label use instructions.
- (n) Gloves, use limitation.
 - (1) If used, single-use gloves shall be used for only one task such as working with ready-to-eat food or with raw animal food, used for no other purpose, and discarded when damaged or soiled, or when interruptions occur in the operation;
 - (2) Except as specified in paragraph (3), slash-resistant gloves that are used to protect the hands during operations requiring cutting shall be used in direct contact only with food that is subsequently cooked as specified in section 11-50-33 such as frozen food or a primal cut of meat;

- (3) Slash-resistant gloves may be used with ready-to-eat food that will not be subsequently cooked if the slash-resistant gloves have a smooth, durable, and nonabsorbent outer surface; or if the slash-resistant gloves are covered with a smooth, durable, nonabsorbent glove, or a single-use glove;
- (4) Cloth gloves may not be used in direct contact with food unless the food is subsequently cooked as required in section 11-50-33 such as frozen food or a primal cut of meat.
- (o) Using clean tableware for second portions and refills.
 - (1) Except for refilling a consumer's drinking cup or container without contact between the pouring utensil and the lip-contact area of the drinking cup or container, food employees may not use tableware, including single-service articles, soiled by the consumer, to provide second portions or refills;
 - (2) Except as specified in paragraph (3), self-service consumers may not be allowed to use soiled tableware, including single-service articles, to obtain additional food from the display and serving equipment;
 - (3) Drinking cups and containers may be reused by self-service consumers if refilling is a contamination-free process as specified in section 11-50-46(p)(1), (2), and (4).
- (p) Refilling returnables.
 - (1) A take-home food container returned to a food establishment may not be refilled at a food establishment with a potentially hazardous food (time/temperature control for safety food);
 - (2) Except as specified in paragraph (3), a take-home food container refilled with food that is not potentially hazardous (time/temperature control for safety food) shall be cleaned as specified in section 11-50-50(k)(2);
 - (3) Personal take-out beverage containers, such as thermally insulated bottles, nonspill coffee cups, and promotional beverage glasses, may be refilled by employees or the consumer if refilling is a contamination-free process as specified in section 11-50-46(p)(1), (2), and (4).

- (q) Food storage.
 - (1) Except as specified in paragraphs (2) and (3), food shall be protected from contamination by storing the food:
 - (A) In a clean, dry location;
 - (B) Where it is not exposed to splash, dust, or other contamination; and
 - (C) At least six inches above the floor;
 - (2) Food in packages and working containers may be stored less than six inches above the floor on case lot handling equipment as specified in section 11-50-46(ii);
 - (3) Pressurized beverage containers, cased food in waterproof containers such as bottles or cans, and milk containers in plastic crates may be stored on a floor that is clean and not exposed to floor moisture.
- (r) Food may not be stored:
 - (1) In locker rooms;
 - (2) In toilet rooms;
 - (3) In dressing rooms;
 - (4) In garbage rooms;
 - (5) In mechanical rooms;
 - (6) Under sewer lines that are not shielded to intercept potential drips;
 - (7) Under leaking water lines, including leaking automatic fire sprinkler heads, or under lines on which water has condensed;
 - (8) Under open stairwells; or
 - (9) Under other sources of contamination.
- (s) Potentially hazardous food (time/temperature control for safety food) dispensed through a vending machine shall be in the package in which it was placed at the food establishment or food processing plant at which it was prepared.
 - (t) During preparation, unpackaged food shall be protected from environmental sources of contamination.
 - (u) Except for nuts in the shell and whole, raw fruits and vegetables that are intended for hulling, peeling, or washing by the consumer before consumption, food on display shall be protected from contamination by the use of packaging; counter, service line, or salad bar food guards; display cases; or other effective means.
 - (v) Condiments, protection.
 - (1) Condiments shall be protected from contamination by being kept in dispensers that are designed to

- provide protection, protected food displays provided with the proper utensils, original containers designed for dispensing, or individual packages or portions;
- (2) Condiments at a vending machine location shall be in individual packages or provided in dispensers that are filled at an approved location, such as the food establishment that provides food to the vending machine location, a food processing plant that is regulated by the agency that has jurisdiction over the operation, or a properly equipped facility that is located on the site of the vending machine location.
 - (w) Consumer self-service operations.
 - (1) Raw, unpackaged animal food, such as beef, lamb, pork, poultry, and fish may not be offered for consumer self-service. This paragraph does not apply to:
 - (A) Consumer self-service of ready-to-eat foods at buffets or salad bars that serve foods such as sushi, sashimi, poke, or raw shellfish;
 - (B) Ready-to-cook individual portions for immediate cooking and consumption on the premises such as consumer-cooked meats or consumer-selected ingredients for Mongolian barbecue or yakiniku;
 - (C) Raw, shell-on shrimp, or crustacean; or
 - (D) Raw, whole, unprocessed fish that are naturally protected from contamination by a shell or skin;
 - (2) Consumer self-service operations shall be provided with suitable utensils or effective dispensing methods that protect the food from contamination;
 - (3) Consumer self-service operations such as buffets and salad bars shall be monitored by food employees trained in safe operating procedures.
 - (x) When food sample demonstrations and food promotions are authorized in the establishment, the person in charge shall ensure that those activities comply with the applicable sanitation provisions of this chapter.
 - (y) Returned food and re-service of food.
 - (1) Except as specified in paragraph (2), after being served or sold and in the possession of a consumer, food that is unused or returned by the

- consumer may not be offered as food for human consumption;
- (2) Except as specified in section 11-50-37(a)(7), a container of food that is not potentially hazardous (time/temperature control for safety food) may be re-served from one consumer to another if:
- (A) The food is dispensed so that it is protected from contamination and the container is closed between uses, such as a narrow-neck bottle containing catsup, steak sauce, or wine; or
 - (B) The food, such as crackers, salt, or pepper, is in an unopened original package and is maintained in sound condition.
- (z) Food shall be protected from contamination that may result from a factor or source not specified in subsections (a) to (y). [Eff _____] (Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-33 Destruction of organisms of public health concern.

- (a) Cooking raw animal foods.
- (1) Except as specified in paragraphs (2), (3) and (4), raw animal foods such as eggs, fish, meat, poultry, and foods containing these raw animal foods, shall be cooked to heat all parts of the food to a temperature and for a time that complies with one of the following methods based on the food that is being cooked:
- (A) One hundred forty-five degrees Fahrenheit or above for fifteen seconds for:
 - (i) Raw eggs that are broken and prepared in response to a consumer's order and for immediate service; and
 - (ii) Except as specified in subparagraphs (B) and (C) and paragraphs (2) and (3), fish and meat including game animals commercially raised for food as specified in section 11-50-31(g)(1)(A) and game animals under a voluntary inspection program as specified in section 11-50-31(g)(1)(B);
 - (B) One hundred fifty-five degrees Fahrenheit for fifteen seconds or the temperature

specified in Table 33-1 that corresponds to the holding time for ratites, mechanically tenderized, and injected meats; the following if they are comminuted: fish, meat, game animals commercially raised for food as specified in section 11-50-31(g)(1)(A), and game animals in a voluntary inspection program as specified in section 11-50-31(g)(1)(B); and raw eggs that are not prepared as specified in subparagraph (A)(i):

Table 33-1

Minimum	
Temperature	Time
145°F	3 minutes
150°F	1 minute
158°F	<1 second (instantaneous)

; or

- (C) One hundred sixty-five degrees Fahrenheit or above for fifteen seconds for poultry, baluts, wild game animals as specified in section 11-50-31(g)(1)(C), stuffed fish, stuffed meat, stuffed pasta, stuffed poultry, stuffed ratites, or stuffing containing fish, meat, poultry, or ratites;
- (2) Whole meat roasts including beef, corned beef, lamb, pork, and cured pork roasts such as ham shall be cooked:
 - (A) In an oven that is preheated to the temperature specified for the roast's weight in Table 33-2 and that is held at that temperature:

Table 33-2

Oven Type	Oven Temperature Based on Roast Weight	
	Less than 10 lbs	10 lbs or More
Still Dry	350°F or more	250°F or more
Convection	325°F or more	250°F or more
High Humidity ¹	250°F or less	250°F or less

¹Relative humidity greater than ninety per cent for at least one hour as measured in the cooking chamber or exit of the oven; or in a moisture-impermeable bag that provides one hundred per cent humidity.

- ; and
- (B) As specified in Table 33-3, to heat all parts of the food to a temperature and for the holding time that corresponds to that temperature:

Table 33-3

Temperature	Time ¹ in Minutes	Temperature	Time ¹ in Seconds
130°F	112	147°F	134
131°F	89	149°F	85
133°F	56	151°F	54
135°F	36	153°F	34
136°F	28	155°F	22
138°F	18	157°F	14
140°F	12	158°F	0
142°F	8	-	-
144°F	5	-	-
145°F	4	-	-

¹Holding time may include post-oven heat rise.

- (3) A raw or undercooked whole-muscle, intact beef steak may be served or offered for sale in a ready-to-eat form if:
- (A) The food establishment serves a population that is not a highly susceptible population;
 - (B) The steak is labeled to indicate that it meets the definition of "whole-muscle, intact beef" as specified in section 11-50-31(a)(5); and
 - (C) The steak is cooked on both the top and bottom to a surface temperature of one hundred forty-five degrees Fahrenheit or above and a cooked color change is achieved on all external surfaces;
- (4) A raw animal food such as raw egg, raw fish, raw-marinated fish, raw molluscan shellfish, or steak tartare; or a partially cooked food such as lightly cooked fish, soft cooked eggs, or rare meat other than whole-muscle, intact beef steaks as specified in paragraph (3), may be served or offered for sale upon consumer request or selection in a ready-to-eat form if:

- (A) As specified in section 11-50-37(a) (3) (A) and (B), the food establishment serves a population that is not a highly susceptible population;
 - (B) The food, if served or offered for service by consumer selection from a children's menu, does not contain comminuted meat; and
 - (C) The consumer is informed as specified in section 11-50-35(e) that to ensure its safety, the food should be cooked as specified in paragraph (1) or (2); or
 - (D) The department grants a variance from paragraph (1) or (2) as specified in section 11-50-13(a) based on a HACCP plan that:
 - (i) Is submitted by the permit holder and approved as specified in section 11-50-13(b);
 - (ii) Documents scientific data or other information showing that a lesser time and temperature regimen results in a safe food; and
 - (iii) Verifies that equipment and procedures for food preparation and training of food employees at the food establishment meet the conditions of the variance.
- (b) Raw animal foods cooked in a microwave oven shall be:
- (1) Rotated or stirred throughout or midway during cooking to compensate for uneven distribution of heat;
 - (2) Covered to retain surface moisture;
 - (3) Heated to a temperature of at least one hundred sixty-five degrees Fahrenheit in all parts of the food; and
 - (4) Allowed to stand covered for two minutes after cooking to obtain temperature equilibrium.
- (c) Fruits and vegetables that are cooked for hot holding shall be cooked to a temperature of one hundred thirty-five degrees Fahrenheit.
- (d) Raw animal foods that are cooked using a non-continuous cooking process shall be:
- (1) Subject to an initial heating process that is no longer than sixty minutes in duration;

- (2) Immediately after initial heating, cooled according to the time and temperature parameters specified for cooked potentially hazardous food (time/temperature control for safety food) in section 11-50-34(d) (1);
- (3) After cooling, held frozen or cold, as specified for potentially hazardous food (time/temperature control for safety food) in section 11-50-34(f) (1) (B);
- (4) Prior to sale or service, cooked using a process that heats all parts of the food to a temperature of at least one hundred sixty-five degrees Fahrenheit for fifteen seconds;
- (5) Cooled according to the time and temperature parameters specified for cooked potentially hazardous food (time/temperature control for safety food) in section 11-50-34(d) (1) if not either hot held as specified in section 11-50-34(f) (1), served immediately, or held using time as a public health control as specified in section 11-50-34(i) after complete cooking; and
- (6) Prepared and stored according to written procedures that:
 - (A) Have obtained prior approval from the department;
 - (B) Are maintained in the food establishment and are available to the department upon request;
 - (C) Describe how the requirements specified in paragraphs (1) to (5) are to be monitored and documented by the permit holder and the corrective actions to be taken if the requirements are not met;
 - (D) Describe how the foods, after initial heating, but prior to complete cooking, are to be marked or otherwise identified as foods that must be cooked as specified in paragraph (4) prior to being offered for sale or service; and
 - (E) Describe how the foods, after initial heating but prior to cooking as specified in paragraph (4), are to be separated from ready-to-eat foods as specified in section 11-50-32(c) (1).
- (e) Parasite destruction.

- (1) Except as specified in paragraph (2), before service or sale in ready-to-eat form, raw, raw-marinated, partially cooked, or marinated-partially cooked fish shall be:
 - (A) Frozen and stored at a temperature of minus four degrees Fahrenheit or below for a minimum of one hundred sixty-eight hours (seven days) in a freezer;
 - (B) Frozen at minus thirty-one degrees Fahrenheit or below until solid and stored at minus thirty-one degrees Fahrenheit or below for a minimum of fifteen hours; or
 - (C) Frozen at minus thirty-one degrees Fahrenheit or below until solid and stored at minus four degrees Fahrenheit or below for a minimum of twenty-four hours;
- (2) Paragraph (1) does not apply to:
 - (A) Molluscan shellfish;
 - (B) Tuna of the species *Thunnus alalunga*, *Thunnus albacares* (Yellowfin tuna), *Thunnus atlanticus*, *Thunnus maccoyii* (Bluefin tuna, Southern), *Thunnus obesus* (Bigeye tuna), or *Thunnus thynnus* (Bluefin tuna, Northern), *Katsuoonus Pelamis* (Skipjack tuna), *Makaira nigricans* (Pacific blue marlin), *Tetrapturus andax* (Striped marlin); or
 - (C) Aquacultured fish, such as salmon, that:
 - (i) If raised in open water, are raised in net-pens; or
 - (ii) Are raised in land-based operations such as ponds or tanks; and
 - (iii) Are fed formulated feed, such as pellets, that contains no live parasites infective to the aquacultured fish;
 - (D) Fish eggs that have been removed from the skein and rinsed; or
 - (E) Non-anadromous open ocean fish commonly eaten raw such as tuna, marlin, and snapper, if the required consumer advisory clearly states that consuming raw or undercooked fish that have not been adequately frozen may increase the risk of infection or injury from parasitic worms.
- (f) Records, creation and retention.

- (1) Except as specified in subsection (e) (2) and paragraph (2), if raw, raw-marinated, partially cooked, or marinated-partially cooked fish are served or sold in ready-to-eat form, the person in charge shall record the freezing temperature and time to which the fish are subjected and shall retain the records of the food establishment for ninety calendar days beyond the time of service or sale of the fish;
 - (2) If the fish are frozen by a supplier, a written agreement or statement from the supplier stipulating that the fish supplied are frozen to a temperature and for a time specified in subsection (e) may substitute for the records specified in paragraph (1).
 - (3) If raw, raw-marinated, partially cooked, or marinated-partially cooked fish are served or sold in ready-to-eat form, and the fish are raised and fed as specified in subsection (e) (2) (C), a written agreement or statement from the supplier or aquaculturist stipulating that the fish were raised and fed as specified in subsection (e) (2) (C) shall be obtained by the person in charge and retained in the records of the food establishment for ninety calendar days beyond the time of service or sale of the fish;
- (g) Cooked and refrigerated food that is prepared for immediate service in response to an individual consumer order, such as a roast beef sandwich au jus, may be served at any temperature.
- (h) Reheating for hot holding.
- (1) Except as specified in paragraphs (2), (3), and (5), potentially hazardous food (time/temperature control for safety food) that is cooked, cooled, and reheated for hot holding shall be reheated so that all parts of the food reach a temperature of at least one hundred sixty-five degrees Fahrenheit for fifteen seconds;
 - (2) Except as specified in paragraph (3), potentially hazardous food (time/temperature control for safety food) reheated in a microwave oven for hot holding shall be reheated so that all parts of the food reach a temperature of at least one hundred sixty-five degrees Fahrenheit and the food is rotated or stirred, covered, and allowed to stand covered for two minutes after reheating;

- (3) Ready-to-eat food taken from a commercially processed, hermetically sealed container, or from an intact package from a food processing plant that is inspected by the food regulatory authority that has jurisdiction over the plant, shall be heated to a temperature of at least one hundred thirty-five degrees Fahrenheit for hot holding;
 - (4) Reheating for hot holding as specified in paragraphs (1) to (3) shall be done rapidly and the time the food is between forty-one degrees Fahrenheit and the temperatures specified in paragraphs (1) to (3) may not exceed two hours;
 - (5) Remaining unsliced portions of meat roasts that are cooked as specified in subsection (a)(2) may be reheated for hot holding using the oven parameters and minimum time and temperature conditions specified in subsection (a)(2).
 - (i) Juice packaged in a food establishment shall be:
 - (1) Treated under a HACCP plan as specified in section 11-50-4(j)(2)(B) and (E) to attain a five-log reduction, which is equal to a 99.999 per cent reduction, of the most resistant microorganism of public health significance; or
 - (2) Labeled, if not treated to yield a five-log reduction of the most resistant microorganism of public health significance:
 - (A) As specified in section 11-50-35(c); and
 - (B) As specified in 21 CFR 101.17(g), juices that have not been specifically processed to prevent, reduce, or eliminate the presence of pathogens with the following, "Warning: This product has not been pasteurized and, therefore, may contain harmful bacteria that can cause serious illness in children, the elderly, and persons with weakened immune systems".
- [Eff] (Auth: HRS §321-11)
(Imp: HRS §321-11)

§11-50-34 Limitation of growth of organisms of public health concern. (a) Stored frozen foods shall be maintained frozen.

- (b) Frozen potentially hazardous food (time/temperature control for safety food) that is slacked to moderate the temperature shall be held:
 - (1) Under refrigeration that maintains the food temperature at forty-one degrees Fahrenheit or less;
 - (2) At any temperature if the food remains frozen.
- (c) Potentially hazardous food (time/temperature control for safety food) shall be thawed:
 - (1) Under refrigeration that maintains the food temperature at forty-one degrees Fahrenheit or less; or
 - (2) Completely submerged under running water:
 - (A) At a water temperature of seventy degrees Fahrenheit or below;
 - (B) With sufficient water velocity to agitate and float off loose particles in an overflow; and
 - (C) For a period of time that does not allow thawed portions of ready-to-eat food to rise above forty-one degrees Fahrenheit; or
 - (D) For a period of time that does not allow thawed portions of a raw animal food requiring cooking as specified in section 11-50-33(a)(1) or (2) to be above forty-one degrees Fahrenheit, for more than four hours including:
 - (i) The time the food is exposed to the running water and the time needed for preparation for cooking; or
 - (ii) The time it takes under refrigeration to lower the food temperature to forty-one degrees Fahrenheit;
 - (3) As part of a cooking process if the food that is frozen is:
 - (A) Cooked as specified in section 11-50-33(a)(1), (2) or (b); or
 - (B) Thawed in a microwave oven and immediately transferred to conventional cooking equipment, with no interruption in the process;
 - (4) Using any procedure if a portion of frozen ready-to-eat food is thawed and prepared for immediate service in response to an individual consumer's order; or

- (5) Using any procedure that ensures the surface temperature does not exceed forty-one degrees Fahrenheit during thawing.
- (d) Cooling.
 - (1) Cooked potentially hazardous food (time/temperature control for safety food) shall be cooled:
 - (A) Within two hours from one hundred thirty-five degrees Fahrenheit to seventy degrees Fahrenheit; and
 - (B) Within a total of six hours from one hundred thirty-five degrees Fahrenheit to forty-one degrees Fahrenheit or less;
 - (2) Potentially hazardous food (time/temperature control for safety food) shall be cooled within four hours to forty-one degrees Fahrenheit or less if prepared from ingredients at ambient temperature, such as reconstituted foods and canned tuna;
 - (3) Except as specified in paragraph (4), a potentially hazardous food (time/temperature control for safety food) received in compliance with laws allowing a temperature above forty-one degrees Fahrenheit during shipment from the supplier as specified in section 11-50-31(h)(2), shall be cooled within four hours to forty-one degrees Fahrenheit or less.
 - (4) Raw eggs shall be received as specified in section 11-50-31(h)(3) and immediately placed in refrigerated equipment that maintains an ambient air temperature of forty-five degrees Fahrenheit or less;
- (e) Cooling methods.
 - (1) Cooling shall be accomplished in accordance with the time and temperature criteria specified in subsection (d) by using one or more of the following methods based on the type of food being cooled:
 - (A) Placing the food in shallow pans;
 - (B) Separating the food into smaller or thinner portions;
 - (C) Using rapid cooling equipment;
 - (D) Stirring the food in a container placed in an ice water bath;

- (E) Using containers (such as metal and stainless steel) that facilitate heat transfer;
 - (F) Adding ice as an ingredient; or
 - (G) Other effective methods;
- (2) When placed in cooling or cold holding equipment, food containers in which food is being cooled shall be:
- (A) Arranged in the equipment to provide maximum heat transfer through the container walls; and
 - (B) Loosely covered, or uncovered if protected from overhead contamination as specified in section 11-50-32(q)(1)(B), during the cooling period to facilitate heat transfer from the surface of the food.
- (f) Potentially hazardous food (time/temperature control for safety food), hot and cold holding.
- (1) Except during preparation, cooking, or cooling, or when time is used as the public health control as specified in subsection (i), and except as specified in paragraphs (2) and (3), potentially hazardous food (time/temperature control for safety food) shall be maintained:
- (A) At one hundred thirty-five degrees Fahrenheit or above, except that roasts cooked to a temperature and for a time specified in section 11-50-33(a)(2) or reheated as specified in section 11-50-33(h)(5) may be held at a temperature of one hundred thirty degrees Fahrenheit or above; or
 - (B) At forty-one degrees Fahrenheit or less;
- (2) Eggs that have not been treated to destroy all viable Salmonellae shall be stored in refrigerated equipment that maintains an ambient air temperature of forty-five degrees Fahrenheit or less;
- (3) Potentially hazardous food (time/temperature control for safety food) in a homogenous liquid form may be maintained outside of the temperature control requirements, as specified in paragraph (1), while contained within specially designed equipment that complies with the design and construction requirements as specified in section 11-50-46(p)(5).

- (g) Ready-to-eat, potentially hazardous food (time/temperature control for safety food), date marking.
- (1) Except when packaging food using a reduced oxygen packaging method as specified in subsection (1), and except as specified in paragraphs (4) and (5), refrigerated, ready-to-eat, potentially hazardous food (time/temperature control for safety food) prepared and held in a food establishment for more than twenty-four hours shall be clearly marked to indicate the date or day by which the food shall be consumed on the premises, sold, or discarded when held at a temperature of forty-one degrees Fahrenheit or less for a maximum of seven days;
 - (2) Except as specified in paragraphs (4) to (6), refrigerated, ready-to-eat, potentially hazardous food (time/temperature control for safety food) prepared and packaged by a food processing plant shall be clearly marked, at the time the original container is opened in a food establishment and if the food is held for more than twenty-four hours, to indicate the date or day by which the food shall be consumed on the premises, sold, or discarded, based on the temperature and time combinations specified in paragraph (1) and:
 - (A) The day the original container is opened in the food establishment shall be counted as day one; and
 - (B) The day or date marked by the food establishment may not exceed a manufacturer's use-by date if the manufacturer determined the use-by date based on food safety;
 - (3) A refrigerated, ready-to-eat, potentially hazardous food (time/temperature control for safety food) ingredient or a portion of a refrigerated, ready-to-eat, potentially hazardous food (time/temperature control for safety food) that is subsequently combined with additional ingredients or portions of food shall retain the date marking of the earliest-prepared or first prepared ingredient;
 - (4) A date marking system that meets the criteria stated in paragraphs (1) and (2) may include:
 - (A) Using a method approved by the department for refrigerated, ready-to-eat potentially

- hazardous food (time/temperature control for safety food) that is frequently rewrapped, such as lunchmeat or a roast, or for which date marking is impractical, such as soft serve mix or milk in a dispensing machine;
- (B) Marking the date or day of preparation, with a procedure to discard the food on or before the last date or day by which the food must be consumed on the premises, sold, or discarded as specified in paragraph (1);
 - (C) Marking the date or day the original container is opened in a food establishment, with a procedure to discard the food on or before the last date or day by which the food must be consumed on the premises, sold, or discarded as specified in paragraph (2); or
 - (D) Using calendar dates, days of the week, color-coded marks, or other effective marking methods, provided that the marking system is disclosed to the director upon request;
- (5) Paragraphs (1) and (2) do not apply to individual meal portions served or repackaged for sale from a bulk container upon a consumer's request;
- (6) Paragraph (2) does not apply to the following foods prepared and packaged by a food processing plant inspected by a regulatory authority:
- (A) Deli salads, such as ham salad, seafood salad, chicken salad, egg salad, pasta salad, potato salad, and macaroni salad, manufactured in accordance with 21 CFR 110, entitled "Current good manufacturing practice in manufacturing, packing, or holding human food";
 - (B) Hard cheeses containing not more than 39 per cent moisture as defined in 21 CFR 133, entitled "Cheeses and related cheese products", such as cheddar, gruyere, parmesan and reggiano, and romano;
 - (C) Semi-soft cheeses containing more than thirty-nine per cent moisture, but not more than fifty per cent moisture, as defined in 21 CFR 133, entitled "Cheeses and related

- cheese products", such as blue, edam, gorgonzola, gouda, and Monterey jack;
 - (D) Cultured dairy products as defined in 21 CFR 131, entitled "Milk and cream", such as yogurt, sour cream, and buttermilk;
 - (E) Preserved fish products, such as pickled herring and dried or salted cod, and other acidified fish products defined in 21 CFR 114, entitled "Acidified foods";
 - (F) Shelf stable, dry fermented sausages, such as pepperoni and Genoa salami that are not labeled "Keep Refrigerated" as specified in 9 CFR 317 entitled "Labeling, marking devices, and containers", and which retain the original casing on the product; and
 - (G) Shelf stable salt-cured products such as prosciutto and Parma (ham) that are not labeled "Keep Refrigerated" as specified in 9 CFR 317 entitled "Labeling, marking devices, and containers".
- (h) Ready-to-eat, potentially hazardous food (time/temperature control for safety food), disposition.
- (1) A food specified in subsection (g)(1) or (2) shall be discarded if it:
 - (A) Exceeds the temperature and time combination specified in subsection (g)(1), except time that the product is frozen;
 - (B) Is in a container or package that does not bear a date or day; or
 - (C) Is appropriately marked with a date or day that exceeds a temperature and time combination as specified in subsection (g)(1);
 - (2) Refrigerated, ready-to-eat, potentially hazardous food (time/temperature control for safety food) prepared in a food establishment and dispensed through a vending machine with an automatic shutoff control shall be discarded if it exceeds a temperature and time combination as specified in subsection (g)(1);
- (i) Time as a public health control.
- (1) Except as specified in paragraph (4), if time without temperature control is used as the public health control for a working supply of potentially hazardous food (time/temperature control for safety food) before cooking, or for

- ready-to-eat potentially hazardous food (time/temperature control for safety food) that is displayed or held for sale or service:
- (A) Written procedures shall be prepared in advance, maintained in the food establishment and made available to the department upon request that specify:
 - (i) Methods of compliance with paragraph (2)(A) to (C) or (3)(A) to (E); and
 - (ii) Methods of compliance with subsection (d) for food that is prepared, cooked, and refrigerated before time is used as a public health control;
- (2) If time temperature control is used as the public health control up to a maximum of four hours:
- (A) The food shall have an initial temperature of forty-one degrees Fahrenheit or less when removed from cold holding temperature control or one hundred thirty-one degrees Fahrenheit or greater when removed from hot holding temperature control;
 - (B) The food shall be marked or otherwise identified to indicate the time that is four hours past the point in time when the food is removed from temperature control;
 - (C) The food shall be cooked and served, served at any temperature if ready-to-eat, or discarded, within four hours from the point in time when the food is removed from temperature control; and
 - (D) The food in unmarked containers or packages, or marked to exceed a four-hour limit shall be discarded;
- (3) If time without temperature control is used as the public health control up to a maximum of six hours:
- (A) The food shall have an initial temperature of forty-one degrees Fahrenheit or less when removed from temperature control and the food temperature may not exceed seventy degrees Fahrenheit within a maximum time period of six hours;
 - (B) The food shall be monitored to ensure the warmest portion of the food does not exceed seventy degrees Fahrenheit during the six-hour period, unless an ambient air

- temperature is maintained that ensures the food does not exceed seventy degrees Fahrenheit during the six-hour holding period;
- (C) The food shall be marked or otherwise identified to indicate:
 - (i) The time when the food is removed from forty-one degrees Fahrenheit or less cold holding temperature control; and
 - (ii) The time that is six hours past the point in time when the food is removed from cold holding temperature control;
 - (D) The food shall be:
 - (i) Discarded if the temperature of the food exceeds seventy degrees Fahrenheit; or
 - (ii) Cooked and served, served at any temperature if ready-to-eat, or discarded within a maximum of six hours from the point in time when the food is removed from forty-one degrees Fahrenheit or less cold holding temperature control; and
 - (E) The food in unmarked containers or packages, or marked with a time that exceeds the six-hour limit shall be discarded;
- (4) A food establishment that serves a highly susceptible population may not use time as specified in paragraphs (1), (2) or (3) as the public health control for raw eggs.
- (j) A food establishment shall obtain a variance from the department as specified in section 11-50-13(a) and (b) before:
- (1) Smoking food as a method of food preservation rather than as a method of flavor enhancement;
 - (2) Curing food;
 - (3) Using food additives or adding components such as vinegar:
 - (A) As a method of food preservation rather than as a method of flavor enhancement; or
 - (B) To render a food so that it is not potentially hazardous (time/temperature control for safety food);
 - (4) Packaging food using a reduced oxygen packaging method except where the growth of and toxin

- formation by *Clostridium botulinum* and the growth of *Listeria monocytogenes* are controlled as specified in subsection (l);
- (5) Operating a molluscan shellfish life-support system display tank used to store or display shellfish that are offered for human consumption;
 - (6) Custom processing animals that are for personal use as food and not for sale or service in a food establishment;
 - (7) Preparing food by another method that is determined by the department to require a variance; or
 - (8) Sprouting seeds or beans.
- (k) A food processing plant may be exempt from this variance requirement.
- (l) Reduced oxygen packaging without a variance, criteria.
- (1) Except for a food establishment that obtains a variance as specified in subsection (j), a food establishment that packages potentially hazardous food (time/temperature control for safety food) using a reduced oxygen packaging method shall control the growth and toxin formation of *Clostridium botulinum* and the growth of *Listeria monocytogenes*;
 - (2) A food establishment that packages potentially hazardous food (time/temperature control for safety food) using a reduced oxygen packaging method shall have a HACCP plan that contains the information specified in section 11-50-4(j)(2)(D) and that:
 - (A) Identifies the food to be packaged;
 - (B) Except as specified in paragraphs (3) to (5), requires that the packaged food shall be maintained at forty-one degrees Fahrenheit or less and meet at least one of the following criteria:
 - (i) Has an A_w of 0.91 or less;
 - (ii) Has a pH of 4.6 or less;
 - (iii) Is a meat or poultry product cured at a food processing plant regulated by the USDA using substances specified in 9 CFR 424.21, entitled "Use of food ingredients and sources of radiation," and is received in an intact package; or

- (iv) Is a food with a high level of competing organisms such as raw meat, raw poultry, or raw vegetables;
- (C) Describes how the package shall be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to:
 - (i) Maintain the food at forty-one degrees Fahrenheit or below; and
 - (ii) Discard the food if within fourteen calendar days of its packaging it is not served for on-premises consumption, or consumed if served or sold for off-premises consumption;
- (D) Limits the refrigerated shelf life to no more than fourteen calendar days from packaging to consumption, except the time the product is maintained frozen, or the original manufacturer's "sell by" or "use by" date, whichever occurs first;
- (E) Includes operational procedures that:
 - (i) Prohibit contacting ready-to-eat food with bare hands as specified in section 11-50-32(a)(2);
 - (ii) Identify a designated work area and the method by which physical barriers or methods of separation of raw foods and ready-to-eat foods minimize cross contamination. Access to the processing equipment is limited to trained personnel familiar with the potential hazards of the operation; and
 - (iii) Delineate cleaning and sanitization procedures for food-contact surfaces; and
- (F) Describes the training program that ensures that the individual responsible for the reduced oxygen packaging operation understands the:
 - (i) Concepts required for a safe operation;
 - (ii) Equipment and facilities; and
 - (iii) Procedures specified in subparagraph (E) and section 11-50-4(j)(2)(D);

- (3) Except for fish that is frozen before, during, and after packaging, a food establishment may not package fish using a reduced oxygen packaging method;
- (4) Except as specified in paragraph (3), a food establishment that packages food using a cook-chill or sous vide process shall:
 - (A) Implement a HACCP plan that contains the information as specified in section 11-50-4(j)(2)(D);
 - (B) Ensure the food is:
 - (i) Prepared and consumed on the premises, or prepared and consumed off the premises but within the same business entity with no distribution or sale of the packaged product to another business entity or the consumer;
 - (ii) Cooked to heat all parts of the food to a temperature and for a time as specified in section 11-50-33(a);
 - (iii) Protected from contamination before and after cooking as specified in sections 11-50-32 and 11-50-33;
 - (iv) Placed in a package with an oxygen barrier and sealed before cooking, or placed in a package and sealed immediately after cooking and before reaching a temperature below one hundred thirty-five degrees Fahrenheit;
 - (v) Cooled to forty-one degrees Fahrenheit in the sealed package or bag as specified in subsection (d) and subsequently cooled to thirty-four degrees Fahrenheit within forty-eight hours of reaching forty-one degrees Fahrenheit and held at that temperature until consumed or discarded within thirty days after the date of packaging;
 - (vi) Cooled to forty-one degrees Fahrenheit in the sealed package or bag as specified in subsection (d) and subsequently cooled to thirty-four degrees Fahrenheit within forty-eight hours of reaching forty-one degrees

- Fahrenheit, removed from refrigeration equipment that maintains a thirty-four degrees Fahrenheit food temperature and then held at forty-one degrees Fahrenheit or less for no more than seventy-two hours, at which time the food must be consumed or discarded;
- (vii) Cooled to forty-one degrees Fahrenheit in the sealed package or bag as specified in subsection (d) and subsequently cooled to thirty-eight degrees Fahrenheit or less within twenty-four hours of reaching forty-one degrees Fahrenheit and held there for no more than seventy-two hours from packaging, at which time the food must be consumed or discarded; or
 - (viii) Cooled to forty-one degrees Fahrenheit in the sealed package or bag as specified in subsection (d) and subsequently held frozen with no shelf life restriction while frozen until consumed or used;
 - (ix) Held in a refrigeration unit that is equipped with an electronic system that continuously monitors time and temperature and is visually examined for proper operation twice daily;
 - (x) If transported off-site to a satellite location of the same business entity, equipped with verifiable electronic monitoring devices to ensure that times and temperatures are monitored during transportation; and
 - (xi) Labeled with the product name and the date packaged; and
- (C) Maintain the records required to confirm that cooling and cold holding refrigeration time/temperature parameters are required as part of the HACCP plan and:
- (i) Make such records available to the director upon request; and
 - (ii) Hold such records for at least six months; and
- (D) Implement written operational procedures as specified in paragraph (2)(E) and a

- training program as specified in paragraph (2) (F);
- (5) A food establishment that packages cheese using a reduced oxygen packaging method shall:
- (A) Limit the cheeses packaged to those that are commercially manufactured in a food processing plant with no ingredients added in the food establishment and that meet the Standards of Identity as specified in 21 CFR 133.150, entitled "Hard cheeses", 21 CFR 133.169, entitled "Pasteurized process cheese" or 21 CFR 133.187, entitled "Semisoft cheeses";
 - (B) Have a HACCP plan that contains the information specified in section 11-50-4(j) (2) (D) and as specified in paragraphs (1) (2) (A), (C) (i), (E), and (F);
 - (C) Label the package on the principal display panel with a "use by" date that does not exceed thirty calendar days from its packaging or the original manufacturer's "sell by" or "use by" date, whichever occurs first; and
 - (D) Discards the reduced oxygen packaged cheese if it is not sold for off-premises consumption or consumed within thirty calendar days of its packaging. [Eff
] (Auth: HRS §321-11)
(Imp: HRS §321-11)

§11-50-35 Food identity, presentation, and on-premises labeling. (a) Packaged food shall comply with standard of identity requirements in 21 CFR 131-169 and 9 CFR 319 entitled "Definitions and standards of identity or composition", and the general requirements in 21 CFR 130, entitled "Food standards: General" and 9 CFR 319 Subpart A entitled "General".

- (b) Honestly presented.
- (1) Food shall be offered for human consumption in a way that does not mislead or misinform the consumer;
- (2) Food or color additives, colored overwraps, or lights may not be used to misrepresent the true appearance, color, or quality of a food.
- (c) Food labels.

- (1) Food packaged in a food establishment, shall be labeled as specified in law, including 21 CFR 101, entitled "Food labeling", and 9 CFR 317 entitled "Labeling, marking devices, and containers".
- (2) The director may waive the packaged food labeling requirement for, but not limited to:
 - (A) Foods manufactured in food establishments such as restaurants, bakeries, and markets, and sold only in those food establishments;
 - (B) Foods of no nutritional significance such as coffee;
 - (C) Bulk food for further processing; and
 - (D) Raw fruits, vegetables, and fish;
- (3) Label information shall include:
 - (A) The common name of the food, or absent a common name, an adequately descriptive identity statement;
 - (B) If made from two or more ingredients, a list of ingredients in descending order of predominance by weight, including a declaration of artificial color or flavor and chemical preservatives, if contained in the food;
 - (C) An accurate declaration of the quantity of contents;
 - (D) The name and place of business of the manufacturer, packer, or distributor; and
 - (E) The name of the food source for each major food allergen contained in the food unless the food source is already part of the common or usual name of the respective ingredient;
 - (F) Except as exempted in the Federal Food, Drug, and Cosmetic Act section 403(Q)(3) to (5), nutrition labeling as specified in 21 CFR 101, entitled "Food labeling" and 9 CFR 317 Subpart B entitled "Nutrition labeling";
 - (G) For any salmonid fish containing canthaxanthin as a color additive, the labeling of the bulk fish container, including a list of ingredients, displayed on the retail container or by other written means, such as a counter card, that discloses the use of canthaxanthin;

- (4) Bulk food that is available for consumer self-dispensing shall be prominently labeled with the following information in plain view of the consumer:
 - (A) The manufacturer's or processor's label that was provided with the food; or
 - (B) A card, sign, or other method of notification that includes the information specified in paragraph (2) (A) and (B);
- (5) Bulk, unpackaged foods such as bakery products and unpackaged foods that are portioned to consumer specification need not be labeled if:
 - (A) A health, nutrient content or other claim is not made;
 - (B) There are no state or local laws requiring labeling; and
 - (C) The food is manufactured or prepared on the premises of the food establishment or at another food establishment or a food processing plant that is owned by the same person and is regulated by the food regulatory agency that has jurisdiction.
- (d) Other forms of information.
 - (1) If required by law, consumer warnings shall be provided;
 - (2) Food establishment or manufacturers' dating information on foods may not be concealed or altered.
- (e) Consumption of animal foods that are raw, undercooked, or not otherwise processed to eliminate pathogens.
 - (1) Except as specified in sections 11-50-33(a) (3) and (4) (D) and 11-50-37(a) (3), if an animal food such as beef, eggs, fish, lamb, pork, poultry, or shellfish is served or sold raw, undercooked, or without otherwise being processed to eliminate pathogens, either in ready-to-eat form or as an ingredient in another ready-to-eat food, the permit holder shall inform consumers of the significantly increased risk of consuming such foods by way of a disclosure and reminder, as specified in paragraphs (2) and (3) using brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means;
 - (2) Disclosure shall include:

- (A) A description of the animal-derived foods, such as "oysters on the half shell (raw oysters)", "raw-egg Caesar salad", and "hamburgers (can be cooked to order)"; or
 - (B) Identification of the animal-derived foods by asterisking them to a footnote that states that the items are served raw or undercooked, or contain (or may contain) raw or undercooked ingredients;
- (3) Reminder shall include asterisking the animal-derived foods requiring disclosure to a footnote that states:
- (A) Regarding the safety of these items, written information is available upon request;
 - (B) Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness; or
 - (C) Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase the risk of foodborne illness especially in consumers with certain medical conditions. [Eff
] (Auth: HRS §321-11)
(Imp: HRS §321-11)

§11-50-36 Contaminated food. Discarding or reconditioning unsafe, adulterated, or contaminated food.

