



SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)
No. 1 Capitol District Bldg., 250 South Hotel St. 5th Fl., Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804
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Tel 808 586-2594

David Y. Ige
Governor

Luis P. Salaveria
DBEDT Director

Members

Anthony Borge
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Vice Chairperson
Oahu

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Oahu

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Maui

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Hawaii

Director, DBEDT
Voting Ex Officio

AGENDA

Wednesday, December 9, 2015 ★ 1:00 p.m.
No. 1 Capitol District Building
250 South Hotel Street - Conference Room 436

- I. Call to Order
- II. Approval of November 18, 2015 Meeting Minutes
- III. Old Business
 - A. Discussion and Action on the Small Business Statement After Public Hearing on the Proposed Amendments promulgated by the Board of Water Supply, County of Kauai, as follows, and attached and incorporated as Exhibit 1
 - a. Section 3, Section VII, "Facilities Reserve Charge," Part 4, **Fixing Rates for the Furnishing of Water Service in the County of Kauai;**
 - b. Section 4, Part 5, **Facilities Reserve Charge in the County of Kauai;**
 - c. Section 5, Section III, "Facilities Reserve Charge," Part 3, **Rules and Regulations for Establishing Standards for Subdivision Water Systems**
- IV. New Business
 - A. Discussion and Action on Proposed Amendments to Hawaii Administrative Rules (HAR), Title 16, Chapter 95, **Pharmacists and Pharmacies**, promulgated by Department of Commerce and Consumer Affairs – attached and incorporated as Exhibit 2
 - B. Discussion and Action in Determining if the Current Airport Pick-up Fees at Hawaii International Airport are consistent with HAR Title 19, Chapter 38.1, **On-Demand Taxi Service at Public Airports**, HAR Chapter 20.1, **Commercial Services at Public Airports**, and are in accordance with Act 163, Session Laws of Hawaii 1994. And, Discussion of Improving upon the Dispatching of Taxi Service for Passengers through Operational and Enforcement of Rules and Procedures and to Upgrade the Level of Customer Service – attached and incorporated as Exhibit 3
 - C. Discussion and Action on Proposed Amendments to HAR Title 18, Chapter 231, **Income Tax Law**, and Title 18, HAR Chapter 251, **Rental Motor Vehicle, Tour Vehicle, and Car-Sharing Vehicle Surcharge Tax**, promulgated by the Department of Taxation – attached and incorporated as Exhibit 4
- V. Administrative Matters
 - A. Discussion and Action on the following:
 1. Draft 2015 Annual Report Summary to the Hawaii State Legislature, pursuant to Section 201M-5(f), Hawaii Revised Statutes (HRS)
 2. Amendments to the Draft Small Business Impact Statement, Section 201M-2, Hawaii Revised Statutes (HRS), and the Small Business Statement After Public Hearing, Section 201M-3, HRS

3. Draft Monthly e-Newsletter
4. Delegation of Authority to Board Member(s) and/or Staff to Submit Testimony and/or Testify on behalf of the Board during the 2016 Hawaii State Legislative Session

VI. Next Meeting: Wednesday, January 27, 2016, at 1:00 p.m., Capitol District Building, Conference Room 436, Honolulu, Hawaii

VII. Adjournment

If you require special assistance or auxiliary aid and/or services to participate in the public hearing process (i.e., sign language, interpreter, wheelchair accessibility, or parking designated for the disabled), please call (808) 586-2594 at least three (3) business days prior to the meeting so arrangements can be made.

Waiting for SBIS from Kawai Water Dept.