- (1) A food that is unsafe, adulterated, or not honestly presented as specified in section 11-50-30 shall be discarded or reconditioned according to an approved procedure;
- (2) Food that is not from an approved source as specified in section 11-50-31(a) to (g) shall be discarded;
- (3) Ready-to-eat food that may have been contaminated by an employee who has been restricted or excluded as specified in section 11-50-21(b) shall be discarded;
- (4) Food that is contaminated by food employees, consumers, or other persons through contact with their hands, bodily discharges, such as nasal or oral discharges, or other means shall be discarded. [Eff
] (Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-37 Special requirements for highly susceptible populations. (a) Foods served to a highly susceptible population:

- (1) The following criteria apply to juice:
 - (A) For the purposes of this paragraph only, children who are age nine or less and receive food in a school, day care setting, or similar facility that provides custodial care are included as highly susceptible populations;
 - (B) Prepackaged juice or a prepackaged beverage containing juice, that bears a warning label as specified in 21 CFR 101.17(g), juices that have not been specifically processed to prevent, reduce, or eliminate the presence of pathogens, or a packaged juice or beverage containing juice, that bears a warning label as specified in section 11-50-33(i)(2) may not be served or offered for sale; and
 - (C) Unpackaged juice that is prepared on the premises for service or sale in a ready-to-eat form shall be processed under a HACCP plan that contains the information specified in section 11-50-4(j)(2)(D) to (E) and as specified in 21 CFR Part 120, entitled "Hazard Analysis and Critical Control Point (HACCP) Systems", Subpart B entitled "Pathogen reduction", 120.24 entitled "Process controls";
- (2) Pasteurized eggs or egg products shall be substituted for raw eggs in the preparation of:
 - (A) Foods such as Caesar salad, hollandaise or Béarnaise sauce, mayonnaise, meringue, eggnog, ice cream, and egg-fortified beverages; and
 - (B) Except as specified in paragraph (6), recipes in which more than one egg is broken and the eggs are combined;
- (3) The following foods may not be served or offered for sale in a ready-to-eat form:
 - (A) Raw animal foods such as raw fish, raw marinated fish, raw molluscan shellfish, and steak tartare;

- (B) A partially cooked animal food such as lightly cooked fish, rare meat, soft-cooked eggs that are made from raw eggs, and meringue; and
- (C) Raw seed sprouts;
- (4) Food employees may not contact ready-to-eat food as specified in section 11-50-32(a)(2) and (4);
- (5) Time only, as the public health control as specified in section 11-50-34(i)(4), may not be used for raw eggs;
- (6) Paragraph (2)(B) does not apply if:
 - (A) The raw eggs are combined immediately before cooking for one consumer's serving at a single meal, cooked as specified in section 11-50-33(a)(1)(A), and served immediately, such as an omelet, soufflé, or scrambled eggs;
 - (B) The raw eggs are combined as an ingredient immediately before baking and the eggs are thoroughly cooked to a ready-to-eat form, such as a cake, muffin, or bread; or
 - (C) The preparation of the food is conducted under a HACCP plan that:
 - (i) Identifies the food to be prepared;
 - (ii) Prohibits contacting ready-to-eat food with bare hands;
 - (iii) Includes specifications and practices that ensure Salmonella Enteritidis growth is controlled before and after cooking, and is destroyed by cooking the eggs according to the temperature and time specified in section 11-50-33(a)(1)(B);
 - (iv) Contains the information specified in section 11-50-4(j)(2)(D) including procedures that control cross contamination of ready-to-eat food with raw eggs, and delineate cleaning and sanitization procedures for food-contact surfaces; and
 - (v) Describes the training program that ensures that the food employee responsible for the preparation of the food understands the procedures to be used;

- (7) Except as specified in paragraph (8), food may be re-served as specified in section 11-50-32(y)(2)(A) and (B);
- (8) Food may not be re-served under the following conditions:
 - (A) Any food served to patients or clients who are under contact precautions in medical isolation or quarantine, or protective environment isolation may not be re-served to others outside;
 - (B) Packages of food from any patients, clients, or other consumers should not be re-served to persons in protective environment isolation. [Eff] (Auth: HRS §321-11)
(Imp: HRS §321-11)

§§11-50-38 to 11-50-44 (Reserved).

SUBCHAPTER 4

EQUIPMENT, UTENSILS, AND LINENS

§11-50-45 Materials for construction and repair. (a) Materials that are used in the construction of utensils and food-contact surfaces of equipment may not allow the migration of deleterious substances or impart colors, odors, or tastes to food and under normal use conditions shall be:

- (1) Safe;
- (2) Durable, corrosion-resistant, and nonabsorbent;
- (3) Sufficient in weight and thickness to withstand repeated warewashing;
- (4) Finished to have a smooth, easily cleanable surface; and
- (5) Resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition.
- (b) Cast iron, use limitation.
 - (1) Except as specified in paragraphs (2) and (3), cast iron may not be used for utensils or food-contact surfaces of equipment;
 - (2) Cast iron may be used as a surface for cooking;

- (3) Cast iron may be used in utensils for serving food if the utensils are used only as part of an uninterrupted process from cooking through service.
- (c) Lead, use limitation.
- (1) Ceramic, china, and crystal utensils, and decorative utensils such as hand painted ceramic or china that are used in contact with food shall be lead-free or contain levels of lead not exceeding the limits of the utensil categories in Table 45-1:

Table 45-1

Utensil Category	Ceramic Article Description	Maximum Lead mg/L
Beverage mugs, cups, pitchers	Coffee mugs	0.5
Large hollowware (excluding pitchers)	Bowls > 1.16 quart	1
Small hollowware (excluding cups and mugs)	Bowls < 1.16 quart	2.0
Flat tableware	Plates, saucers	3.0

- (2) Pewter alloys containing lead in excess of 0.05 per cent may not be used as a food-contact surface;
- (3) Solder and flux containing lead in excess of 0.2 per cent may not be used as a food-contact surface.
- (d) Copper, use limitation.
- (1) Except as specified in paragraph (2), copper and copper alloys such as brass may not be used in contact with a food that has a pH below six such as vinegar, fruit juice, or wine or for a fitting or tubing installed between a backflow prevention device and a carbonator;
- (2) Copper and copper alloys may be used in contact with beer brewing ingredients that have a pH below six in the prefermentation and fermentation steps of a beer brewing operation such as a brewpub or microbrewery.
- (e) Galvanized metal may not be used for utensils or food-contact surfaces of equipment that are used in contact with acidic food.

- (f) Sponges may not be used in contact with cleaned and sanitized or in-use food-contact surfaces.
- (g) Wood, use limitation.
 - (1) Except as specified in paragraphs (2), (3), and (4), wood and wood wicker may not be used as a food-contact surface;
 - (2) Hard maple or an equivalently hard, close-grained wood may be used for:
 - (A) Cutting boards, cutting blocks, bakers' tables, and utensils such as rolling pins, doughnut dowels, salad bowls, and chopsticks; and
 - (B) Wooden paddles used in confectionery operations for pressure scraping kettles when manually preparing confections at a temperature of two hundred thirty degrees Fahrenheit or above;
 - (3) Whole, uncut, raw fruits and vegetables, and nuts in the shell may be kept in the wood shipping containers in which they were received, until the fruits, vegetables, or nuts are used;
 - (4) If the nature of the food requires removal of rinds, peels, husks, or shells before consumption, the whole, uncut, raw food may be kept in:
 - (A) Untreated wood containers; or
 - (B) Treated wood containers if the containers are treated with a preservative that meets the requirements specified in 21 CFR 178.3800, entitled "Preservatives for wood".
- (h) Multiuse kitchenware such as frying pans, griddles, sauce pans, cookie sheets, and waffle bakers that have a perfluorocarbon resin coating shall be used with nonscoring or nonscratching utensils and cleaning aids.
- (i) Nonfood-contact surfaces of equipment that are exposed to splash, spillage, or other food soiling or that require frequent cleaning shall be constructed of a corrosion-resistant, nonabsorbent, and smooth material.
- (j) Materials that are used to make single-service and single-use articles:
 - (1) May not:
 - (A) Allow the migration of deleterious substances; or
 - (B) Impart colors, odors, or tastes to food; and

- (2) Shall be:
 - (A) Safe; and
 - (B) Clean. [Eff] (Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-46 Design and construction. (a) Equipment and utensils shall be designed and constructed to be durable and to retain their characteristic qualities under normal use conditions.

(b) Food temperature measuring devices may not have sensors or stems constructed of glass, except that thermometers with glass sensors or stems that are encased in a shatterproof coating such as candy thermometers may be used.

- (c) Food-contact surfaces.
 - (1) Multiuse food-contact surfaces shall be:
 - (A) Smooth;
 - (B) Free of breaks, open seams, cracks, chips, inclusions, pits, and similar imperfections;
 - (C) Free of sharp internal angles, corners, and crevices;
 - (D) Finished to have smooth welds and joints; and
 - (E) Except as specified in paragraph (2), accessible for cleaning and inspection by one of the following methods:
 - (i) Without being disassembled;
 - (ii) By disassembling without the use of tools; or
 - (iii) By easy disassembling with the use of handheld tools commonly available to maintenance and cleaning personnel such as screwdrivers, pliers, open-end wrenches, and Allen wrenches;
 - (2) Paragraph (1)(E) does not apply to cooking oil storage tanks, distribution lines for cooking oils, or beverage syrup lines or tubes.
- (d) CIP equipment.
 - (1) CIP equipment shall meet the characteristics specified in subsection (c) and shall be designed and constructed so that:
 - (A) Cleaning and sanitizing solutions circulate throughout a fixed system and contact all interior food-contact surfaces; and

- (B) The system is self-draining or capable of being completely drained of cleaning and sanitizing solutions; and
- (2) CIP equipment that is not designed to be disassembled for cleaning shall be designed with inspection access points to ensure that all interior food-contact surfaces throughout the fixed system are being effectively cleaned.
- (e) Except for hot oil cooking or filtering equipment, "V" type threads may not be used on food-contact surfaces.
- (f) Hot oil filtering equipment shall meet the characteristics specified in subsection (c) or (d) and shall be readily accessible for filter replacement and cleaning of the filter.
- (g) Cutting or piercing parts of can openers shall be readily removable for cleaning and for replacement.
- (h) Nonfood-contact surfaces shall be free of unnecessary ledges, projections, and crevices, and designed and constructed to allow easy cleaning and to facilitate maintenance.
- (i) Kick plates shall be designed so that the areas behind them are accessible for inspection and cleaning by being:
 - (1) Removable by one of the methods specified in subsection (c) (1) (E) or capable of being rotated open; and
 - (2) Removable or capable of being rotated open without unlocking equipment doors.
- (j) Filters or other grease extracting equipment shall be designed to be readily removable for cleaning and replacement if not designed to be cleaned in place.
- (k) Accuracy of temperature measuring devices, food.
 - (1) Food temperature measuring devices that are scaled only in Celsius or dually scaled in Celsius and Fahrenheit shall be accurate to plus or minus one degree Celsius in the intended range of use;
 - (2) Food temperature measuring devices that are scaled only in Fahrenheit shall be accurate to plus or minus two degrees Fahrenheit in the intended range of use.
- (1) Temperature measuring devices, ambient air and water.
 - (1) Ambient air and water temperature measuring devices that are scaled in Celsius or dually

scaled in Celsius and Fahrenheit shall be designed to be easily readable and accurate to plus or minus one and one-half degrees Celsius in the intended range of use.

- (2) Ambient air and water temperature measuring devices that are scaled only in Fahrenheit shall be accurate to plus or minus three degrees Fahrenheit in the intended range of use.

(m) Pressure measuring devices that display the pressures in the water supply line for the fresh hot water sanitizing rinse shall have increments of one pound per square inch or smaller and shall be accurate to plus or minus two pounds per square inch) in the range indicated on the manufacturer's data plate.

(n) Exhaust ventilation hood systems in food preparation and warewashing areas including components such as hoods, fans, guards, and ducting shall be designed to prevent grease or condensation from draining or dripping onto food, equipment, utensils, linens, and single-service and single-use articles.

(o) Equipment openings, closures and deflectors.

- (1) A cover or lid for equipment shall overlap the opening and be sloped to drain;
- (2) An opening located within the top of a unit of equipment that is designed for use with a cover or lid shall be flanged upward at least two-tenths of an inch;
- (3) Except as specified in paragraph (4), fixed piping, temperature measuring devices, rotary shafts, and other parts extending into equipment shall be provided with a watertight joint at the point where the item enters the equipment.
- (4) If a watertight joint is not provided:
 - (A) The piping, temperature measuring devices, rotary shafts, and other parts extending through the openings shall be equipped with an apron designed to deflect condensation, drips, and dust from openings into the food; and
 - (B) The opening shall be flanged as specified in paragraph (2).

(p) In equipment that dispenses or vends liquid food or ice in unpackaged form:

- (1) The delivery tube, chute, orifice, and splash surfaces directly above the container receiving the food shall be designed in a manner, such as

- with barriers, baffles, or drip aprons, so that drips from condensation and splash are diverted from the opening of the container receiving the food;
- (2) The delivery tube, chute, and orifice shall be protected from manual contact such as by being recessed;
 - (3) The delivery tube or chute and orifice of equipment used to vend liquid food or ice in unpackaged form to self-service consumers shall be designed so that the delivery tube or chute and orifice are protected from dust, insects, rodents, and other contamination by a self-closing door if the equipment is:
 - (A) Located in an outside area that does not otherwise afford the protection of an enclosure against the rain, windblown debris, insects, rodents, and other contaminants that are present in the environment; or
 - (B) Available for self-service during hours when it is not under the full-time supervision of a food employee; and
 - (4) The dispensing equipment actuating lever or mechanism and filling device of beverage dispensing equipment shall be designed to prevent contact with the lip-contact surface of glasses or cups that are refilled;
 - (5) Dispensing equipment in which potentially hazardous food (time/temperature control for safety food) in a homogenous liquid form is maintained outside of the temperature control requirements as specified in section 11-50-34(f)(1) shall:
 - (A) Be specifically designed and equipped to maintain the commercial sterility of aseptically packaged food in a homogenous liquid form for a specified duration from the time of opening the packaging within the equipment; and
 - (B) Conform to the requirements for this equipment as specified in NSF/ANSI 18-2006-Manual Food and Beverage Dispensing Equipment.
- (q) The dispensing compartment of a vending machine including a machine that is designed to vend prepackaged

snack food that is not potentially hazardous (time/temperature control for safety food) such as chips, party mixes, and pretzels shall be equipped with a self-closing door or cover if the machine is:

- (1) Located in an outside area that does not otherwise afford the protection of an enclosure against the rain, windblown debris, insects, rodents, and other contaminants that are present in the environment; or
 - (2) Available for self-service during hours when it is not under the full-time supervision of a food employee.
- (r) Equipment containing bearings and gears that require lubricants shall be designed and constructed so that the lubricant cannot leak, drip, or be forced into food or onto food-contact surfaces.
- (s) Except for cold plates that are constructed integrally with an ice storage bin, beverage tubing and cold-plate beverage cooling devices may not be installed in contact with stored ice.
- (t) Liquid waste drain lines may not pass through an ice machine or ice storage bin.
- (u) If a condenser unit is an integral component of equipment, the condenser unit shall be separated from the food and food storage space by a dustproof barrier.
- (v) Cutting or piercing parts of can openers on vending machines shall be protected from manual contact, dust, insects, rodents, and other contamination.
- (w) Molluscan shellfish tanks.
- (1) Except as specified in paragraph (2), molluscan shellfish life support system display tanks may not be used to store or display shellfish that are offered for human consumption and shall be conspicuously marked so that it is obvious to the consumer that the shellfish are for display only;
 - (2) Molluscan shellfish life-support system display tanks that are used to store or display shellfish that are offered for human consumption shall be operated and maintained in accordance with a variance granted by the department as specified in section 11-50-13(a) and a HACCP plan that:
 - (A) Is submitted by the permit holder and approved as specified in section 11-50-13(b); and
 - (B) Ensures that:

- (i) Water used with fish other than molluscan shellfish does not flow into the molluscan tank;
 - (ii) The safety and quality of the shellfish as they were received are not compromised by the use of the tank; and
 - (iii) The identity of the source of the shellstock is retained as specified in section 11-50-31(s).
- (x) Vending machines, automatic shutoff.
- (1) A machine vending potentially hazardous food (time/temperature control for safety food) shall have an automatic control that prevents the machine from vending food:
- (A) If there is a power failure, mechanical failure, or other condition that results in an internal machine temperature that cannot maintain food temperatures as specified in subchapter 3; and
 - (B) If a condition specified in paragraph (1)(A) occurs, until the machine is serviced and restocked with food that has been maintained at temperatures specified in subchapter 3;
- (2) When the automatic shutoff within a machine vending potentially hazardous food (time/temperature control for safety food) is activated:
- (A) In a refrigerated vending machine, the ambient air temperature may not exceed forty-one degrees Fahrenheit for more than thirty minutes immediately after the machine is filled, serviced, or restocked; or
 - (B) In a hot holding vending machine, the ambient air temperature may not be less than one hundred thirty-five degrees Fahrenheit for more than one hundred twenty minutes immediately after the machine is filled, serviced, or restocked.
- (y) Temperature measuring devices.
- (1) In a mechanically refrigerated or hot food storage unit, the sensor of a temperature measuring device shall be located to measure the air temperature or a simulated product

- temperature in the warmest part of a mechanically refrigerated unit and in the coolest part of a hot food storage unit;
- (2) Except as specified in paragraph (3), cold or hot holding equipment used for potentially hazardous food (time/temperature control for safety food) shall be designed to include and shall be equipped with at least one integral or permanently affixed temperature measuring device that is located to allow easy viewing of the device's temperature display;
 - (3) Paragraph (2) does not apply to equipment for which the placement of a temperature measuring device is not a practical means for measuring the ambient air surrounding the food because of the design, type, and use of the equipment, such as calrod units, heat lamps, cold plates, bainmaries, steam tables, insulated food transport containers, and salad bars;
 - (4) Temperature measuring devices shall be designed to be easily readable;
 - (5) Food temperature measuring devices and water temperature measuring devices on warewashing machines shall have a numerical scale, printed record, or digital readout in increments no greater than two degrees Fahrenheit in the intended range of use.
- (z) A warewashing machine shall be provided with an easily accessible and readable data plate affixed to the machine by the manufacturer that indicates the machine's design and operation specifications including the:
- (1) Temperatures required for washing, rinsing, and sanitizing;
 - (2) Pressure required for the fresh water sanitizing rinse unless the machine is designed to use only a pumped sanitizing rinse; and
 - (3) Conveyor speed for conveyor machines or cycle time for stationary rack machines.
- (aa) Warewashing machine wash and rinse tanks shall be equipped with baffles, curtains, or other means to minimize internal cross contamination of the solutions in wash and rinse tanks.
- (bb) A warewashing machine shall be equipped with a temperature measuring device that indicates the temperature of the water:
- (1) In each wash and rinse tank; and

- (2) As the water enters the hot water sanitizing final rinse manifold or in the chemical sanitizing solution tank.
- (cc) If hot water is used for sanitization in manual warewashing operations, the sanitizing compartment of the sink shall be:
 - (1) Designed with an integral heating device that is capable of maintaining water at a temperature not less than one hundred seventy-one degrees Fahrenheit; and
 - (2) Provided with a rack or basket to allow complete immersion of equipment and utensils into the hot water.
- (dd) A warewashing machine that is installed shall be equipped to:
 - (1) Automatically dispense detergents and sanitizers; and
 - (2) Incorporate a visual means to verify that detergents and sanitizers are delivered or a visual or audible alarm to signal if the detergents and sanitizers are not delivered to the respective washing and sanitizing cycles.
- (ee) Warewashing machines, flow pressure device.
 - (1) Warewashing machines that provide a fresh hot water sanitizing rinse shall be equipped with a pressure gauge or similar device such as a transducer that measures and displays the water pressure in the supply line immediately before entering the warewashing machine; and
 - (2) If the flow pressure measuring device is upstream of the fresh hot water sanitizing rinse control valve, the device shall be mounted in a one-fourth inch Iron Pipe Size (IPS) valve;
 - (3) Paragraphs (1) and (2) do not apply to a machine that uses only a pumped or recirculated sanitizing rinse.
- (ff) Sinks and drainboards of warewashing sinks and machines shall be self-draining.
- (gg) Equipment compartments that are subject to accumulation of moisture due to conditions such as condensation, food or beverage drip, or water from melting ice shall be sloped to an outlet that allows complete draining.
- (hh) Vending machines, liquid waste products.
 - (1) Vending machines designed to store beverages that are packaged in containers made from paper

- products shall be equipped with diversion devices and retention pans or drains for container leakage;
- (2) Vending machines that dispense liquid food in bulk shall be:
 - (A) Provided with an internally mounted waste receptacle for the collection of drip, spillage, overflow, or other internal wastes; and
 - (B) Equipped with an automatic shutoff device that will place the machine out of operation before the waste receptacle overflows;
 - (3) Shutoff devices specified in paragraph (2) (B) shall prevent water or liquid food from continuously running if there is a failure of a flow control device in the water or liquid food system or waste accumulation that could lead to overflow of the waste receptacle.
- (ii) Vending machine, doors and openings.
- (1) Vending machine doors and access opening covers to food and container storage spaces shall be tight-fitting so that the space along the entire interface between the doors or covers and the cabinet of the machine, if the doors or covers are in a closed position, is no greater than one-sixteenth inch by:
 - (A) Being covered with louvers, screens, or materials that provide an equivalent opening of not greater than one-sixteenth inch. Screening of sixteen mesh to one inch meets this requirement;
 - (B) Being effectively gasketed;
 - (C) Having interface surfaces that are at least one-half inch wide; or
 - (D) Jambs or surfaces used to form an L-shaped entry path to the interface;
 - (2) Vending machine service connection openings through an exterior wall of a machine shall be closed by sealants, clamps, or grommets so that the openings are no larger than 1.5 millimeters or one-sixteenth inch.
- (jj) Food equipment that is certified or classified for sanitation by an American National Standards Institute (ANSI)-accredited certification program is deemed to comply

with sections 11-50-45 and 11-50-46. [Eff
] (Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-47 Numbers and capacities. (a) Equipment for cooling and heating food, and holding cold and hot food, shall be sufficient in number and capacity to provide food temperatures as specified in subchapter 3.

(b) Manual warewashing, sink compartment requirements.

- (1) Except as specified in paragraph (3), a sink with at least three compartments shall be provided for manually washing, rinsing, and sanitizing equipment and utensils;
- (2) Sink compartments shall be large enough to accommodate immersion of the largest equipment and utensils. If equipment or utensils are too large for the warewashing sink, a warewashing machine or alternative equipment as specified in paragraph (3) shall be used;
- (3) Alternative manual warewashing equipment may be used when there are special cleaning needs or constraints and its use is approved by the director. Alternative manual warewashing equipment may include:
 - (A) High-pressure detergent sprayers;
 - (B) Low- or line-pressure spray detergent foamers;
 - (C) Other task-specific cleaning equipment;
 - (D) Brushes or other implements;
 - (E) One or two-compartment sinks if only a limited number of utensils need to be washed; or
 - (F) Receptacles that substitute for the compartments of a multi-compartment sink.

(c) Drainboards, utensil racks, or tables large enough to accommodate all soiled and cleaned items that may accumulate during hours of operation shall be provided for necessary utensil holding before cleaning and after sanitizing.

(d) If required by law, ventilation hood systems and devices shall be sufficient in number and capacity to prevent grease or condensation from collecting on walls and ceilings.

(e) Clothes washers and dryers.

- (1) Except as specified in paragraph (2), if work clothes or linens are laundered on the premises, a mechanical clothes washer and dryer shall be provided and used;
 - (2) If on-premises laundering is limited to wiping cloths intended to be used moist, or wiping cloths are air-dried as specified in section 11-50-53(b), a mechanical clothes washer and dryer need not be provided.
- (f) A food dispensing utensil shall be available for each container displayed at a consumer self-service unit such as a buffet or salad bar.
- (g) Food temperature measuring devices.
- (1) Food temperature measuring devices shall be provided and readily accessible for use in ensuring attainment and maintenance of food temperatures as specified in subchapter 3;
 - (2) A temperature measuring device with a suitable small diameter probe that is designed to measure the temperature of thin masses shall be provided and readily accessible to accurately measure the temperature in thin foods such as meat patties and fish filets.
- (h) In manual warewashing operations, a temperature measuring device shall be provided and readily accessible for frequently measuring the washing and sanitizing temperatures. A test kit or other device that accurately measures the concentration in parts per million of sanitizing solutions shall be provided. [Eff
] (Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-48 Location and installation. (a) Equipment, clothes washers and dryers, and storage cabinets, contamination prevention.

- (1) Except as specified in paragraph (2), equipment, a cabinet used for the storage of food, or a cabinet that is used to store cleaned and sanitized equipment, utensils, laundered linens, and single-service and single-use articles may not be located:
 - (A) In locker rooms;
 - (B) In toilet rooms;
 - (C) In garbage rooms;
 - (D) In mechanical rooms;

- (E) Under sewer lines that are not shielded to intercept potential drips;
- (F) Under leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed;
- (G) Under open stairwells; or
- (H) Under other sources of contamination;
- (2) A storage cabinet used for linens or single-service or single-use articles may be stored in a locker room;
- (3) If a mechanical clothes washer or dryer is provided, the washer or dryer shall be located so that it is protected from contamination and only where there is no exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.
- (b) Fixed equipment, spacing or sealing.
- (1) Equipment that is fixed because it is not easily movable shall be installed so that it is:
 - (A) Spaced to allow access for cleaning along the sides, behind, and above the equipment;
 - (B) Spaced from adjoining equipment, walls, and ceilings a distance of not more than one millimeter or one thirty-second inch; or
 - (C) Sealed to adjoining equipment or walls, if the equipment is exposed to spillage or seepage;
- (2) Counter-mounted equipment that is not easily movable shall be installed to allow cleaning of the equipment and areas underneath and around the equipment by being:
 - (A) Sealed; or
 - (B) Elevated on legs as specified in subsection (c)(4).
- (c) Fixed equipment, elevation or sealing.
- (1) Except as specified in paragraphs (2) and (3), floor-mounted equipment that is not easily movable shall be sealed to the floor or elevated on legs that provide at least a six inch clearance between the floor and the equipment;
- (2) If no part of the floor under the floor-mounted equipment is more than six inches from the point of cleaning access, the clearance space may be only four inches;
- (3) This section does not apply to display shelving units, display refrigeration units, and display

freezer units located in the consumer shopping areas of a retail food store, if the floor under the units is maintained clean;

- (4) Except as specified in paragraph (5), counter-mounted equipment that is not easily movable shall be elevated on legs that provide at least a four inch clearance between the table and the equipment;
- (5) The clearance space between the table and counter-mounted equipment may be:
 - (A) Three inches if the horizontal distance of the table top under the equipment is no more than twenty inches from the point of access for cleaning; or
 - (B) Two inches if the horizontal distance of the table top under the equipment is no more than three inches from the point of access for cleaning. [Eff
] (Auth: HRS §321-11)
(Imp: HRS §321-11)

§11-50-49 Maintenance and operation. (a) Good repair and proper adjustment.

- (1) Equipment shall be maintained in a state of repair and condition that meets the requirements specified in sections 11-50-45 and 11-50-46;
 - (2) Equipment components such as doors, seals, hinges, fasteners, and kick plates shall be kept intact, tight, and adjusted in accordance with manufacturer's specifications;
 - (3) Cutting or piercing parts of can openers shall be kept sharp to minimize the creation of metal fragments that can contaminate food when the container is opened.
- (b) Surfaces such as cutting blocks and boards that are subject to scratching and scoring shall be resurfaced if they can no longer be effectively cleaned and sanitized, or discarded if they are not capable of being resurfaced.
- (c) A warewashing machine; the compartments of sinks, basins, or other receptacles used for washing and rinsing equipment, utensils, or raw foods, or laundering wiping cloths; and drainboards or other equipment used to substitute for drainboards as specified in section 11-50-47(c) shall be cleaned:
- (1) Before use;

- (2) Throughout the day at a frequency necessary to prevent recontamination of equipment and utensils and to ensure that the equipment performs its intended function; and
- (3) If used, at least every twenty-four hours.
- (d) Warewashing machines, manufacturers' operating instructions.
 - (1) A warewashing machine and its auxiliary components shall be operated in accordance with the machine's data plate and other manufacturer's instructions;
 - (2) A warewashing machine's conveyor speed or automatic cycle times shall be maintained accurately timed in accordance with manufacturer's specifications.
- (e) Warewashing sinks, use limitation.
 - (1) A warewashing sink may not be used for handwashing as specified in section 11-50-22(d);
 - (2) If a warewashing sink is used to wash wiping cloths, wash produce, or thaw food, the sink shall be cleaned as specified in subsection (d) before and after each time it is used to wash wiping cloths or wash produce or thaw food. Sinks used to wash or thaw food shall be sanitized as specified in section 11-50-51 before and after using the sink to wash produce or thaw food.
- (f) When used for warewashing, the wash compartment of a sink, mechanical warewasher, or wash receptacle of alternative manual warewashing equipment as specified in section 11-50-47(b)(3), shall contain a wash solution of soap, detergent, acid cleaner, alkaline cleaner, degreaser, abrasive cleaner, or other cleaning agent according to the cleaning agent manufacturer's label instructions.
- (g) The wash, rinse, and sanitize solutions shall be maintained clean.
- (h) The temperature of the wash solution in manual warewashing equipment shall be maintained at not less than one hundred ten degrees Fahrenheit or the temperature specified on the cleaning agent manufacturer's label instructions.
- (i) Mechanical warewashing equipment, wash solution temperature.
 - (1) The temperature of the wash solution in spray type warewashers that use hot water to sanitize may not be less than:

- (A) For a stationary rack, single temperature machine, one hundred sixty-five degrees Fahrenheit;
 - (B) For a stationary rack, dual temperature machine, one hundred fifty degrees Fahrenheit;
 - (C) For a single tank, conveyor, dual temperature machine, one hundred sixty degrees Fahrenheit; or
 - (D) For a multitank, conveyor, multitemperature machine, one hundred fifty degrees Fahrenheit;
- (2) The temperature of the wash solution in spray-type warewashers that use chemicals to sanitize may not be less than one hundred twenty degrees Fahrenheit.
- (j) If immersion in hot water is used for sanitizing in a manual operation, the temperature of the water shall be maintained at one hundred seventy-one degrees Fahrenheit or above.
- (k) Mechanical warewashing equipment, hot water sanitization temperatures.
- (1) Except as specified in paragraph (2), in a mechanical operation, the temperature of the fresh hot water sanitizing rinse as it enters the manifold may not be more than one hundred ninety-four degrees Fahrenheit, or less than:
- (A) For a stationary rack, single temperature machine, one hundred sixty-five degrees Fahrenheit; or
 - (B) For all other machines, one hundred eighty degrees Fahrenheit;
- (2) The maximum temperature specified in paragraph (1), does not apply to the high pressure and temperature systems with wand-type, hand-held, spraying devices used for the in-place cleaning and sanitizing of equipment such as meat saws.
- (1) The flow pressure of the fresh hot water sanitizing rinse in a warewashing machine, as measured in the water line immediately downstream or upstream from the fresh hot water sanitizing rinse control valve, shall be within the range specified on the machine manufacturer's data plate and may not be less than five pounds per square inch or more than thirty pounds per square inch.
- (m) A chemical sanitizer used in a sanitizing solution for a manual or mechanical operation at contact

times specified in section 11-50-51(c)(3) shall meet the criteria specified in section 11-50-81(e), shall be used in accordance with the EPA registered label use instructions, and shall be used as follows:

- (1) A chlorine solution shall have a minimum temperature based on the concentration and pH of the solution as listed in Table 49-1;

Table 49-1

Concentration Range mg/L	Minimum Temperature	
	pH 10 or less °F	pH 8 or less °F
25 to 49	120	120
50 to 99	100	75
100	55	55

- (2) An iodine solution shall have a:
 - (A) Minimum temperature of sixty-eight degrees Fahrenheit;
 - (B) pH of 5.0 or less or a pH no higher than the level for which the manufacturer specifies the solution is effective; and
 - (C) Concentration between 12.5 milligram per liter and twenty-five milligram per liter;
- (3) A quaternary ammonium compound solution shall:
 - (A) Have a minimum temperature of seventy-five degrees Fahrenheit;
 - (B) Have a concentration as specified in section 11-50-81(e) and as indicated by the manufacturer's use directions included in the labeling; and
 - (C) Be used only in water with five hundred milligram per liter hardness or less or in water having a hardness no greater than specified by the EPA-registered label use instructions;
- (4) If another solution of a chemical specified in paragraphs (1) to (3) is used, the permit holder shall demonstrate to the director that the solution achieves sanitization and the use of the solution shall be approved; or
- (5) If a chemical sanitizer other than chlorine, iodine, or a quaternary ammonium compound is used, it shall be applied in accordance with the EPA-registered label use instructions.

(n) If a detergent-sanitizer is used to sanitize in a cleaning and sanitizing procedure where there is no distinct water rinse between the washing and sanitizing steps, the agent applied in the sanitizing step shall be the same detergent-sanitizer that is used in the washing step.

(o) Concentration of the sanitizing solution shall be accurately determined by using a test kit or other device.

(p) Good repair and calibration.

(1) Utensils shall be maintained in a state of repair or condition that complies with the requirements specified in sections 11-50-45 and 11-50-46 or shall be discarded;

(2) Food temperature measuring devices shall be calibrated in accordance with manufacturer's specifications as necessary to ensure their accuracy;

(3) Ambient air temperature, water pressure, and water temperature measuring devices shall be maintained in good repair and be accurate within the intended range of use.

(q) A food establishment without facilities specified in sections 11-50-50 and 11-50-51 for cleaning and sanitizing kitchenware and tableware shall provide only single-use kitchenware, single-service articles, and single-use articles for use by food employees and single-service articles for use by consumers.

(r) Single-service and single-use articles, use limitation.

(1) Single-service and single-use articles may not be reused, except that the director may approve the reuse of single-use articles that meet the materials, durability, strength, and cleanability specifications in sections 11-50-45(a) and 11-50-46(a) and (c) for multiuse utensils;

(2) The bulk milk container dispensing tube shall be cut on the diagonal leaving no more than one inch protruding from the chilled dispensing head.

(s) Mollusk and crustacea shells may not be used more than once as serving containers. [Eff]
(Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-50 Cleaning of equipment and utensils. (a)
Equipment, food-contact surfaces, nonfood-contact surfaces,
and utensils-objective.

- (1) Equipment food-contact surfaces and utensils shall be clean to sight and touch;
 - (2) The food-contact surfaces of cooking equipment and pans shall be kept free of encrusted grease deposits and other soil accumulations;
 - (3) Nonfood-contact surfaces of equipment shall be kept free of an accumulation of dust, dirt, food residue, and other debris.
- (b) Equipment food-contact surfaces and utensils-frequency.
- (1) Equipment food-contact surfaces and utensils shall be cleaned:
 - (A) Except as specified in paragraph (2), before each use with a different type of raw animal food such as beef, fish, lamb, pork, or poultry;
 - (B) Each time there is a change from working with raw foods to working with ready-to-eat foods;
 - (C) Between uses with raw fruits and vegetables and with potentially hazardous food (time/temperature control for safety food);
 - (D) Before using or storing a food temperature measuring device; and
 - (E) At any time during the operation when contamination may have occurred;
 - (2) Paragraph (1)(A) does not apply if the food-contact surface or utensil is in contact with a succession of different raw animal foods each requiring a higher cooking temperature as specified in section 11-50-33(a) than the previous food, such as preparing raw fish followed by cutting raw poultry on the same cutting board;
 - (3) Except as specified in paragraph (4), if used with potentially hazardous food (time/temperature control for safety food), equipment food-contact surfaces and utensils shall be cleaned throughout the day at least every four hours;
 - (4) Surfaces of utensils and equipment contacting potentially hazardous food (time/temperature control for safety food) may be cleaned less frequently than every four hours if:
 - (A) In storage, containers of potentially hazardous food (time/temperature control for safety food) and their contents are

maintained at temperatures specified in subchapter 3 and the containers are cleaned when they are empty;

(B) Utensils and equipment are used to prepare food in a refrigerated room or area that is maintained at one of the temperatures in Table 50-1 and:

(i) The utensils and equipment are cleaned at the frequency in the following chart that corresponds to the temperature; and

Table 50-1

Temperature	Cleaning Frequency
41°F or less	24 hours
>41°F to 45°F	20 hours
>45°F to 50°F	16 hours
>50°F to 55°F	10 hours

(ii) The cleaning frequency based on the ambient temperature of the refrigerated room or area is documented in the food establishment;

(C) Containers in serving situations such as salad bars, delis, and cafeteria lines hold ready-to-eat potentially hazardous food (time/temperature control for safety food) that is maintained at the temperatures specified in subchapter 3, are intermittently combined with additional supplies of the same food that is at the required temperature, and the containers are cleaned at least every twenty-four hours;

(D) Temperature measuring devices are maintained in contact with food, such as when left in a container of deli food or in a roast, held at temperatures specified in subchapter 3;

(E) Equipment is used for storage of packaged or unpackaged food such as a reach-in refrigerator and the equipment is cleaned at a frequency necessary to preclude accumulation of soil residues;

- (F) The cleaning schedule is approved based on consideration of:
 - (i) Characteristics of the equipment and its use;
 - (ii) The type of food involved;
 - (iii) The amount of food residue accumulation; and
 - (iv) The temperature at which the food is maintained during the operation and the potential for the rapid and progressive multiplication of pathogenic or toxigenic microorganisms that are capable of causing foodborne disease; or
 - (G) In-use utensils are intermittently stored in a container of water in which the water is maintained at one hundred thirty-five degrees Fahrenheit or more and the utensils and container are cleaned at least every twenty-four hours or at a frequency necessary to preclude accumulation of soil residues;
- (5) Except when dry cleaning methods are used as specified in subsection (e), surfaces of utensils and equipment contacting food that is not potentially hazardous (time/temperature control for safety food) shall be cleaned:
- (A) At any time when contamination may have occurred;
 - (B) At least every twenty-four hours for iced tea dispensers and consumer self-service utensils such as tongs, scoops, or ladles;
 - (C) Before restocking consumer self-service equipment and utensils such as condiment dispensers and display containers; and
 - (D) In equipment such as ice bins and beverage dispensing nozzles and enclosed components of equipment such as ice makers, cooking oil storage tanks and distribution lines, beverage and syrup dispensing lines or tubes, coffee bean grinders, and water vending equipment:
 - (i) At a frequency specified by the manufacturer; or

- (ii) Absent manufacturer specifications, at a frequency necessary to preclude accumulation of soil or mold.
- (c) Cooking and baking equipment.
 - (1) The food-contact surfaces of cooking and baking equipment shall be cleaned at least every twenty-four hours. This section does not apply to hot oil cooking and filtering equipment if it is cleaned as specified in subsection (b) (4) (F);
 - (2) The cavities and door seals of microwave ovens shall be cleaned at least every twenty-four hours by using the manufacturer's recommended cleaning procedure.
- (d) Nonfood-contact surfaces of equipment shall be cleaned at a frequency necessary to preclude accumulation of soil residues.
 - (e) Dry cleaning.
 - (1) If used, dry cleaning methods such as brushing, scraping, and vacuuming shall contact only surfaces that are soiled with dry food residues that are not potentially hazardous (time/temperature control for safety food);
 - (2) Cleaning equipment used in dry cleaning food-contact surfaces may not be used for any other purpose.
 - (f) Precleaning.
 - (1) Food debris on equipment and utensils shall be scrapped over a waste disposal unit or garbage receptacle or shall be removed in a warewashing machine with a prewash cycle;
 - (2) If necessary for effective cleaning, utensils and equipment shall be preflushed, presoaked, or scrubbed with abrasives.
 - (g) Soiled items to be cleaned in a warewashing machine shall be loaded into racks, trays, or baskets or onto conveyors in a position that:
 - (1) Exposes the items to the unobstructed spray from all cycles; and
 - (2) Allows the items to drain.
 - (h) Wet cleaning.
 - (1) Equipment food-contact surfaces and utensils shall be effectively washed to remove or completely loosen soils by using the manual or mechanical means necessary such as the application of detergents containing wetting agents and emulsifiers; acid, alkaline, or

abrasive cleaners; hot water; brushes; scouring pads; high-pressure sprays; or ultrasonic devices;

- (2) The washing procedures selected shall be based on the type and purpose of the equipment or utensil, and on the type of soil to be removed.

- (i) If washing in sink compartments or a warewashing machine is impractical such as when the equipment is fixed or the utensils are too large, washing shall be done by using alternative manual warewashing equipment as specified in section 11-50-47(b) (3) in accordance with the following procedures:

- (1) Equipment shall be disassembled as necessary to allow access of the detergent solution to all parts;
 - (2) Equipment components and utensils shall be scrapped or rough cleaned to remove food particle accumulation; and
 - (3) Equipment and utensils shall be washed as specified in subsection (h) (1).

- (j) Washed utensils and equipment shall be rinsed so that abrasives are removed and cleaning chemicals are removed or diluted through the use of water or a detergent-sanitizer solution by using one of the following procedures:

- (1) Use of a distinct, separate water rinse after washing and before sanitizing if using:
 - (A) A three-compartment sink;
 - (B) Alternative manual warewashing equipment equivalent to a three-compartment sink as specified in section 11-50-47(b) (3); or
 - (C) A three-step washing, rinsing, and sanitizing procedure in a warewashing system for CIP equipment;
 - (2) Use of a detergent-sanitizer as specified in section 11-50-49(n) if using:
 - (A) Alternative warewashing equipment as specified in section 11-50-47(b) (3) that is approved for use with a detergent sanitizer; or
 - (B) A warewashing system for CIP equipment;
 - (3) Use of a nondistinct water rinse that is integrated in the hot water sanitization immersion step of a two-compartment sink operation;

- (4) If using a warewashing machine that does not recycle the sanitizing solution as specified in paragraph (5), or alternative manual warewashing equipment such as sprayers, use of a nondistinct water rinse that is:
 - (A) Integrated in the application of the sanitizing solution; and
 - (B) Wasted immediately after each application; or
- (5) If using a warewashing machine that recycles the sanitizing solution for use in the next wash cycle, use of a nondistinct water rinse that is integrated in the application of the sanitizing solution.
- (k) Returnables, cleaning for refilling.
- (1) Except as specified in paragraphs (2) and (3), returned empty containers intended for cleaning and refilling with food shall be cleaned and refilled in a regulated food processing plant;
- (2) A food-specific container for beverages may be refilled at a food establishment if:
 - (A) Only a beverage that is not a potentially hazardous food (time/temperature control for safety food) is used as specified in section 11-50-32(p)(1);
 - (B) The design of the container and of the rinsing equipment and the nature of the beverage, when considered together, allow effective cleaning at home or in the food establishment;
 - (C) Facilities for rinsing before refilling returned containers with fresh, hot water that is under pressure and not recirculated are provided as part of the dispensing system;
 - (D) The consumer-owned container returned to the food establishment for refilling is refilled for sale or service only to the same consumer; and
 - (E) The container is refilled by:
 - (i) An employee of the food establishment; or
 - (ii) The owner of the container if the beverage system includes a contamination-free transfer process

- that cannot be bypassed by the container owner;
- (3) Consumer-owned containers that are not food-specific may be filled at a water vending machine or system. [Eff] (Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-51 Sanitization of equipment and utensils.

- (a) Equipment food-contact surfaces and utensils shall be sanitized.
- (b) Utensils and food-contact surfaces of equipment shall be sanitized before use after cleaning.
- (c) After being cleaned, equipment food-contact surfaces and utensils shall be sanitized in:
- (1) Hot water manual operations by immersion for at least thirty seconds and as specified in section 11-50-49(j);
- (2) Hot water mechanical operations by being cycled through equipment that is set up as specified in section 11-50-49(d), (k), and (l) and achieving a utensil surface temperature of one hundred sixty degrees Fahrenheit as measured by an irreversible registering temperature indicator; or
- (3) Chemical manual or mechanical operations, including the application of sanitizing chemicals by immersion, manual swabbing, brushing, or pressure spraying methods, using a solution as specified in section 11-50-49(m). Contact times shall be consistent with those on EPA-registered label use instructions by providing:
- (A) Except as specified in subparagraph (B), a contact time of at least ten seconds for a chlorine solution specified in section 11-50-49(m) (1);
- (B) A contact time of at least seven seconds for a chlorine solution of fifty mg/L that has a pH of ten or less and a temperature of at least one hundred degrees Fahrenheit or a pH of 8.0 or less and a temperature of at least seventy-five degrees Fahrenheit;
- (C) A contact time of at least thirty seconds for other chemical sanitizing solutions; or
- (D) A contact time used in relationship with a combination of temperature, concentration, and pH that, when evaluated for efficacy,

yields sanitization as defined in section
11-50-2. [Eff] (Auth:
HRS §321-11) (Imp: HRS §321-11)

- §11-50-52 Laundering. (a) Clean linens shall be free from food residues and other soiling matter.
- (b) Specifications.
- (1) Linens that do not come in direct contact with food shall be laundered between operations if they become wet, sticky, or visibly soiled;
- (2) Cloth gloves used as specified in section 11-50-32(n)(4) shall be laundered before being used with a different type of raw animal food such as beef, fish, lamb, pork or poultry;
- (3) Linens and napkins that are used as specified in section 11-50-32(1) and cloth napkins shall be laundered between each use;
- (4) Wet wiping cloths shall be laundered daily;
- (5) Dry wiping cloths shall be laundered as necessary to prevent contamination of food and clean serving utensils.
- (c) Soiled linens shall be kept in clean, nonabsorbent receptacles or clean, washable laundry bags and stored and transported to prevent contamination of food, clean equipment, clean utensils, and single-service and single-use articles.
- (d) Mechanical washing.
- (1) Except as specified in paragraph (2), linens shall be mechanically washed;
- (2) In food establishments in which only wiping cloths are laundered as specified in section 11-50-47(e)(2), the wiping cloths may be laundered in a mechanical washer, sink designated only for laundering wiping cloths, or a warewashing or food preparation sink that is cleaned as specified in section 11-50-49(c).
- (e) Use of laundry facilities.
- (1) Except as specified in paragraph (2), laundry facilities on the premises of a food establishment shall be used only for the washing and drying of items used in the operation of the establishment;
- (2) Separate laundry facilities located on the premises for the purpose of general laundering such as for institutions providing boarding and

lodging may also be used for laundering food establishment items. [Eff]
(Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-53 Protection of clean items. (a) After cleaning and sanitizing, equipment and utensils:

- (1) Shall be air-dried or used after adequate draining as specified in the first paragraph of 40 CFR 180.940, entitled "Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (food-contact surface sanitizing solutions)", before contact with food; and
 - (2) May not be cloth dried except that utensils that have been air-dried may be polished with cloths that are maintained clean and dry.
- (b) Wiping cloths laundered in a food establishment that does not have a mechanical clothes dryer as specified in section 11-50-47(e)(2) shall be air-dried in a location and in a manner that prevents contamination of food, equipment, utensils, linens, and single-service and single-use articles and the wiping cloths. This section does not apply if wiping cloths are stored after laundering in a sanitizing solution as specified in section 11-50-49(m).
- (c) Lubricants as specified in section 11-50-81(i) shall be applied to food-contact surfaces that require lubrication in a manner that does not contaminate food-contact surfaces.
- (d) Equipment shall be reassembled so that food-contact surfaces are not contaminated.
- (e) Equipment, utensils, linens, and single-service and single-use articles.
- (1) Except as specified in paragraph (4), cleaned equipment and utensils, laundered linens, and single-service and single-use articles shall be stored:
 - (A) In a clean, dry location;
 - (B) Where they are not exposed to splash, dust, or other contamination; and
 - (C) At least six inches above the floor;
 - (2) Clean equipment and utensils shall be stored as specified in paragraph (1) and shall be stored:
 - (A) In a self-draining position that allows air drying; and
 - (B) Covered or inverted;

- (3) Single-service and single-use articles shall be stored as specified in paragraph (1) and shall be kept in the original protective package or stored by using other means that afford protection from contamination until used;
- (4) Items that are kept in closed packages may be stored less than six inches above the floor on dollies, pallets, racks, and skids that are designed as specified in section 11-50-46(ii).
- (f) Prohibitions.
 - (1) Except as specified in paragraph (2), cleaned and sanitized equipment, utensils, laundered linens, and single-service and single-use articles may not be stored:
 - (A) In locker rooms;
 - (B) In toilet rooms;
 - (C) In garbage rooms;
 - (D) In mechanical rooms;
 - (E) Under sewer lines that are not shielded to intercept potential drips;
 - (F) Under leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed;
 - (G) Under open stairwells; or
 - (H) Under other sources of contamination;
 - (2) Laundered linens and single-service and single-use articles that are packaged or in a facility such as a cabinet may be stored in a locker room.
- (g) Kitchenware and tableware.
 - (1) Single-service and single-use articles and cleaned and sanitized utensils shall be handled, displayed, and dispensed so that contamination of food- and lip-contact surfaces is prevented;
 - (2) Knives, forks, and spoons that are not prewrapped shall be presented so that only the handles are touched by employees and by consumers if consumer self-service is provided;
 - (3) Except as specified in paragraph (2), single-service articles that are intended for food- or lip-contact shall be furnished for consumer self-service with the original individual wrapper intact or from an approved dispenser.
 - (h) Soiled tableware shall be removed from consumer eating and drinking areas and handled so that clean tableware is not contaminated.
 - (i) Preset tableware.

- (1) Except as specified in paragraph (2), tableware that is preset shall be protected from contamination by being wrapped, covered, or inverted;
- (2) Preset tableware may be exposed if:
 - (A) Unused settings are removed when a consumer is seated; or
 - (B) Settings not removed when a consumer is seated are cleaned and sanitized before further use.
- (j) After being cleaned and sanitized, equipment and utensils shall not be rinsed before air drying or use unless:
 - (1) The rinse is applied directly from a potable water supply by a warewashing machine that is maintained and operated as specified in sections 11-50-46(n) to (jj) and 11-50-49(a) to (o); and
 - (2) The rinse is applied only after the equipment and utensils have been sanitized by the application of hot water or by the application of a chemical sanitizer solution whose EPA registered label use instructions call for rinsing off the sanitizer after it is applied in a commercial warewashing machine. [Eff _____] (Auth: HRS §321-11) (Imp: HRS §321-11)

§§11-50-54 to 11-50-59 (Reserved).

SUBCHAPTER 5

WATER, PLUMBING, AND WASTE

- §11-50-60 Water. (a) Drinking water shall be obtained from an approved source that is:
- (1) A public water system; or
 - (2) A nonpublic water system that is constructed, maintained, and operated according to law.
- (b) A drinking water system shall be flushed and disinfected before being placed in service, after construction, repair, or modification and after an emergency situation, such as a flood, that may introduce contaminants to the system.

(c) Bottled drinking water used or sold in a food establishment shall be obtained from approved sources in accordance with 21 CFR 129, entitled "Processing and bottling of bottled drinking water".

(d) Standards. Except as specified in subsection

(e):

(1) Water from a public water system shall meet 40 CFR 141, entitled "National primary drinking water regulations" and state drinking water quality standards; and

(2) Water from a nonpublic water system shall meet state drinking water quality standards.

(e) Nondrinking water.

(1) A nondrinking water supply shall be used only if its use is approved;

(2) Nondrinking water shall be used only for nonculinary purposes such as air conditioning, nonfood equipment cooling, and fire protection.

(f) Except when used as specified in subsection (e), water from a nonpublic water system shall be sampled and tested as required by the department.

(g) The most recent sample report for the nonpublic water system shall be retained on file in the food establishment or the report shall be maintained as specified by state water quality regulations.

(h) Capacity.

(1) The water source and system shall be of sufficient capacity to meet the peak water demands of the food establishment;

(2) Hot water generation and distribution systems shall be sufficient to meet the peak hot water demands throughout the food establishment.

(i) Water under pressure shall be provided to all fixtures, equipment, and nonfood equipment that are required to use water except that water supplied as specified in subsection (k)(1) and (2) to a temporary food establishment or in response to a temporary interruption of a water supply need not be under pressure.

(j) Water shall be received from the source through the use of:

(1) An approved public water main; or

(2) One or more of the following that shall be constructed, maintained, and operated according to law:

- (A) Nonpublic water main, water pumps, pipes, hoses, connections, and other appurtenances;
 - (B) Water transport vehicles or other approved water transport delivery system; or
 - (C) Water containers.
- (k) Water meeting the requirements specified in subsections (a) to (i) shall be made available for a mobile facility, for a temporary food establishment without a permanent water supply, and for a food establishment with a temporary interruption of its water supply through:
- (1) A supply of containers of commercially bottled drinking water;
 - (2) One or more closed portable water containers;
 - (3) An enclosed vehicular water tank; or
 - (4) An on-premises water storage tank.
- [Eff] (Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-61 Plumbing system. (a) Approved.

- (1) A plumbing system and hoses conveying water shall be constructed and repaired with approved materials according to law;
 - (2) A water filter shall be made of safe materials.
- (b) Approved system and cleanable fixtures.
- (1) A plumbing system shall be designed, constructed, and installed according to law;
 - (2) A plumbing fixture such as a handwashing sink, toilet, or urinal shall be easily cleanable.
- (c) Handwashing sink, installation.
- (1) A handwashing sink if provided with hot water shall be equipped with a mixing valve or combination faucet;
 - (2) A steam mixing valve may not be used at a handwashing sink;
 - (3) A self-closing, slow-closing, or metering faucet shall provide a flow of water for at least fifteen seconds without the need to reactivate the faucet;
 - (4) An automatic handwashing facility shall be installed in accordance with manufacturer's instructions;
 - (5) Faucets shall provide a sufficient flow of water to permit proper washing and rinsing of hands.

(d) An air gap between the water supply inlet and the flood level rim of the plumbing fixture, equipment, or nonfood equipment shall be at least twice the diameter of the water supply inlet and may not be less than one inch.

(e) A backflow or backsiphonage prevention device installed on a water supply system shall meet American Society of Sanitary Engineering (A.S.S.E.) standards for construction, installation, maintenance, inspection, and testing for that specific application and type of device.

(f) A water filter, screen, and other water conditioning device installed on water lines shall be designed to facilitate disassembly for periodic servicing and cleaning. A water filter element shall be of the replaceable type.

(g) Handwashing sinks.

(1) Except as specified in paragraph (2), at least one handwashing sink, a number of handwashing sinks necessary for their convenient use by employees in areas specified in subsection (1), and not fewer than the number of handwashing sinks required by law shall be provided;

(2) If approved and capable of removing the types of soils encountered in the food operations involved, automatic handwashing facilities may be substituted for handwashing sinks in a food establishment that has at least one handwashing sink.

(h) At least one toilet and not fewer than the toilets required by law shall be provided.

(i) Facilities for disposal of mop water and similar liquid waste shall be provided. At least one service sink or one curbed cleaning facility equipped with a floor drain shall be provided and conveniently located for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water and similar liquid waste for newly constructed or extensively remodeled establishments; except that the director may waive this requirement if an alternative liquid waste disposal facility is readily available.

(j) A plumbing system shall be installed to preclude backflow of a solid, liquid, or gas contaminant into the water supply system at each point of use at the food establishment, including on a hose bibb if a hose is attached or on a hose bibb if a hose is not attached and backflow prevention is required by law, by:

- (1) Providing an air gap as specified in subsection (d); or
- (2) Installing an approved backflow prevention device as specified in subsection (e).
- (k) Backflow prevention device, carbonator.
 - (1) If not provided with an air gap as specified in subsection (d), a dual check valve with an intermediate vent preceded by a screen of not less than one hundred mesh to one inch shall be installed upstream from a carbonating device and downstream from any copper in the water supply line;
 - (2) A dual check valve attached to the carbonator need not be of the vented type if an air gap or vented backflow prevention device has been otherwise provided as specified in paragraph (1).
- (1) A handwashing sink shall be located:
 - (1) To allow convenient use by employees in food preparation, food dispensing, and warewashing areas; and
 - (2) In, or immediately adjacent to, toilet rooms.
- (m) A backflow prevention device shall be located so that it may be serviced and maintained.
- (n) A water filter, screen, and other water conditioning device installed on water lines shall be located to facilitate disassembly for periodic servicing and cleaning.
 - (o) Using a handwashing sink.
 - (1) A handwashing sink shall be maintained so that it is accessible at all times for employee use;
 - (2) A handwashing sink may not be used for purposes other than handwashing;
 - (3) An automatic handwashing facility shall be used in accordance with manufacturer's instructions.
- (p) Prohibiting a cross connection.
 - (1) A person may not create a cross connection by connecting a pipe or conduit between the drinking water system and a nondrinking water system or a water system of unknown quality;
 - (2) The piping of a nondrinking water system shall be durably identified so that it is readily distinguishable from piping that carries drinking water.
- (q) Water reservoir of fogging devices, cleaning.
 - (1) A reservoir that is used to supply water to a device such as a produce fogger shall be:

- (A) Maintained in accordance with manufacturer's specifications; and
- (B) Cleaned in accordance with manufacturer's specifications or according to the procedures specified in paragraph (2), whichever is more stringent;
- (2) Cleaning procedures shall include at least the following steps and shall be conducted at least once a week:
 - (A) Draining and complete disassembly of the water and aerosol contact parts;
 - (B) Brush-cleaning the reservoir, aerosol tubing, and discharge nozzles with a suitable detergent solution;
 - (C) Flushing the complete system with water to remove the detergent solution and particulate accumulation; and
 - (D) Rinsing by immersing, spraying, or swabbing the reservoir, aerosol tubing, and discharge nozzles with at least fifty mg/L hypochlorite solution.
- (r) A plumbing system shall be:
 - (1) Repaired according to law; and
 - (2) Maintained in good repair. [Eff] (Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-62 Mobile water tank and mobile food establishment water tank. (a) Materials that are used in the construction of a mobile water tank, mobile food establishment water tank, and appurtenances shall be:

- (1) Safe;
- (2) Durable, corrosion-resistant, and nonabsorbent; and
- (3) Finished to have a smooth, easily cleanable surface.

(b) A mobile water tank shall be:

- (1) Enclosed from the filling inlet to the discharge outlet; and
- (2) Sloped to an outlet that allows complete drainage of the tank.

(c) If a water tank is designed with an access port for inspection and cleaning, the opening shall be in the top of the tank and:

- (1) Flanged upward at least 0.5 inch; and

- (2) Equipped with a port cover assembly that is:
 - (A) Provided with a gasket and a device for securing the cover in place; and
 - (B) Flanged to overlap the opening and sloped to drain.
- (d) A fitting with "V" type threads on a water tank inlet or outlet shall be allowed only when a hose is permanently attached.
- (e) If provided, a water tank vent shall terminate in a downward direction and shall be covered with:
 - (1) Sixteen mesh to one inch screen or equivalent when the vent is in a protected area; or
 - (2) A protective filter when the vent is in an area that is not protected from windblown dirt and debris.
- (f) Inlet and outlet, sloped to drain.
 - (1) A water tank and its inlet and outlet shall be sloped to drain;
 - (2) A water tank inlet shall be positioned so that it is protected from contaminants such as waste discharge, road dust, oil, or grease.
- (g) A hose used for conveying drinking water from a water tank shall be:
 - (1) Safe;
 - (2) Durable, corrosion-resistant, and nonabsorbent;
 - (3) Resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition;
 - (4) Finished with a smooth interior surface; and
 - (5) Clearly and durably identified as to its use if not permanently attached.
- (h) A filter that does not pass oil or oil vapors shall be installed in the air supply line between the compressor and drinking water system when compressed air is used to pressurize the water tank system.
- (i) A cap and keeper chain, closed cabinet, closed storage tube, or other approved protective cover or device shall be provided for a water inlet, outlet, and hose.
- (j) A water tank, pump, and hoses shall be flushed and sanitized before being placed in service after construction, repair, modification, and periods of nonuse.
- (k) A person shall operate a water tank, pump, and hoses so that backflow and other contamination of the water supply are prevented.

(1) If not in use, a water tank and hose inlet and outlet fitting shall be protected using a cover or device as specified in subsection (i).

(m) Tank, pump, and hoses, dedication.

(1) Except as specified in paragraph (2), a water tank, pump, and hoses used for conveying drinking water shall be used for no other purpose;

(2) Water tanks, pumps, and hoses approved for liquid foods may be used for conveying drinking water if they are cleaned and sanitized before they are used to convey water. [Eff]

(Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-63 Sewage, other liquid waste, and rainwater.

(a) A sewage holding tank in a mobile food establishment shall be:

(1) Sized fifteen per cent larger in capacity than the water supply tank; and

(2) Provided with a tank bottom that is sloped down to an outlet with a shut-off valve to permit complete drainage of the tank, except for those tanks that are readily removable.

(b) Food establishment drainage systems, including grease traps, that convey sewage shall be designed and installed as specified in section 11-50-61(b)(1).

(c) Backflow prevention.

(1) Except as specified in paragraphs (2), (3) and (4), a direct connection may not exist between the sewage system and a drain originating from equipment in which food, portable equipment, or utensils are placed;

(2) Paragraph (1) does not apply to floor drains that originate in refrigerated spaces that are constructed as an integral part of the building;

(3) If allowed by law, a warewashing machine may have a direct connection between its waste outlet and a floor drain when the machine is located within five feet of a trapped floor drain and the machine outlet is connected to the inlet side of a properly vented floor drain trap;

(4) If allowed by law, a warewashing or culinary sink may have a direct connection.

(d) If used, a grease trap shall be located to be easily accessible for cleaning.

(e) Sewage shall be conveyed to the point of disposal through an approved sanitary sewage system or other system, including use of sewage transport vehicles, waste retention tanks, pumps, pipes, hoses, and connections that are constructed, maintained, and operated according to law.

(f) Sewage and other liquid wastes shall be removed from a mobile food establishment at an approved waste servicing area or by a sewage transport vehicle in such a way that a public health hazard or nuisance is not created.

(g) A tank for liquid waste retention shall be thoroughly flushed and drained in a sanitary manner during the servicing operation.

(h) Sewage shall be disposed through an approved facility that is:

- (1) A public sewage treatment plant; or
- (2) An individual sewage disposal system that is sized, constructed, maintained, and operated according to law.

(i) Condensate drainage and other nonsewage liquids and rainwater shall be drained from point of discharge to disposal according to law. [Eff _____] (Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-64 Refuse, recyclables, and returnables. (a) If located within the food establishment, a storage area for refuse, recyclables, and returnables shall meet the requirements specified in sections 11-50-70 and 11-50-71(a) to (h), (m), and (n).

(b) An outdoor storage surface for refuse, recyclables, and returnables shall be constructed of nonabsorbent material such as concrete or asphalt and shall be smooth, durable, and sloped to drain.

(c) If used, an outdoor enclosure for refuse, recyclables, and returnables shall be constructed of durable and cleanable materials.

(d) Receptacles.

- (1) Except as specified in paragraph (2), receptacles and waste handling units for refuse, recyclables, and returnables and for use with materials containing food residue shall be durable, cleanable, insect- and rodent-resistant, leakproof, and nonabsorbent;
- (2) Plastic bags and wet strength paper bags may be used to line receptacles for storage inside the

- food establishment, or within closed outside receptacles.
- (e) Except for a receptacle for beverage bottle crown closures, a refuse receptacle may not be located within a vending machine.
 - (f) Outside receptacles.
 - (1) Receptacles and waste handling units for refuse, recyclables, and returnables used with materials containing food residue and used outside the food establishment shall be designed and constructed to have tight-fitting lids, doors, or covers;
 - (2) Receptacles and waste handling units for refuse and recyclables such as an on-site compactor shall be installed so that accumulation of debris and insect and rodent attraction and harborage are minimized and effective cleaning is facilitated around and, if the unit is not installed flush with the base pad, under the unit.
 - (g) Storage areas, rooms, and receptacles, capacity and availability.
 - (1) An inside storage room and area and outside storage area and enclosure, and receptacles shall be of sufficient capacity to hold refuse, recyclables, and returnables that accumulate;
 - (2) A receptacle shall be provided in each area of the food establishment or premises where refuse is generated or commonly discarded, or where recyclables or returnables are placed;
 - (3) If disposable towels are used at handwashing lavatories, a waste receptacle shall be located at each lavatory or group of adjacent lavatories.
 - (h) A toilet room used by females shall be provided with a covered receptacle for sanitary napkins.
 - (i) Cleaning implements and supplies.
 - (1) Except as specified in paragraph (2), suitable cleaning implements and supplies such as high pressure pumps, hot water, steam, and detergent shall be provided as necessary for effective cleaning of receptacles and waste handling units for refuse, recyclables, and returnables;
 - (2) If approved, off-premises-based cleaning services may be used if on-premises cleaning implements and supplies are not provided.
 - (j) Storage areas, redeeming machines, receptacles and waste handling units, location.

- (1) An area designated for refuse, recyclables, returnables, and, except as specified in paragraph (2), a redeeming machine for recyclables or returnables shall be located so that it is separate from food, equipment, utensils, linens, and single-service and single-use articles and a public health hazard or nuisance is not created;
- (2) A redeeming machine may be located in the packaged food storage area or consumer area of a food establishment if food, equipment, utensils, linens, and single-service and single-use articles are not subject to contamination from the machines and a public health hazard or nuisance is not created;
- (3) The location of receptacles and waste handling units for refuse, recyclables, and returnables may not create a public health hazard or nuisance or interfere with the cleaning of adjacent space.
- (k) Refuse, recyclables, and returnables shall be stored in receptacles or waste handling units so that they are inaccessible to insects and rodents.
 - (1) Storage areas, enclosures, and receptacles for refuse, recyclables, and returnables shall be maintained in good repair.
- (m) Outside storage prohibitions.
 - (1) Except as specified in paragraph (2), refuse receptacles not meeting the requirements specified in subsection (d)(1) such as receptacles that are not rodent-resistant, unprotected plastic bags and paper bags, or baled units that contain materials with food residue may not be stored outside;
 - (2) Cardboard or other packaging material that does not contain food residues and that is awaiting regularly scheduled delivery to a recycling or disposal site may be stored outside without being in a covered receptacle if it is stored so that it does not create a rodent harborage problem.
- (n) Receptacles and waste handling units for refuse, recyclables, and returnables shall be kept covered:
 - (1) Inside the food establishment if the receptacles and units:
 - (A) Contain food residue and are not in continuous use; or
 - (B) After they are filled; and

- (2) With tight-fitting lids or doors if kept outside the food establishment.
- (o) Drains in receptacles and waste handling units for refuse, recyclables, and returnables shall have drain plugs in place.
- (p) A storage area and enclosure for refuse, recyclables, or returnables shall be maintained free of unnecessary items, as specified in section 11-50-74(n), and clean.
- (q) Cleaning receptacles.
 - (1) Receptacles and waste handling units for refuse, recyclables, and returnables shall be thoroughly cleaned in a way that does not contaminate food, equipment, utensils, linens, or single-service and single-use articles, and waste water shall be disposed of as specified in section 11-50-63(e);
 - (2) Soiled receptacles and waste handling units for refuse, recyclables, and returnables shall be cleaned at a frequency necessary to prevent them from developing a buildup of soil or becoming attractants for insects and rodents.
- (r) Refuse, recyclables, and returnables shall be removed from the premises at a frequency that will minimize the development of objectionable odors and other conditions that attract or harbor insects and rodents.
- (s) Refuse, recyclables, and returnables shall be removed from the premises by way of:
 - (1) Portable receptacles that are constructed and maintained according to law; or
 - (2) A transport vehicle that is constructed, maintained, and operated according to law.
- (t) Solid waste not disposed of through the sewage system such as through grinders and pulpers shall be recycled or disposed of in an approved public or private community recycling or refuse facility; or solid waste shall be disposed of in an individual refuse facility such as a landfill or incinerator which is sized, constructed, maintained, and operated according to law. [Eff
] (Auth: HRS §321-11) (Imp: HRS §321-11)

§§11-50-65 to 11-50-69 (Reserved).

SUBCHAPTER 6

PHYSICAL FACILITIES

§11-50-70 Materials for construction and repair.
Materials for indoor floor, wall, and ceiling surfaces under conditions of normal use shall be:

- (1) Smooth, durable, and easily cleanable for areas where food establishment operations are conducted;
- (2) Closely woven and easily cleanable carpet for carpeted areas; and
- (3) Nonabsorbent for areas subject to moisture such as food preparation areas, walk-in refrigerators, warewashing areas, toilet rooms, mobile food establishment servicing areas, and areas subject to flushing or spray cleaning methods. [Eff] (Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-71 Design, construction, and installation.

- (a) Except as specified in subsection (d) and except for antislip floor coverings or applications that may be used for safety reasons, floors, floor coverings, walls, wall coverings, and ceilings shall be designed, constructed, and installed so they are smooth and easily cleanable.
 - (b) Floors, walls, and ceilings, utility lines.
 - (1) Utility service lines and pipes may not be unnecessarily exposed;
 - (2) Exposed utility service lines and pipes shall be installed so they do not obstruct or prevent cleaning of the floors, walls, or ceilings;
 - (3) Exposed horizontal utility service lines and pipes may not be installed on the floor.
 - (c) Floor and wall junctures, coved, and enclosed or sealed.
 - (1) In food establishments in which cleaning methods other than water flushing are used for cleaning floors, the floor and wall junctures shall be coved or closed to no larger than one thirty-second inch;
 - (2) The floors in food establishments in which water flush cleaning methods are used shall be provided

- with drains and be graded to drain, and the floor and wall junctures shall be coved and sealed.
- (d) Floor carpeting, restrictions and installation.
 - (1) A floor covering such as carpeting or similar material may not be installed as a floor covering in food preparation areas, walk-in refrigerators, warewashing areas, toilet room areas where handwashing lavatories, toilets, and urinals are located, refuse storage rooms, or other areas where the floor is subject to moisture, flushing, or spray cleaning methods;
 - (2) If carpeting is installed as a floor covering in areas other than those specified in paragraph (1), it shall be:
 - (A) Securely attached to the floor with a durable mastic, by using a stretch and tack method, or by another method; and
 - (B) Installed tightly against the wall under the coving or installed away from the wall with a space between the carpet and the wall and with the edges of the carpet secured by metal stripping or some other means.
 - (e) Mats and duckboards shall be designed to be removable and easily cleanable.
 - (f) Wall and ceiling coverings and coatings.
 - (1) Wall and ceiling covering materials shall be attached so that they are easily cleanable;
 - (2) Except in areas used only for dry storage, concrete, porous blocks, or bricks used for indoor wall construction shall be finished and sealed to provide a smooth, nonabsorbent, easily cleanable surface.
 - (g) Walls and ceilings, attachments.
 - (1) Except as specified in paragraph (2), attachments to walls and ceilings such as light fixtures, mechanical room ventilation system components, vent covers, wall mounted fans, decorative items, and other attachments shall be easily cleanable;
 - (2) In a consumer area, wall and ceiling surfaces and decorative items and attachments that are provided for ambiance need not meet this requirement if they are kept clean.
 - (h) Except for temporary food establishments, studs, joists, and rafters may not be exposed in areas subject to moisture.

- (i) Light bulbs, protective shielding.
- (1) Except as specified in paragraph (2), light bulbs shall be shielded, coated, or otherwise shatter-resistant in areas where there is exposed food; clean equipment, utensils, and linens; or unwrapped single-service and single-use articles;
- (2) Shielded, coated, or otherwise shatter-resistant bulbs need not be used in areas used only for storing food in unopened packages, if:
 - (A) The integrity of the packages cannot be affected by broken glass falling onto them; and
 - (B) The packages are capable of being cleaned of debris from broken bulbs before the packages are opened;
- (3) An infrared or other heat lamp shall be protected against breakage by a shield surrounding and extending beyond the bulb so that only the face of the bulb is exposed.
- (j) Heating, ventilating, and air conditioning systems shall be designed and installed so that make-up air intake and exhaust vents do not cause contamination of food, food-contact surfaces, equipment, or utensils.
- (k) Insect control devices, design and installation.
 - (1) Insect control devices that are used to electrocute or stun flying insects shall be designed to retain the insect within the device;
 - (2) Insect control devices shall be installed so that:
 - (A) The devices are not located over a food preparation area; and
 - (B) Dead insects and insect fragments are prevented from being impelled onto or falling on exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.
- (1) Except where a toilet room is located outside a food establishment and does not open directly into the food establishment such as a toilet room that is provided by the management of a shopping mall, a toilet room located on the premises shall be completely enclosed and provided with a tight-fitting and self-closing door.
- (m) Outer openings, protected.
 - (1) Except as specified in paragraphs (2) to (5), outer openings of a food establishment shall be

protected against the entry of insects and rodents by:

- (A) Filling or closing holes and other gaps along floors, walls, and ceilings;
 - (B) Closed, tight-fitting windows; and
 - (C) Solid, self-closing, tight-fitting doors;
- (2) Paragraph (1) does not apply if a food establishment opens into a larger structure, such as a mall, airport, or office building, or into an attached structure, such as a porch, and the outer openings from the larger or attached structure are protected against the entry of insects and rodents;
- (3) Exterior doors used as exits need not be self-closing if they are:
- (A) Solid and tight-fitting;
 - (B) Designated for use only when an emergency exists, by the fire protection authority that has jurisdiction over the food establishment; and
 - (C) Limited-use so they are not used for entrance or exit from the building for purposes other than the designated emergency exit use;
- (4) Except as specified in paragraphs (2) and (5), if the windows or doors of a food establishment, or of a larger structure within which a food establishment is located, are kept open for ventilation or other purposes or a temporary food establishment is not provided with windows and doors as specified in paragraph (1), the openings shall be protected against the entry of insects, rodents and other pests by:
- (A) Sixteen mesh to one inch screens;
 - (B) Properly designed and installed air curtains to control flying insects; or
 - (C) Other effective means;
- (5) Paragraph (4) does not apply if flying insects and other pests are absent due to the location of the establishment, the weather, or other limiting condition;
- (6) The requirements of this section may be waived or modified when alternative controls acceptable to the director are utilized to ensure that all food and food-contact surfaces of equipment and utensils are effectively protected against

contamination, and no other public health hazards will result from the conduct of the operation.

(n) Perimeter walls and roofs of a food establishment shall effectively protect the establishment from the weather and the entry of insects, rodents, and other animals.

(o) Except for machines that vend canned beverages, if located outside, a machine used to vend food shall be provided with overhead protection.

(p) Except for areas used only for the loading of water or the discharge of sewage and other liquid waste, through the use of a closed system of hoses, servicing areas shall be provided with overhead protection.

(q) Exterior walking and driving surfaces shall be graded to drain.

(r) Outdoor refuse areas shall be constructed in accordance with law and shall be curbed and graded to drain to collect and dispose of liquid waste that result from the refuse and from cleaning the area and waste receptacles.

(s) Establishment operations shall be separated from any living or sleeping quarters by complete partitioning and shall have no direct opening into any living or sleeping quarters, except through a solid, tight-fitting and self-closing door. Entrance into the establishment shall not be through any living or sleeping quarters. [Eff
] (Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-72 Numbers and capacities. (a) Handwashing sinks shall be provided as specified in section 11-50-61(g).

(b) Each handwashing sink or group of two adjacent handwashing sinks shall be provided with a supply of hand cleaning liquid, powder, or bar soap.

(c) Each handwashing sink or group of adjacent handwashing sinks shall be provided with:

- (1) Individual, disposable towels;
- (2) A continuous towel system that supplies the user with a clean towel; or
- (3) A heated-air hand drying device; or
- (4) A hand drying device that employs an air-knife system that delivers high velocity, pressurized air at ambient temperatures.

(d) A sink used for food preparation or utensil washing, or a service sink or curbed cleaning facility used for the disposal of mop water or similar wastes, may not be

provided with the handwashing aids and devices required for a handwashing sink as specified in subsections (b) and (c), and section 11-50-64(g) (3).

(e) A sign or poster that notifies food employees to wash their hands shall be provided at all handwashing sinks used by food employees and shall be clearly visible to food employees.

(f) A handwashing sink or group of adjacent handwashing sinks that is provided with disposable towels shall be provided with a waste receptacle as specified in section 11-50-64(g) (3).

(g) Toilets and urinals shall be provided as specified in section 11-50-61(h).

(h) A supply of toilet tissue shall be available at each toilet.

(i) The light intensity shall be:

(1) At least one hundred eight lux (ten footcandles) at a distance of thirty inches above the floor, in walk-in refrigeration units and dry food storage areas and in other areas and rooms during periods of cleaning;

(2) At least two hundred fifteen lux (twenty footcandles):

(A) At a surface where food is provided for consumer self-service such as buffets and salad bars or where fresh produce or packaged foods are sold or offered for consumption;

(B) Inside equipment such as reach-in and under-counter refrigerators; and

(C) At a distance of thirty inches above the floor in areas used for handwashing, warewashing, and equipment and utensil storage, and in toilet rooms; and

(3) At least five hundred forty lux (fifty footcandles) at a surface where a food employee is working with food or working with utensils or equipment such as knives, slicers, grinders, or saws where employee safety is a factor.

(j) Designation.

(1) Dressing rooms or dressing areas shall be designated if employees routinely change their clothes in the establishment;

(2) Lockers or other suitable facilities shall be provided for the orderly storage of employees' clothing and other possessions.

(k) A service sink or curbed cleaning facility shall be provided as specified in section 11-50-61(i). [Eff] (Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-73 Location and placement. (a) Handwashing sinks shall be conveniently located as specified in section 11-50-61(1).

(b) Toilet rooms shall be conveniently located and accessible to employees during all hours of operation

(c) Designated areas.

(1) Areas designated for employees to eat, drink, and use tobacco shall be located so that food, equipment, linens, and single-service and single-use articles are protected from contamination;

(2) Lockers or other suitable facilities shall be located in a designated room or area where contamination of food, equipment, utensils, linens, and single-service and single-use articles cannot occur.

(d) Products that are held by the permit holder for credit, redemption, or return to the distributor, such as damaged, spoiled, or recalled products, shall be segregated and held in designated areas that are separated from food, equipment, utensils, linens, and single-service and single-use articles.

(e) Units, receptacles, and areas designated for storage of refuse and recyclable and returnable containers shall be located as specified in section 11-50-64(j). [Eff] (Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-74 Maintenance and operation. (a) Physical facilities shall be maintained in good repair.

(b) Cleaning, frequency and restrictions.

(1) Physical facilities shall be cleaned as often as necessary to keep them clean;

(2) Except for cleaning that is necessary due to a spill or other accident, cleaning shall be done during periods when the least amount of food is exposed such as after closing.

(c) Cleaning floors, dustless methods.

(1) Except as specified in paragraph (2), only dustless methods of cleaning shall be used, such as wet cleaning, vacuum cleaning, mopping with

treated dust mops, or sweeping using a broom and dust-arresting compounds;

- (2) Spills or drippage on floors that occur between normal floor cleaning times may be cleaned:
 - (A) Without the use of dust-arresting compounds; and
 - (B) In the case of liquid spills or drippage, with the use of a small amount of absorbent compound such as sawdust or diatomaceous earth applied immediately before spot cleaning.

(d) Intake and exhaust air ducts shall be cleaned and filters changed so they are not a source of contamination by dust, dirt, and other materials.

(e) Food preparation sinks, handwashing sinks, and warewashing equipment may not be used for the cleaning of maintenance tools, the preparation or holding of maintenance materials, or the disposal of mop water and similar liquid wastes.

(f) After use, mops shall be placed in a position that allows them to air-dry without soiling walls, equipment, or supplies.

(g) Except as specified in subsection (c)(2), sawdust, wood shavings, granular salt, baked clay, diatomaceous earth, or similar materials may not be used on floors.

(h) Plumbing fixtures such as handwashing sinks, toilets, and urinals shall be cleaned as often as necessary to keep them clean.

(i) Except during cleaning and maintenance operations, toilet room doors as specified in section 11-50-71(1) shall be kept closed.

(j) Using dressing rooms and lockers.

(1) Dressing rooms shall be used by employees if the employees regularly change their clothes in the establishment;

(2) Lockers or other suitable facilities shall be used for the orderly storage of employee clothing and other possessions.