December 9, 2015 ~ SBRRB Meeting Checklist

Member Attendance				
	Airline Preference	From	Details	Attend
Anthony Borge, Chair	NA	Oahu	Parking Pass	Yes X
Barbara Bennett, 2nd Vice Chair	HA	Kauai	Parking Pass	Yes X
Kyoko Kimura	HA	Maui	Parking Pass	X
Harris Nakamoto, Vice Chair	NA	Oahu	NA	Yes X
Director's ex officio Mark Richey	NA	Oahu	NA	Yes X
Robert Cundiff	NA	Oahu	Parking Pass	Yes X
Nancy Atmospera- Walch	NA	Oahu	NA	X
Phillip Kasper	HA	Maui	Parking Pass	No
Garth Yamanaka	HA	B.I.	Parking Pass	Yes

Pre Meeting Checklist	
Conference Room #436 (Confirm each month)	X
Make 12 - 15 copies of rule packages for board packets	✓
Poll Board Attendance	✓
Prepare TAF's for Director's approval - ASAP (Linda)	✓ ✓
Airline booking ASAP - Linda	Requested from L.G. Barbara/Kyoko Requested - L.G.
Draft Agenda to Chair for approval	✓ Sent 11/30
Post approved agenda on 1) SBRRB website, 2) State Calendar, 3) Lte. Governor's Office	✓ ✓
Send Agendas to those people who requested it - IMPORTANT	✓ Done
Mail Board Packets to Board members, Deputy AG	✓ 1/2 ✓ 1/2 ✓
Include "discussion leader" names on the agendas to Board members only.	✓ Invite Ford Fuchigami to Mtg - Director DOT
Add Dale Evans DOT Issue on Agendas	✓
Include parking permits in Board members' agenda packets.	✓

STAFF				
Margaret Ahn				Yes
Dori Palcovich				Yes

Post Meeting Checklist	

Check
Paul
Ting

Done
for

Visitors Sign-in-Sheet - Small Business Regulatory Review Board - December 9, 2015

	Name	Title	Organization	Email	Phone
1	Lee Ann Tesluma	Exec. Off.	Board of Pharmacy	Pharmacy@doea.hawaii.gov	586-2695
2	James Umberto	FI2	DBED	James_Umberto@FI29.org	6-2508
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Exhibit 1

**AMENDMENTS TO
THE RULES AND REGULATIONS OF THE
BOARD OF WATER SUPPLY, OF THE COUNTY OF KAUAI, STATE OF HAWAII,
PRESCRIBED ON November 19, 2015**

BE IT RESOLVED BY THE BOARD OF WATER SUPPLY OF THE COUNTY OF KAUAI, STATE OF HAWAII

SECTION 1. This amendment to the Rules and Regulations of the County of Kauai Department of Water (hereafter "Rules") is made pursuant to Section 17.03D of the Kauai County Charter 2014, as amended, and Chapter 91, Haw. Rev. Stat. as amended.

SECTION 2. Summary of Rule Amendment.

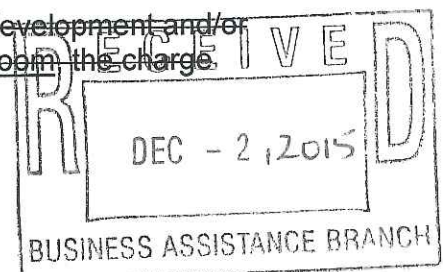
The amendment to the Rules modifies the Department's facilities reserve charges. These charges were found in Section VII of Part 4, "FIXING RATES FOR THE FURNISHING OF WATER SERVICE IN THE COUNTY OF KAUAI" AND in Section III of Part 3 "ESTABLISHING STANDARDS FOR SUBDIVISION WATER SYSTEMS WITHIN THE COUNTY OF KAUAI" This new Part 5 will deal solely with Facilities Reserve Charges.

SECTION 3. Section VII "FACILITIES RESERVE CHARGE" ONLY Part 4 "FIXING RATES FOR THE FURNISHING OF WATER SERVICE IN THE COUNTY OF KAUAI" of the Rules is hereby amended to delete Section VII and rennumbers Part 4 to ten (10) sections.