(k) The premises shall be maintained free of insects, rodents, and other pests. The presence of insects, rodents, and other pests shall be controlled by:

(1) Routinely inspecting incoming shipments of food and supplies;

(2) Routinely inspecting the premises for evidence of pests;

- (3) Using methods, if pests are found, such as trapping devices or other means of pest control as specified in section 11-50-81 (c), (k) and (l); and
- (4) Eliminating harborage conditions.
 - (1) Dead or trapped birds, insects, rodents, and other pests shall be removed from control devices and the premises at a frequency that prevents their accumulation, decomposition, or the attraction of pests.
 - (m) Maintenance tools such as brooms, mops, vacuum cleaners, and similar items shall be:
 - (1) Stored so they do not contaminate food, equipment, utensils, linens, and single-service and single-use articles; and
 - (2) Stored in an orderly manner that facilitates cleaning the area used for storing the maintenance tools.
 - (n) The premises shall be free of:
 - (1) Items that are unnecessary to the operation or maintenance of the establishment such as equipment that is nonfunctional or no longer used; and
 - (2) Litter.
 - (o) Prohibiting animals.
 - (1) Except as specified in paragraphs (2) and (3), live animals may not be allowed on the premises of a food establishment;
 - (2) Live animals may be allowed in the following situations if the contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles cannot result:
 - (A) Edible fish or decorative fish in aquariums, shellfish or crustacea on ice or under refrigeration, and shellfish and crustacea in display tank systems;
 - (B) Patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas;
 - (C) In areas that are not used for food preparation and that are usually open for customers, such as dining and sales areas, service animals that are controlled by the disabled employee or person, if a health or safety hazard will not result from the

- presence or activities of the service animal;
- (D) Pets in the common dining areas of institutional care facilities such as nursing homes, assisted living facilities, group homes, or residential care facilities at times other than during meals if:
 - (i) Effective partitioning and self-closing doors separate the common dining areas from food storage or food preparation areas;
 - (ii) Condiments, equipment, and utensils are stored in enclosed cabinets or removed from the common dining areas when pets are present; and
 - (iii) Dining areas including tables, countertops, and similar surfaces are effectively cleaned before the next meal service; and
 - (E) In areas that are not used for food preparation, storage, sales, display, or dining, in which there are caged animals or animals that are similarly confined, such as in a variety store that sells pets or a tourist park that displays animals;
- (3) Live or dead fish bait may be stored if contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles cannot result. [Eff] (Auth: HRS §321-11) (Imp: HRS §321-11)

§§11-50-75 to 11-50-79 (Reserved).

SUBCHAPTER 7

POISONOUS OR TOXIC MATERIALS

- §11-50-80 Labeling and identification. (a)
Containers of poisonous or toxic materials and personal care items shall bear a legible manufacturer's label.
- (b) Working containers used for storing poisonous or toxic materials such as cleaners and sanitizers taken from

bulk supplies shall be clearly and individually identified with the common name of the material. [Eff
] (Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-81 Operational supplies and applications. (a) Poisonous or toxic materials shall be stored so they cannot contaminate food, equipment, utensils, linens, and single-service and single-use articles by:

- (1) Separating the poisonous or toxic materials by spacing or partitioning; and
 - (2) Locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens, and single-service or single-use articles. This paragraph does not apply to equipment and utensil cleaners and sanitizers that are stored in warewashing areas for availability and convenience if the materials are stored to prevent contamination of food, equipment, utensils, linens, and single-service and single-use articles.
- (b) Presence and use restriction.
- (1) Only those poisonous or toxic materials that are required for the operation and maintenance of a food establishment, such as for the cleaning and sanitizing of equipment and utensils and the control of insects and rodents, shall be allowed in a food establishment;
 - (2) Paragraph (1) does not apply to packaged poisonous or toxic materials that are for retail sale.
- (c) Poisonous or toxic materials shall be:
- (1) Used according to:
 - (A) This chapter and law;
 - (B) Manufacturer's use directions included in labeling, and, for a pesticide, manufacturer's label instructions that state that use is allowed in a food establishment;
 - (C) The conditions of certification, if certification is required, for use of the pest control materials; and
 - (D) Additional conditions that may be established by the department; and
 - (2) Applied so that:

- (A) A hazard to employees or other persons is not constituted; and
- (B) Contamination including toxic residues due to drip, drain, fog, splash, or spray on food, equipment, utensils, linens, and single-service and single-use articles is prevented, and for a restricted use pesticide, this is achieved by:
 - (i) Removing the items;
 - (ii) Covering the items with impermeable covers; or
 - (iii) Taking other appropriate preventive actions; and
 - (iv) Cleaning and sanitizing equipment and utensils after the application;
- (3) A restricted use pesticide shall be applied only by a licensed pest control operator, or a person under the direct supervision of a licensed pest control operator.
- (d) A container previously used to store poisonous or toxic materials may not be used to store, transport, or dispense food.
- (e) Chemical sanitizers and other chemical antimicrobials applied to food-contact surfaces shall meet the requirements specified in 40 CFR 180.940, entitled "Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (food-contact surface sanitizing solutions)".
- (f) Chemicals for washing, treatment, storage and processing fruits and vegetables, criteria.
 - (1) Chemicals used to wash or peel raw, whole fruits and vegetables shall meet the requirements specified in 21 CFR 173.315 entitled "Chemicals used in washing or to assist in the peeling of fruits and vegetables";
 - (2) Ozone as an antimicrobial agent used in the treatment, storage, and processing of fruits and vegetables in a food establishment shall meet the requirements specified in 21 CFR 173.368, entitled "Ozone".
- (g) Chemicals used as boiler water additives shall meet the requirements specified in 21 CFR 173.310, entitled "Boiler water additives".
- (h) Drying agents used in conjunction with sanitization shall:

- (1) Contain only components that are listed as one of the following:
 - (A) Generally recognized as safe for use in food as specified in 21 CFR 182, entitled "Substances generally recognized as safe", or 21 CFR 184, entitled "Direct food substances affirmed as generally recognized as safe";
 - (B) Generally recognized as safe for the intended use as specified in 21 CFR 186, entitled "Indirect food substances affirmed as generally recognized as safe";
 - (C) Approved for use as a drying agent under a prior sanction specified in 21 CFR 181, entitled "Prior-sanctioned food ingredients";
 - (D) Specifically regulated as an indirect food additive for use as a drying agent as specified in 21 CFR Parts 175-178; or
 - (E) Approved for use as a drying agent under the threshold of regulation process established by 21 CFR 170.39, entitled "Threshold of regulation for substances used in food-contact articles"; and
- (2) When sanitization is with chemicals, the approval required in paragraph (1)(C) or (E) or the regulation as an indirect food additive required in paragraph (1)(D), shall be specifically for use with chemical sanitizing solutions.
 - (i) Lubricants shall meet the requirements specified in 21 CFR 178.3570, entitled "Lubricants with incidental food contact", if they are used on food-contact surfaces, on bearings and gears located on or within food-contact surfaces, or on bearings and gears that are located so that lubricants may leak, drip, or be forced into food or onto food-contact surfaces.
 - (j) Restricted use pesticides specified in subsection (c)(3) shall meet the requirements specified in 40 CFR 152 Subpart I, entitled "Classification of Pesticides".
 - (k) Rodent bait shall be contained in a covered, tamper-resistant bait station.
 - (1) Tracking powders, pest control and monitoring.
 - (1) Except as specified in paragraph (2), a tracking powder pesticide may not be used in a food establishment;

- (2) If used, a nontoxic tracking powder such as talcum or flour may not contaminate food, equipment, utensils, linens, and single-service and single-use articles.
- (m) Medicines restriction and storage.
 - (1) Except for medicines that are stored or displayed for retail sale, only those medicines that are necessary for the health of employees shall be allowed in a food establishment;
 - (2) Medicines that are in a food establishment for the employees' use shall be labeled as specified in section 11-50-80(a) and located to prevent the contamination of food, equipment, utensils, linens, and single-service and single-use articles.
- (n) Medicines belonging to employees that require refrigeration and are stored in a food refrigerator shall be stored in a package or container and kept inside a covered, leakproof container that is identified as a container for the storage of medicines.
- (o) First aid supplies that are in a food establishment for the employees' use shall be:
 - (1) Labeled as specified in section 11-50-80(a); and
 - (2) Stored in a kit or a container that is located to prevent the contamination of food, equipment, utensils, and linens, and single-service and single-use articles.
- (p) Except as specified in subsections (n) and (o), employees shall store their personal care items in facilities as specified in section 11-50-72(j)(2)). [Eff] (Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-82 Stock and retail sale. Poisonous or toxic materials shall be stored and displayed for retail sale so they cannot contaminate food, equipment, utensils, linens, and single-service and single-use articles by:

- (1) Separating the poisonous or toxic materials by spacing or partitioning; and
- (2) Locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens, and single-service or single-use articles. [Eff] (Auth: HRS §321-11) (Imp: HRS §321-11)

§§11-50-83 to 11-50-84 (Reserved).

SUBCHAPTER 8

MOBILE FOOD ESTABLISHMENTS

§11-50-85 General requirements. (a) Mobile food establishments shall comply with the requirements of this chapter, except as otherwise provided in this subchapter.

(b) The department may impose additional requirements to protect against health hazards or nuisances related to the conduct of food establishments as mobile operations.

(c) The department may prohibit the sale of some or all potentially hazardous foods.

(d) When no health hazard will result, the department may waive or modify the requirements of this chapter for mobile food establishments.

(e) A mobile food establishment shall be of a design that allows relocation of the mobile food establishment to an approved establishment as needed.

[Eff] (Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-86 Approved food establishment requirements.

(a) Mobile food establishments shall operate out of an approved food establishment and shall return to the approved food establishment for cleaning and servicing.

(b) The approved food establishment shall provide a servicing area that is conveniently accessible for the mobile food establishment cleaning, discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food.

(c) The approved food establishment shall be used for the following purposes:

(1) Storage. Food, equipment, utensils, and supplies shall be stored in the approved food establishment unless stored on board mobile food establishments;

(2) Food preparation. All food preparation not permitted on board mobile food establishments shall take place at the approved food establishment;

- (3) Cleaning. Multi-use equipment and utensils that are not permitted to be cleaned on board mobile food establishments shall be cleaned and sanitized at the approved food establishment at least once each day at the conclusion of the daily operations;
 - (4) Water supply. The water tank(s) of all mobile food establishments shall be drained and filled daily with potable water at an approved servicing area at the approved food establishment;
 - (5) Wastewater disposal. Wastewater holding tank(s) of all mobile food establishments shall be drained daily and cleaned at an approved servicing area;
 - (6) Cooking and reheating. All cooking not permitted on mobile food establishments shall take place at the approved food establishment;
 - (7) Cooling. Leftover food to be reheated for later service shall be rapidly cooled as specified in section 11-50-34(d).
- (d) A mobile food establishment may use more than one approved food establishment. The names and addresses of all sites used as an approved food establishment for a mobile food establishment shall be provided to the department in writing for approval. The director may limit the number of mobile establishments operating out of the same food establishment.
- (e) If the owner of the mobile food establishment is not also the owner of the approved food establishment, the following shall apply:
- (1) Written documentation detailing the operational agreement between the two parties shall be provided. The documentation required shall include, but not be limited to, the days, times, and specific types of operations to be conducted in the approved food establishment. The written documentation must be submitted annually along with the renewal application and fees;
 - (2) The approved food establishment shall be provided with a means by which used of the facility can be documented and verified by the director. Acceptable methods are:
 - (A) The use of time cards stamped by a punch clock sealed by the director;
 - (B) A tampered-proof electronic log-in;

- (C) Log-in sheets listing dates and times of an approved food establishment use shall be maintained on a form provided by the department. Each daily entry shall be initialed or signed by representatives of both the approved food establishment and the mobile food establishment; or
 - (D) An alternative record keeping method approved by the director if such method adequately documents the usage of the approved food establishment by the mobile food establishment. These records shall be retained at the approved food establishment for at least twelve months and shall be made available to the director upon request;
- (3) These records shall be retained at the approved food establishment for at least twelve months and shall be made available to the director upon request.
 - (4) Separate clearly designated storage areas for food, supplies, and equipment shall be provided in the approved food establishment for use by the mobile food establishment.
 - (f) A private home kitchen shall not be used as an approved food establishment. [Eff]
(Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-87 Food supplies, storage, display and service. (a) Food supplies. A list of all foods offered shall be submitted to the department for approval. Approval shall be based on a determination by the director that the mobile food establishment is provided with the minimum facilities necessary for a safe and sanitary operation.

(b) Food storage. Excess food not carried on the mobile food establishment shall be stored at the approved food establishment.

(c) Food display and service. Self-service of unpackaged potentially hazardous food by customers is prohibited except through self-dispensing units that do not require a separate dispensing utensil such as a scoop or tongs, if approved by the director.

[Eff] (Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-88 Single-service restrictions. (a) Food shall be served to customers in, or on, single-service or single-use containers only.

(b) Only single-service utensils shall be provided to customers. [Eff] (Auth: HRS §321-11)
(Imp: HRS §321-11)

§11-50-89 Water system. (a) Mobile food establishments where exposed or unpackaged foods are handled shall be equipped with an approved self-contained water system that provides sufficient water at the required temperatures to meet the needs of the operation and shall be constructed and operated as specified in section 11-50-62.

(b) The water supply and sink requirements shall be as follows:

- (1) Mobile food establishments required to have a water system shall be equipped with a handwashing sink as specified in sections 11-50-60(k) and 11-50-61(c) and (g). The water system shall be of sufficient capacity to furnish the amount of water needed for the hours of operation, but not less than five gallons;
- (2) Mobile food establishments that conduct food preparation or warewashing on the mobile unit shall be equipped as specified in sections 11-50-47(b) and 11-50-49(h). In such case the water system shall be of sufficient capacity to furnish the amount of water needed for the hours of operation. The minimum volume of water shall be approved by the director based on operational factors that may include, but not be limited to, the hours of operation, the number of workers involved, the type and amount of food prepared, and extent of food-handling/warewashing conducted on board the mobile food establishment. Water use projections or estimations shall be provided by the applicant. [Eff] (Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-90 Wastewater system. All mobile food establishments equipped with a water system shall be

provided with a wastewater holding tank sized at least fifteen per cent larger than the water supply and shall be constructed and operated as specified in section 11-50-63. [Eff] (Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-91 Other requirements. (a) For identification purposes, the permit number of the permit issued by the department shall be permanently and prominently displayed on two sides of the exterior of the mobile food establishment in characters not less than four inches high, of strokes not less than one-fourth inch wide and of a color that contrasts with the background.

(b) All mobile food establishments shall be capable of being moved from their vending site at any time. They shall be moved from the vending site to the approved food establishment for cleaning and servicing.

(c) No utility service lines shall be connected to a mobile food establishment.

(d) All equipment essential to the basic operation of the mobile food establishment shall be physically attached to or located aboard the mobile unit. This includes, but is not limited to, grills, ice chests, storage containers, and generators. [Eff] (Auth: HRS §321-11) (Imp: HRS §321-11)

§§11-50-92 to 11-50-94 (Reserved).

SUBCHAPTER 9

TEMPORARY FOOD ESTABLISHMENTS

§11-50-95 General requirements. (a) A temporary food establishment shall comply with the requirements of this chapter, except as otherwise provided in this subchapter.

(b) The department may impose additional requirements to protect against health hazards or nuisances related to the conduct of temporary food establishments.

(c) The department may prohibit the sale of some or all potentially hazardous foods.

(d) When no health hazards will result, the department may waive or modify requirements of this chapter

for temporary food establishments. [Eff]
(Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-96 Special requirements. (a) All temporary food establishment operational sites shall be approved by the department. Temporary food establishment operational sites shall include the approved food establishment sites, event sites, vending or distribution sites and any other sites where food is prepared, packaged, stored, served, vended, or distributed.

(b) All temporary food establishment menus and schematic plans shall be approved by the department.

- (1) The permit applicant may be required to submit to the department in writing, a complete menu and schematic plan of the proposed operation;
- (2) This schematic shall clearly detail, step by step, the flow and handling of all foods on the menu from the initial receipt of ingredients, through the processing or preparation of the foods, to the final distribution of the food to the consumer. [Eff] (Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-97 Approved food establishment requirements. An approved food establishment shall be available and used for any food preparation that is not allowed at the event site and to clean and sanitize multi-use utensils and equipment before the event and at the end of each business day. [Eff] (Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-98 Single-service restrictions. (a) Food shall be served to customers in, or on, single-service or single-use containers only.

(b) Only single-service utensils shall be provided to customers. [Eff] (Auth: HRS §321-11)
(Imp: HRS §321-11)

§11-50-99 Handwashing facilities. Temporary food establishments where exposed or unpackaged foods are handled shall be provided with at least one handwashing sink as specified in sections 11-50-60(k) and 11-50-61(c)

and (g). If an alternative water supply is provided instead of water under pressure, it shall be of sufficient capacity to furnish the amount of water needed for the hours of operation, but not less than five gallons. [Eff] (Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-100 Wastewater disposal. Wastewater shall be disposed of in a manner that does not create a nuisance. [Eff] (Auth: HRS §321-11) (Imp: HRS §321-11)

§11-50-101 Other facilities and operations. (a) Temporary food establishments shall be located in a clean, controlled area in which the potential for contamination of food and food contact equipment is minimized.

(b) Garbage and refuse from temporary food establishments shall be stored in tightly covered leakproof containers until removed.

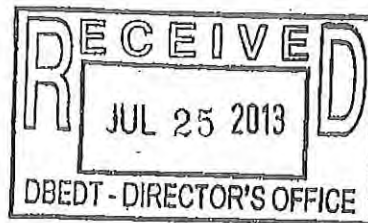
(c) Refuse containers shall be available on the grounds at convenient locations.

(d) All garbage and refuse shall be disposed of at a frequency and in a manner that does not create a nuisance. [Eff] (Auth: HRS §321-11) (Imp: HRS §321-11)

§§11-50-102 to 11-50-104 (Reserved).

III. New Business

C. HAR Title 16 Chapter 88 Naturopaths (DCCA)



NEIL ABERCROMBIE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR

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KEALI'I S. LOPEZ
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

DTS20130725135023
To: SBRRB
From: Director's Office
Appropriate Attention
Due Date: 8-6-13

July 1, 2013

MEMORANDUM

TO: Dori Palcovich
Small Business Regulatory Review Board
Department of Business, Economic Development & Tourism

FROM: Keali'i S. Lopez, Director 
Department of Commerce and Consumer Affairs

SUBJECT: Small Business Impact Review of the Proposed Amendments to Chapter 88,
Title 16, Hawaii Administrative Rules, Relating to Naturopaths

Attached for your review is the proposal to amend Chapter 16-88, HAR, relating to Naturopaths.

I. Proposed Rules:

Section 16-88-7.5 Use of titles. Non-substantive grammatical amendments are made for clarity and style.

Section 16-88-12.1 Examination requirements for licensure. This section is amended by deleting the requirement for the homeopathy examination. Until February 2007, Part II of the Naturopathic Physicians Licensing Examination ("NPLEX") consisted of eight parts and three separate add-on examinations (minor surgery, acupuncture and homeopathy). In February 2007, the professional testing agency administered a new integrated Part II of the NPLEX. The examination on homeopathy is incorporated into the Part II of the NPLEX and the separate examination on homeopathy is no longer administered. The professional testing agency began providing notification to examination candidates at least a year prior to the administration of the new integrated Part II of the NPLEX, however individuals who did not anticipate applying for licensure in Hawaii¹ did not take the separate examination in homeopathy. Because the examination on homeopathy is no longer administered, applicants

¹ The separate examination on homeopathy was not a license requirement in California and Connecticut.



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¹ The separate examination on homeopathy was not a license requirement in California and Connecticut.

are not able to meet the requirements for licensure in Hawaii unless they take the new integrated Part II of the NPLEX which includes the examination on homeopathy.

Part II of the NPLEX is designed to test the skills and knowledge that an entry level naturopathic physician must have in order to practice safely. The Board felt that it would be burdensome to require naturopathic physicians who already took and passed the Part II of the NPLEX, to take the new integrated Part II of the NPLEX to meet the examination on homeopathy licensing requirement. Students are examined in their courses on homeopathy as they work toward their doctor of naturopathic medicine degree. The Board believes that graduates of accredited naturopathic colleges are proficient in homeopathy and the risk of incompetence or patient injury would only be of concern if homeopathy were performed by individuals who are not graduates of accredited naturopathic colleges.

Section 16-88-14.2 Reexamination. Non-substantive grammatical amendments are made for clarity and style.

Section 16-88-56 Authorization to use parenteral therapy required. Subsection (a) is amended to clarify that parenteral therapy also includes various therapeutic injection techniques such as prolotherapy, trigger point injection and plasma rich platelet therapy. The Board believes that the education and training required to qualify for authorization to perform parenteral therapy is adequate to perform various therapeutic injection techniques safely. The required education and training together with the Board's standards of practice, care and code of ethics provide for the safe practice of various therapeutic injection techniques by naturopathic physicians.

After your timely review, the proposed amendments will be submitted to the Governor for approval before scheduling a public hearing.

II. Small Business Impact Statement pursuant to section 201M-2, HRS:

1. The businesses that will be directly affected by, bear the cost of, or directly benefit from the proposed rules?

We do not anticipate any adverse affects on businesses or any additional direct costs for businesses to bear.

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

We do not anticipate any adverse affects.

3. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, record keeping, equipment, construction,

labor, professional services, revenue loss, or other costs associated with compliance?

No additional direct or indirect costs are anticipated.

4. The probable monetary costs and benefits to the implementing agency and other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used?

Monetary benefits to the department are not anticipated.

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

Through the forum of public Board meetings at which the proposed rule amendments were discussed, the availability and distribution of minutes covering those open meetings, and the availability of the proposed rules throughout the process.

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

In addition to the public Board meetings and availability of the minutes of those meetings, the public hearing will afford all interested persons the opportunity to comment on the proposed rules.

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

There are no mandated federal, state, or county standards applicable to this area.

III. Other Alternatives in Lieu of Proposed Rules:

There appears to be no other way to implement and clarify the statutory requirements.

The proposed rules have been reviewed by the Legislative Reference Bureau and the Department of the Attorney General.

Small Business Regulatory Review Board

July 1, 2013

Page 4

The Department submits these proposed rules and the Small Business Impact Statement contained herein, for consideration by the Small Business Regulatory Review Board.

KSL:CI/fn

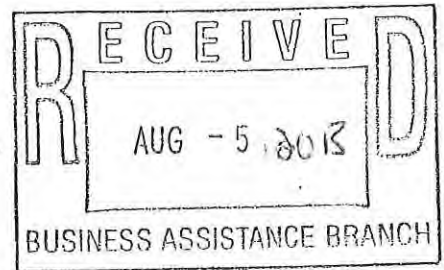
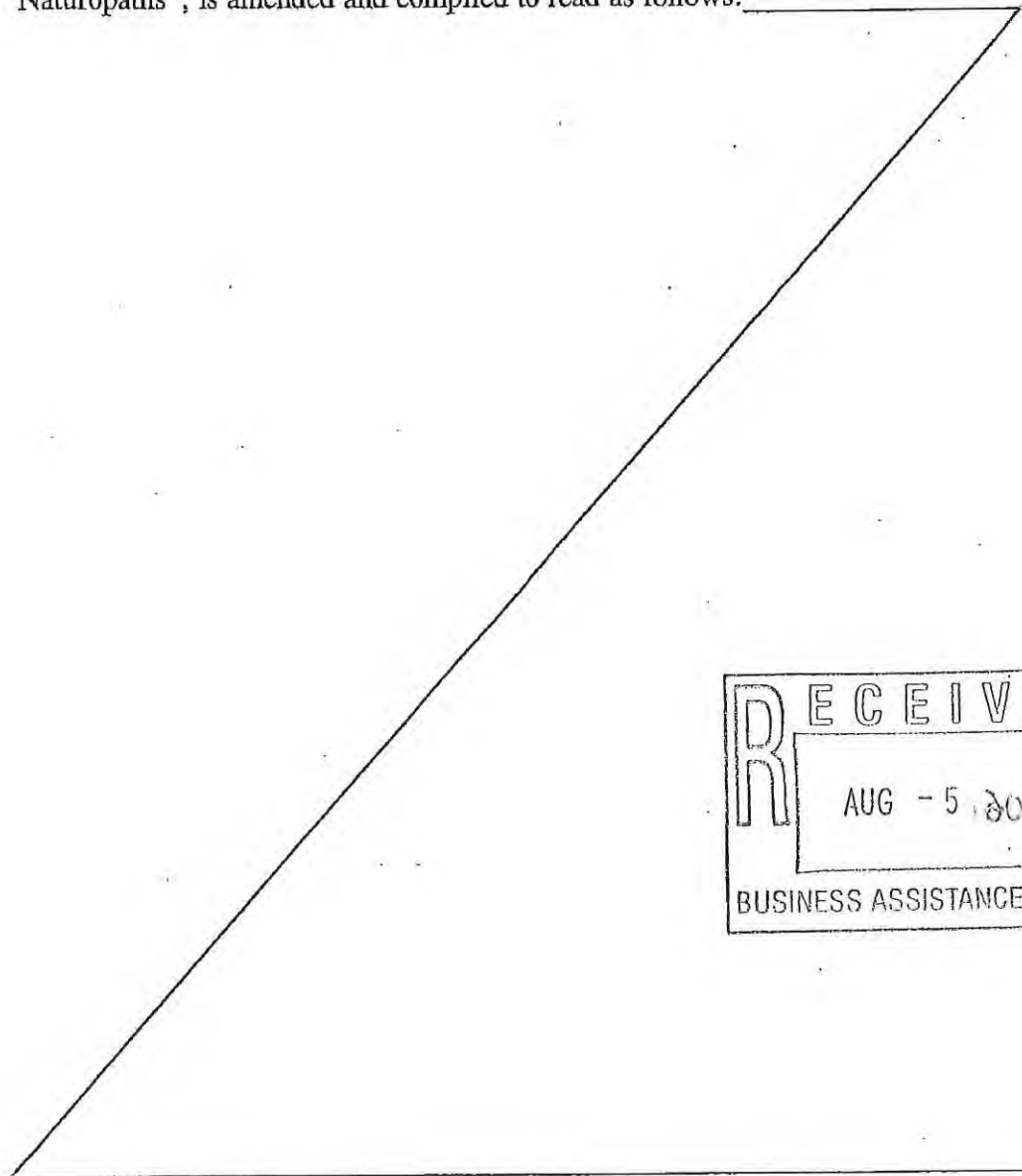
Attachment

cc: Candace Ito, Executive Officer

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendment and Compilation of Chapter 16-88
Hawaii Administrative Rules

1. Chapter 16-88, Hawaii Administrative Rules, entitled "Naturopaths", is amended and compiled to read as follows:



"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 88

NATUROPATHS

Subchapter 1 General Provisions

- §16-88-1 Objective
- §16-88-2 Definitions
- §16-88-3 Notification and filing of names, addresses, and changes
- §16-88-4 Payment of renewal fees
- §16-88-5 Automatic forfeiture of license
- §16-88-6 Restoration of forfeited license
- §16-88-7 Display of wall certificate
- §16-88-7.5 Use of titles

Subchapter 2 Applications

- §16-88-8 Repealed
- §16-88-9 Application for licensure
- §16-88-10 Application for examination and reexamination

Subchapter 3 Examination

- §16-88-12 Repealed
- §16-88-12.1 Examination requirements for licensure
- §16-88-12.2 Educational requirements for licensure
- §16-88-13 Repealed
- §16-88-14 Repealed
- §16-88-14.1 Passing score
- §16-88-14.2 Reexamination

Subchapter 4 Hearings

- §16-88-15 Denial
- §16-88-16 Demand for a hearing
- §16-88-17 Proceedings upon demand for a hearing
- §16-88-18 Administrative practice and procedure

Subchapter 5 Oral Testimony

- §16-88-20 Oral testimony

Subchapter 6 Repealed

- §16-88-21 Repealed
- §16-88-22 Repealed
- §16-88-23 Repealed
- §16-88-24 Repealed
- §16-88-25 Repealed
- §16-88-26 Repealed
- §16-88-27 Repealed

Subchapter 7 Fees

- §16-88-31 Fees

Subchapter 8 Repealed

- §16-88-35 Repealed
- §16-88-36 Repealed
- §16-88-37 Repealed
- §16-88-38 Repealed
- §16-88-39 Repealed
- §16-88-40 Repealed
- §16-88-41 Repealed

Subchapter 9 Parenteral Therapy

- §16-88-56 Authorization to use parenteral therapy required
- §16-88-57 Education and training requirements for parenteral therapy
- §16-88-58 Disapproval of course providers, courses, and instructors

§16-88-59 Standards to administer parenteral therapy

Subchapter 10 Minor Office Procedures

§16-88-70 Authorization to perform minor office procedures required

Subchapter 11 Standards of Practice, Care, and Ethics

§16-88-80 Code of ethics

§16-88-81 Standards of practice and care

SUBCHAPTER 1

GENERAL PROVISIONS

§16-88-1 Objective. This chapter is intended to clarify and implement chapter 455, HRS, to the end that the provisions thereunder may be best effectuated and the public interest most effectively protected. [Eff 6/11/79; am and ren §16-88-1, 6/22/81; am and comp 4/28/88; comp 7/10/91; comp 10/13/94; comp 1/21/10; am and comp 2/14/11; comp 4/13/12; comp] (Auth: HRS §455-6) (Imp: HRS §455-6)

§16-88-2 Definitions. As used in this chapter:

"Board" means the board of naturopathic medicine. [Eff 6/11/79; am and ren §16-88-2, 6/22/81; am and comp 4/28/88; comp 7/10/91; am and comp 10/13/94; comp 1/21/10; am and comp 2/14/11; comp 4/13/12; comp] (Auth: HRS §455-6) (Imp: HRS §§455-4, 455-6)

§16-88-3 Notification and filing of names, addresses, and changes. Every licensee shall file the licensee's mailing address with the board and shall notify the board in writing of any and all changes within thirty calendar days of the change. [Eff 6/11/79; am and ren §16-88-3, 6/22/81; am and comp 4/28/88; comp 7/10/91; comp 10/13/94; comp 1/21/10; am and comp 2/14/11; comp 4/13/12; comp] (Auth: HRS §455-6) (Imp: HRS §455-6)

§16-88-4 Payment of renewal fees. Renewal fees paid by mail shall be considered as paid when due if the envelope bears the postmark of December 31 or earlier of each odd-numbered year. [Eff 6/11/79; am and ren §16-88-4, 6/22/81; am and comp 4/28/88; am and comp 7/10/91; comp 10/13/94; comp 1/21/10; am and comp 2/14/11; comp 4/13/12; comp] (Auth: HRS §455-6) (Imp: HRS §455-8)

§16-88-5 Automatic forfeiture of license. A licensee's license shall be automatically forfeited if:

- (1) The licensee fails to pay the renewal fee on or before December 31 of each odd-numbered year;
- (2) The licensee pays the renewal fee by check which is not honored due to insufficient funds; or
- (3) For any other reason, the renewal fee shall be considered not paid. [Eff and comp 4/28/88; am and comp 7/10/91; comp 10/13/94; comp 1/21/10; comp 2/14/11; comp 4/13/12; comp] (Auth: HRS §455-6) (Imp: HRS §455-8)

§16-88-6 Restoration of forfeited license. A license [which] that is forfeited pursuant to section 16-88-5 may be restored upon:

- (1) Submitting an application for renewal on a form approved by the board and payment of a renewal fee;
- (2) Payment of all delinquent fees; and
- (3) Payment of a penalty fee. [Eff and comp 4/28/88; comp 7/10/91; am and comp 10/13/94; comp 1/21/10; am and comp 2/14/11; comp 4/13/12; am and comp] (Auth: HRS §455-6) (Imp: HRS §455-8)

§16-88-7 Display of wall certificate. [A] An original or legible copy of the wall certificate issued by the board shall be conspicuously displayed in the licensee's place of business. [Eff and comp 4/28/88; comp 7/10/91; comp 10/13/94; am and comp 1/21/10; am and comp 2/14/11; comp 4/13/12; am and comp] (Auth: HRS §455-6) (Imp: HRS §455-8)

§16-88-7.5 Use of titles. A person licensed under chapter 455, HRS, and this chapter:

- (1) Shall clearly identify [him or herself] the person as being a naturopathic physician;
- (2) May use the titles "natureopath", "naturopath", "doctor of naturopathy", "doctor of naturopathic medicine", "naturopathic healthcare", "naturopathic physician", "naturopathic medicine", "naturopathy", "naturopathic doctor", and "N.D.";
- (3) Shall not use any title to induce the belief that the person is licensed as a physician or an osteopathic physician in this State; and
- (4) Shall not use the title "naturopathic medical doctor" or the acronym "N.M.D."; provided that this prohibition shall not apply to a naturopathic physician who is licensed as a physician or an osteopathic physician in this State. [Eff and comp 1/21/10; am and comp 2/14/11; comp 4/13/12; am and comp]
(Auth: HRS §455-6) (Imp: HRS §§455-9, 455-11)

SUBCHAPTER 2

APPLICATIONS

§16-88-8 Repealed. [R 4/28/88]

§16-88-9 Application for licensure. (a) An application for licensure filed with the board shall be prepared in accordance with the application forms and instructions provided by the board and shall be accompanied by:

- (1) The required application fees, which shall not be refunded;
 - (2) A certified copy of an official transcript;
 - (3) Passing scores of the examinations as required in section 16-88-14.1.
The applicant shall be responsible for having the professional testing agency verify, directly to the board, the passing scores of the examinations as required in section 16-88-14.1; and
 - (4) Any other documents deemed necessary by the board.
- (b) The board may delegate to the board's executive officer the authority to issue a license upon verification that an applicant has met the education and examination requirements of this chapter and chapter 455, HRS. [Eff and comp 4/28/88; am and comp 7/10/91; am and comp 10/13/94; am and comp 1/21/10;

comp 2/14/11; comp 4/13/12; comp
HRS §§455-2, 455-3, 455-7)

] (Auth: HRS §455-6) (Imp:

§16-88-10 Application for examination and reexamination. An application for examination and reexamination shall be filed directly with the professional testing agency contracted with the board. [Eff and comp 4/28/88; am and comp 7/10/91; comp 10/13/94; am and comp 1/21/10; am and comp 2/14/11; comp 4/13/12; comp] (Auth: HRS §455-6) (Imp: HRS §§455-2, 455-7)

SUBCHAPTER 3

EXAMINATION

§16-88-12 Repealed. [R 4/28/88]

§16-88-12.1 Examination requirements for licensure. Each applicant shall be required to take and pass the following parts of the Naturopathic Physicians Licensing Examinations (NPLEX):

- (1) Part I of the NPLEX; and
- (2) Part II of the NPLEX; and
- (3) Examination on homeopathy; provided that after February 2007, the examination on homeopathy will no longer be a separate examination as it will be incorporated into the Part II of the NPLEX. [Eff and comp 4/28/88; comp 7/10/91; am and comp 10/13/94; am and comp 1/21/10; am and comp 2/14/11; comp 4/13/12; am and comp] (Auth: HRS §455-6) (Imp: HRS §455-7)

§16-88-12.2 Educational requirements for licensure. The naturopathic medical education program shall be a minimum of four academic years, with in-residence curriculum in basic science and clinical didactic studies, as well as clinical training. [Eff and comp 1/21/10; comp 2/14/11; comp 4/13/12; comp] (Auth: HRS §455-6) (Imp: HRS §455-3)

§16-88-13 Repealed. [R 4/28/88]

§16-88-14 Repealed. [R 4/28/88]

§16-88-14.1 Passing score. (a) The passing score, which shall be verified directly to the board by the professional testing agency, for [each examination or] each part of the [examinations] examination specified in section 16-88-12.1 shall be a converted score of at least seventy-five or a result of "P" or "pass"; provided that the score report of "P" or "pass" is equivalent to a converted score of at least seventy-five.

(b) The professional testing agency shall grade and score each part of the [examinations] examination. [Eff and comp 4/28/88; am and comp 7/10/91; am and comp 10/13/94; am and comp 1/21/10; am and comp 2/14/11; comp 4/13/12; am and comp] (Auth: HRS §455-6) (Imp: HRS §455-7)

§16-88-14.2 Reexamination. (a) An applicant who fails any part of Part I of the NPLEX shall be required to retake all failed parts during the same administration of the NPLEX [examination] and shall attain a converted score of at least seventy-five on all parts of the examination that the applicant had failed and had retaken; provided that:

- (1) An applicant who fails more than two parts of Part I of the NPLEX shall retake the entire Part I of the NPLEX; and
- (2) An applicant who fails to pass all parts of Part I of the NPLEX within four attempts shall retake the entire Part I of the NPLEX. An applicant who has not passed all five parts of Part I of the NPLEX prior to August 2009, shall retake the entire Part I of the NPLEX. After February 2009, an applicant who fails any part of the Part I of the NPLEX shall retake the entire examination.

(b) An applicant who fails any part of Part II of the NPLEX shall retake the entire examination. [Eff and comp 4/28/88; comp 7/10/91; comp 10/13/94; am and comp 1/21/10; am and comp 2/14/11; comp 4/13/12; am and comp] (Auth: HRS §455-6) (Imp: HRS §455-7)

SUBCHAPTER 4

HEARINGS

§16-88-15 Denial. If an application for the issuance of a license, renewal of a license, or restoration of a license is denied by the board, the applicant or licensee, as the case may be, shall be notified by letter of the board's action which shall include a concise statement of the reasons for denial and a statement informing the applicant or licensee of the right to a hearing. [Eff 6/11/79; am and ren §16-88-15, 6/22/81; am and comp 4/28/88; comp 7/10/91; comp 10/13/94; comp 1/21/10; am and comp 2/14/11; comp 4/13/12; am and comp] (Auth: HRS §455-6) (Imp: HRS §§455-6, 455-11)

§16-88-16 Demand for a hearing. Any person whose application for the issuance of a license, renewal of a license, or restoration of a license has been denied by the board may petition for hearing relief pursuant to chapter 16-201; provided that the petition for hearing relief is filed with the board within sixty calendar days of the date of the denial of the application. [Eff 6/11/79; am and ren §16-88-16, 6/22/81; am and comp 4/28/88; comp 7/10/91; comp 10/13/94; am and comp 1/21/10; am and comp 2/14/11; comp 4/13/12; am and comp] (Auth: HRS §455-6) (Imp: HRS §§91-13.1, 455-6, 455-11)

§16-88-17 Proceedings upon demand for a hearing. If a demand for a hearing is filed pursuant to section 16-88-16, the board shall order a hearing pursuant to chapter 16-201. [Eff 6/11/79; am and ren §16-88-17, 6/22/81; am and comp 4/28/88; comp 7/10/91; comp 10/13/94; am and comp 1/21/10; am and comp 2/14/11; comp 4/13/12; comp] (Auth: HRS §455-6) (Imp: HRS §§455-6, 455-11)

§16-88-18 Administrative practice and procedure. The rules of practice and procedure provided in chapter 16-201, [as amended,] shall be followed for administrative hearings, and are hereby incorporated into and made a part of this chapter. [Eff and comp 4/28/88; comp 7/10/91; am and comp 10/13/94; comp 1/21/10; am and comp 2/14/11; comp 4/13/12; am and comp] (Auth: HRS §§91-2, 455-6) (Imp: §§91-2, 455-6)

SUBCHAPTER 5

ORAL TESTIMONY

§16-88-20 Oral testimony. (a) The board shall accept oral testimony on any item which is on the board's agenda, provided that the testimony shall be subject to the following conditions:

- (1) Each person seeking to present oral testimony is requested to notify the board not later than forty-eight hours prior to the meeting, and at that time shall state the item on which testimony is to be presented;
- (2) The board may request that any person providing oral testimony submit the remarks, or a summary of the remarks, in writing to the board;
- (3) The board may rearrange the items on the agenda for the purpose of providing for the most efficient and convenient presentation of oral testimony;
- (4) Persons presenting oral testimony shall, at the beginning of the testimony, identify themselves and the organization, if any, that they represent;
- (5) The board may limit oral testimony to a specified time period but in no case shall the period be less than five minutes, and the person testifying shall be informed prior to the commencement of the testimony of the time constraints to be imposed; and
- (6) The board may refuse to hear any testimony which is irrelevant, immaterial, or unduly repetitious to the agenda item on which it is presented.

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

(c) Nothing in this section shall prevent the board from soliciting oral remarks from persons present at the meeting or from inviting persons to make presentations to the board on any particular matter on the board's agenda. [Eff and comp 4/28/88; comp 7/10/91; am and comp 10/13/94; comp 1/21/10; comp 2/14/11; comp 4/13/12; comp] (Auth: HRS §455-6) (Imp: HRS §§92-3, 455-6)

SUBCHAPTER 6

§16-88-21 Repealed. [R 7/10/91]

§16-88-22 Repealed. [R 7/10/91]

§16-88-23 Repealed. [R 7/10/91]

§16-88-24 Repealed. [R 7/10/91]

§16-88-25 Repealed. [R 4/28/88]

§16-88-26 Repealed. [R 7/10/91]

§16-88-27 Repealed. [R 7/10/91]

SUBCHAPTER 7

FEES

§16-88-31 Fees. All fees under chapter 455, HRS, and this chapter shall be specified in chapter 16-53, relating to boards and commissions. [Eff 11/7/64; am and ren §16-88-31, 6/22/81; am and comp 4/28/88; comp 7/10/91; comp 10/13/94; comp 1/21/10; am and comp 2/14/11; comp 4/13/12; comp]
(Auth: HRS §92-28) (Imp: HRS §§26-9, 92-28)

SUBCHAPTER 8

§16-88-35 Repealed. [R 7/10/91]

§16-88-36 Repealed. [R 7/10/91]

§16-88-37 Repealed. [R 7/10/91]

§16-88-38 Repealed. [R 7/10/91]

§16-88-39 Repealed. [R 7/10/91]

§16-88-40 Repealed. [R 7/10/91]

§16-88-41 Repealed. [R 7/10/91]

SUBCHAPTER 9

PARENTERAL THERAPY

§16-88-56 Authorization to use parenteral therapy required. (a) For the purposes of this chapter, parenteral therapy is limited to injection in subcutaneous, intramuscular, [and] intravenous [injection.], and other areas of the body; provided that the injection shall not puncture or penetrate the thoracic, abdominal, pelvic, cranial, or spinal cavities.

(b) Only a naturopathic physician licensed under chapter 455, HRS, who meets the education and training requirements of this subchapter shall be authorized to administer parenteral therapy in the naturopathic physician's practice. [Eff and comp 2/14/11; comp 4/13/12; am and comp] (Auth: HRS §455-6) (Imp: HRS §§455-1, 455-6, 455-11)

§16-88-57 Education and training requirements for parenteral therapy.

(a) To qualify to administer parenteral therapy in the naturopathic physician's practice, a naturopathic physician shall submit an application and applicable fees to the board and demonstrate that the naturopathic physician has:

- (1) A current naturopathic physician's license in this State; and
- (2) Completed a qualifying course on parenteral therapy from an approved course provider as provided in this section.

(b) The qualifying course shall consist of a minimum of thirty classroom hours on parenteral administration through injection of applicable naturopathic formulary substances.

(1) At a minimum, the qualifying course shall have covered all of the following topics:

- (A) Current and historical research on parenteral therapy;
- (B) Indications and contraindications of parenteral therapy;
- (C) Parenteral therapy side effects and toxicity, nutrient/drug interactions;
- (D) Parenteral therapy and practical application, vein selection, and insertion techniques;
- (E) Intravenous solutions, equipment, supplies, catheters, and pic lines;
- (F) Initial evaluation and treatment monitoring requirements;
- (G) Frequency of parenteral treatments;
- (H) Charting requirements, standards of care, office procedures, consent to treat, nutrition and lifestyle recommendations during treatment, errors and adverse reactions; and
- (I) Practicum on mixing and administering parenteral solutions, including observation of intravenous set up and administration (the licensee shall have observed at least ten of these); and successful completion of intravenous set up (the licensee shall have completed at least ten of these).

(2) The licensee shall have successfully completed a written examination developed and administered by the course provider, and the practicum described in subparagraph (b)(1)(I). The written examination shall consist of at least fifty questions that are relevant to the topics set forth in this subsection. Successful completion of the written examination shall be a passing score of at least seventy-five percent or its equivalent.

(3) One classroom hour is defined as fifty minutes out of each sixty minute segment and may include time devoted to examinations.

(4) No credit shall be granted for distance education, including but not limited to correspondence courses, internet courses, or video or remote television offerings.

(c) Schools, universities, or colleges that meet the requirements of section 455-3, HRS, and schools, universities, or colleges that are accredited by a regional or national accrediting body recognized by the United States Department of Education, shall automatically be approved course providers. The dean of

these approved course providers shall certify to the board that the qualifying course and licensee met the requirements of subsection (b).

(d) Course providers that are not automatically approved pursuant to subsection (c) shall submit an application and applicable fees, course description and outline, and course instructor qualifications to the board for approval.

- (1) Course instructors shall have had at least one year of experience teaching parenteral therapy at a school, university or college as described in [16-88-57(c),] subsection (c) and at least five years' experience and training combined in parenteral therapy.
- (2) These course providers shall:
 - (A) Provide attendees within sixty days of completion of the course or the examination, completion certificates which shall include information regarding the number of classroom hours and[,] whether there was successful passage of the course examination; and
 - (B) Keep attendance records for a minimum of seven years.
- (3) Completion certificates shall be issued only if the attendee physically attended the course.
- (4) Attendees may take no more than one make-up examination; provided that the examination is taken within ninety days after the end date of the course. [Eff and comp 2/14/11; comp 4/13/12; am and comp] (Auth: HRS §455-6) (Imp: HRS §§455-3, 455-6, 455-11)

§16-88-58 Disapproval of course providers, courses, and instructors. (a)

Course providers, courses, and instructors may be disapproved when:

- (1) The instructor or administrators of the course provider have had any disciplinary action imposed against them in any jurisdiction; or
 - (2) The course provider, course, or instructor fails to meet the requirements in section 16-88-57.
- (b) Course approval may be withdrawn for cause after notification to the course provider by the board or the board's authorized designee. [Eff and comp 2/14/11; comp 4/13/12; comp] (Auth: HRS §455-6) (Imp: HRS §455-6)

§16-88-59 Standards to administer parenteral therapy. (a) To protect the general public, every licensee authorized to administer parenteral therapy in the licensee's practice shall make a good faith effort to comply with the standards set

forth in this section. These standards are designed to be a systematic process to improve professional performance, a measurable tool for implementation and disciplinary action, and a statement of level of practice for the best outcome in patient care. Standard of practice guidelines for parenteral therapy are not intended to replace professional clinical judgment in individual cases, but rather to establish patient care parameters for safe and effective patient care.

(b) Standards of care summary:

- (1) General and intravenous specific history and physical examination;
- (2) Appropriate laboratory evaluations;
- (3) Referrals: assessment of referral from other provider and necessity for potential referral from your facility;
- (4) Prevention and intervention: assessment of need for prevention of adverse events specific to the patient's history and condition and intervention in the plan to address these assessments;
- (5) Follow up evaluation: evaluate the patient at the end of treatment and on discharge;
- (6) Stated assessment on weekly, monthly, quarterly, or yearly basis: the original plan should have treatment goals and intervals for follow up assessment;
- (7) Therapeutic options: address other options (additional to the original plan) as the need arises;
- (8) Self-management education: assure that patient follow-up instruction is given and patient care at home is addressed; and
- (9) Note appropriate details of treatment in a patient's record.

(c) A written intravenous order shall include the following information:

- (1) Patient: name and date;
- (2) Type of carrier solution and amount;
- (3) Type and amount of medication added to the carrier solution;
- (4) Rate of infusion;
- (5) Route solution is given (e.g., intravenous, intramuscular, etc.); and
- (6) Type of access device used: catheter, butterfly, or central venous access device.

(d) The following [procedure]procedures [is]are required prior to providing initial or new intravenous therapy to patients:

- (1) The written order for intravenous therapy shall be issued by a licensed naturopathic physician who is authorized to administer parenteral therapy;
- (2) Each patient shall read and sign an informed consent form for intravenous therapy;

(b) To qualify to perform minor office procedures in the naturopathic physician's practice, a naturopathic physician shall submit an application and applicable fees to the board and demonstrate that the naturopathic physician has a current naturopathic physician's license in this State, and:

- (1) [Successfully] Have successfully passed the NPLEX Clinical Elective Minor Surgery Examination; or
- (2) [Licensees who were] If the naturopathic physician was licensed prior to the establishment of the NPLEX, the licensee may provide evidence of successful passage of a minor surgery examination that was administered by another licensing jurisdiction and required to allow the licensee to practice minor surgery in that licensing jurisdiction. The licensee shall be responsible for having the other licensing jurisdiction verify, directly to the board, the successful passage of the minor surgery examination and that passage of that examination was required to allow the licensee to practice minor surgery in that licensing jurisdiction. [Eff and comp 2/14/11; comp 4/13/12; am and comp] (Auth: HRS §455-6) (Imp: HRS §§455-1, 455-6, 455-11)

SUBCHAPTER 11

STANDARDS OF PRACTICE, CARE, AND ETHICS

§16-88-80 Code of ethics. (a) To provide protection to the general public, a naturopathic physician shall abide by the following code of ethics:

- (1) **Honesty:** A naturopathic physician shall conduct himself or herself in an honest manner; shall not represent himself or herself to patients or the public in an untruthful, misleading, or deceptive manner; and shall not engage in advertising that is false or deceptive.
- (2) **Improper relationship:** A naturopathic physician shall not engage in sexual relations with a patient unless that patient has been released from the naturopathic physician's care for at least one year. The termination of the physician-patient relationship shall be in writing, and the patient shall understand that the physician-patient relationship has ended.
- (3) **Privacy:** A naturopathic physician shall maintain patient privacy and confidentiality; provided that if the naturopathic physician becomes aware that a patient is a danger to the public, the

- naturopathic physician shall take reasonable steps to advise appropriate public officials or agencies of the potential danger, within the guidelines of applicable laws.
- (4) Performance: A naturopathic physician shall perform professional tasks and responsibilities to the best of the naturopathic physician's ability, and refrain from engaging in any behavior that will detract from [his or her] the naturopathic physician's ability to engage in the practice of naturopathic medicine.
- (5) Obligation: The fundamental and primary obligation of a naturopathic physician is to the patient, and the maintenance and improvement of the patient's health and well-being.
- (A) A naturopathic physician shall at all times seek to employ methods of therapy that are consistent with naturopathic medical philosophy, scientific principles and evidence, and the naturopathic physician's training and experience, and shall provide patients with information about these therapies and potential alternative therapies so that the patient may give fully informed consent to the recommended treatments.
- (B) As part of the obligation to provide care, a naturopathic physician shall use [his or her] the naturopathic physician's best efforts to facilitate a patient's access to high quality, safe and reliable medicines, medical devices, and supplements.
- (C) A naturopathic physician shall offer alternative sources for obtaining the items in subparagraph (a)(5)(B) as long as those alternative sources do not compromise patient safety or clinical effectiveness.
- (D) The naturopathic physician shall adequately disclose the contents of medicines or the nature and description of treatments recommended to a patient.
- (E) Furthermore, all therapies shall be monitored by the naturopathic physician in a timely manner utilizing reliable means in order to accurately assess the patient's response to employed treatments.
- (F) A naturopathic physician shall only provide or recommend services that are medically necessary or deemed to be beneficial for an individual patient.
- (6) Competence: A naturopathic physician shall maintain proficiency and competence, and be diligent in the provision and

administration of patient care.

- (A) A naturopathic physician shall recognize and exercise professional judgment within the limits of [his or her] the naturopathic physician's qualifications, and collaborate with others, seek counsel, or make referrals as appropriate.
 - (B) When expanding the naturopathic treatments or services provided to patients, a naturopathic physician shall pursue the appropriate advanced education and training.
 - (C) A naturopathic physician shall dedicate sufficient time to each patient in order to provide (to the best of the naturopathic physician's ability) accurate, comprehensive, and individualized patient assessment and treatment.
- (7) **Discrimination:** A naturopathic physician is free to decide whether or not to provide naturopathic medical care of a particular person, unless confronted with a medical emergency; provided that the naturopathic physician shall not refuse [his or her] the naturopathic physician's best care if other reasonable options are not available.
- (A) A naturopathic physician shall not decline to provide care for a person or discriminate against others on the basis of race, ethnicity, creed, religion, disability, sex, age, sexual orientation, or national origin.
 - (B) Once the naturopathic physician-patient relationship has begun, the naturopathic physician shall provide care until care is complete, the patient ends the relationship, or the naturopathic physician has discharged the patient from care.
 - (C) If a naturopathic physician justifiably desires to end the naturopathic physician-patient relationship, and if continued medical care is appropriate, the naturopathic physician shall document a formal referral to an appropriate health care provider.
- (8) **Communication:** A naturopathic physician has a duty to not only communicate effectively with a patient, but also to educate the patient and convey relevant information in terms the patient can understand, providing adequate opportunity for the patient to ask questions and discuss matters related to the patient's care.
- (A) A naturopathic physician shall transfer a patient's records to another health care provider at the request of the patient, in accordance with appropriate and applicable legal guidelines, in a reasonable and timely fashion, and at reasonable cost.

- (B) A naturopathic physician shall maintain confidentially of all patient records unless otherwise instructed by the patient or required by law.
- (9) Conflicts of interest: If a naturopathic physician is faced with a conflict of interest, the conflict shall be resolved in the best interest of the patient.
 - (A) If a naturopathic physician has any financial interests that may conflict with appropriate medical care, the naturopathic physician shall disclose those interests to the patient.
 - (B) A naturopathic physician who makes written or oral public statements concerning specific products sold by a company from which the naturopathic physician receives compensation, or in which the naturopathic physician holds an ownership interest, shall disclose this financial relationship in those public statements.
- (10) Improper conduct: A naturopathic physician shall not prescribe, provide, or seek compensation for medical services that are not specifically indicated for an individual patient.
- (11) Influence: A naturopathic physician shall not exert influence over a patient to undertake any action that is contrary to the patient's best interest.
- (12) Accepting gifts: A naturopathic physician shall not accept gifts from any individual or entity that are deemed to influence the naturopathic physician's professional clinical judgment.
 - (b) The failure to comply with any of the provisions of this section shall subject a licensee to discipline under chapters 436B and 455, HRS, and this chapter. [Eff and comp 4/13/12; am and comp _____] (Auth: HRS §455-6) (Imp: HRS §§436B-18, 436B-19, 436B-20 to 436B-28, 455-6, 455-11)

§16-88-81 Standards of practice and care. (a) Basic standards. To protect the general public, a naturopathic physician shall make a good faith effort to abide by the standards of practice and patient care provided in this section.

(b) Ongoing education. A naturopathic physician shall use [his or her] the naturopathic physician's best efforts to keep up with the changes and advancements in naturopathic medicine.

- (1) A naturopathic physician shall critically and without bias evaluate new therapeutic agents and methods that may be of benefit to the naturopathic physician's patients; and

(2) A naturopathic physician shall use [his or her] the naturopathic physician's best efforts to continually evolve the naturopathic physician's practice of medical care to provide increased benefit to patients.

(c) Primary care. A naturopathic physician is trained to be a primary care family practice physician, and may choose to emphasize or specialize in certain methods, modalities, or areas of practice, either singly or within the scope of a general practice.

(d) Specialization. If a naturopathic physician decides to emphasize or specialize in certain methods, modalities, or areas of practice within the scope of a general practice, the naturopathic physician shall:

- (1) Disclose the nature of the naturopathic physician's limited practice to the public, patients, and colleagues; and
- (2) Make appropriate referrals if requested by a patient, or if a patient requires treatment that is not within the limited practice.

(e) Naturopathic physician's role in health promotion. A naturopathic physician's role in health promotion includes:

- (1) The prevention of disease through education and the promotion of healthy ways of living. A naturopathic physician shall:
 - (A) Assess risk factors and hereditary susceptibility to disease;
 - (B) Make appropriate interventions to prevent illness and assist patients to achieve their optimum health;
 - (C) Encourage a patient towards independence and self-direction;
 - (D) View health optimization as the ultimate goal rather than crisis intervention;
 - (E) Assist a patient to identify, test out, and evaluate constructive patterns of living; and
 - (F) Reinforce positive behavior patterns.
- (2) Following the guidelines of applicable public health agencies including:
 - (A) Reporting diseases; and
 - (B) Keeping up with public health data such as updates issued by the U.S. Centers for Disease Control and Prevention and the State Department of Health.
- (3) Using methods to prevent illness and maintain optimum health such as:
 - (A) Periodic screening for common risk factors, such as elevated serum (blood) glucose, hypertension, and obesity; and

(B) Periodic screening for specific diseases such as cancer, coronary artery disease, diabetes, osteoporosis, and thyroid dysfunction.

(f) Patient records. A naturopathic physician shall keep clear and concise records documenting patient care. Records shall be legible, orderly, complete, and abbreviations and symbols employed shall be commonly used and understood. The Problem Oriented Medical Record, also known as the Subjective, Objective, Assessment and Plan (SOAP) format, shall be used as the standard form for keeping records.

(1) Patient data may be collected from:

- (A) The patient affected;
- (B) The patient's family or friends; or
- (C) Medical records from previous physicians, or other health care providers, for the purpose of patient evaluation.

(2) Patient records shall include the following:

- (A) Identifying data (e.g., name, age, sex, occupation, nationality, etc.);
- (B) Description of the patient's chief complaint, preferably in the [patients'] patient's own words;
- (C) History of the present illness including any concurrent medical problems;
- (D) Past medical history (e.g., previous illnesses, surgeries, medications, hospitalizations, childhood illnesses, accidents, injuries, pregnancies, etc.);
- (E) Current health status (e.g., allergies, current medications and supplements, immunization history, tobacco, alcohol or recreational drug use, exercise and leisure activities, sleep habits, diet, environmental hazards, etc.);
- (F) Family history (e.g., familial tendencies, genetic predispositions, infectious diseases, etc.);
- (G) Psychosocial disposition (e.g., brief biography, family and home situation, occupation, lifestyle, emotional make-up, stressors, typical daily events, etc.);
- (H) Review of systems or written positive findings and pertinent negatives;
- (I) Patient's general appearance, vital signs, and the results of the rest of the examination whether it is regional or comprehensive; and
- (J) Results of any laboratory studies.

(g) Diagnostic criteria. A naturopathic physician shall use conventional medical diagnostic criteria in the establishment of a diagnosis, taking into account all information recorded in subsection (f)(2). Other diagnostic criteria may be used, including those of non-western medical traditions. All diagnostic criteria shall be consistent with other health care disciplines that utilize the same criteria. A naturopathic physician may use a combination of conventional and other diagnostic criteria. A naturopathic physician utilizing diagnostic criteria other than conventional diagnostic criteria shall also apply conventional forms when:

- (1) A patient is also being evaluated by another health care provider for the same or a related condition, in order to maintain continuity among the different disciplines of medicine and to assure quality patient care;
- (2) Faced with a life threatening or degenerative illness with the possibility that interventional therapies may be needed;
- (3) The naturopathic physician knows that a patient will need referral for the same or other illnesses;
- (4) A patient requests it; or
- (5) As required by State law.

(h) Assessment. A naturopathic physician shall begin a written assessment with a summary of the patient's medical history and physical examination that recaps the findings in a way that supports the differential diagnosis or working diagnosis. The assessment shall include an explanation of the analysis and reasoning for the assessment that includes:

- (1) The type of care that is needed (e.g., immediate, acute, chronic, long or short-term);
- (2) A discussion of naturopathic considerations; and
- (3) A patient's ability to respond to treatment based on past medical history and the naturopathic [physicians'] physician's subjective assessment.

(i) Treatment plan. A naturopathic physician shall develop a specific written health plan for each patient that is:

- (1) Rational and is:
 - (A) Based on identified needs;
 - (B) Realistic in its goals;
 - (C) Practical in light of the patient's condition and situation;
 - (D) In the best interest of the patient;
 - (E) Logical in sequence and internally consistent;
 - (F) Prioritized to the patient's most pressing conditions;
 - (G) Compatible with other therapies the patient may be

- undergoing;
 - (H) Cost effective;
 - (I) Flexible to accommodate new developments[,] and findings[.]; and
 - (J) Experimental only with informed consent and only in areas of [a] the naturopathic physician's expertise.
- (2) Based on proper assessment, including:
- (A) Ruling out or identifying life-threatening or hidden conditions with appropriate history, examination and testing; including referral for specialized evaluation, when appropriate; and
 - (B) Allowing for timely on-going reassessment.
- (3) Based on naturopathic principles including:
- (A) Stimulating a patient's vital force to promote healing or, in special instances, supplementing or replacing the action of the vital force when the patient is unable to respond to curative treatment;
 - (B) Removing the cause of conditions, when known;
 - (C) Choosing treatments that pose the least risk of patient harm;
 - (D) Individualizing treatments to the whole patient, including referral to appropriate health care providers for specialized therapies;
 - (E) Educating a patient to participate responsibly in [his or her] the patient's own health care and to learn the principles for building of health and preventing future disease;
 - (F) Involving, when appropriate, others significant to a patient in the treatment plan; and
 - (G) Prevention of disease.
- (4) Self-critical, but is not limited to:
- [(1)](A) A mechanism for timely evaluation of plan effectiveness; and
 - [(2)](B) A mechanism for timely modification of failed plans, including referral to other appropriate health care providers.
- (j) Consent to treatment. A naturopathic physician shall inform [a] the patient of the patient's right to informed consent and freedom of choice in health care and present the patient with all the options for medical care in an unbiased manner. A naturopathic physician may express [his or her] the naturopathic physician's opinion as to the quality of the different types of health care options, or if requested to by the patient.

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

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

4. These amendments to and compilation of chapter 16-88, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____, and filed with the Office of the Lieutenant Governor.

KEVIN R. GIBSON, N.D., Chairperson
Board of Naturopathic Medicine

APPROVED AS TO FORM:

Deputy Attorney General

III. New Business

D. Amendments to HAR Title 5 Chapter 31
Child Support (Dept. of Atty Gen'l)

Department of the Attorney General
Child Support Enforcement Agency
Amendment to Chapter 31

November 2, 2012

Explanatory Statement

The Hawaii Administrative Rules pertaining to the State of Hawaii, Department of the Attorney General, Child Support Enforcement Agency, have not been amended since October 31, 1991. Since that time, there have been numerous changes in federal and state laws, requirements, and policies.

The following lists the changes being made to Title 5, Chapter 31 of the rules and the reasons and justifications for the changes.

1. §5-31-1 Statement of purpose is being amended to correct the federal citation of authority.
2. §5-31-2 Definitions is being amended to add definitions for: “administrative hearing”, “administrative order”, “administrative review”, “administrator”, “alleged father”, “annual fee”, “applicant”, “arrearages”, “authorized representative”, “certified account balance”, “child support order”, “financial institution data match”, “income withholding”, “lien”, “medical support”, “non-custodial parent”, “office of child support hearings”, “other state”, “state”, “temporary assistance for needy families”, “uniform interstate family support act”, and “unreimbursed assistance”. These definitions are added to clarify new provisions being added to the rules.

The following definitions are being deleted: “absent parent”, “aid to families with dependent children”, “debtor parent”, “delinquent child support”, “dhs”, “director”, “public assistance debt”, “support obligation”, “uniform reciprocal enforcement of support act”, and “wage assignment”. These definitions are being deleted as the terms are no longer being referred to in the rules.

3. §5-31-3 Authorization of services is being amended to clarify that applications will not be accepted to establish paternity and/or support for children that are emancipated or beyond the age of 18. The changes also cover: the assignment of rights if a person is a Temporary Assistance for Needy Families (TANF) recipient, the annual fee requirement, the prohibition against applying to disestablish paternity, and fact that applications may not

be submitted directly by a child in the case. Subsections (b), (g), and (h) are state policies, while the remaining sections fulfill requirements of federal law.

4. §5-31-4 Scope is being amended to update terminology being used in the section. Enforcement methods are added related to: periodic and lump sum payments, financial institution data match, referrals to consumer reporting agencies and licensing agencies, referrals for administrative offsets, and passport denial referrals. The section also makes modest changes in terminology for clarity. The changes to this section summarize provisions from a number of state statutes. All provisions listed are federally required.
5. §5-31-5 Child support debts is repealed as the federal law relative to the treatment of debts owed during public assistance periods has been changed to follow the same processes as child support.
6. §5-31-12 Application process is changed to clarify that applications are not needed in Title IV-A, Title IV-E, and Title XIX cases. This section also is amended to further define the family violence indicator, and procedures to be followed when the family is believed to be in danger of physical violence. The matter addressed in this section fulfills requirements of federal law.
7. §5-31-13 Case opening is amended to clarify that the filing of an application with CSEA allows the agency to create a case, but does not require it. Changes in this section are intended to clarify that cases can be opened in Hawaii, or another state through an interstate process depending on the circumstances. The matter addressed in this section fulfills requirements of federal law.
8. §5-31-14 Orientation is added to clarify that orientation sessions may be presented by the agency to inform the public of their rights and responsibilities relating to their case. This section was added to educate the parties to a case and offer the agency option of presenting orientation sessions. This change is a state policy.
9. §5-31-15 Application information is added to clarify the required information necessary to provide the agency with a complete application. The matter addressed in this section fulfills requirements of federal law. The content of the application is state policy.
10. §5-31-17 Locate is amended to clarify that locate services are to be used to locate both custodial and non-custodial parents. The amendment clarifies to the parties how locate activities will be conducted in accord with federal law. This is further delineation of the federal requirements.

11. §5-31-18 Interstate locate is amended by making technical, nonsubstantive amendments for clarity, consistency, and style.
12. §5-31-21 Establishment of paternity is added to clarify the paternity process. This provision further explains the requirements of federal law.
13. §5-31-21.1 Non-pursuit of paternity is added to clarify the circumstances under which paternity will not be pursued. The matter addressed in this section fulfills requirements of federal law.
14. §5-31-21.2 Procedures when paternity is at issue is added to clarify paternity procedures that will be followed. This section references a compilation of state statutes, but further delineates how the process will take place.
15. §5-31-22 Establishment of child support orders is amended to clarify procedures for establishing child support orders through the administrative process. This section references a compilation of state statutes, but further delineates how the process will take place.
16. §5-31-23 Guidelines for determining the amount of the child support obligation is amended to clarify the obligation amount for incarcerated non-custodial parents. Subsection (b) is state policy, but is encouraged by the federal government.
17. §5-31-24 Modification of child support orders is added to clarify the procedures for modifying child support orders through the administrative process. The matter addressed in this section fulfills requirements of federal law.
18. §5-31-25 Review and adjustment for temporary assistance for needy families cases is added to clarify the federal requirement that the current support order for temporary assistance for needy families cases must be reviewed in accord with the child support guidelines at least once every three years. The matter addressed in this section fulfills requirements of federal law.
19. §5-31-27 Identifying arrearages and initiating enforcement is amended to clarify that enforcement procedures are applicable for all arrearages rather than just delinquencies. The matter addressed in this section fulfills requirements of federal law.
20. §5-31-28 Requiring a security bond or other guarantee from a non-custodial parent is amended to clarify when a bond may be required and when it will

not be pursued. The matter addressed in this section fulfills requirements of federal law.

21. §5-31-29 Information of arrearages to consumer reporting agencies is amended to offer the option of an administrative review to any non-custodial parent that challenges a case being referred to consumer reporting agencies. The matter addressed in this section fulfills requirements of federal law.
22. §5-31-30 Property liens is amended to clarify the procedure for implementing a lien against the property of the non-custodial parent. The matter addressed in this section fulfills requirements of federal law. There is minor duplication with provisions of Section 576D-10.5, Hawaii Revised Statutes.
23. §5-31-31 State income tax refund offset and overpayment refund is amended to clarify the procedure for the agency seizure of a state tax refund in cases where arrearages are owed. The matter addressed in this section fulfills requirements of federal law.
24. §5-31-31.1 Federal income tax refund offset is added to clarify the procedure for the agency seizure of a federal tax refund in cases where arrearages are owed. The matter addressed in this section fulfills requirements of federal law.
25. §5-31-32 Income withholding is amended to clarify the procedures for income withholding. The matter addressed in this section fulfills requirements of federal law.
26. §5-31-32.1 License suspension is added to clarify procedures for suspending both the driver's license and the professional license of a non-custodial parent in cases where arrearages are owed. The matter addressed in this section fulfills requirements of federal law. The requirements for the referral for license suspension under Section 576D-13, Hawaii Revised Statutes, is duplicated in subsections (a), (b), (c), and (d).
27. §5-31-32.2 Administrative financial institution data match is added to clarify procedures for seizing financial accounts administratively in cases where arrearages are owed. The matter addressed in this section fulfills requirements of federal law.
28. §5-31-32.3 Referral for passport denial is added to clarify procedures to suspend or deny passports in cases where arrearages are owed. The matter addressed in this section fulfills requirements of federal law.

29. §5-31-32.4 Other enforcement mechanisms is added to clarify other enforcement mechanisms that can be used in cases where arrearages are owed. The matter addressed in this section fulfills requirements of federal law.
30. §5-31-32.5 Referral for special prosecution is added to clarify options available for prosecuting non-custodial parents in cases where arrearages are owed and they do not make timely payment. Federal government allows and encourages special prosecution in certain cases. State prosecutions are required if available.
31. §5-31-32.6 Bankruptcy is added to clarify procedures to be followed when the non-custodial parent files for bankruptcy in cases where arrearages are owed. This is a federally authorized action for collecting arrears.
32. §5-31-32.7 Insurance company data match is added to clarify that type of enforcement mechanisms can be used in cases where arrearages are owed. This is a federally authorized action for collecting arrears.
33. §5-31-35 Requests for administrative hearings on enforcement actions is amended to clarify procedures for setting up an administrative hearing on enforcement actions where such hearings are allowed. The matter addressed in this section fulfills requirements of federal law.
34. §5-31-35.1 Requests for administrative review on enforcement actions is added to clarify procedures for administrative reviews on enforcement actions where such reviews are allowed. The matter addressed in this section fulfills requirements of federal law.
35. §5-31-38 State disbursement unit is added to clarify procedures for the acceptance and distribution of payments. The matter addressed in this section fulfills requirements of federal law.
36. §5-31-39 Safeguarding information is amended to clarify procedures for safeguarding the information of the custodial and non-custodial parents. The matter addressed in this section fulfills requirements of federal law.
37. §5-31-40 Retention and reproduction of records is amended by making technical, nonsubstantive amendments for clarity, consistency, and style.
38. §5-31-41 Electronic case records is added to clarify that the agency's records may be established, converted, and maintained, electronically. These provisions are federally allowed.

39. §5-31-43 Termination is added to clarify procedures for the termination of the collection of child support. This is a further delineation of federal requirements.
40. §5-31-44 Criteria for case closure is amended to clarify case closure requirement as specified by the federal government. The matter addressed in this section fulfills requirements of federal law.
41. §5-31-45 Notice of case closure is amended to specify federal case closure notice requirements. The matter addressed in this section fulfills requirements of federal law.
42. §5-31-46 Maintaining active case status is amended by making technical, nonsubstantive amendments for clarity, consistency, and style.
43. §5-31-49 Initiating and responding interstate cases is added to clarify procedures for initiating and receiving interstate cases. This is a federal requirement and a further delineation of the Uniform Interstate Family Support Act (UIFSA).
44. §5-31-50 Central registry is added to clarify the role and function of the central registry function within the agency. The matter addressed in this section fulfills requirements of federal law.
45. §5-31-51 Federal full faith and credit is added to clarify the reciprocal obligation of a state enforcing another state's order as if it were their own. The matter addressed in this section fulfills requirements of federal law.
46. §5-31-52 Enforcement services is added to clarify the enforcement standard for interstate cases. The matter addressed in this section fulfills requirements of federal law.
47. §5-31-53 Forwarding collections is added to clarify procedures for forwarding collections to the initiating state. This is a federal requirement and a further delineation of the Uniform Interstate Family Support Act (UIFSA).
48. §5-31-58 Penalties for failure to cooperate with the agency's request for information is added to specify penalties for failure to provide information to the agency as requested. The matter addressed in this section fulfills requirements of federal law.

Describe the manner in which the proposal would affect the agency's internal and external responsibilities, programs, functions, operations, activities, and inter-relationships.

Although many changes are being made to the rules, there will be minimal impact on the agency's internal and external responsibilities, functions, operations, and inter-relationships. Because much of the authority for the agency's actions is prescribed by state law and or federal regulation, most of the changes better explain the activities already being performed by the agency.

Identify the final result expected by instituting the proposal (e.g. a program improvement/clarification of statute).

A few of the changes do clarify existing state statutes. However, the greatest impact of the changes is that it provides the public with information that will give them a better understanding of what the agency's responsibilities are and the procedures that it follows in one source. Currently, an individual seeking information on a particular agency practice may have to search three or more different resources to obtain the information.

Identify any program and financial impacts on the state that will arise upon the implementation of the proposal to include:

- **Long and short range program impacts, and**
- **Anticipated program funding required for the present biennium, including a statement as to whether funds are currently budgeted to permit the implementation and enforcement of the proposed adoption, amendment, or repeal of the rule, and estimates for anticipated savings or funding shortfalls projected over the subsequent four-year planning period, and the assumptions used to arrive at these estimates.**

The program impacts expected from the changes to these rules are that the general public will gain a better understanding of child support services. This understanding is expected to create additional good will, particularly from members of the general public that have child support cases with the agency. This is very important because better informing a parent who is separated from their child(ren), or the remaining parent who has custody of the children is a top priority for the agency, and is expected to improve public service.

There are not expected to be any financial impacts on the state or the agency as a result of these changes. Funds are currently appropriated to fund the operations of the agency. While these changes are not expected to save money as such, these changes will not result in higher costs over the subsequent four-year planning period.

Describe the long- and short-term impacts to the public or economy of the state.

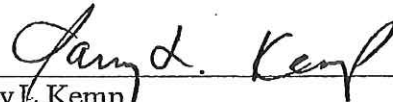
Since most of the changes merely reflect the activities already being performed by the agency, there are no short- or long-range impacts to the economy of the State. As mentioned previously, the changes will benefit the public in both the short- and long-term as it provides an easier avenue to access information on the agency's practices which is a positive impact on program operations.

Identify the alternatives explored in lieu of implementing the proposal.

Because the administrative rules pertaining to the agency have not been amended since 1991, these changes are necessary to reflect the changes in federal and state laws, requirements, and policies. Other alternatives (not amending the rules) would not be able to resolve the need for the rules to be updated and to provide the public with a simpler, inclusive resource for information relating to child support.

Provide an explanation of whether the proposal will affect small business. For purposes of this Directive, a proposal will affect small business if the proposal will impact a for-profit enterprise consisting of fewer than 100 full-time or part-time employees and 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.

One change to the rules may have an effect on small business. Section 576D-17(b), Hawaii Revised Statutes, authorizes the agency to establish a system of fines, through administrative rules, for the failure to promptly respond to the agency's request for information. Although the change could impact a for-profit enterprise consisting of fewer than 100 full-time or part-time employees, the agency does not believe that it will cause a significant economic burden nor is directly related to the formation, operation, or expansion of a small business.



Garry L. Kemp
Administrator

Department of the Attorney General
Child Support Enforcement Agency

RULES AMENDING TITLE 5

HAWAII ADMINISTRATIVE RULES

[Date]

1. Chapter 31 of Subtitle 3, Title 5, Hawaii Administrative Rules, entitled "Child Support Enforcement," is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 5

DEPARTMENT OF THE ATTORNEY GENERAL

SUBTITLE 3 CHILD SUPPORT ENFORCEMENT

CHAPTER 31

CHILD SUPPORT

Subchapter 1 General Provisions

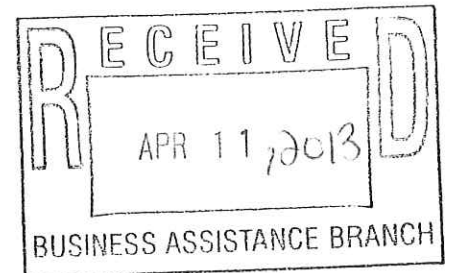
- §5-31-1 Statement of purpose
- §5-31-2 Definitions
- §5-31-3 Authorization of services
- §5-31-4 Scope
- §5-31-5 [~~Child support debts~~] Repealed
- §5-31-7 Repealed

Subchapter 2 Intake of Cases for Title IV-D Services

- §5-31-12 Application process
- §5-31-13 Case opening
- §5-31-14 Orientation
- §5-31-15 Application information

Subchapter 3 [~~Location of Absent Parents~~] Locate

- §5-31-17 [~~Cases needing location services~~] Locate
- §5-31-18 Interstate [~~requests for location services~~] locate



Subchapter 4 Establishment of Paternity and Support

<u>§5-31-21</u>	<u>Establishment of paternity</u>
<u>§5-31-21.1</u>	<u>Non-pursuit of paternity</u>
<u>§5-31-21.2</u>	<u>Procedures when paternity is at issue</u>
<u>§5-31-22</u>	<u>Establishment of [a support obligation] child support orders</u>
<u>§5-31-23</u>	<u>Guidelines for determining the amount of the child support obligation</u>
<u>§5-31-24</u>	<u>Modification of child support orders</u>
<u>§5-31-25</u>	<u>Review and adjustment for temporary assistance for needy families cases</u>

Subchapter 5 Enforcement

<u>§5-31-27</u>	<u>Identifying [delinquency] <u>arrearages</u> and initiating enforcement</u>
<u>§5-31-28</u>	<u>Requiring security bond or other guarantee from a [debtor] <u>non-custodial parent</u></u>
<u>§5-31-29</u>	<u>Information of [delinquent child support] <u>arrearages</u> to consumer [credit] <u>reporting agencies</u></u>
<u>§5-31-30</u>	<u>Property liens</u>
<u>§5-31-31</u>	<u>State income tax refund setoff and overpayment refund</u>
<u>§5-31-31.1</u>	<u>Federal income tax refund offset</u>
<u>§5-31-32</u>	<u>[Initiating income withholding on cases not subject to immediate income withholding under section 5-34-22] <u>Income withholding</u></u>
<u>§5-31-32.1</u>	<u>License suspension</u>
<u>§5-31-32.2</u>	<u>Administrative financial institution data match</u>
<u>§5-31-32.3</u>	<u>Referral for passport denial</u>
<u>§5-31-32.4</u>	<u>Other enforcement mechanisms</u>
<u>§5-31-32.5</u>	<u>Referral for special prosecution</u>
<u>§5-31-32.6</u>	<u>Bankruptcy</u>
<u>§5-31-32.7</u>	<u>Insurance company data match</u>
<u>§5-31-35</u>	<u>[Handling requests] <u>Requests</u> for administrative hearings on enforcement actions</u>
<u>§5-31-35.1</u>	<u>Requests for administrative review on enforcement actions</u>

Subchapter 5.1 Collections and Disbursements

<u>§5-31-38</u>	<u>State disbursement unit</u>
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Subchapter 6 Maintenance of Records

- §5-31-39 Safeguarding information
§5-31-40 Retention and reproduction of records
§5-31-41 Electronic case records

Subchapter 7 Termination and Case Closure

- §5-31-43 Termination
§5-31-44 Criteria for case closure
§5-31-45 Notice of case closure
§5-31-46 Maintaining active case status

Subchapter 8 Interstate

- §5-31-49 Initiating and responding interstate cases
§5-31-50 Central registry
§5-31-51 Federal full faith and credit for child
support orders act
§5-31-52 Enforcement services
§5-31-53 Forwarding collections

Subchapter 9 Penalties

- §5-31-58 Penalties for failure to cooperate with the
agency's request for information

SUBCHAPTER 1

GENERAL PROVISIONS

§5-31-1 Statement of purpose. This chapter shall implement the child support enforcement plan as required under title IV-D of the Social Security Act (42 United States Code §§652-658a, 664, 666, 667, 668, and [1302] 669), 45 Code of Federal Regulations parts 300-399, and chapter 576D, Hawaii Revised Statutes. [Eff 2/13/89; comp 10/31/91; am and comp _____] (Auth: HRS §91-2) (Imp: HRS §576D-2; 45 C.F.R. §302.10)

§5-31-2 Definitions. For the purpose of this chapter:

~~["Absent parent" means a parent who is absent from the family, whether or not the parent is a debtor parent.]~~

"Administrative hearing" means a hearing conducted in accord with chapter 91 of the Hawaii Revised Statutes and presided by a hearing officer from the office of child support hearings.

"Administrative order" means a child support order resulting from an administrative, rather than a judicial, determination.

"Administrative review" means a review by the agency based on all information available to the agency at the time of the review.

"Administrator" means the administrator of the agency.

"Agency" means the child support enforcement agency established under section 576D-2, Hawaii Revised Statutes.

["Aid to Families With Dependent Children" or "AFDC" means financial assistance provided under the federal aid to families with dependent children program under title IV-A of the Social Security Act.]

"Alleged father" means any person who may be identified as a biological father of a child.

"Annual fee" means a fee imposed by the child support enforcement agency for services provided under the child support program during the federal fiscal year.