**"PART 4
FIXING RATES FOR THE FURNISHING OF WATER SERVICE IN THE COUNTY OF
KAUAI"**

~~SECTION VII - FACILITIES RESERVE CHARGE~~

- ~~1. The water system facilities reserve charge shall be assessed against all new developments and subdivisions requiring supply of water from the County of Kauai, Department of Water, and existing developments requiring additional supply of water from the Department's system. The facilities reserve charge must be paid before water services are made available to the new or existing development.~~
- ~~2. The water system facilities reserve charge shall be paid by all applicants for water service, including but not limited to the following:
 - ~~a. All irrigation services and/or meters.~~
 - ~~b. Additional buildings to be connected to existing services where additional demands or supplies are indicated. The charges shall be based on the meter sizes required if the buildings were metered separately.~~
 - ~~c. Additional units connected to existing services and meters under the categories of single family and multi-family residential units. The charges will be based on the established schedule of charges for the respective categories.~~~~
- ~~3. The water system facilities reserve charges shall apply to all applicants for water service as follows:
 - ~~a. For each parcel created by subdivision, including the first lot created; and for every new single family residential dwelling unit not yet metered and a facilities reserve charge has not yet been paid, the charge shall be \$4,600.00.~~
 - ~~b. For each unit or hotel room in a multi-family residential development and/or resort development, which applies to each unit or hotel room, the charge shall be \$4,600.00.~~~~



**AMENDMENTS TO
THE RULES AND REGULATIONS OF THE
BOARD OF WATER SUPPLY, OF THE COUNTY OF KAUAI, STATE OF HAWAII,
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- e. ~~For all other uses, the facilities reserve charge shall be determined by the size of the meter as follows:~~

<u>Meter Size</u>	<u>Amount</u>
5/8"	\$ 4,600.00
3/4"	\$ 14,300.00
1"	\$ 26,400.00
1 1/2"	\$ 53,200.00
2"	\$ 90,700.00
3"	\$ 170,000.00
4"	\$ 283,400.00
6"	\$ 566,800.00
8"	\$ 907,000.00

~~Meter sizes shall be determined by the Department and not by the Developer or Applicant. The facilities reserve charge for multi-family and/or resort development will be determined by the approved meter size or the number of units, whichever number is larger.~~

~~Facilities reserve charges are periodically adjusted by the Department. These adjustments may increase or decrease existing facilities reserve charge amounts. Where adjustments to facilities reserve charges result in decreases of such charges, no refund will be made of the difference between the higher, pre-existing charges and the lower, adjusted charges.~~

4. ~~FRC Offsets.~~

- a. ~~Definitions and construction of words. As used in this paragraph 4, the following definitions shall apply:~~

~~"Applicant" means any person, individual, corporation, partnership, business, organization, association, or other entity whatsoever that applies for water service from the Department.~~

~~"Consumer" has the meaning ascribed to it under Section I of Part 2 of the Department's Rules and Regulations.~~

~~"FRC" means the facilities reserve charges described in section VII of Part 4 and Section III of Part 3 of the Department's rules.~~

~~"Offset" means reduced or reduction.~~

~~"Subdivider" has the meaning ascribed to it under section I of Part 3 of the Department's Rules and Regulations.~~

~~"Subdivision" has the meaning ascribed to it under section I of Part 3 of the Department's Rules and Regulations.~~

~~"Water transmission main" or "main" means a main extension under Paragraph 2.d [2.a.(4)] of Section II of Part 2 of the Department's Rules and Regulations.~~

~~As used in this Paragraph 4, the following rules of construction shall apply:~~

~~Number. Words in the singular or plural number signify both the singular and plural number.~~

~~"Or", "and". Each of the terms "or" and "and", has the meaning of the other or of both.~~

**AMENDMENTS TO
THE RULES AND REGULATIONS OF THE
BOARD OF WATER SUPPLY, OF THE COUNTY OF KAUAI, STATE OF HAWAII,
PRESCRIBED ON November 19, 2015**

- b. ~~When an applicant, consumer, or subdivider is required to construct and dedicate water source or water storage facilities, or water transmission mains, to the Department, the following rules shall apply.~~

~~Subject to the provisions of this paragraph 4, the applicable FRC liability of such applicants, consumers, or subdividers shall be offset by up to 33% each where water source or water storage improvements are constructed, and up to 50% where water transmission mains are constructed; provided that the total amount of all offsets that an applicant, consumer, or subdivider receives shall not exceed 100% of the applicant's, consumer's, or subdivider's FRC liability, and provided further that the offset for any source or storage improvement or transmission main shall not exceed the actual cost of the source or storage improvement or transmission main. The Department, and not the applicant, consumer, or subdivider, shall calculate and determine the total amount of an applicant's, consumer's, or subdivider's FRC offset in any given case. The Department may require the applicant, consumer, or subdivider to submit documentation verifying the actual cost of a source or storage improvement or transmission main.~~