"Applicant" means persons or entities that have completed an application requesting title IV-D services, persons with whom the subject child resides and receives temporary assistance for needy families or title XIX benefits, and department of human services in title IV-E cases.

"Arrearages" means past due, unpaid amounts owed by the non-custodial parent resulting from a child support order.

"Authorized representative" means a person who is designated in writing by the custodial parent, the non-custodial parent, or the alleged father as his or her representative in the case.

"Central registry" means a function at the state level responsible for receiving, distributing, and responding to inquiries on all incoming interstate, tribal, and international title IV-D cases[, including URESA petitions and requests for income withholding].

"Certified account balance" means an official reconciliation by the agency of both the amounts of child support collected from a non-custodial parent and the amounts distributed to the custodial parent or other appropriate entities during a specified time period.

"Child support" means [payment] an obligation to pay for the necessary support and maintenance of a child as

required by law. This definition includes both financial and medical support. Except in establishment actions under section 5-31-22, modification actions under section 5-31-24, and termination actions under section 5-31-43, child support may include court-ordered spousal support when spousal support is being enforced in conjunction with the financial support of a child.

"Child support order" means an order to pay for the necessary support and maintenance of a child resulting from a judicial or an administrative proceeding that may include financial and medical support for the child. Except in establishment actions under section 5-31-22, modification actions under section 5-31-24, and termination actions under section 5-31-43, child support order may include court-ordered spousal support when spousal support is being enforced in conjunction with the financial support of a child.

"Consumer reporting agency" means any person or entity which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

~~"Court order" means [any judgment, decree, or order of a court or agency that requires the payment of a set or determinant amount of child support, or child support and spousal support.]~~ a child support order resulting from a judicial, rather than an administrative, adjudication.

"Custodial parent" means a parent, guardian, ~~[or]~~ other person, or entity having physical custody of the child.

~~["Debtor parent" means any person who is delinquent in payment of court ordered child support or who owes a public assistance debt.]~~

~~["Delinquent child support" means past due child support under an existing court order owed by a debtor parent.]~~

"Department" means the department of the attorney general.

~~["DHS" means the department of human services.]~~

~~["Director" means the administrator of the agency.]~~

"Financial institution data match" means the process of identifying the financial account of a non-custodial parent

Probably not small business

as a means of locating and seizing financial resources to satisfy obligations owed by the non-custodial parent.

"Income withholding" means the withholding or assignment of future income under sections 571-52, 571-52.2, 571-52.3, 576D-14, and 576E-16, Hawaii Revised Statutes.

"Lien" means a legal claim upon property to prevent sale or transfer of that property until arrearages are satisfied.

"Medical support" means a form of child support where either or both parents provide for medical insurance, which may include dental, drug, or vision services or all, for the children in the case or the payment of a specific amount in lieu of providing medical insurance.

"Non-custodial parent" means a parent who is absent from the family, whether or not the parent is required to pay child support.

"Obligee" means any person [~~to whom payments are required to be made under the terms of a court order for child support, or child support and spousal support.~~] or entity designated to receive payments under the terms of a child support order.

"Obligor" means [~~a person owing a duty of child support.~~] any person or entity that is required to make payments pursuant to a child support order.

"Office of Child Support Hearings" means the office of child support hearings established pursuant to chapter 576E, Hawaii Revised Statutes.

"Other state" includes:

- (1) All states of the United States other than the State of Hawaii;
- (2) The District of Columbia;
- (3) Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States;
- (4) Any Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe and is included in the list of federally recognized Indian Tribal governments as published in the Federal Register that is operating under title IV-D; and
- (5) A foreign country or a political subdivision thereof:
 - (i) Declared to be a foreign reciprocating country under title IV-D; or

(ii) With which the State has entered into a reciprocal arrangement for the establishment and enforcement of child support obligations to the extent consistent with title IV-D.

~~["Public assistance debt" means a debt owing to the department of human services under section 346-37.1, Hawaii Revised Statutes.]~~

"State" means the State of Hawaii.

"State plan" means the state child support enforcement plan as required under title IV-D [of the Social Security Act].

~~["Support obligation" means an obligation determined by a court or authorized agency for the maintenance of a dependent child, which is owed to or on behalf of the child, or to the parent or custodian with whom the child is living.]~~

"Spousal support" means a legally enforceable obligation against an individual for the support of a spouse or former spouse [who is living with a child for whom an individual also owes support].

"Temporary assistance for needy families" means financial assistance provided under the federal Personal Responsibility and Work Opportunity Reconciliation Act, Public Law 104-193, (title IV-A), formerly known as "Aid to Families With Dependent Children".

"Title IV-A", "title IV-D", [and] "title IV-E", and "title XIX" mean title IV-A (temporary assistance for needy families), title IV-D (child support), title IV-E (foster care), and title XIX (medicaid), respectively, of the federal Social Security Act (August 14, 1935, chapter 531, 49 Stat. 620) as amended.

"Uniform Interstate Family Support Act" means the uniform law that sets forth the requirements of processing child support orders in interstate and international cases established under chapter 576B, Hawaii Revised Statutes.

~~["Uniform Reciprocal Enforcement of Support Act" or "URESA" means a uniform law which sets forth reciprocal legislation concerning the enforcement of support between the states.]~~

"Unreimbursed assistance" means the amount of temporary assistance for needy families benefits paid to the family by the department of human services that has not been recovered by the State.

~~["Wage assignment" means the assignment of future income under sections 571-52, 571.52.2, and 576E-16, Hawaii Revised Statutes.] [Eff 2/13/89; am and comp 10/31/91; am~~

and comp _____] (Auth: HRS §576D-2) (Imp: HRS §§576B, 576D-2, 576E-2; 45 C.F.R. § 303.1)

§5-31-3 Authorization of services. (a) The agency shall provide services authorized by chapter 576D, Hawaii Revised Statutes.

(b) Any individual or organization providing custodial care on behalf of a child [~~with an absent parent~~], an alleged father, or [~~an absent~~] any non-custodial parent, may apply to the agency for services. [~~An applicant for or recipient of AFDC shall:~~

- ~~(1) Assign to the State any:
 - ~~(A) Rights to support from any other persons the applicant or recipient may be entitled;~~
 - ~~(B) Amounts that have accrued at the time the assignment is executed for the period of time that the recipient received AFDC; and~~
 - ~~(C) Payments received by the recipient directly from the absent parent for the period of time that the recipient received AFDC; and~~~~
- ~~(2) Cooperate (unless good cause for refusing to do so is determined by DHS) with the agency in:
 - ~~(A) Identifying and locating absent parents of a child;~~
 - ~~(B) Establishing paternity of a child born out of wedlock;~~
 - ~~(C) Obtaining support payments for the AFDC applicant or recipient and for a child for whom aid is claimed; and~~
 - ~~(D) Obtaining any other payments or property due the applicant or recipient or the child.]~~~~

Applications shall not be accepted for the establishment of paternity or child support or both of a child who is emancipated or is beyond the age of eighteen.

~~(c) [Those persons not receiving AFDC who apply for services, shall receive services at a fee of one dollar to be paid with agency incentive funds. However, when the agency is ordered to collect and distribute support payments under section 5-31-4(b)(6) for a non-AFDC recipient who has not requested enforcement services with the agency, no fees shall apply.] An applicant for or recipient of temporary assistance for needy families assigns to the State any:~~

- (1) Rights to child and spousal support from any other person(s) to which the applicant or recipient may be entitled;

(2) Amounts that have accrued at the time the assignment is executed for the period of time that the recipient received temporary assistance for needy families; and

(3) Payments received by the recipient directly from the non-custodial parent for the period of time that the recipient received temporary assistance for needy families.

(d) An applicant or recipient of temporary assistance for needy families shall cooperate (unless good cause for refusing to do so is determined by the department of human services) with the agency in:

(1) Identifying and locating the non-custodial parent(s) of a child;

(2) Establishing paternity of a child born out of wedlock;

(3) Obtaining child and spousal support payments; and

(4) Obtaining any other payments due the applicant or recipient or the child.

(e) Those persons not receiving temporary assistance for needy families who apply for services, shall receive services for an application fee of \$1 to be paid by the agency. However, where the agency is ordered to collect and distribute child support payments under section 5-31-4(b)(6) for a case in which there is no applicant, no fees shall apply.

(f) In title IV-D cases where the custodial parent has never received temporary assistance for needy families, there shall be an annual fee of \$25, once there has been a total disbursement to the custodial parent of \$500 within the federal fiscal year. The custodial parent shall be responsible for this annual fee. Upon the disbursement of the \$500, the fee shall be retained from child support payments collected. The retention of this fee shall not adversely affect the child support amounts owed by the non-custodial parent. The fee shall not be imposed in responding interstate cases. Notwithstanding any other provision, the non-custodial parent shall be responsible for the annual fee in international cases and shall not receive child support credit for this amount. The collected fees are retained for the agency's operational expenses without the usual federal matching portion and are not considered as administrative cost of the agency's program. The collected fees are considered to be income to the program.

(g) The agency shall not accept applications for the sole purpose of disestablishing paternity.

(h) The agency shall not accept applications from children for their own support, regardless of age. [Eff 2/13/89; am 7/27/90; am and comp 10/31/91; am and comp _____] (Auth: HRS §576D-2) (Imp: HRS §§576D-3, 576D-6; 45 C.F.R. §§302.31, 302.33)

§5-31-4 Scope. (a) The agency shall formulate and administer the state plan as required pursuant to section 576D-2, Hawaii Revised Statutes.

(b) The agency ~~[shall]~~ may undertake any or all legal or administrative ~~[action]~~ actions to:

- (1) Locate ~~[absent]~~ non-custodial parents;
- (2) Establish paternity;
- (3) Establish ~~[absent]~~ non-custodial parents' obligation to support their child~~[+]~~ or children;
- (4) Review ~~[absent]~~ non-custodial parents' obligation to support ~~[a-child+]~~ their child or children;
- (5) Modify ~~[absent]~~ non-custodial parents' obligation to support ~~[a-child+]~~ their child or children;
- (6) Collect and distribute voluntary payments or child support payments or both when a ~~[court]~~ child support order requires collection and distribution, except that disbursement in ~~[AFDC]~~ temporary assistance for needy families cases shall be made in accordance with 45 C.F.R. §302.51; and
- (7) Enforce collection of ~~[court-ordered]~~ child support [payments] by any or a combination of ~~[the following methods+]~~ all appropriate enforcement methods available to the agency, including, but not limited to:
 - (A) Judicial process;
 - (B) Administrative process;
 - (C) ~~[Intercept and retain]~~ Interception and retention of federal tax refunds [(persons not receiving AFDC may request federal tax refund intercept service provided they meet the eligibility requirements specified in 45 C.F.R. §303.72)];
 - (D) ~~[Intercept]~~ Interception and retention of state tax refunds [of debtor parents under section 231-53, Hawaii Revised Statutes];
 - (E) ~~[Intercept]~~ Interception and retention of periodic or lump-sum payments from unemployment benefits~~[+]~~, workers' compensation benefits, assets, settlements, proceeds, awards, judgments, lotteries, and

any other entitlement to money due to non-custodial parents;

- (F) [Establish] Establishment of liens; [or]
- (G) [Income withholding.] Establishment and enforcement of income withholding orders;
- (H) Financial institution data match resulting in the freezing of financial accounts and the seizing of funds;
- (I) Referrals to consumer reporting agencies;
- (J) Referrals to licensing agencies for the suspension of driver or professional licenses;
- (K) Referrals for the denial of passports;
- (L) Referrals for administrative offsets; and
- (M) Referrals for federal prosecution in interstate cases.

(c) The agency may decline to establish paternity, to pursue child support, and to initiate review and modification of child support when:

- (1) Incest or forcible rape is involved;
 - (2) Legal proceedings for adoption are involved;
 - (3) The parent is receiving pre-adoption services not to exceed three months; or
 - (4) There is actual or potential physical or emotional harm to parents, children, or caretakers.
- (d) The agency shall cooperate with other states in:
- (1) Locating ~~[an absent]~~ a non-custodial parent;
 - (2) Establishing paternity and ~~[support]~~ child support orders;
 - (3) Enforcing ~~[support]~~ child support orders;
 - (4) Collecting and disbursing child support payments;

and

- (5) Reviewing and modifying ~~[support obligations.]~~ child support orders. [Eff 2/13/89; am 7/27/90; am and comp 10/31/1991; am and comp _____] (Auth: HRS §576D-2) (Imp: HRS §§576D-3, 576D-4, 576D-6, 576D-10, 576E-2; 45 C.F.R. §§302.51, 302.60, 303.5, 303.71,)

~~§5 31 5 Child support debts. (a) Public assistance payments to or for the benefit of any dependent child or children is a debt due and owing to the State by the natural or adoptive parent or parents who are responsible for such support. The debt shall not be incurred by nor collected from the parent or other person who is the recipient of public assistance moneys for the benefit of~~

~~minor dependent children.~~

~~(b) The debt shall equal the amount of public assistance paid on behalf of the child except where there is a court order, the debt shall be limited to the amount provided for by the order. If there is no existing court order, the debt may be established as provided by section 346-37.1, Hawaii Revised Statutes.~~

~~(c) DHS shall be subrogated to the right of individuals to the public assistance debt. The agency shall undertake any judicial or administrative action to collect the debt.] [Eff 2/13/89; comp 10/31/91; R _____] (Auth: HRS § 91-2) (Imp: HRS §§346-37.1, 346-37.2, 576D-8)~~

§5-31-7 REPEALED. [R 10/31/91]

SUBCHAPTER 2

INTAKE OF CASES FOR TITLE IV-D SERVICES

§5-31-12 Application process. (a) The application to obtain title IV-D child support services shall be made on forms supplied by the title IV-D agency and completed in a manner prescribed thereon.

(b) The agency shall provide the appropriate application forms to individuals who make a request in person or send the appropriate application forms upon receiving a written or telephone request. Application forms shall be provided within timeframes prescribed by federal ~~[regulations,]~~ regulation, 45 C.F.R. §303.2(a)(2).

(c) Information describing available child support services, individual's rights and responsibilities, fees, cost recovery, and distribution policies shall be provided to applicants with the application form and to all ~~[eases]~~ applicants referred to the agency within five working days of referral.

(d) No application shall be necessary in title IV-A, title IV-E, and title XIX cases. In such cases, referrals are made through an electronic interface with the department of human services.

(e) In cases where there is a protective order or where the custodial parent discloses that the custodial parent or the child(ren), or both may be in danger from the non-custodial parent, an application for family violence indicator shall be completed by the custodial parent. If this application is approved by the agency, the agency will

not disclose the location of the custodial parent and the subject child(ren) to other states or persons through the federal parent locator service without court approval or the custodial parent's written authorization.

(f) Any current recipient of temporary assistance for needy families who believes he or she or the subject child(ren) or both are in danger of physical harm may notify the department of human services. Should the agency receive referrals of temporary assistance for needy families cases identifying this situation, no action to establish paternity or establish or enforce child support shall be taken until the agency is notified otherwise by the department of human services. [Eff and comp 10/31/91; am and comp _____] (Auth: HRS §576D-2) (Imp: HRS §576D-2; 45 C.F.R. §303.2(a)(2))

§5-31-13 Case opening. (a) An application or referral is considered filed on the date the appropriate unit office receives a completed, signed application form, or complete referral information, and any applicable fees.

(b) Upon the filing of an application or referral, the agency [~~shall~~] may establish a case record, assess the case and determine necessary action, solicit necessary and relevant information, initiate verification, and refer for location services, if necessary. In addition, the agency shall refer the case, including all necessary documents as prescribed by federal regulations, to another state's title IV-D central registry when the application or referral form indicates that the [~~absent~~] non-custodial parent or putative father resides in that state. These actions shall be completed within timeframes prescribed by federal regulations, 45 C.F.R. §§303.2(b), 303.7(b).

(c) Upon receiving an interstate title IV-D case, the agency shall review the documentation for completeness, establish a case record, forward the case to the appropriate unit for processing, acknowledge to the initiating state receipt of the case, inform the initiating state where the case was sent for action, and request the initiating state to provide additional documentation if necessary. These actions shall be completed within timeframes prescribed by federal [~~regulations,~~] regulation, 45 C.F.R. §303.7(a)(2). [Eff and comp 10/31/1991; am and comp _____] (Auth: HRS §576D-2) (Imp: HRS §§576D-2, 576D-6; 45 C.F.R. §§303.2, 303.7)

§5-31-14 Orientation. A specially designed orientation session may be presented by the agency to

familiarize applicants with the rights and responsibilities of the parties. [Eff and comp _____] (Auth: HRS §§576D-2, 576D-6) (Imp: HRS §§576D-2, 576D-6; 45 C.F.R. §302.30)

§5-31-15 Application information. The following information may be required to complete the application:

- (1) The applicant's social security number and date of birth;
- (2) The applicant's last four pay stubs;
- (3) The applicant's most recent federal or state income tax return;
- (4) Child care receipts for the last three months;
- (5) Birth certificates for each child in the family;
- (6) Social security numbers and dates of birth for each child and non-applicant party;
- (7) Address information for all parties;
- (8) Information when the child has received temporary assistance for needy families or medicaid any time in the State or in other states;
- (9) Information on the applicant's employer and work history;
- (10) Information on the employer and work history of the other parent of the child(ren);
- (11) Information on or availability and cost of medical coverage for the child(ren) by either parent;
- (12) All child support orders;
- (13) Information on ownership of real property by the non-custodial parent;
- (14) Information on financial accounts held by either parent;
- (15) Work, home, and cellular telephone numbers for both parents;
- (16) Information on both paternal and maternal grandparents for each child;
- (17) Caretaker information if the children are not living with the mother or the father;
- (18) Marriage or divorce or separation history of both parties, marriage certificate, and divorce decree; and
- (19) Restraining orders issued by the court. [Eff and comp _____] (Auth: HRS §§576D-2, 576D-6) (Imp: HRS §§576D-2, 576D-6; 45 C.F.R. §303.2)

SUBCHAPTER 3

~~[LOCATION OF ABSENT PARENTS]~~ LOCATE

§5-31-17 ~~[Cases needing location services.]~~ Locate.

(a) The agency shall access available and appropriate sources ~~[of information]~~ to obtain ~~[sufficient]~~ information concerning the ~~[absent parent's physical whereabouts, employment, sources of income or assets, or medical insurance coverage, which is sufficient and necessary to take the next appropriate action in a case.]~~ custodial and non-custodial parent. All appropriate location sources shall be accessed within timeframes prescribed by federal ~~[regulations,]~~ regulation, 45 C.F.R. § 303.3(b)(3).

(b) Where ~~[previous attempts]~~ efforts to locate ~~[an absent]~~ a non-custodial parent have failed, attempts shall be repeated periodically within timeframes prescribed by federal ~~[regulations,]~~ regulation, 45 C.F.R. § 303.3(b)(5) [and (6)], or immediately upon receipt of new and relevant information, whichever is earlier.

(c) Upon ~~[obtaining]~~ receipt of sufficient and necessary [location] locate information, the case shall be forwarded immediately for the next appropriate action. [Eff and comp 10/31/1991; am and comp _____] (Auth: HRS §576D-2) (Imp: HRS §576D-6; 45 C.F.R. §303.3)

§5-31-18 Interstate ~~[requests for location services.]~~ locate.

(a) Requests from other jurisdictions for ~~[location]~~ locate services only shall be processed pursuant to section 5-31-17(a).

(b) Results of actions completed to locate ~~[an absent]~~ a non-custodial parent shall be communicated to the requesting jurisdiction. No further action shall be required by the agency unless specified by the requesting jurisdiction and determined to be appropriate by the agency. [Eff and comp 10/31/1991; am and comp _____] (Auth: HRS §576D-2) (Imp: HRS §576D-6; 45 C.F.R. §§303.3, 303.7)

SUBCHAPTER 4

ESTABLISHMENT OF PATERNITY AND SUPPORT

§5-31-21 Establishment of paternity. (a) When a referral is received from the department of human services,

another state, or the applicant, a determination is made whether paternity for a child is at issue.

(b) Paternity is at issue when natural parents are not married to each other at the time of the birth of the child.

(c) Paternity can be established by the following methods:

- (1) By the voluntary establishment of paternity pursuant to section 584-3.5, Hawaii Revised Statutes;
- (2) By a court ordered judgment of paternity; or
- (3) By a decree of divorce naming the child as a child of the marriage. [Eff and comp _____] (Auth: HRS §§584-3.5, 584-8.5, 584-15) (Imp: HRS §§584-3.5, 584-8.5, 584-15; 45 C.F.R. §§302.70, 303.5)

§5-31-21.1 Non-pursuit of paternity. (a) The agency shall not initiate paternity proceedings in the following situations:

- (1) Where paternity has been established by court order or voluntary establishment of paternity pursuant to section 584-3.5, Hawaii Revised Statutes; or
- (2) Where the mother was married at the time of the birth of the child or the child was born within three hundred days of the divorce of the mother, and no alleged natural father has been identified.

(b) The agency may not initiate paternity proceedings in the following situations:

- (1) Where incest or forcible rape is involved;
- (2) Where legal proceedings for adoption are involved; or
- (3) Where the department of human services has made a good cause determination. [Eff and comp _____] (Auth: HRS §§576D-2, 576D-6) (Imp: HRS §§576D-2, 576D-6, 584-3.5; 45 C.F.R. §§302.31, 302.70, 303.5)

§5-31-21.2 Procedures when paternity is at issue.

(a) A complaint for paternity initiated by the agency is filed with the court.

(b) Service of the complaint, which includes a court hearing date, is made upon the parties named in the complaint.

(c) Any named party in the complaint may request genetic testing and genetic testing will be ordered by the court. In such instance, the agency will advance the genetic testing cost subject to reimbursement by any party.

(d) The genetic testing report will be filed with the court and sent to the named parties on the complaint.

(e) If genetic testing does not result in exclusion of the alleged father and testing has been conducted in accordance with sections 584-11(a)(2), Hawaii Revised Statutes, the alleged father is presumed to be the father of the subject child pursuant to section 584-4(a)(5), Hawaii Revised Statutes.

(f) A party who has been excluded by genetic testing may have the paternity action dismissed by the court and will not be responsible for the genetic testing cost.

(g) A party has a right to request a non-jury trial on the issue of paternity.

(h) Where paternity has been established pursuant to admission or court order, a judgment of paternity is issued by the court.

(i) Once paternity is established and the parents and the child are residing together, no further action will be taken. [Eff and comp _____] (Auth: §§576D-2, 576D-3, 576D-4, 576D-6) (Imp: §§576D-2, 576D-3, 576D-4, 576D-6, 576E-2, 584-4, 584-11; 45 C.F.R. §§302.70, 303.5)

§5-31-22 Establishment of [a support obligation.] child support orders. (a) [A petition for child] Child support [should be processed] is addressed in conjunction with paternity establishment [, with the child support guidelines, mandated by section 576D-7, Hawaii Revised Statutes, being applied whenever there is sufficient information to do so.] or through the administrative process when paternity is not at issue.

(b) Within time frames prescribed by federal [regulations,] regulation, 45 C.F.R. § 303.4(d), the agency must establish an order for child support, or complete service of process necessary to establish an order, or document unsuccessful attempts to serve process.

(c) [If a proposed support order is dismissed without prejudice, the agency shall determine the next appropriate action to be taken based on the reasons for dismissal. Appropriate actions include, but are not limited to:

- (1) Sending the case for location services if the proposed order for support was dismissed due to unemployment or insufficient income;
- (2) Appealing the dismissal; or

~~(3) Seeking an order for support at some designated time in the future.]~~ If there is no existing order and paternity is not at issue, the administrative process to establish a child support order is initiated when appropriate information is received. Information that is necessary to initiate order establishment are:

- (1) Income information from the applicant if the applicant is not receiving temporary assistance for needy families; and
- (2) A serviceable address for both parties in the case.

(d) Once it is determined that it is appropriate to initiate an administrative process to establish a child support order, the following steps are taken:

- (1) Notice is sent to the other party in the case requesting income information;
- (2) Automated inquiries for income information are made to state and federal agencies;
- (3) After ten calendar days have passed, a proposed administrative order that includes the amount for child support and medical insurance provision is generated and served upon the parties by certified mail or personal service pursuant to section 576E-4, Hawaii Revised Statutes. The amount of child support is determined by using the child support guidelines as required by section 576D-7, Hawaii Revised Statutes;
- (4) Once a party has been served with the proposed administrative order, that party has ten working days to request an administrative hearing;
- (5) If neither party requests a hearing, the proposed administrative order is signed by the administrator or a hearings officer with the office of child support hearings. If applicable, an income withholding order, in the standard format prescribed by title IV-D, is issued;
- (6) The signed administrative order and income withholding order are filed with the family court. Filed copies of the child support order are sent to the parties. A certified copy of the child support order is sent to the bureau of conveyances for recordation purposes and a notice of income withholding is sent to the non-custodial parent's employer, if applicable;
- (7) If an administrative hearing is requested, a hearing is scheduled and notice of the hearing is sent to the parties once both parties are served

with the proposed administrative order.
Administrative hearings are scheduled at one-half
hour intervals Tuesdays through Fridays from 9:00
a.m. through 11:30 a.m. Administrative hearings
that are continued may be scheduled at other
times as necessary;

- (8) Prior to the hearing the agency representative
meets with the parties to determine if a
settlement can be reached or to obtain updated
information on the parties;
- (9) At the time of the hearing, the agency
representative provides case information to the
administrative hearings officer. The parties are
allowed to provide information to the
administrative hearings officer that supports
their position on the issues being addressed;
- (10) After the administrative hearing has been
completed and a signed child support order is
received from the administrative hearings
officer, the process described in paragraph (6)
is followed;
- (11) Both parties must be served before the
administrative process can continue.
 - (i) If the unserved party is the applicant,
attempts will be made to contact the
applicant to complete service of process.
If such attempts are unsuccessful, case
closure may be initiated.
 - (ii) If the unserved party is not the applicant,
the unserved party may be referred to locate
or case closure may be initiated.

(e) If the administrative process to establish a
child support order is dismissed without prejudice, the
agency shall determine the appropriate action to be taken.
Appropriate actions include, but are not limited to:

- (1) Sending the case for locate;
- (2) Appealing the dismissal; or
- (3) Seeking an order for child support at a later
date.

(f) Child support orders shall include a provision
requiring either parent or both to provide medical support.
[Eff and comp 10/31/91; am and comp _____]
(Auth: HRS §576D-2) (Imp: HRS §576D-6; 45 C.F.R. §303.4)

§5-31-23 Guidelines for determining the amount of the
child support obligation. (a) The agency shall review the
child support guidelines mandated by section 576D-7, Hawaii

Revised Statutes, at least once every four years [~~to ensure their application results in the appropriate child support award amounts~~]. Recommendations on amendments to the child support guidelines shall be communicated to the family court.

(b) Where the non-custodial parent is incarcerated, a presumption of exceptional circumstance is created and the agency may initiate administrative proceedings to set current child support at zero. [Eff and comp 10/31/91; am and comp _____] (Auth: HRS §576D-2) (Imp: HRS §576D-7; P.L. 100-485, §103 (1988))

§5-31-24 Modification of child support orders. (a) If there is an existing child support order, the administrative process to modify child support is initiated when a request is received from one of the parties. Information that is necessary to initiate order modification are:

- (1) A written request specifying the reason for the modification;
- (2) Income information from the requesting party if the requesting party is not receiving temporary assistance for needy families; and
- (3) A serviceable address for both parties in the case.

(b) Once it is determined that it is appropriate to initiate an administrative process to modify a child support order, the following steps are taken:

- (1) A notice is sent to both parties in the case indicating that the agency is reviewing the current child support obligation for possible modification and requesting income information;
- (2) Automated inquiries for income information are made to state and federal agencies;
- (3) Ten calendar days after the date of notice, a proposed administrative order with modified child support is generated if the threshold under section 576E-14(c), Hawaii Revised Statutes, has been met. If the threshold under section 576E-14(c), Hawaii Revised Statutes, has not been met, a statement of no change is generated. The proposed administrative order or the statement of no change is served upon the parties by regular mail pursuant to section 576E-4, Hawaii Revised Statutes. The amount of child support is determined by using the child support guidelines

as required by section 576D-7, Hawaii Revised Statutes; and

(4) Once a party has been served with the proposed administrative order or the statement of no change, the party has thirty calendar days to request an administrative hearing.

(c) The process as described in section 5-31-22(d) (5) through (10) is followed to complete the modification action. [Eff and comp _____] (Auth: §§576D-2, 576D-6, 576E-2, 576E-5, 576E-6) (Imp: §§ 576D-2, 576D-6, 576E-2, 576E-5, 576E-6; 45 C.F.R. §§302.70, 303.8)

§5-31-25 Review and adjustment for temporary assistance for needy families cases. (a) The agency shall review and, if appropriate, adjust the current child support order in accordance with the guidelines for temporary assistance for needy families cases every three years from the filed date of the most recent order or the date of the most recent review, whichever is later.

(b) The process described in section 5-31-24 is followed except that no written request from a party is necessary. [Eff and comp _____] (Auth: HRS §576D-6) (Imp: HRS §§576D-2, 576D-6, 576E-2; 45 C.F.R. §§302.70, 303.8)

SUBCHAPTER 5

ENFORCEMENT

§5-31-27 Identifying ~~[delinquency]~~ arrearages and initiating enforcement. (a) The agency shall maintain a system for identifying title IV-D cases in which there is a failure to make ~~[a support payment]~~ payments in accordance with the ~~[current]~~ child support order.

(b) Upon identifying ~~[a delinquency]~~ arrearages or receiving ~~[an interstate]~~ a request for enforcement ~~[7]~~ from other states, the agency shall proceed to take appropriate enforcement action to collect ~~[the]~~ child support as currently ordered, within timeframes prescribed by federal regulations, 45 C.F.R. §303.6(c) (2) and (3).

(c) Upon identifying ~~[a delinquency in payment]~~ arrearages in a title IV-D case where the ~~[debtor]~~ non-custodial parent resides in another state, the title IV-D agency in the other state shall be requested to provide enforcement services ~~[-]~~ when appropriate. The request shall be made as prescribed by federal ~~[regulations,]~~

regulation, 45 C.F.R. §303.7(b).

(d) ~~[Automated information from records and accounts]~~ Information maintained in computerized systems available to the agency shall be ~~[considered]~~ adequate basis ~~[upon which a determination may be made]~~ to identify an obligor as ~~[delinquent in child support payments]~~ owing arrearages or to impose ~~[a means of]~~ enforcement. [Eff and comp 10/31/1991; am and comp _____] (Auth: HRS §576D-2) (Imp: HRS §576D-6; 45 C.F.R. §§303.6, 303.7)

§5-31-28 Requiring a security bond or other guarantee from a ~~[debtor]~~ non-custodial parent. (a) A ~~[debtor]~~ non-custodial parent ~~[delinquent in an amount that exceeds \$1,000, shall]~~ owing arrearages exceeding the amount of child support due for a six month period may be required by ~~[court]~~ child support order ~~[or administrative process]~~ to give security, post bond, or give some other guarantee to secure payment of ~~[delinquent child support.]~~ such arrearages.

(b) The ~~[debtor]~~ non-custodial parent shall not be required to provide such security when:

- (1) The ~~[debtor]~~ non-custodial parent is receiving public assistance for the benefit of minor children;
- (2) The ~~[debtor]~~ non-custodial parent does not have means to post bond or other security; or
- (3) It is not in the best interest of all the ~~[debtor]~~ non-custodial parent's dependent children.

(c) When commencing administrative process to require a ~~[debtor]~~ non-custodial parent to give security, post bond, or give some other guarantee of payment, the agency shall proceed under section ~~[5-34-14.]~~ 5-31-22. [Eff 2/13/89; §5-31-6; am, ren, and comp 10/31/1991; am and comp _____] (Auth: HRS §576D-6(b)) (Imp: HRS §§576D-6(a)(5), 576E-5; 45 C.F.R. §303.104)

§5-31-29 Information of ~~[delinquent child support]~~ arrearages to consumer ~~[credit]~~ reporting agencies. (a) Information of ~~[delinquent child support]~~ arrearsages owed by a ~~[debtor]~~ non-custodial parent that exceeds ~~[\$1,000 shall]~~ \$2,500 may be released to [a] consumer reporting ~~[agency upon the reporting agency's request.]~~ agencies.

(b) The agency shall provide advance written notice to the ~~[debtor]~~ non-custodial parent by mailing the notice to the non-custodial parent's last known address. The

notice shall inform the ~~[debtor]~~ non-custodial parent of ~~[+]~~ the following:

- (1) The amount of the ~~[delinquent child support,]~~ arrearages;
- (2) The agency's intent to release information of ~~[delinquent child support]~~ the arrearages owed by the ~~[debtor]~~ non-custodial parent to ~~[a]~~ consumer reporting ~~[agency,]~~ agencies;
- ~~[-(3)- A procedure for contesting the action;~~
- ~~[-(4)-]~~ (3) ~~[An explanation that the agency shall proceed with the intended action if the agency does not receive a written objection from the debtor parent within fourteen calendar days of the date of the notice,]~~ A statement that the non-custodial parent may contest the agency's action by requesting an administrative review in writing within fourteen calendar days of the date of the notice; and
- ~~[-(5)- An explanation that]~~ (4) The only issues that may be raised when contesting the intended action are limited to either an error in the amount of the ~~[overdue support]~~ arrearages or an error in the identity of the ~~[debtor]~~ non-custodial parent.

~~[-(d)-]~~ (c) If a written objection is received by the agency from the ~~[debtor]~~ non-custodial parent within the timeframe specified in the advance written notice, the agency shall suspend further action related to releasing information on the case to consumer ~~[credit]~~ reporting agencies ~~[until the matter is resolved,]~~ and shall proceed under section 5-31-35.1. [Eff 2/13/89; §5-31-8; am, ren, and comp 10/31/1991; am and comp _____] (Auth: HRS §576D-6(b)) (Imp: HRS §576D-6(a)(6))

§5-31-30 Property Liens. (a) Liens on real and personal property shall be established pursuant to section 576D-10.5, Hawaii Revised Statutes. ~~[Judgment liens shall attach under section 636-3, Hawaii Revised Statutes.]~~

(b) ~~[Liens shall not be sought if the debtor parent is receiving public assistance for the benefit of the minor child or if the action would prevent the debtor parent to meet a current support obligation.]~~ The agency shall be responsible for intercepting and seizing assets, settlements, proceeds, awards, judgments, lotteries, and any other entitlement to money due to non-custodial parents who owe arrearages.

(c) A notice of the amount owed by the non-custodial parent shall be provided to any entity that may be holding funds on behalf of a non-custodial parent to whom subsection (b) applies.

(d) Upon receipt of a written request by the non-custodial parent for an administrative review on the seizure of the funds, the agency shall proceed under section 5-31-35.1.

(e) Prior to the agency receiving the funds, if the agency is served with proper notice that the non-custodial parent is contesting the seizure through a judicial proceeding, the agency shall notify the entity to hold the funds until the proceeding has been completed.

(f) If, after the judicial proceeding has been completed, it is determined that the seizure is proper and the funds have not been released to the agency, the agency shall notify the entity to release the funds to the agency.

(g) If, after an administrative review or a judicial proceeding, it is determined that the seizure is improper and the funds have not been released to the agency, the agency shall notify the entity that the lien is withdrawn.

(h) Liens may not be enforced if the administrator determines that it is not in the best interest of the child. [Eff 2/13/89; § 5-31-9; am, ren, and comp 10/31/1991; am and comp _____] (Auth: HRS §576D-6(b)) (Imp: HRS §§576D-6(a)(7), 576D-10.5)

§5-31-31 State income tax refund setoff and overpayment refund. (a) [~~State income tax refunds of those persons who owe a child support debt shall be setoff to recover this debt.~~] The agency shall refer those persons who owe arrearages in an amount that meet the requirements of section 231-53, Hawaii Revised Statutes, to the state department of accounting and general services for income tax refund setoff.

(b) The agency shall provide advance written notice to the [~~debtor~~] non-custodial parent by pre-setoff letter [~~regarding the~~] of the initial referral of the [~~debtor~~] non-custodial parent for state income tax refund setoff. The pre-setoff letter shall be mailed to the [~~debtor~~] non-custodial parent's last known address and shall include:

- (1) The amount of the [~~delinquent child support;~~] arrearages;
- (2) The agency's intent to refer the [~~debtor~~] non-custodial parent for state income tax refund setoff due to [~~nonpayment of a debt to the agency;~~] arrearages owed;

~~[(3) A procedure for contesting the debt;~~

~~[(4)] (3) [An explanation that the debtor parent has fourteen calendar days from the date of the notice to contest the debt;] A statement that the non-custodial parent may contest the agency's action by requesting an administrative review in writing within fourteen calendar days of the date of the notice; and~~

~~[(5)] (4) An explanation that the issues that may be raised when contesting the action are limited to either an error in the amount of the [overdue child support] arrearages or an error in the identity of the [debtor] non-custodial parent.~~

(c) ~~[Once a debtor parent has been referred for state income tax refund setoff, and an actual setoff is identified, a notice of proposed refund application shall be provided to the debtor parent.] A notice of proposed refund application shall be provided to the non-custodial parent once an actual setoff is identified. The notice shall be mailed to the [debtor] non-custodial parent's last known address and shall include:~~

- ~~(1) The amount of the [debtor's] non-custodial parent's state income tax refund for a specified year;~~
- ~~(2) The amount of the [child support debt;] arrearages;~~
- ~~(3) The amount that has been identified for [application against the debt;] setoff;~~
- ~~(4) The legal authority supporting the action;~~
- ~~(5) The right of the [debtor] non-custodial parent to request an administrative hearing within thirty calendar days of the date of the notice;~~
- ~~(6) Procedures for requesting an administrative hearing; and~~
- ~~(7) An explanation that the action, when completed, is final, if the agency does not receive a request for an administrative hearing within thirty calendar days of the date of the notice.~~

(d) Upon receipt of a written request for an administrative hearing from the non-custodial parent on the matter of an identified tax refund setoff, the agency shall proceed under section 5-31-35.

(e) ~~[When the agency sets off a state income tax refund under section 231-53, Hawaii Revised Statutes, the agency shall notify the custodial parent that the setoff shall be credited to unreimbursed AFDC or foster care maintenance debts before any other debt. The notice shall~~

~~be sent within forty five days of the date the tax refund is setoff. The notice shall contain:~~

- ~~(1) The name of the debtor parent;~~
- ~~(2) The amount of the setoff;~~
- ~~(3) Application of the setoff amount; and~~
- ~~(4) A statement explaining that the setoff amount is required to be credited toward unreimbursed AFDC or foster care maintenance before any other debt.]~~

The agency shall provide advance notice to applicants that in cases where medical support rights have been assigned to the State, if state tax income refunds are setoff and applied to amounts designated in the child support order for medical purposes, the amounts shall be retained by the State.

(f) If the agency intercepts a state income tax refund and any portion has not been disbursed, the agency may reimburse the amount that exceeds the amount due~~[, the agency shall reimburse the overpayment within twenty days after the agency discovers the overpayment.]~~ or the amount that includes the non-custodial parent's spouse's share, up to the undisbursed amount. If the [overpayment] state income tax refund has been released to the obligee, the agency [will] shall notify the obligee of [the] any overpayment [and request that the obligee refund the overpayment as required under the request for tax refund setoff services.] or claim made by the non-custodial parent's spouse for his or her share of the refund. The notice shall inform the obligee that he or she may have the obligation to refund the amount that was received by the obligee. [Eff 2/13/89; § 5-31-10; am, ren, and comp 10/31/1991; am and comp _____] (Auth: HRS §576D-6(b)) (Imp: HRS §§231-53, 576D-6(a)(8) and (9); 45 C.F.R. §303.102)

§5-31-31.1 Federal income tax refund offset. (a) The agency shall refer to the federal Office of Child Support Enforcement, those persons who owe arrearages in an amount that meets the requirements for federal income tax refund offset.

(b) Referrals to the Office of Child Support Enforcement will result in a pre-offset notice to the non-custodial parent. Upon receiving the notice, the non-custodial parent may request that the agency conduct an administrative review of the arrearages owed.

(c) Once a federal income tax refund offset has been made, the Secretary of the United States Treasury will send notice to the non-custodial parent indicating that the

offset has occurred. Upon receiving the notice, the non-custodial parent may challenge the offset and request an administrative review from the agency. Challenges received by the agency after the federal income tax refund offset has been disbursed may not result in a return of the offset amount.