- e. ~~The offsets described in this Paragraph 4 "FRC Offsets" shall not apply to water transmission mains constructed by a subdivider, applicant or consumer which are within or adjacent to a subdivision or lands either 1) owned by the applicant or consumer, or 2) developed by the applicant or consumer for uses such as, but not limited to, residential, agricultural, commercial, resort, industrial, governmental, religious, or educational uses. Where water transmission mains are constructed within, adjacent to, or outside of such subdivisions or lands, the offsets shall apply only to mains constructed outside of and off-site from such subdivisions or lands."}]~~

SECTION VIII] - OTHER CHARGES

1. **Restoration of Water Service.** If a consumer's water service is turned off for failure to pay a bill, for violation of any of the provisions of these rules and regulations, or for other reasons, all outstanding accounts against said consumer plus the charge for reopening, reinstallation or reconnection must be paid before water service be restored. Said charges shall be as established by the Department.
2. **Fire Hydrant and Other Temporary Meters.** In addition to regular meter service charge and water consumption charge, there shall be installation, removal, testing and user charges for all Fire Hydrant and other temporary meters as established by the Department.
3. **Pass Through of Private Charges.**
 - a) As used in this Paragraph 3:

"Private charge" or "private charges" means charges, fees, assessments, exactions, and all other moneys a private water company may require the Department to pay to permit the Department to purchase water from the company. The terms include contribution-in-aid-of-construction charges that a company may assess against the Department.

"Private water company" or "company" means any department or agency of the federal government or the State of Hawaii, any private person, trust, association, corporation, partnership, or business, and any water utility regulated by the Hawaii Public Utilities Commission.

(b) Whenever the Department purchases water from a private water company for end use by any of the Department's consumers or prospective consumers and the company imposes private charges in excess of any similar

**AMENDMENTS TO
THE RULES AND REGULATIONS OF THE
BOARD OF WATER SUPPLY, OF THE COUNTY OF KAUAI, STATE OF HAWAII,
PRESCRIBED ON November 19, 2015**

charge or fee imposed under the Department's administrative rules, the Department shall require a consumer or prospective consumer to pay, in addition to the Department's charge or fee, the difference between the charge or fee imposed under the Department's rules and the similar private charge imposed by the company. If the private charge imposed is less than the similar charge or fee imposed under the Department's administrative rules, the consumer or prospective consumer shall not be entitled to the difference between the private charge imposed and the similar charge or fee imposed under the Department's rules.

Whenever the Department purchases water from a private water company for end use by any of the Department's consumers or prospective consumers and the company imposes private charges that are dissimilar to any charge or fee imposed under the Department's administrative rules, the Department shall require a consumer or prospective consumer to pay an amount equal to the dissimilar private charge imposed by the company."

SECTION ~~IX~~ VIII- TEMPORARY GRANTS OF WATER

1. **Purpose.** The purpose of this section is to establish standards for temporary grants of water to support the initial development of county or state public beautification projects or the initial or further development of county or state public parks and public ways.
2. **Temporary Grants of Water.** The Board of Water Supply may, in its discretion, authorize temporary grants of water to support the initial development of county or state public beautification projects or the initial or further development of county or state public parks and public ways.

Any county or state department, office, or agency wishing to receive such temporary grants of water shall apply to the Board of Water Supply for such temporary grants. The application shall explain or describe in detail the contemplated project, why a temporary grant of water from the Department is necessary, what other efforts the applicant has made to obtain water from other sources, for what specific purposes the water will be used, and how the water provided will yield public benefits. The applicant shall also certify that there were no other available sources which can be used to support the project in question.

For each application, the Board shall determine and establish a maximum time limit that water may be provided to an applicant and a quantity limit on the amount of water that may be drawn.

The Board and the Manager and Chief Engineer may prescribe conditions under which water may be drawn so that the provision of water to the applicant does not adversely affect the Department's ability to provide water to its other users.

SECTION IX - COST OF POWER ADJUSTMENT CLAUSE

All water consumption (for general use, agriculture use and ships) shall be subject to the imposition of a Cost of Power Adjustment as part of all water consumption charges.

The Department will review the actual unit costs of power for each twelve month period ending March 31st as part of the Department's annual budget review process. The power cost adjustment for the upcoming fiscal year will be calculated as the sum of the following two components:

- 1) the difference (plus or minus) between budgeted unit power costs for the upcoming fiscal year and the projected unit power costs, and

**AMENDMENTS TO
THE RULES AND REGULATIONS OF THE
BOARD OF WATER SUPPLY, OF THE COUNTY OF KAUAI, STATE OF HAWAII,
PRESCRIBED ON November 19, 2015**

2) the difference (plus or minus) between the actual unit power costs incurred during the twelve-month period ending March 31st as previously described and the projected unit power costs.

The sum of these two components, calculated on a dollar[s] per thousand gallons basis, will be applied to all water consumption.

Any power cost adjustments will be implemented on July 1st of each year.

SECTION XIII – LATE CHARGES

A late payment charge may be applied to any delinquent balance payable to the Department. The late payment charge shall be assessed at the rate of half a percent (0.5%) for each month or fraction thereof against the delinquent balance, beginning 30 days after the date of the bill.

For the purposes of this section, 'delinquent balance' includes any loan, fee, charge, or other liquidated sum which is 30 days past due to the Department, regardless of whether there is an outstanding judgment for that sum, and whether the sum has accrued through contract, subrogation, tort, operation of law, or administrative order.

SECTION 4. Part 5 “FACILITIES RESERVE CHARGE IN THE COUNTY OF KAUAI” of the Rules is hereby created as follows:

**“Part 5
FACILITIES RESERVE CHARGE IN THE COUNTY OF KAUAI”**

SECTION I – GENERAL PROVISIONS

1. Purpose and Authority
 - a. Capital water facilities expansion is needed in order to accommodate increased demands on existing source, storage, and transmission pipeline capacity due to new development and/or additional demand of existing users. New development and/or additional demand shall be assessed a Facilities Reserve Charge in proportion to its impact and demand on capital water facilities. The Facilities Reserve Charge shall be expended for public capital water facilities projects. These rules were enacted pursuant to Hawaii Revised Statutes (H.R.S.) §46-141 et seq. and other applicable State law.

2. Findings
 - a. In the review of the impact of growth relative to the existing and planned capital water system facilities capacity available to the water system, the Board hereby finds that the recent and anticipated population growth rates and corresponding water demands would place additional burdens on the existing water system. The Board further finds that such growth and increased demand would necessitate increased expenditures of public funds in order to create adequate facilities and to promote and protect the public health, safety, and welfare. The Board also finds that it is fair and reasonable to impose additional fees to accommodate such development. Finally, the Board finds that establishing benefit zones as identified in Hawaii Revised Statutes (H.R.S.) §46-14* is not necessary as a reasonable benefit can otherwise be derived.

**AMENDMENTS TO
THE RULES AND REGULATIONS OF THE
BOARD OF WATER SUPPLY, OF THE COUNTY OF KAUAI, STATE OF HAWAII,
PRESCRIBED ON November 19, 2015**

- b. The following rules shall govern the assessment of impact fees for the Board of Water Supply, County of Kauai capital water facilities expansion. New development and/or additional demand shall be assessed impact fees in proportion to its demand on capital water facilities and the impact fees assess shall be expended for public capital water facilities projects. The Facilities Reserve Charge (FRC) was adopted in accordance with the report prepared by an independent consultant retained by the County of Kauai, Board of Water Supply (Board) to assess and study water facilities. The report calculated the proportionate costs associated with the water development needs as laid out in the Board approved Department facilities needs assessment study entitled "Water Plan 2020", as amended.

SECTION II – DEFINITIONS

"Affordable or Workforce Housing Project" shall mean any project confirmed or sponsored by the County Housing Agency as a residential development where the majority of housing lots, single family dwelling units, or multiple-family dwelling units are affordable housing or workforce housing as defined in Chapter 7A of the Kauai County Code 1987, as amended.