(d) The agency shall refer any challenge to the offset by the non-custodial parent's spouse to the Secretary of the United States Treasury.

(e) Collections resulting from federal income tax refund offsets shall be distributed in accordance with federal regulations. When the offset is received, it may be held for up to thirty calendar days in single filed tax returns and for up to one hundred eighty calendar days in jointly filed tax returns.

(f) In cases where arrearages are owed to the State during the period that the custodial parent received temporary assistance for needy families, the amounts collected shall first be distributed to the federal and the state governments for reimbursement of the assistance paid.

(g) Upon receipt of a written request for an administrative review, the agency shall proceed under section 5-31-35.1. If the arrearages are based upon another state's child support order and the non-custodial parent requests that the administrative review be done by the state that issued the order, the agency shall send the non-custodial parent's request along with all necessary documentation to the appropriate entity in the state that issued the order. [Eff and comp _____] (Auth: HRS §§576D-2, 576D-6) (Imp: HRS §§576D-2, 576D-6; 45 C.F.R. §§302.60, 303.72)

~~§5-31-32 [Initiating income withholding on cases not subject to immediate income withholding under section 5-34-22-] Income withholding. (a) The agency shall initiate income withholding [, whether or not there are income withholding provisions in the support order, if the obligor is employed or otherwise receiving income, upon identifying a delinquency in payment in an amount equal to or greater than the support payable for one month, or if earlier and without regard to whether there is a delinquency, upon the earlier of:~~

- ~~(1) Receiving a request for income withholding from the obligor;~~
- ~~(2) Receiving a request for income withholding from the obligee upon showing of good cause.] for all~~

title IV-D cases unless a determination has been made by the agency that income withholding would not be in the best interest of the child.

~~(b) [In a case where the obligor is believed to be employed or otherwise receiving income in another state, the agency shall request the title IV-D agency in the other state to implement income withholding.]~~ If income withholding is initiated on the basis of an arrearage, the administrator or designee may sign an income withholding order which includes an additional amount to reduce the arrearages owed. A copy of the income withholding order shall be filed in the office of the clerk of the circuit court in the circuit where the child support order was issued.

~~(c) [When the agency pursues income withholding in a case where the obligor is employed or otherwise receiving income in the State, except in the case of income withholding being initiated at the request of the obligor, the obligor shall be provided advance written notice. The notice shall include:~~

- ~~(1) The amount of the delinquent child support, if applicable;~~
- ~~(2) The intent of the agency to implement income withholding and the amount proposed to be withheld;~~
- ~~(3) A statement that the withholding applies to any current or subsequent period of employment or payment of income;~~
- ~~(4) A procedure for contesting the action;~~
- ~~(5) A statement that the only basis for contesting the withholding is a mistake of fact; and~~
- ~~(6) An explanation that the agency shall proceed with the intended action if the agency does not receive a written objection and request for an administrative hearing from the obligor within fourteen calendar days of the date of the notice, or within ten calendar days of the date of the notice if income withholding was requested by another state.]~~ The agency shall send a filed

copy of the income withholding order to the non-custodial parent and a notice of the income withholding to the employer. Such income withholding procedures and challenges thereto are specified in section 576D-14, Hawaii Revised Statutes.

~~(d) [The advance notice shall be served upon the obligor by personal service or certified mail, return receipt requested, unless subsection (c) of this section~~

~~applies.] In those cases where current child support has been suspended or terminated and arrearages are owed, the most recent income withholding order that has not been terminated by court or administrative order shall continue in effect and may be served on current or future employers until such time as the arrearages are fully satisfied.~~

~~(e) If income withholding is initiated on the basis of a delinquency, pursuant to subsection (a) of this section, and the current support order contains income withholding provisions pursuant to section 571-52.2, Hawaii Revised Statutes, the advance notice may be mailed to the parent's last known address by regular mail.~~

~~(f) If the agency does not receive a written objection and request for an administrative hearing within the timeframe specified in the advance notice, the agency shall proceed to send an order of income withholding to the employer.~~

~~(g) The income withholding order shall operate as an assignment to the agency and shall include:~~

- ~~(1) The amount to be withheld;~~
- ~~(2) The effective date of withholding;~~
- ~~(3) Sanctions for noncompliance; and~~
- ~~(4) A notice that the amount of income withheld shall not exceed limits imposed by the Consumer Credit Protection Act.~~

~~(h) The income withholding order shall be signed by the director of the agency or designee unless the order is being issued after an administrative hearing has commenced whereupon the order shall be signed by the hearings officer.~~

~~(i) A copy of the income withholding order shall be filed in the office of the clerk of the circuit court in the circuit where the order was issued.~~

~~(j) If a written objection and request for an administrative hearing is received by the agency from the obligor within the timeframe specified in the notice sent under subsection (c), the agency shall suspend further income withholding action on the case until the matter is resolved and complete the following:~~

- ~~(1) Handle the request for administrative hearing in accordance with section 5-31-35;~~
- ~~(2) Service of an order or notice to the absent parent regarding whether or not income withholding is to occur; and~~
- ~~(3) Service of an order to commence income withholding to the employer if income withholding is to occur.~~

~~(k) If the agency has received child support through income withholding in an amount that exceeds the amount due, and has released the overpayment to the obligee, the agency will request the obligee to refund the overpayment or the agency will withhold future child support payments from the obligee until the overpayment has been recovered. The agency shall reimburse the absent parent within twenty days after the overpayment has been recovered from the obligee.~~

~~(l) If the agency has access to the overpayment moneys at the time that an overpayment is identified, the agency shall reimburse the absent parent within twenty days after the agency has discovered the overpayment.]~~

(e) Upon receipt of a written request for an administrative hearing regarding the income withholding action, the agency shall proceed under section 5-31-35.
[Eff and comp 10/31/1991; am and comp _____]
(Auth: HRS §§91-2, 576D-10) (Imp: HRS §§571-52.2, 576D-6(a)(10); 45 C.F.R. §303.100)

§5-31-32.1 License suspension. (a) The agency may refer non-custodial parents who are delinquent in child support in an amount that would be owed for a three-month period to appropriate licensing authorities to suspend their driver's license.

(b) The agency may refer non-custodial parents who are delinquent in child support in an amount that would be owed for a six-month period to appropriate licensing authorities to suspend their professional license(s).

(c) The agency may refer individuals who have failed to comply with the subpoena or the warrant relating to a paternity or a child support proceeding to appropriate licensing authorities to suspend the individual's driver's or professional license(s) or both.

(d) The agency may refer individuals who have not obtained or maintained health insurance coverage as required by a child support order to appropriate licensing authorities to suspend the individual's driver's or professional license(s) or both.

(e) License suspension procedures and challenges thereto are specified in section 576D-13, Hawaii Revised Statutes.

(f) Where the non-custodial parent has entered into a repayment agreement in response to a notice of impending license suspension action and has failed to comply with the agreement, the agency shall refer the non-custodial parent to appropriate licensing authorities to suspend the

individual's driver's or professional license(s) or both without further advance notice to the affected individual.

(g) Upon receipt of a written request for an administrative hearing regarding the license suspension action, the agency shall proceed under section 5-31-35. [Eff and comp _____] (Auth: HRS §§576D-1, 576D-2, 576D-13) (Imp: HRS §§576D-1, 576D-2, 576D-13; 45 C.F.R. §303.6)

§5-31-32.2 Administrative financial institution data match. (a) The agency shall enter into agreements with financial institutions to exchange data related to non-custodial parents that owe arrearages.

(b) The agency may be responsible for freezing and seizing funds from the accounts of delinquent non-custodial parents that have active accounts. The administrative financial institution data match process may be initiated against a non-custodial parent who owes arrearages equal to or greater than the amount owed for one month of child support and the arrearages amount has been outstanding for a three month period.

(c) A notice of lien and levy shall be served on the financial institution that may be holding funds on behalf of a non-custodial parent to whom subsection (b) applies. Upon being served with notice, the financial institution:

- (1) Notifies the account holders of the freeze of the account and the impending seizure;
- (2) Discloses to the agency the amount being held, if any, pursuant to the notice of lien and levy, and also inform the agency of any safe deposit box held in the name of the non-custodial parent; and
- (3) Sixty calendar days after being served with the lien, shall turn over the funds to the agency unless otherwise informed by the agency that the institution should hold onto the funds for a longer period.

(d) After serving the notice of lien and levy on the financial institution, the agency shall serve notice upon the non-custodial parent of the agency's intent to seize funds in the account held by the financial institution. The notice shall be sent by regular mail to both the last known address of record of the non-custodial parent as shown in the records of the financial institution and the address of record of the non-custodial parent as shown in the agency's child support record. For purposes of this section, the date of service means two working days following the date of mailing of the notice to the non-

custodial parent by the agency. The notice shall contain the following information:

- (1) Identification of the financial institution where the funds are being held;
- (2) The name, the last four digits of the social security number, if available, and each applicable child support case number or numbers of the non-custodial parent;
- (3) The amount of the arrears owed by the non-custodial parent; and
- (4) A statement that the non-custodial parent may contest the seizure by requesting an administrative review in writing within fourteen calendar days of the date of service of the notice of intent to seize the funds.

(e) After receipt of a written request by the non-custodial parent for an administrative review on the seizure of the funds held by the financial institution, the agency shall proceed under section 5-31-35.1.

(f) If the agency receives a timely request for an administrative review prior to the agency receiving the funds from the financial institution, the agency may notify the financial institution to hold the funds until the administrative review has been completed.

(g) If, after the administrative review, it is determined that the seizure is proper and the funds have not been released to the agency, the financial institution shall be notified to release the funds to the agency.

(h) If, after the administrative review, it is determined that the seizure is improper and the funds have not been released to the agency, the financial institution shall be notified that the lien is released. [Eff and comp _____] (Auth: HRS §576D-15) (Imp: HRS §576D-15; 45 C.F.R. §303.6)

§5-31-32.3 Referral for passport denial. (a) The agency may request the federal Office of Child Support Enforcement to deny, revoke, or limit the passport of any non-custodial parent that owes arrearages equal to or greater than \$2,500.

(b) In cases where such requests are approved, passport privileges will not be restored unless the arrearages have been fully satisfied.

(c) The administrator has the discretion to request the restoration of passport privileges when the non-custodial parent clearly demonstrates an inability to fully satisfy the arrearages owed and that exigent circumstances

exist. [Eff and comp _____] (Auth: HRS §576D-2) (Imp: HRS §576D-2; 45 C.F.R. §303.6)

§5-31-32.4 Other enforcement mechanisms. The agency may utilize other enforcement mechanisms to collect arrearages. These include, but are not limited to:

- (1) Garnishment;
- (2) Criminal forfeiture;
- (3) Tax sale; and
- (4) Foreclosure. [Eff and comp _____]
(Auth: HRS §§576D-2, 576D-10.5) (Imp: HRS §§576D-2, 576D-10.5; 45 C.F.R. §303.6)

§5-31-32.5 Referral for special prosecution. In cases where the non-custodial parent owes arrearages and the agency is not successful in securing his or her compliance in meeting child support obligations, the agency may refer the cases to the appropriate county, state, or federal agencies for special prosecution. [Eff and comp _____] (Auth: HRS §576D-2) (Imp: HRS §576D-2; 45 C.F.R. §§302.34, 303.6)

§5-31-32.6 Bankruptcy. During the pendency of the non-custodial parent's bankruptcy proceeding, the agency may file a proof of claim and take all appropriate enforcement actions. [Eff and comp _____] (Auth: HRS §576D-2) (Imp: HRS §576D-2; 45 C.F.R. §303.6)

§5-31-32.7 Insurance company data match. (a) The agency may enter into agreements to obtain insurance claim information related to non-custodial parents that owe arrearages.

(b) The agency may institute such enforcement action as appropriate based upon the information obtained from the data match. [Eff and comp _____] (Auth: HRS §576D-2) (Imp: HRS §576D-2; 45 C.F.R. §303.6)

§ 5-31-35 [~~Handling requests~~] Requests for administrative hearings on enforcement actions. (a) [~~Upon~~] After receipt of a written request for an administrative hearing on an enforcement action imposed by the agency, a determination shall be made [~~as to~~] whether [~~or not~~] the criteria for [~~referring a case for~~] scheduling a hearing have been met.

(b) The criteria for [~~referring a case for~~] scheduling an administrative hearing include:

(1) Receipt of the written request for a hearing on a timely basis[+] as prescribed by the specific enforcement action; and

(2) The issues stated in the request are limited to those which are allowed to be considered by applicable state law and federal regulations.

(c) If the criteria for [~~referring the case for~~] scheduling an administrative hearing have been met, the agency shall [~~forward the request to the office of child support hearings-~~] send a written notice of the date, place, and the time of the hearing to the individual requesting the hearing. The notice shall be sent by regular mail to the individual's last known address.

(d) If the criteria for [~~granting~~] scheduling an administrative hearing have not been met [~~and the request for a hearing is to be denied~~], the agency shall send the requestor a written notice [~~of denial-~~] that the request for hearing is denied. [Eff and comp 10/31/91; am and comp _____] (Auth: HRS §576E-8) (Imp: HRS §576E-8; 45 C.F.R. §§303.100, 303.101)

§5-31-35.1 Requests for administrative review on enforcement actions. (a) After receipt of a written request for an administrative review on an enforcement action imposed by the agency, a determination shall be made whether the criteria for scheduling an administrative review have been met.

(b) The criteria for scheduling an administrative review include:

(1) Receipt of the written request for a review on a timely basis as prescribed by the specific enforcement action; and

(2) The issues stated in the request are limited to those which are allowed to be considered by applicable state law and federal regulations.

(c) If the criteria for scheduling an administrative review have been met, the agency shall schedule and perform the review. The results of the review and relevant documentation shall be sent to the non-custodial parent. The agency shall notify the non-custodial parent that an in-person review may be scheduled if the non-custodial parent submits a written request for an in-person review within fourteen calendar days from the date that the results of the administrative review were sent to the non-custodial parent.

(d) If the criteria for granting an administrative review have not been met, the request is denied, and the

agency shall send the non-custodial parent a written notice of denial.

(e) After receipt of a timely written request for an in-person review, the agency shall send a written notice to the non-custodial parent of the date, place, and the time of the in-person review. The notice shall inform the non-custodial parent to bring to the review all appropriate child support related documentation that the non-custodial parent wishes to be considered.

(f) Following the in-person review, the results of the review and relevant documentation shall be provided to the non-custodial parent.

(g) If the request for an in-person review has not been received on a timely basis, the request is denied and the agency shall send the non-custodial parent a written notice of denial.

(h) The applicable enforcement action shall continue if:

(1) The request for an administrative review has not been received or has been denied;

(2) The results of an administrative review was sent to the non-custodial parent and no written request for an in-person review was received in a timely manner; or

(3) After an in-person review is conducted, the agency determines that the action shall continue.

(i) For enforcement actions related to federal tax or administrative offset, the results of the administrative review and the results of the in-person review, including relevant documentation, shall be provided to the custodial parent in a non-title IV-A case.

(j) The agency, at its discretion, may suspend taking an applicable enforcement action at any time. [Eff and comp _____] (Auth: HRS §576E-8) (Imp: 45 C.F.R. §§303.100, 303.101)

SUBCHAPTER 5.1

COLLECTIONS AND DISBURSEMENTS

§5-31-38 State collection and disbursement unit. (a) The agency shall maintain a statewide collection and disbursement unit. This unit shall receive child support collections and disburse funds to the proper parties as required by federal law.

(b) The agency shall meet the federal requirements governing the disbursement of money received pursuant to a child support order.

(c) When the non-custodial parent makes a child support payment by personal check and there are insufficient funds in the account, the non-custodial parent shall be instructed to submit future payments by cashier's check, certified bank check, money order, or another method that will ensure valid payment.

(d) When the non-custodial parent's employer makes a child support payment by company check and there are insufficient funds in the account, the employer shall be instructed to submit future payments by cashier's check, certified bank check, money order, or another method that will ensure valid payment.

(e) Any check received that does not clear due to insufficient funds or any other reason, may not be given credit as payment for child support.

(f) When the agency disburses a payment to the custodial parent, an assignment of the right to receive and retain the amount that the agency disbursed is created from the custodial parent to the agency in the following circumstances:

- (1) Where a payment is disbursed to the custodial parent based upon a check received by the agency that does not clear due to insufficient funds or for any other reason;
- (2) Where a payment is disbursed to the custodial parent based upon a federal or state tax intercept refund received by the agency that has subsequently been retracted by the federal or state tax authority; or
- (3) Where a payment received by the agency is erroneously disbursed to the custodial parent.

The amount covered by the assignment may be established as an arrearage owed by the non-custodial parent to the agency and may include any applicable fees. Such arrearages shall be eligible for collection through all appropriate child support enforcement mechanisms.

(g) The agency may proceed against the custodial parent or non-custodial parent to recoup any payment disbursed inappropriately.

(h) If the agency has received child support in an amount that exceeds the amount due and has access to the overpayment, or if the agency determines that reimbursement can be made, the agency shall distribute all appropriate refunds within thirty calendar days to the non-custodial

parent after the overpayment has been discovered. If the overpayment has been released to the obligee, the agency shall notify the obligee of the overpayment and inform the obligee of his or her obligation to refund the overpayment.
[Eff and comp _____] (Auth: HRS §§576D-2, 576D-6, 576D-10) (Imp: HRS §§576D-2, 576D-6, 576D-10; 45 C.F.R. 302.33(d))

SUBCHAPTER 6

MAINTENANCE OF RECORDS

§5-31-39 Safeguarding information. (a) The agency shall maintain such records as may be necessary and proper to carry out its functions in accordance with title IV-D [~~of the Social Security Act~~] and chapter 576D, Hawaii Revised Statutes. The use or disclosure of information [~~concerning applicants and recipients~~] in the agency's records shall be [limited pursuant to] in accordance with section 576D-12, Hawaii Revised Statutes. Except as provided for in section 5-31-49 and otherwise prohibited by law, the custodial parent, the non-custodial parent, or their authorized representative may be provided information regarding the status of their child support account, their rights and responsibilities relating to child support, and actions taken by the agency.

(b) Federal tax information may be released to the non-custodial parent. Custodial parents may only receive information on the amount of any federal tax refund offset and the date the offset has been applied to the case after the amount has been allocated to the case. [Eff 2/13/89; am 7/27/90; § 5-31-11; ren and comp 10/31/91; am and comp _____] (Auth: HRS §576D-12) (Imp: HRS §576D-12; 45 C.F.R. §303.21)

§5-31-40 Retention and reproduction of records. (a) Case records shall be retained by the agency for at least three years from the date of closure, in accordance with 45 C.F.R. §74.53.

(b) The agency may require [~~of the requestor~~] payment of a reasonable fee for the reproduction and processing of records from the requestor. [Eff and comp 10/31/1991; am and comp _____] (Auth: HRS §576D-2) (Imp: HRS §576D-2; 45 C.F.R. §§74.53, 302.15, 303.11)

§5-31-41 Electronic case records. The agency may establish, convert, and maintain the records for all agency cases in an electronic format. [Eff and comp _____] (Auth: HRS §§489E-12, 489E-17, 489E-18) (Imp: HRS §§489E-12, 489E-17, 489E-18; 45 C.F.R. §302.15)

SUBCHAPTER 7

TERMINATION AND CASE CLOSURE

§5-31-43 Termination. (a) Child support shall automatically be terminated if the conditions for termination set forth in the child support order are met. Such conditions include, but are not limited to, the adoption, marriage, legal emancipation, enlistment in the military, and death of the child. Child support shall also terminate if the child reaches eighteen years of age and there is no provision in the child support order for continuing child support.

(b) The agency may initiate action to terminate child support when the conditions for termination are not set forth in the child support order and the agency determines that termination is appropriate. Such conditions include, but are not limited to, the court ordered change of custody of the child to the obligor, the parties residing together with the child as an intact family, and the conditions described in subsection (a). A proposed administrative order terminating child support is generated and served upon the parties by regular mail pursuant to section 576E-4, Hawaii Revised Statutes. The process as described in section 5-31-22(d)(4) through (11) is followed to complete the termination action.

(c) In cases where the child support order provides for child support past the age of eighteen due to continuing education and services are being provided under title IV-D, the agency shall seek verification of the child's continued educational status. If the child is in high school or is enrolled or plans to enroll full-time in a post-secondary educational or vocational institution, then child support shall continue un-interrupted upon receipt of such verification. The agency shall initially request verification of continued educational status three months prior to the child's eighteenth birthday and semiannually thereafter. The request for verification shall include the name and date of birth of the child for whom the verification is being sought and time frame when

the verification must be returned to the agency before the agency's collection of child support is terminated.

Verification of continuing school shall consist of:

- (1) Registration confirmation from the high school;
- (2) Prior to the beginning of the school year, an acceptance letter on school letterhead and the child's written statement indicating his or her intent to enroll on a full-time basis;
- (3) The registration confirmation from the school of full-time enrollment or, if the full-time status is not indicated on the registration, a minimum of twelve credit hours per semester or its equivalent be reflected on the registration and indicating the school and student names;
- (4) The receipt of tuition payment reflecting full-time enrollment and indicating the school and student names; or
- (5) The school registrar's letter indicating full-time enrollment status.

If the agency does not receive verification within the timeframe stated in the request for verification, the agency's collection of child support shall be terminated. Once the agency's collection of child support has been terminated, future child support shall only be reinstated commencing the first of the month following the date proof of the child's full-time enrollment is received by the agency. Reinstatement shall only occur if the adult child has continuously attended post-high school education on a full-time basis.

(d) In cases where the child support order provides for child support past the age of eighteen due to continuing education and services are not being provided under title IV-D, the agency shall seek verification of the child's continued educational status three months prior to the child's nineteenth birthday. If the agency does not receive verification within the timeframe stated in the request for verification, the agency's collection of child support shall be terminated.

(e) In cases where the child support order provides for child support past the age of eighteen, the agency's collection of child support shall be terminated upon the child reaching twenty-three years of age unless the child support order provides for continuing child support past the age of twenty-three.

(f) The agency may terminate the income withholding as necessary. [Eff and comp _____] (Auth: HRS

§§576D-2, 576E-14) (Imp: HRS §§576D-2, 576E-14; 45 C.F.R. §303.11)

§5-31-44 Criteria for case closure. (a) The agency may close a case without application by any party to the case.

(b) Cases may be closed if the case meets at least one of the following criteria:

- (1) There is no longer a current child support order and arrearage is under \$500 or unenforceable under state law[-];
- (2) The [~~absent~~] non-custodial parent or putative father is deceased and no further action, including a levy against the estate, can be taken[-];
- (3) Paternity has not been established and will not be pursued because:
 - (A) The child has reached the age of three years beyond the age of majority and the action is barred by a statute of limitations;
 - (B) All identified putative fathers have been excluded by genetic tests or by [~~legal~~] judicial or administrative process; [~~or~~]
 - (C) The agency has determined that it would not be in the best interests of the child, pursuant to section 5-31-4(c), to establish paternity[-]; or
 - (D) The identity of the biological father is unknown and cannot be identified after diligent efforts, including at least one interview by the agency with the applicant;
- (4) The agency is unable to locate the [~~absent~~] non-custodial parent over a three-year period, having made periodic efforts according to schedules prescribed by federal regulations using available and appropriate location sources[-] or over a one-year period when there is insufficient information to initiate an automated locate search;
- (5) The [~~absent~~] non-custodial parent is institutionalized in a licensed facility for the mentally ill, incarcerated with no chance of parole, or medically totally and permanently disabled, and no income or assets are available[-];
- (6) The [~~absent~~] non-custodial parent is a citizen of and lives in a foreign country[-] that has no

- reciprocal arrangement for the enforcement and collection of child support, does not work for the United States government or a company [which] that has its headquarters or offices in the United States, and has no accessible domestic income or assets[, and the State has been unable to establish reciprocity with the foreign country in which the absent parent resides.] ;
- (7) The [custodial parent has requested only location services from the Federal Parent Locator Services] agency has received a request for location-only services and the request has been completed[-] ;
- (8) The [custodial parent] applicant has requested case closure in a [non AFDC, former AFDC, Medicaid, or foster care case,] non-title IV-A case and there is no [assigned arrearage.] assignment of medical support, or arrearages to the State;
- (9) There has been a finding of good cause [for failure to cooperate and] by the title IV-A, title XIX, or title IV-E agency [has determined that support enforcement] that agency actions may not proceed[-] ;
- (10) [The] In non-title IV-A and non-title XIX cases, the agency is unable to contact [a non AFDC custodial parent] the applicant by telephone or letter over a period of [thirty] sixty calendar days and at least one [certified or registered] letter has been sent[-] by first class mail to the applicant's last known address;
- (11) [The non AFDC custodial parent] In non-title IV-A and non-title XIX cases, the applicant is uncooperative with the agency and the agency is unable to proceed with the case without the [custodial parent's] applicant's cooperation, and there [is] are no [assigned arrearage.] arrearages assigned to the State. Documentation of the circumstances regarding the applicant's non-cooperation shall be maintained by the agency; or
- (12) The initiating state fails to take appropriate action that is necessary for the agency to proceed with the case. Documentation of the failure shall be maintained by the agency. [Eff and comp 10/31/91; am and comp _____]

(Auth: HRS §576D-2) (Imp: HRS §576D-2; 45 C.F.R. §303.11)

§5-31-45 Notice of case closure. (a) In cases meeting the criteria in section 5-31-44(b)(1) through (6), (10) and (11) [~~of this chapter~~], the agency shall notify the [~~custodial parent~~] applicant of the closing of a title IV-D case by sending written notice to the [~~custodial parent's~~] applicant's last known address. The notice shall be sent at least sixty calendar days prior to the effective date of closure.

(b) The notice shall inform the [~~custodial parent~~] applicant of:

- (1) The agency's intent to close the case;
- (2) The effective date of closure;
- (3) The reasons for the intended action;
- (4) The statutes and rules supporting the action; and
- (5) An explanation that the [~~custodial parent~~] applicant may submit information that was previously unknown to the agency, which may impact upon the disposition of the case, within sixty calendar days of the date of the notice.

(c) Upon closing a case pursuant to section 5-31-44(b)(12), the agency shall [~~also notify the interstate central registry in the responding jurisdiction, if applicable.~~] send written notice to the initiating state at least sixty calendar days prior to closure. [Eff and comp 10/31/1991; am and comp _____] (Auth: HRS §576D-2) (Imp: HRS §576D-2; 45 C.F.R. §§303.7, 303.11)

§5-31-46 Maintaining active case status. If the agency receives information on a case in response to the notice of closure sent pursuant to section 5-31-45 [~~of this chapter~~], within the specified timeframe, and the information enables the agency to proceed with the [~~process~~] processing of the case, the agency shall maintain the case as active and proceed with appropriate action. [Eff and comp 10/31/1991; am and comp _____] (Auth: HRS §576D-2) (Imp: HRS §576D-2; 45 C.F.R. §303.11)

SUBCHAPTER 8

INTERSTATE

§5-31-49 Initiating and responding interstate cases.

(a) Once proper application has been received and a determination has been made to initiate appropriate action to an other state, the agency shall send all necessary documentation to the other state for the locate of an individual, the establishment of paternity or child support or both, modification of an existing child support order, or the enforcement, and collection of child support.

(b) Upon receipt of a proper interstate request from an other state, the agency shall process the request and take all appropriate action.

(c) Where the agency is the responding state, information shall be disclosed in accordance with the requirements of the initiating state.

(d) All actions shall be taken within the time frames specified by federal law. [Eff and comp _____]
(Auth: HRS §§576B-304, 576B-305, 576B-307, 576B-310, 576D-2) (Imp: HRS §§576B-304, 576B-305, 576B-307, 576B-310, 576D-2; 45 C.F.R. §§302.36, 303.7)

§5-31-50 Central registry. The agency shall maintain a central registry that receives and distributes interstate requests, and responds to interstate inquiries within the time frames specified by federal law. [Eff and comp _____] (Auth: HRS §§576B-307, 576B-310, 576D-2) (Imp: HRS §§576B-307, 576B-310, 576D-2; 45 C.F.R. §§302.36, 303.7)

§5-31-51 Federal full faith and credit for child support orders act. Federal full faith and credit for child support orders act requires that a valid order issued by an other state be recognized and enforced as if the order were issued in this State. [Eff and comp _____] (Auth: HRS §576D-2) (Imp: HRS §576D-2; 45 C.F.R. §§302.36, 302.70, 303.7; 28 U.S.C. §1738B)

§5-31-52 Enforcement services. The agency shall provide the same level of service for interstate cases, as would be provided for in-state cases. [Eff and comp _____] (Auth: HRS §§576B-305, 576D-2) (Imp: HRS §§576B-305, 576D-2; 45 C.F.R. §§302.36, 303.11)

§5-31-53 Forwarding collections. The agency shall forward collections to the initiating state for distribution within the time frames specified by federal law. [Eff and comp _____] (Auth: HRS §§576B-

319, 576D-2) (Imp: HRS §§576B-319, 576D-2; 45 C.F.R. §§302.32, 302.70)

SUBCHAPTER 9

PENALTIES

§5-31-58 Penalties for failure to cooperate with the agency's request for information. (a) Any person or entity that wilfully fails to promptly respond to the agency's request for information shall be subject to a fine of no more than \$1,000.

(b) When there is wilful failure to promptly respond to the agency's request for information, the person or entity shall be sent a written notice of the agency's findings by regular mail and shall have fourteen calendar days to comply with the agency's request.

(c) If there is no compliance after fourteen calendar days, then civil penalties may be imposed as follows:

(1) The first instance shall result in a fine of \$250;

(2) The second instance shall result in a fine of \$500; and

(3) The third and subsequent instances shall result in a fine of \$1,000.

(d) The notification of imposition of the penalty will be sent by regular mail and the payment shall be made within thirty calendar days from the date of notification.

(e) Appeals may be made within thirty calendar days from the date of notification of the imposition of the penalty. All appeals shall be made to the attorney general or his or her designee." [Eff and comp _____]
(Auth: HRS §576D-17) (Imp: HRS §576D-17)

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

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

4. These amendments to and compilation of chapter 5-31, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements

of section 91-4.1, Hawaii Revised Statutes, which were
adopted on _____ and filed with the Office
of the Lieutenant Governor.



GARRY L. KEMP
Administrator, Child Support
Enforcement Agency

DAVID M. LOUIE
Attorney General

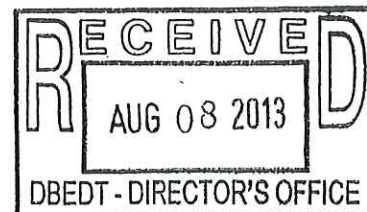
APPROVED AS TO FORM:

Deputy Attorney General

III. New Business

E. Proposed HAR Title 13 Chapter 95.1 Island-
Based Fisheries Rules (DLNR)

RULE-MAKING CHECKLIST
FOR



"SMALL BUSINESS IMPACT STATEMENT"

(§201M-2, SLH 1998, am L 2008)

DEPARTMENT OR AGENCY: Land and Natural Resources

Chapter and Title: Chapter 95.1, Title 13

Name and Phone Number of Contact Person: Russell Sparks (808-243-5294); David Sakoda (587-0104)

A. Description:

New rule(s) Repeal of Rule Amendment to rule(s)

B. Provided are the following information described in Items 1-7 of the Policy Section in the Governor's Administrative Directive No. 09-01

1. Exact Changes and Reasons for Changes.

These proposed new rules would establish new, more protective fisheries regulations for species of concern on Maui and Lana'i islands, including size limits and bag limits. The reason for the proposed changes is that current statewide regulations concerning these species are inadequate or nonexistent.

In addition, the proposed new rules supplement daily "take" limits with corresponding "possession" limits. This will enhance the enforceability of bag limit regulations by eliminating the requirement that an enforcement officer actually observe an individual taking numbers of fish greater than the daily bag limit, within a verifiable period of less than twenty-four hours.

2. How would the proposed changes affect Department operations or functions?

The proposed rules would not change the responsibilities, functions, or activities of the Department. The Department currently manages nearshore fisheries through similar regulations. Enforcement operations and functions are also unlikely to change.

- a. Is the proposed rule authorized by a federal or state law or statute that does not require an agency to interpret or describe the requirements of the law or statute?

Yes No

- b. Is the proposed rule an emergency regulation?

Yes No

- c. Will the proposed rule affect small business because it:

- 1) will apply to a for-profit enterprise consisting of fewer than 100 full-time or part-time employees?

Yes No

- 2) will cause a direct and significant economic burden upon a small business?

Yes No

- 3) is directly related to the formation, operation, or expansion of a small business?

Yes No

Provide the information requested in only Items 3-7 (Skip Items 8-11)

- If you answered YES to either Item 2. a. or Item 2. b.; or
- If you answered NO to Item 2. c. 1); or
- If you answered YES to Item 2. c. 1), and NO to both Item 2. c. 2) and Item 2. c. 3).

Provide the information requested in Items 3-11:

- If you answered YES to Item 2. c. 1), and YES to either Item 2. c. 2) or 2. c. 3).

3. Departmental Impact (i.e. fiscal, personnel, program)?

Yes No (If yes, describe long and short-range impacts, estimated in dollar amounts or personnel, due to enforcement, administration, execution, or implementation of the proposed rule that may result in a savings or shortfall under the current program budget.)

The Department does not anticipate a long or short range negative impact from enforcement, administration, or implementation of the proposed rule. Existing enforcement costs are not expected to increase due to these proposed rules.

4. Impact on General Public (i.e. individuals, consumers, and businesses)?

Yes No (If yes, describe long- and short-range impacts due to the enforcement, implementation, or execution of the proposed rule.)

The proposed rules impose stricter bag limits on certain species that apply to both recreational and commercial fishermen. Commercial fishermen that target these regulated species will likely suffer some adverse economic impacts. In addition, this could result in potential shortages in the availability of certain species to the consuming public. These shortages may slightly increase costs to the public. However, these increases are not expected to result in significant effects to the general public. According to mandatory commercial catch reports, reef fish make up a very small portion of Maui's commercially caught and sold seafood. Over the last four years, there were only nine fishers who reported sales of reef fish in excess of \$1,000 and only three with annual sales that exceeded \$10,000. In addition, over this same four-year timeframe, the average total annual value of the fish with proposed bag-limit regulations was just \$30,355.

5. Impact on state economy?

Yes No (If yes, describe long and short-range impacts.)

The proposed rules are not expected to negatively impact the state's economy. As pointed out above, the monetary impact will be small and limited to very few commercial fishers. However, the potential positive economic impacts of improved coral reefs ecosystems could be substantial.

6. Final result anticipated from the proposed rule.

The proposed rules would help improve the long-range sustainability of nearshore marine fisheries resources around Maui and Lana'i islands and, as a result, would increase economic opportunities for small businesses in recreational fishing and in marine sightseeing (snorkel, scuba dive tours, etc).

7. Other alternatives explored to carry out the statutory purpose other than rulemaking.

The proposed rules are the only practicable way to carry out the statutory purpose of managing, preserving, protecting, and conserving Hawaii's nearshore marine fisheries resources.

Small Business Impact Statement:

8. Is there a new or increased fee or fine?

Yes No If yes, provide the following information:

- a. Amount of the current fee or fine and last time it was increased.
- b. Amount of the proposed fee or fine and percentage increase.
- c. Reason for new or increased fee or fine.
- d. Administrative cost to implement or enforce the proposed rule.
- e. Amount agency expects to collect annually from change in fee or fine.
- f. Will fee revert to general fund? If not, specify where and how monies will be allocated.

- g. Criteria used to determine amount of fee or fine. (Example: cost of specific service, general overhead or overall program cost, or no relationship to cost).

9. Will the proposed rule affect small business?

Yes No If yes, provide the following information:

- a. Describe the type(s) of small business that will be directly or adversely affected by, bear the costs of, or directly benefit from the proposed rule.

The proposed rules would directly and adversely impact commercial fishermen that target nearshore species in the waters of Maui and Lana'i. The commercial fishermen are typically individuals or groups of fishers fishing off a boat or from shore on single-day fishing trips. They typically sell their catch to commercial marine dealers, who market the fish to the public. In some cases, they sell their catch directly to the public. As explained in #4, the total combined annual value of the fish we are proposing to regulate with bag limits is close to \$30,000 per year (average annual value from 2009 – 2012).

- b. Description of any increase in direct costs, in estimated dollar amounts, to small business, such as fees or fines, or other direct costs associated with compliance.

The proposed rules do not include any fees or fines that will directly or adversely affect the costs of any small business.

- c. Description of any increase in indirect costs, in estimated dollar amounts, to small business, such as reporting, record keeping, equipment, construction, labor, professional services, revenue loss or other costs associated with compliance.

Those commercial fishermen who currently target the fish with proposed bag limits, would most likely suffer some increased indirect costs in the form of revenue loss from landing and selling less fish. Additionally, commercial fishermen may incur higher costs for fuel and equipment if they have to change their fishing practices to target offshore fish species.

- d. Description of how small business was involved in the development of the proposed rules.

The Department developed these proposed rules after holding numerous public scoping meetings both statewide and specifically on Maui and Lana'i islands. A number of commercial fishermen either attended these meetings or provided comments to the Department. In addition specific stakeholder meetings were held with nearshore commercial fishers to directly gather their input and look for ways to accommodate their concerns.

- e. Methods considered or used to reduce the impact on small business such as:

- Simplification,
- Consolidation,
- Varying schedule for fees or fines,
- Modified compliance or reporting requirements, or
- Other alternative or less stringent measures proposed by affected businesses and, if proposed, why those proposals were not adopted.

Provisions have been carefully crafted to leave room for sustainable commercial harvest of certain ulua species, subject to size and species restrictions that DAR's scientists and community members feel will minimize the impact on current fisheries resources. These exceptions should allow commercial fishers to continue capturing and selling some

ulua species valued at approximately \$15,000 annually (average annual value from 2009 – 2012). These special accommodations for commercial fishers should reduce the total economic impact outlined in #4 and #9a from approximately \$40,000 down to approximately \$25,000.

- f. If the proposed rule is more stringent than those mandated by governing federal or state law or statute, explain how and why the proposed rule is more stringent.

There is no federal or state mandate for the proposed rules.

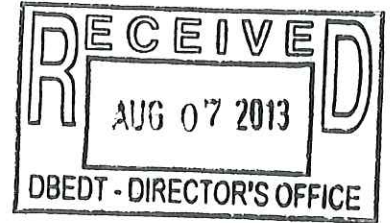
10. Was the departmental advisory committee on small business or other small businesses or organizations consulted during the drafting of the proposed rule, and were the committee's recommendations, if any, incorporated into the proposed rule?

Commercial fishers were consulted during the drafting of the proposed rule in numerous general public scoping meetings, as well as in a specific commercial nearshore fisher stakeholder meeting during which the department gathered their input and looked for ways to accommodate their concerns.

11. Did the Small Business Regulatory Review Board or a small business make any recommendation to the department or agency regarding the need for any rule change that may be related to the proposed rule?

Some commercial fishers were among those advocating for more protective fishing regulations, and some of the provisions in these proposed rules have been carefully crafted to leave room for sustainable commercial harvest of certain ulua species, based on recommendations provided by commercial fishers.

The Board of Land and Natural Resources approved a request to hold a public hearing on this proposed rule at its meeting of July 12, 2013. The Department of the Attorney General reviewed and approved the draft rule on August 5, 2013.