"Applicant" means any person, individual, subdivider, corporation, partnership, business, organization, association, or other entity whatsoever that applies for water service from the Department.

"Consumer" has the meaning ascribed to it under Section I of Part 2 of the Department's Rules and Regulations.

"Facilities Reserve Charge" (FRC) means the fee to be paid by an Applicant as their proportionate share in required improvements to capital water facilities.

"Grant Funds" shall mean a contribution, gift, or subsidy bestowed to the Board for specific water facilities improvement associated with a specific project that necessitates such water facilities improvements.

"Grantor" means the person or entity that makes a grant of funds.

"Offset" means a reduction in Facilities Reserve Charge designed to fairly reflect the value of non-site related capital water facilities improvements provided by an Applicant pursuant to Department of Water requirements.

"Recoupment" shall be defined as in H.R.S. 46-141, as amended, and refers to the proportionate share of the water facility capital improvement costs of excess capacity in existing water capital facilities where excess capacity has been provided in anticipation of the needs of development.

"Subdivider" has the meaning ascribed to it under section I of Part 3 of the Department's Rules and Regulations.

"Subdivision" has the meaning ascribed to it under section I of Part 3 of the Department's Rules and Regulations.

"Water transmission main" or "main" means a main extension under Paragraph 2.d [2.a.(4)] of Section II of Part 2 of the Department's Rules and Regulations.

**AMENDMENTS TO
THE RULES AND REGULATIONS OF THE
BOARD OF WATER SUPPLY, OF THE COUNTY OF KAUAI, STATE OF HAWAII,
PRESCRIBED ON November 19, 2015**

As used in this Section, the following rules of construction shall apply:

Number. Words in the singular or plural number signify both the singular and plural number.

"Or", "and". Each of the terms "or" and "and", has the meaning of the other or of both.

SECTION III – APPLICABILITY

1. The Facilities Reserve Charge shall be assessed against all new developments and subdivisions requiring supply of water from the County of Kauai, Department of Water, and existing developments requiring new or additional supply of water from the Department's system. The Facilities Reserve Charge must be paid before water services are made available to the new or existing development.
2. The Facilities Reserve Charge shall be paid by all Applicants for new or additional water service, including but not limited to the following:
 - a. All irrigation services and/or meters.
 - b. Additional buildings to be connected to existing services where additional demands are indicated. The charges shall be based on the meter sizes required if the buildings were metered separately.
 - c. Additional dwellings connected to existing services and meters under the categories of single family and multi-family residential units. The charges will be based on the established schedule of charges for the respective categories.
 - d. Changes in service that require an increase in meter size.
 - e. Where an FRC was paid but a water meter was never installed to serve the subject property, the applicant shall pay the Facilities Reserve Charge in accordance with Part 5, Section IV (4) of these Rules.
3. The Facilities Reserve Charge shall apply to all Applicants for water service as follows:
 - a. For each parcel created by subdivision, including the first lot created; and for every new single family residential dwelling unit not yet metered and a Facilities Reserve Charge has not yet been paid, the applicable Facilities Reserve Charge shall be \$14,115.00.
 - b. The Facilities Reserve Charge for multi-family and/or resort development will be the cost of the approved meter size or the cost of \$9,880.00 per unit or hotel room, whichever number is larger.
 - c. For all other uses, the Facilities Reserve Charge shall be determined by the size of the meter, as shown below. Meter sizes shall be determined by the Department and not by the Developer or Applicant.

**AMENDMENTS TO
THE RULES AND REGULATIONS OF THE
BOARD OF WATER SUPPLY, OF THE COUNTY OF KAUAI, STATE OF HAWAII,
PRESCRIBED ON November 19, 2015**

<u>Meter Size</u>	<u>Amount</u>
<u>5/8"</u>	<u>\$ 14,115.00</u>
<u>3/4"</u>	<u>\$ 21,170.00</u>
<u>1"</u>	<u>\$ 35,290.00</u>
<u>1 1/2"</u>	<u>\$ 70,580.00</u>
<u>2"</u>	<u>\$ 112,920.00</u>
<u>3"</u>	<u>\$ 225,840.00</u>
<u>4"</u>	<u>\$ 352,880.00</u>
<u>6"</u>	<u>\$ 705,750.00</u>
<u>8"</u>	<u>\$ 1,129,200.00</u>

Facilities Reserve Charges are periodically adjusted by the Department. These adjustments may increase or decrease existing Facilities Reserve Charge amounts. Where adjustments to Facilities Reserve Charges result in decreases of such charges, no refund will be made of the difference between the higher, pre-existing charges and the lower, adjusted charges.