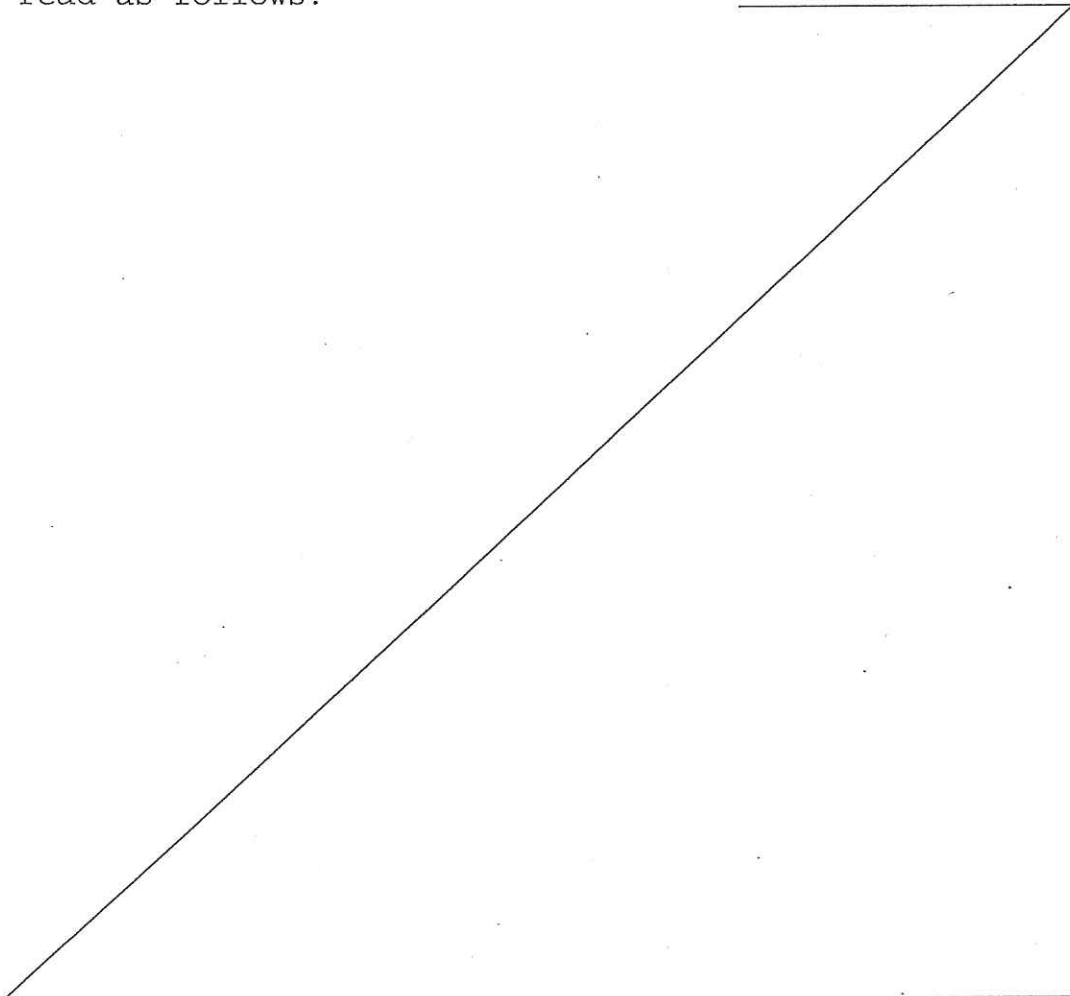
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DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-95.1
Hawaii Administrative Rules

(Date of adoption)

1. Chapter 13-95.1, Hawaii Administrative Rules, entitled "Island-Based Fisheries Rules" is adopted to read as follows:



"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART V PROTECTED MARINE FISHERIES RESOURCES

CHAPTER 95.1

ISLAND-BASED FISHERIES RULES

Subchapter 1 General Provisions

- §13-95.1-1 Definitions
- §13-95.1-2 Penalty
- §13-95.1-3 Scope
- §13-95.1-4 Exceptions
- §13-95.1-5 Severability
- §§13-95.1-6 to 13-95.1-19 (Reserved)

Subchapter 2 Maui and Lana'i Islands Fisheries

- §13-95.1-20 Āholehole
- §13-95.1-21 'Āweoweo
- §13-95.1-22 Goatfish
- §13-95.1-23 Kole
- §13-95.1-24 Manini
- §13-95.1-25 Moi
- §13-95.1-26 Mū
- §13-95.1-27 Pāku'iku'i
- §13-95.1-28 Uhu
- §13-95.1-29 Ulua; 'ōmilu; papa
- §13-95.1-30 'Ū'ū

SUBCHAPTER 1

GENERAL PROVISIONS

§13-95.1-1 Definitions. As used in this chapter, unless otherwise provided:

"Āholehole" means any fish known as *Kuhlia sandvicensis*, *Kuhlia xenura*, or any recognized synonym. Āholehole are also known as āhole or flagtail.

"Āweoweo" means any fish known as *Heteropriacanthus cruentatus*, *Priacanthus meeki*, or any recognized synonym. Āweoweo are also known as bigeye or glasseye.

"Commercial fishing expedition" means a joint venture between commercial marine licensees fishing solely for commercial purposes. All individuals in a fishing party shall hold valid commercial marine licenses, and shall all be engaged in fishing for commercial purposes, in order for any of the party members to be considered part of a commercial fishing expedition.

"Commercial marine dealer" means any person who sells or exchanges, or who is an agent in the transfer of marine life obtained directly from a commercial marine licensee, or any commercial marine licensee who sells or exchanges marine life at retail.

"Commercial marine licensee" means a person who has been issued a valid commercial marine license pursuant to section 189-2, HRS, and section 13-74-20.

"Commercial purpose" means the taking of marine life for profit or gain or as a means of livelihood where the marine life is taken in or outside of the State, or where marine life is sold, offered for sale, landed, or transported for sale anywhere in the State.

"Department" means the department of land and natural resources.

"Goatfish" means any fish in the family Mullidae, or any recognized synonym.

"Kole" means any fish known as *Ctenochaetus strigosus* or any recognized synonym. Kole are also known as goldring surgeonfish.

"Kūmū" means any fish known as *Parupeneus porphyreus* or any recognized synonym. Kūmū are also known as whitesaddle goatfish.

"Length" means the straight-line measurement from the tip of the snout to the middle of the trailing edge of the tail.

"Manini" means any fish known as *Acanthurus triostegus* or any recognized synonym. Manini are also known as convict tang.

"Moano kea" means any fish known as *Parupeneus cyclostomus* or any recognized synonym. Moano kea are also known as moano kali, moano ukali ulua, blue goatfish, or goldsaddle goatfish.

"Moi" means any fish known as *Polydactylus sexfilis* or any recognized synonym. Moi are also known as Pacific threadfin. The young of this fish are also known as moi li'i.

"Mū" means any fish known as *Monotaxis grandoculis* or any recognized synonym. Mū are also known as bigeye emperor.

"Munu" means any fish known as *Parupeneus insularis* or any recognized synonym. Munu are also known as doublebar goatfish.

"Oama" means any juvenile weke'ā or *Mulloidichthys flavolineatus*, which is less than five inches in length.

"Ōmilu" means any fish known as *Caranx melampygus* or any recognized synonym. Ōmilu are also known as bluefin trevally.

"Pāku'iku'i" means any fish known as *Acanthurus achilles* or any recognized synonym. Pāku'iku'i are also known as Achilles tang.

"Papa" means any fish known as *Carangoides orthogrammus* or any recognized synonym. Papa are also known as island jack or yellowspot.

"Possess" means to procure, receive, hold, or control for a sufficient period to have had the opportunity to release or relinquish control.

"Take" means to fish for, capture, confine, or harvest aquatic life. This term shall not apply to the temporary capture or confinement of any specimen which is returned to the water as soon as possible after landing.

"Uhu" means any fish belonging to the family Scaridae or any recognized synonyms. Uhu is a general term for parrotfish.

"Uhu 'ahu'ula" means any fish known as *Chlorurus perspicillatus* or any recognized synonym. Uhu 'ahu'ula are also known as spectacled parrotfish. The terminal phase of these fish is also known as "uhu uliuli."

"Uhu 'ele'ele" is any *Scarus rubroviolaceus* which has reached its terminal phase, indicated by a change in coloration from brownish-red and yellowish-grey, to green and blue. A predominantly green or blue-green body color and a green beak on a specimen of *Scarus rubroviolaceus* is prima facie evidence that the specimen is an uhu 'ele'ele. Both uhu 'ele'ele and uhu pālukaluka are known as redlip or ember parrotfish.

"Uhu pālukaluka" means any fish known as *Scarus rubroviolaceus* or any recognized synonym. Uhu pālukaluka are also known as redlip or ember parrotfish. The terminal phase of these fish is also known as "uhu 'ele'ele."

"Uhu uliuli" is any *Chlorurus perspicillatus* which has reached its terminal phase, indicated by a change in coloration from a grayish brown body with a broad white band at the base of the tail, to a blue green body with a dark band across the top of the snout. A predominantly blue-green body color and the lack of a white tail band on a specimen of *Chlorurus perspicillatus* is prima facie evidence that the specimen is an uhu uliuli. Both uhu uliuli and uhu 'ahu'ula are known as spectacled parrotfish.

"Ulua" means any fish known as *Alectis ciliaris* (threadfin pompano or kagami); *Carangoides equula* (whitefin trevally); *Carangoides ferdau* (barred jack); *Carangoides orthogrammus* (island jack, yellowspot, or papa); *Caranx ignobilis* (giant trevally, white ulua or ulua aukea); *Caranx lugubris* (black trevally or ulua

lā'uli); *Caranx melampygus* (bluefin trevally or 'ōmilu); *Caranx sexfasciatus* (bigeye trevally or menpachi ulua); or any recognized synonyms. The young of these fish are also known as pāpio.

"Ū'ū" means any fish in the genus *Myripristis*. Ū'ū are also known as menpachi or soldierfish.

"Weke'ā" means any fish known as *Mulloidichthys flavolineatus* or any recognized synonym. Weke'ā are also known as white goatfish. The young of these fish are also known as 'oama.

"Weke nono" means any fish known as *Mulloidichthys pfluegeri* or any recognized synonym. Weke nono are also known as Pflueger's goatfish or moelua. [Eff] (Auth: HRS §§187A-5, 189-2, 189-6) (Imp: HRS §§187A-1, 187A-5, 189-2, 189-6)

§13-95.1-2 Penalty. Any person who violates any provision of this chapter, or the terms and conditions of any permit issued pursuant to this chapter, shall be subject to administrative fines of:

- (1) Not less than \$100 and not more than \$1,000 for a first offense;
- (2) Not less than \$200 and not more than \$2,000 for a second offense; and
- (3) Not less than \$500 and not more than \$3,000 for a third or subsequent offense.

Any criminal penalty imposed pursuant to section 188-70, HRS, for any violation of a provision of this chapter shall not preclude the recovery of administrative fines under this section, or as may be otherwise provided by law. [Eff] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 187A-12.5, 188-53, 188-70)

§13-95.1-3 Scope. (a) Unless expressly provided otherwise, the scope of jurisdiction for each of the following subchapters of chapter 13-95.1 shall be as follows:

(1) Subchapter 2 (sections 13-95.1-20 through 13-95.1-30) shall apply to the take or possession of aquatic life from, in, or on the lands or waters of Maui or Lana'i islands subject to state jurisdiction or control. For purposes of subchapter 2, "waters of Maui and Lana'i islands" means all ocean waters within three nautical miles seaward from the highest wash of the waves on the shores of Maui and Lana'i, respectively, excluding all waters within two nautical miles from the shores of Kaho'olawe island, as shown on the exhibit entitled "Map of Maui and Lana'i Islands Fisheries", dated 5/7/13, located at the end of this chapter.

(b) Nothing in this chapter shall restrict the State's claims to jurisdiction and authority over its marine waters.

(c) The take and possession provisions of this chapter supersede any conflicting take or possession provisions in chapter 13-95. [Eff]
(Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-1.5, 188-22.5, 187A-5, 188-53)

§13-95.1-4 Exceptions. (a) The prohibitions of this chapter shall not apply to authorized employees of the department when acting in the course of their official duties, departmental agents and contractors engaged in authorized departmental activities, or to any persons conducting activities permitted under a valid license or permit listed under section 13-95-1.1 that expressly refers to this chapter.

(b) Nothing in this chapter shall prohibit the exercise of traditional and customary native Hawaiian rights or practices for subsistence, cultural, and religious purposes.

(c) For the purposes of this chapter, any commercial marine dealer may possess more than the allowed number of aquatic specimens, only if the

specimens were purchased from other individual(s) with:

- (1) A valid commercial marine license; or
 - (2) A valid special marine product license;
- and has receipts issued for each purchase pursuant to section 189-11, HRS. Receipts shall include the first and last name and license number of the person to whom the receipt is issued. [Eff]
 (Auth: HRS §§187A-3.5, 187A-5, 187A-6, 189-2, 189-6)
 (Imp: HRS §§187A-3.5, 187A-5, 187A-6, 188-53, 189-2, 189-6, 189-11)

§13-95.1-5 Severability. If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remaining chapter provisions, or application of the chapter provisions which can be given effect without the invalid provision or application, shall not be affected thereby. [Eff] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

§§13-95.1-6 to 13-95.1-19 (Reserved)

SUBCHAPTER 2

MAUI AND LANAI ISLANDS FISHERIES

§13-95.1-20 Āholehole. (a) Any other department size restriction notwithstanding, subject to subsection (b), any person may take āholehole of any size.

(b) No person may take more than twenty āholehole per day, or possess more than twenty āholehole at any one time. [Eff]
 (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

§13-95.1-21 'Āweoweo. No person may take more than five 'āweoweo per day, or possess more than five 'āweoweo at any one time. [Eff]
(Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

§13-95.1-22 Goatfish. (a) No person may take or possess any kūmū, moano kea, or weke nono less than twelve inches in length.

(b) Except as provided in subsection (e), no person may take or possess any other goatfish less than eight inches in length.

(c) No person may take more than one kūmū per day, or possess more than one kūmū at any one time.

(d) No person may take more than two each of moano kea or munu per day, or possess more than two each of moano kea or munu at any one time.

(e) Subsection (b) notwithstanding, any person may take up to fifty 'oama per day, or possess up to fifty 'oama at any one time, provided that no 'oama may be taken by any means other than hook-and-line fishing. No person may sell any 'oama at any time.
[Eff] (Auth: HRS §§187A-5, 188-53)
(Imp: HRS §§187A-5, 188-53)

§13-95.1-23 Kole. No person may take more than twenty kole per day, or possess more than twenty kole at any one time. [Eff] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

§13-95.1-24 Manini. (a) No person may take or possess any manini less than five inches in length.

(b) No person may take more than twenty manini per day, or possess more than twenty manini at any one time. [Eff] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

§13-95.1-25 Moi. (a) No person may take or possess any moi less than twelve inches in length.
(b) No person may take more than five moi per day, or possess more than five moi at any one time.
(c) Except as otherwise provided by law, no person may take, possess, or sell any moi during June, July, or August. [Eff _____] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

§13-95.1-26 Mū. (a) No person may take or possess any mū less than fourteen inches in length.
(b) No person may take more than two mū per day, or possess more than two mū at any one time. [Eff _____] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

§13-95.1-27 Pāku'iku'i. No person may take more than five pāku'iku'i per day, or possess more than five pāku'iku'i at any one time. [Eff _____] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

§13-95.1-28 Uhu. (a) No person may take or possess any uhu 'ele'ele or uhu uliuli at any time.
(b) No person may take or possess any uhu pālupaluka or any uhu 'ahu'ula less than fourteen inches in length.
(c) Any other department size restriction notwithstanding, subject to subsections (a) and (b), any person may take any other uhu greater than ten inches in length.
(d) No person may take more than two uhu of any variety per day, or possess more than two uhu of any variety at any one time. [Eff _____] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

§13-95.1-29 Ulua; 'ōmilu; papa.

(a) Recreational bag and size limits. Except as provided in subsection (b), no person may:

- (1) Take or possess any ulua less than ten inches in length;
- (2) Take more than five ulua of any variety per day, or possess more than five ulua of any variety at any one time;
- (3) Take more than two ulua of any variety greater than twenty-four inches in length per day, or possess more than two ulua of any variety greater than twenty-four inches in length at any one time; or
- (4) Take or possess any 'ōmilu greater than twenty-four inches in length.

(b) Commercial bag and size limits. A commercial marine licensee fishing solely for commercial purposes either alone, or as part of a commercial fishing expedition, may:

- (1) Take, possess, and sell any number of papa between sixteen inches and twenty-four inches in length; and
- (2) Take up to five ulua of any variety, other than 'ōmilu and papa, between sixteen inches and thirty-two inches in length, per day, or possess up to five ulua of any variety, other than 'ōmilu and papa, between sixteen inches and thirty-two inches in length, at any one time.

No ulua greater than thirty-two inches in length, no papa greater than twenty-four inches in length, and no 'ōmilu of any size may be taken or possessed while fishing for commercial purposes.

(c) No person shall sell or attempt to sell any ulua less than sixteen inches or greater than thirty-two inches in length, or any papa less than sixteen inches or greater than twenty-four inches in length, or any 'ōmilu of any size. . [Eff]

(Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)


§13-95.1-30 'Ū'ū. No person may take more than twenty 'ū'ū per day, or possess more than twenty 'ū'ū at any one time." [Eff _____] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

2. The adoption of chapter 13-95.1, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____, and filed with the Office of the Lieutenant Governor.

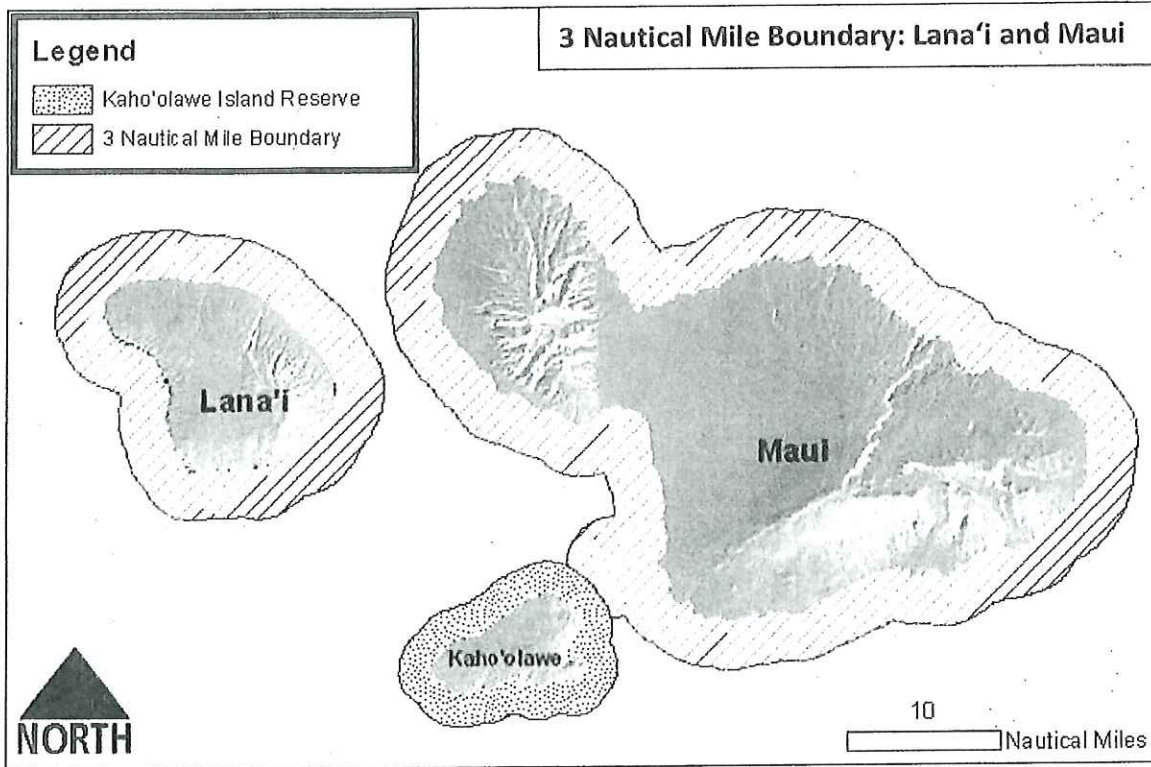
William J. Aila, Jr., Chairperson
Board of Land and Natural Resources

APPROVED FOR PUBLIC HEARING:



Deputy Attorney General

Map of Maui and Lana'i Islands Fisheries (5/7/2013)



NOTE: The Maui and Lana'i Islands Fisheries rules do NOT apply to waters within two nautical miles of Kaho'olawe island (which are governed by the Kaho'olawe Island Reserve Commission's separate authority, Hawaii Administrative Rules chapter 13-261).

III. New Business

F. Amendments to HAR Title 15 Chapter 315
Mortgage Credit Certificate Program
(DBEDT/HHFDC)



Visit us at: <http://hawaii.gov/health/environmental/sanitation/index.html>

HOW TO GET A GREEN PLACARD

- Avoid Major Violations

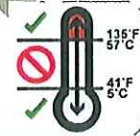
EMPLOYEE HEALTH & HYGIENE:

- Ensure that all hand wash sinks are accessible, stocked with soap, paper towels, and have hot & cold running water.
- Employees are required to wash their hands throughout the day and anytime hands may be contaminated.
- Employees may not work in the food facility if they have been vomiting or have diarrhea.



FOOD TEMPERATURES:

- All potentially hazardous COLD foods are held at or below 41° F (5° C).
- All potentially hazardous HOT foods are held at or above 135° F (57.2° C).
- Cool hot foods quickly. Use shallow pans in the refrigerator.
- Thaw food in a refrigerator or under cool running water in less than 2 hours.



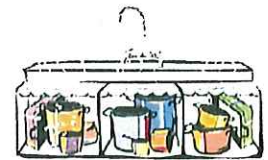
COOKING TEMPERATURES:

- Ensure all final cooking temperatures are met.
Ground Beef: 157° F (69.4° C)
Beef, Pork, Lamb & Eggs: 145° F (63° C)
Poultry: 165° F (74° C)
Leftovers: 165° F (62.8° C)
- Rapidly reheat all potentially hazardous foods to 165° F (62.8° C) within 2 hours.



FOOD & EQUIPMENT CONTAMINATION:

- Use correct dishwashing method in 3-compartment sink.
1) Wash 2) Rinse 3) Sanitize 4) Air dry
- Maintain dishwasher sanitizer concentration at 50 ppm chlorine or 180° F (82.2° C) at final rinse.
- Ensure food prep surfaces are sanitized between preparation of raw and ready-to-eat foods and produce.



WASH, RINSE and SANITIZE pots, pans, glasses, dishes and utensils.

FOOD FROM UNAPPROVED SOURCE:

- Ensure all food is obtained from an approved source.
- Do not serve food prepared in a private residence.
- Unpackaged food served to a customer is not re-served or re-used as food.



VIOLATIONS THAT MAY WARRANT THE CLOSURE OF A FACILITY:

- Vermin infestation. Keep cockroaches, mice, rats, and flies out of the facility. Use a license pest control service.
- Widespread food temperature violations that cannot be corrected at time of inspection.
- Lack of hot and/or cold running water.
- Poor sanitation with no clean prep surfaces.
- Sewage backing up into the facility. Operator should: STOP operations, repair plumbing, clean and sanitize all surfaces.
- Selling food from an unapproved source.
Example: food made in a private home or unpermitted facility.

Use approved pest control methods



Bait boxes
Glue Boards
Professional pest control





Visit us at: <http://hawaii.gov/health/environmental/sanitation/index.html>

HOW TO GET A GREEN PLACARD

- Avoid Major Violations

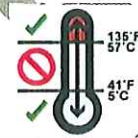
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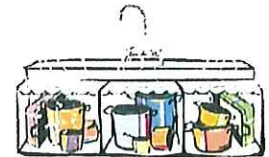
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Use approved pest control methods



Bait boxes
Glue Boards
Professional pest control



NEIL ABERCROMBIE
GOVERNOR



KAREN SEDDON
EXECUTIVE DIRECTOR

STATE OF HAWAII

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION
677 QUEEN STREET, SUITE 300
Honolulu, Hawaii 96813
FAX: (808) 587-0600

IN REPLY REFER TO

13:PEO/78

July 19, 2013

DTS20130716110225 5
To: SBRRB
From: Director's Office
Comment/Recommendation
Due Date: 8/9/13

TO: The Honorable Neil Abercrombie
Governor of Hawaii

THRU: Richard C. Lim, Director *Mary Alice Evans*
Department of Business, Economic Development
and Tourism

FROM: Karen Seddon *Karen Seddon*
Executive Director

SUBJECT: Approval to Conduct Public Hearing on Proposed Amendments to
Chapter 15-315 "Mortgage Credit Certificate Program", Hawaii Administrative
Rules.

In accordance with Administrative Directive 09-01, we are requesting your approval to conduct a public hearing on proposed amendments to Chapter 15-315, "Mortgage Credit Certificate Program", Hawaii Administrative Rules (HAR), as approved by the Hawaii Housing Finance and Development Corporation (HHFDC) Board of Directors on July 11, 2013.

Background

HHFDC is the State of Hawaii's authorized allocating agency for the federal Mortgage Credit Certificate (MCC) program. The MCC program provides eligible first-time homebuyers with a direct tax credit against their federal income tax liability to make more income available to qualify for a mortgage loan and make monthly payments. The amount of credit is equivalent to 20 percent of the annual interest paid on a mortgage loan. This means that 20 percent of the annual interest paid by an eligible first-time homebuyer on a mortgage loan will be a direct dollar for dollar reduction in tax liability, while the remaining 80 percent will continue to qualify as an itemized tax deduction.

The Honorable Neil Abercrombie
Re: Approval to Conduct Public Hearing on
Proposed Amendments to Chapter 15-315, HAR
Page 2

Exact Changes to be Made

Proposed amendments to Chapter 15-315, HAR are as follows:

1. In section 15-315-2, HAR, the definition of "gross monthly income" is amended to include income from commissions.
2. In section 15-315-21, HAR, a typographical error in the section title is corrected, and language inserted clarifying that in order to participate in the MCC program, HHFDC elects not to issue an amount of private activity bonds that it may already issue under the mortgage loan program, and in their place, issue MCCs.
3. In section 15-315-24, HAR, program charges payable by eligible borrowers are amended by adding a new fee of \$25 paid to the HHFDC to issue a replacement MCC.
4. Also in section 15-315-24, HAR the following new program fees payable by the mortgage lender to HHFC are added:
 - A participation fee of \$250 per year;
 - Application review fee of \$25 per application; and
 - Extension fee of \$100 per application, for up to 60 calendar days beyond the initial 90 days period.

Manner in Which the Proposal Affects the Agency's Internal and External Responsibilities, Program, Functions, Operations, Activities and Inter-Relationships
Not applicable.

Final Result Expected

Following final approval of these amendments, HHFDC will be able to recoup more of the administrative costs of the MCC program. This will allow HHFDC to devote more of its fiscal resources towards its other affordable housing financing and development tools.

Program and Financial Impacts on the State

Short-term impacts: The new fees will help to offset program administrative expenses. Based on past program activity levels, HHFDC estimates that the lender participation fee will generate approximately \$6,250 per year, and the application review fee will generate \$675 per year.

The amounts that will be generated by the new fees for providing replacement MCCs and for loan extensions are uncertain. Because these particular fees are intended to discourage requests for replacements or extension, HHFDC does not anticipate that they will generate a significant amount of revenue.

Long-term impacts: Same as above.

Anticipated program funding requirements: HHFDC does not anticipate that these rules will require any additional State resources to implement.

The Honorable Neil Abercrombie
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Proposed Amendments to Chapter 15-315, HAR
Page 3

Long- and Short-Term Impacts to the Public or the Economy of the State

Short-term impacts: Minimal.

Long-term impacts: Minimal.

Alternatives Explored

Not applicable.

Small Business Impact Statement

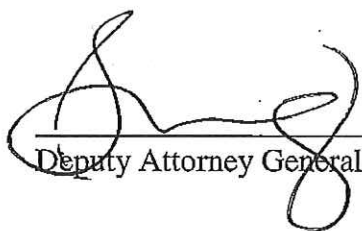
See attached document.

The following exhibits are enclosed for your review:

- A. Copy of the proposed draft rule amendments;
- B. Copy of the For Action memorandum approved by the HHFDC Board on July 11, 2013;
and
- C. Small Business Impact Statement.

Should you have any questions, please call Mavis Masaki at 587-0636. Your favorable consideration of our request would be appreciated.

Approved as to Form:

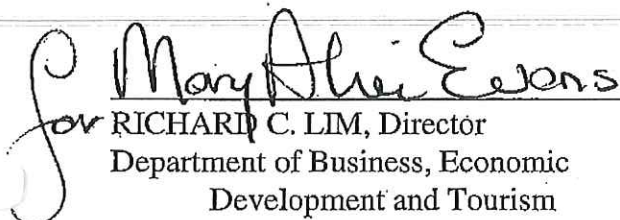


Deputy Attorney General

RECOMMEND:

APPROVAL

DISAPPROVAL



for RICHARD C. LIM, Director
Department of Business, Economic
Development and Tourism

7-25-13
DATE

The Honorable Neil Abercrombie
Re: Approval to Conduct Public Hearing on
Proposed Amendments to Chapter 15-315, HAR
Page 4

APPROVED

DISAPPROVED

NEIL ABERCROMBIE
Governor of Hawaii

DATE

Enclosures

c: Department of Budget and Finance
Small Business Review Board, Department of Business, Economic Development, and
Tourism

**SMALL BUSINESS IMPACT STATEMENT
BED/HHFDC**

Proposed Amendments to Chapter 15-315, "Mortgage Credit Certificate Program", HAR.

1. Businesses Directed Affected By Proposed Rules:

Mortgage lenders who have contracted with HHFDC to be Mortgage Credit Certificate Program participating lenders, specifically:

American Savings Bank; Bank of Hawaii; Castle & Cooke Mortgage, LLC; Central Pacific Bank; DHI Mortgage; Envoy Mortgage; First Hawaiian Bank; Guild Mortgage Company, Hawaii HomeOwnership Center; Hawaii State Federal Credit Union; HawaiiUSA Federal Credit Union; Hawaiian Tel Federal Credit Union; HomeStreet Bank; Island Mortgage; Mann Mortgage; Mason-McDuffie Mortgage Company; Pacific Access Mortgage; Point Financial, Inc.; Stellar Capital, Inc.; Territorial Savings Bank; Wells Fargo Home Mortgage of Hawaii, LLC.

2. Description of Affected Small Businesses:

Community banks, credit unions and mortgage lenders.

3. Dollar Value of Direct and Indirect Costs for Affected Small Businesses:

Direct costs: Program participation fee of \$250 per year;
 Application review fee of \$25 per application; and
 Loan extension fee of \$100 per application.

Indirect costs: None.

4. Monetary Costs and Benefits to the Directly Affected Agency:

Based on prior year program activities, HHFDC anticipates collecting approximately \$7,425 per year from the new fees being proposed.

5. Methods Considered or Used to Reduce the Impact on Small Businesses

HHFDC staff surveyed the fees charged by other State housing finance agencies, and opted for fee amounts that were near the median amounts charged nationally for the same types of services. Also, HHFDC will not prohibit participating lenders from passing on the costs to eligible borrowers.

6. How the Agency Involved Small Businesses in the Development of the Rules

On July 2, 2013, staff circulated the proposed fees among its participating lenders for comment and responded to questions about how the fees would be administered.

HHFDC did not receive any comments in opposition to the proposed amendments.

7. Provisions More Stringent than Federal, State, or County Mandates, With Cost Comparisons and Justifications

Not applicable.

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,
AND TOURISM

Amendments to Chapter 15-315 Hawaii Administrative
Rules

_____, 2013

SUMMARY

1. §15-315-2 is amended.
2. §15-315-21 is amended.
3. §15-315-24 is amended.

§15-315-2 Definitions. (a) Whenever used in these rules, unless the context otherwise requires:

"Annual gross household income" means an eligible borrower's gross monthly income multiplied by twelve.

"Gross monthly income" is the sum of monthly gross pay, any additional income from overtime pay, part-time employment, bonuses, commissions, dividends, interest, royalties, pensions, Department of Veterans' Affairs (VA) compensation, net rental income, etc.; and other income (such as alimony, child support, public assistance, sick pay, social security benefits, unemployment compensation, income from trusts, and income received from business activities or investments). Information with respect to gross monthly income may be obtained from available loan documents executed during the four month period ending on the date of the closing of the mortgage, provided that any gross monthly income not included on the loan documents must be included by the issuer in determining gross monthly income.

"Board" means the board of directors of the corporation.

"Certified credit rate" or "credit rate" means the rate specified by the corporation on the MCC. The credit rate applicable to the MCC program is twenty per cent.

"Corporation" means the Hawaii housing finance and development corporation, a public body and a body corporate and politic of the State of Hawaii.

"Executive director" means the executive director of the corporation or the executive director's designee.

"Eligible borrower" means a person who is eligible to be a holder of an MCC.

"Federal MCC program" means the mortgage credit certificate program which was established pursuant to the IRC, including section 25 thereof, and the regulations promulgated thereunder.

"HRS" means the Hawaii Revised Statutes.

"IRC" means the Internal Revenue Code of the Internal Revenue Service, and the corresponding regulations promulgated thereunder.

"IRS" means the Internal Revenue Service.

"MCC" means a mortgage credit certificate which is issued under the program.

"Mortgage lender" means a business enterprise authorized to do business in the State of Hawaii which has as one of its principal purposes, the origination or servicing of loans or both. Mortgage origination or servicing or both must customarily be part of the mortgage lender's regular, usual, and normal course of business. Organizations that originate or service such loans occasionally, or in special circumstances do not fall within this definition.

"Mortgage lender participation agreement" means a written contract between the corporation and mortgage lender which establish the terms by which mortgage lender will participate in the program.

"Program" means each and every qualified mortgage credit certificate program of the corporation which the corporation elects to authorize in accordance with the requirements of the federal MCC program.

"Rules" means these rules.

"State" means the State of Hawaii.

(b) The definitions of other terms used in these rules shall have the meaning ascribed to such terms under the IRC, including sections 25 and 103A thereof, for the federal MCC program, and the same are hereby incorporated by reference. [Eff 12/4/10;

am] (Auth: HRS §201H-16) (Imp: HRS §201H-16)

§15-315-21 Election not to [issued] issue
qualified mortgage bonds. To establish a program, the
corporation shall take action to elect not to issue an
amount of qualified mortgage revenue bonds that the
corporation might otherwise issue under section 103A
of the IRC and the regulations thereunder during each
calendar year and in lieu thereof to issue MCCs to
eligible borrowers in accordance with the requirements
of the federal MCC program. The corporation shall
follow the requirements of the federal MCC program in
making such election. [Eff 12/4/10; am]
(Auth: HRS §201H-16) (Imp: HRS §201H-16)

§15-315-24 Charges. (a) Subject to the requirements of the federal MCC program, the corporation hereby establishes [a] the following schedule of fees. [~~which applications for MCCs, mortgage lenders, and developers will be required to pay to participate in the program.~~]

(b) Fees to be paid by the eligible borrower are as follows:

- (1) Upon final approval of their MCC package, the eligible borrower shall pay a fee of up to \$300 to the corporation and a fee of up to \$100 to the participating mortgage lender.
- (2) Upon final approval of a request for reissuance of an MCC, the eligible borrower shall pay a fee of up to \$200 to the corporation and a fee of up to \$100 to the participating mortgage lender.
- (3) Upon request, the eligible borrower shall pay a fee of \$25 to the corporation to replace an MCC.

(c) Fees to be paid by the mortgage lender to the corporation are as follows:

- (1) Upon election to participate in the program, the mortgage lender shall pay a fee of \$250 per year to the corporation.
- (2) Upon submission of an application for or corporation review, the mortgage lender shall pay a fee of \$25 per application to the corporation.
- (3) Upon final approval of a request for an extension of up to sixty calendar days, the mortgage lender shall pay a fee of \$100 to the corporation.

[Eff 12/4/10; am

] (Auth: HRS

§201H-16) (Imp: HRS §201H-16)

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,
AND TOURISM

Amendments to chapter 15-315, Hawaii
Administrative Rules, on the Summary Page dated
_____, were adopted on _____, following
public hearing held on _____, after public
notice was given in the Honolulu Star-Advertiser, The
Garden Island, The Maui News, West Hawaii Today and
The Hawaii Tribune-Herald on _____.

These amendments shall take effect ten days after
filing with the Office of the Lieutenant Governor.

RALPH MESICK, Chairperson
Hawaii Housing Finance and
Development Corporation

APPROVED AS TO FORM:

Deputy Attorney General

APPROVED:

NEIL ABERCROMBIE
Governor
State of Hawaii

Dated: _____

Filed

July 11, 2013

FOR ACTION

I. REQUEST

Approve Proposed Amendments to Chapter 15-315 "Mortgage Credit Certificate Program," Hawaii Administrative Rules.

II. FACTS

- A. Substantive amendments to the Mortgage Credit Certificate (MCC) program rules, Chapter 15-315, Hawaii Administrative Rules (HAR), are proposed to implement new program fees.
- B. The MCC program provides eligible first-time homebuyers with a direct tax credit against their federal income tax liability to make more income available to qualify for a mortgage loan and make monthly payments. The amount of credit is equivalent to 20 percent of the annual interest paid on a mortgage loan. This means that 20 percent of the annual interest paid by an eligible first-time homebuyer on a mortgage loan will be a direct dollar for dollar reduction in tax liability, while the remaining 80 percent will continue to qualify as an itemized tax deduction.

III. DISCUSSION

- A. Proposed amendments to Chapter 15-315, HAR were drafted in consultation with Finance Branch staff. A copy of Chapter 15-315, HAR, as is currently in effect is attached hereto as Exhibit A. The proposed amendments are attached hereto as Exhibit B.
- B. The proposed amendments are as follows:
 - 1. In section 15-315-2, HAR, the definition of "gross monthly income" is amended to include income from commissions.
 - 2. In section 15-315-21, HAR, a typographical error in the section title is corrected, and language is added clarifying that in order to participate in the MCC program, HHFDC elects not to issue mortgage revenue bonds.
 - 3. In section 15-315-24, HAR, program charges payable by eligible borrowers are amended by adding a new fee of \$25 paid to the HHFDC to issue a replacement MCC.
 - 4. Also in section 15-315-24, HAR the following new program fees payable by the mortgage lender to HHFDC are added:

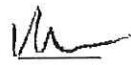
- C. The HHFDC authority to charge administrative fees pursuant to §201H-99 and 201H-100, Hawaii Revised Statutes, which provide that the agency's housing loan programs are to be self-sustaining, and which authorize the agency to implement fees and charges to cover administrative costs of these programs.


IV. RECOMMENDATION

That the HHFDC Board of Directors:


1. Approve the proposed Amendments to Chapter 15-315, HAR, subject to approval as to form by the HHFDC Deputy Attorney General;
2. Subject to Governor approval, authorize the Executive Director or a designated representative(s) to conduct a public hearing on the adoption of the proposed Amendments to Chapter 15-315, HAR;
3. Authorize the Executive Director to make any necessary non-substantive amendments to the draft Amendments following the public hearing; and
4. After the public hearings, authorize the Executive Director to transmit the proposed Amendments to Chapter 15-315, HAR, to the Governor for final approval provided that no substantive amendments are made.

Attachment: Exhibit A - Chapter 15-315, HAR
Exhibit B - Proposed Amendments to Chapter 15-315, HAR

Prepared by: Mavis Masaki, Planner 

Brian Davidson, Housing Finance Specialist 

Reviewed by: Janice Takahashi, Chief Planner 

Darren Ueki, Finance Manager 

Approved by The Board of Directors at its meeting

on JUL 11 2013 as amended, noted on

PLANNING AND EVALUATION OFFICE

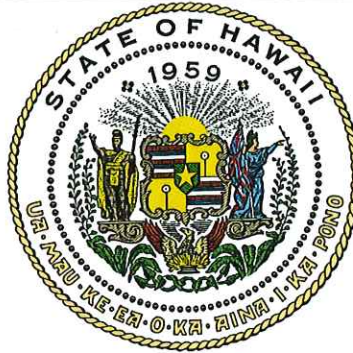
Please take necessary action.

page 1 of 2,
and
the fifth page
of Exhibit B.



IV. Administrative Matters

- A. Review of third draft of Board's proposed Brochure and Evaluation Survey



Draft 3

Evaluation Survey

Small Business Regulatory Review Board (SBRRB)

Department of Business, Economic Development and Tourism (DBEDT)

Capitol District Building, 250 South Hotel Street

Honolulu, Hawaii 96813

Website Address: <http://dbedt.hawaii.gov/sbrrb>

Thank you for presenting to the SBRRB on _____. Please take a moment to reply to the following questions. Mahalo and Aloha.

1. Please rate your experience with the SBRRB from 1 thru 10, with 10 being exceptional: _____

2. Were communication and responses prompt and efficient? Yes _____ No _____

Explain _____

3. Was presenting to the SBRRB a valuable part of reducing the burden of the rules on small business: _____

If yes, why _____

If no, why _____

4. Other comments that you would like to share with the SBRRB: _____

5. Name (Optional): _____

6. Name of Organization & Telephone No. or Email for personal interview: _____

Please return to: Dori Palcovich, Economic Development Specialist, DBEDT, c/o Small Business Regulatory Review Board, Room 501, 250 South Hotel Street, Honolulu, HI 96813; or Email sbrrb@dbedt.hawaii.gov.