SECTION IV – COLLECTION AND REFUND OF FRC

1. Upon collection of the Facilities Reserve Charge, the Facilities Reserve Charge shall be deposited in a special trust fund or interest-bearing account. The portion that constitutes recoupment may be transferred to any appropriate fund.
2. If the Facilities Reserve Charge is not expended or encumbered within six years from the date of collection, it shall be refunded to the property owner or the property owner's successor in title, together with accrued interest (if any).
 - a. An application for a refund shall be submitted to the Board within one year of the date upon which the refund right arises;
 - b. Amounts unclaimed within one year of the date the right to refund arises shall be retained in a special trust fund or interest bearing account and shall be expended for capital facilities improvement projects.
3. If the Board terminates the Facilities Reserve Charge (or analogous) requirement, all unexpended or unencumbered funds shall be refunded to the property owner or the property owner's successor in title, together with accrued interest (if any).
 - a. Public notices of termination and availability of refunds shall be given by the Board at least two times in a manner approved by the Board. All funds available for refund shall be retained for a period of one year and at the end of said one year period, any remaining funds may be transferred to the Board's general fund and expended for any public purposes involving water supply or service as determined by the Board.
4. No FRC refund shall be made for existing meters requiring a decrease in water demand, decrease in meter size, or decrease in existing water supply fixture units; or requests to change service categories.
5. Recoupment shall be exempt from subsections (2) and (3).
6. Facilities Reserve Charge Paid Prior to Enactment of Part 5 Rules

**AMENDMENTS TO
THE RULES AND REGULATIONS OF THE
BOARD OF WATER SUPPLY, OF THE COUNTY OF KAUAI, STATE OF HAWAII,
PRESCRIBED ON November 19, 2015**

- a. This Section applies to those Applicants that have paid a Facilities Reserve Charge prior to enactment of these Part 5 Rules and have failed to install a water meter on the subject property for which the Facilities Reserve Charge was paid, hereinafter referred to as "Prior Applicants".
- b. Prior Applicants shall have three (3) years from the date of enactment of these Part 5 Rules, hereinafter referred to as the "Grace Period", to install a water meter, at no additional Facilities Reserve Charge cost.
- c. After expiration of the Grace Period, Prior Applicants must pay the difference of the original Facilities Reserve Charge paid and the Facilities Reserve Charge in effect at the time the meter is installed.
- d. The Manager may grant exceptions to item 6c if the Manager finds all of the following:
 - i. Strict application of the rule would cause an absurd, unfair, or unreasonably harsh result; and
 - ii. The Prior Applicant's circumstance or condition is unique or exceptional and the Manager would grant the same request if made by ever similarly situated Prior Applicant; and
 - iii. Such exception thereof is as reasonably necessary or expedient and not contrary to law or the intent and purposes of these rules.

7. Facilities Reserve Charge Paid After Enactment of Part 5 Rules

- a. The Department may issue conditional approval for water service requests.
- b. A conditional approval shall be valid for a period of one year and shall expire unless installation of the meter occurs within that period or an extension of the conditional approval is granted.
 - i. An extension of the conditional approval may be granted for a single additional one-year period.
- c. Upon expiration, the conditional approval shall become null and void and the Applicant will be required to re-apply to the Department of Water for water service. Any request for water service will be dependent on the adequacy of the source, storage, and transmission facilities existing at that time.
- d. A Water Meter Application and FRC payment can only be made upon completing the requirements set forth in the conditional approval.

8. Facilities Reserve Charges for Affordable and Work Force Facilities Housing Projects

- a. The Manager may defer collection of Facility Reserve Charges for Affordable or Workforce Housing Projects, provided, however that applicable Reserve Charges shall be collected before building permit approval or installation of applicable meters, whichever occurs first.

**AMENDMENTS TO
THE RULES AND REGULATIONS OF THE
BOARD OF WATER SUPPLY, OF THE COUNTY OF KAUAI, STATE OF HAWAII,
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- b. Administrative fees related to the Facility Reserve Charge shall be waived for Affordable or Workforce Housing Projects.

SECTION V - FRC OFFSETS

When an Applicant, is required to construct and dedicate water source or water storage facilities, or water transmission mains, to the Department, the following rules shall apply:

1. The applicable FRC liability of such Applicant, shall be offset by up to 22% where water source improvements are constructed, up to 41% where water storage improvements are constructed, and up to 37% where water transmission mains are constructed; provided that the total amount of all offsets that an Applicant, receives shall not exceed 100% of the Applicant's, FRC liability.
 - a. An Applicant who provides 100% of the necessary source or storage or transmission requirements shall be entitled to an offset for the entire amount per category of source, storage, or transmission improvements as shown above.
2. The Department, and not the Applicant, shall calculate and determine the total amount of an Applicant's, FRC offset in any given case. The Department may require the Applicant to submit documentation verifying the actual cost of a source or storage improvement or transmission main.
3. The offsets described in this Section V "FRC Offsets" shall not apply to water transmission mains constructed by an Applicant which are within or adjacent to a subdivision or lands either 1) owned by the Applicant, or 2) developed by the Applicant. Where water transmission mains are constructed within, adjacent to, or outside of such subdivisions or lands, the offsets shall apply only to mains constructed outside of and off-site from such subdivisions or lands.
4. Grant Funds. Grant funds, specifically allocated to projects by the Grantor, may be used by the Manager to offset the FRC assessed to said projects on a dollar for dollar basis as it relates to source development, storage development and/or transmission main development.
 - a. Applicants shall be offset by up to 22% where water source improvements are constructed; up to 41% where water storage improvements are constructed; and up to 37% where water transmission mains are constructed; provided that the total amount of all offsets that an Applicant receives shall not exceed 100% of the Applicant's FRC liability.
 - b. The Manager shall determine which improvements are eligible for FRC offsets.
 - c. FRC offsets shall be afforded only to those Applicants that are beneficiaries of the Grantor and identified as such at the time the Grant fund is made.
 - d. FRC offsets for Grant Funds shall be a one-time event.

**AMENDMENTS TO
THE RULES AND REGULATIONS OF THE
BOARD OF WATER SUPPLY, OF THE COUNTY OF KAUAI, STATE OF HAWAII,
PRESCRIBED ON November 19, 2015**

SECTION VI – APPEAL OF FACILITIES RESERVE CHARGE

1. Any person assessed a Facilities Reserve Charge under these rules may contest the amount of the Facilities Reserve Charge assessed by following the requirements in Part 1 of these Rules and Regulations.

SECTION 5. Section III “FACILITIES RESERVE CHARGE” ONLY of Part 3 “ESTABLISHING STANDARDS FOR SUBDIVISION WATER SYSTEMS WITHIN THE COUNTY OF KAUAI” of the Rules is hereby amended as follows:

**“Part 3
RULES AND REGULATIONS FOR ESTABLISHING STANDARDS FOR
SUBDIVISION WATER SYSTEMS**

SECTION III - FACILITIES RESERVE CHARGE

1. The subdivider shall pay to the Department the facilities reserve charge established in Part ~~[4]~~ 5 of the Rules and Regulations of the Department, for each (additional) parcel created by the subdivision, including the first lot, except (as provided below) when facilities reserve charges have already been paid by the developer or subdivider.
2. No facilities reserve charge will be made for lots created by the subdivision which will not be served by the Department’s water system. In the event that the Department determines that the subdivision will not be serviced by the Department’s water system, but later water service is requested, full payment of the then applicable facilities reserve charge must be paid. A statement to this effect shall be clearly lettered on the subdivision map.
3. No facilities reserve charge will be made for any parcel which is already serviced by an existing meter or which was serviced by a meter within 365 days prior to formal submittal of the subdivision request to the Planning Department.
4. The subdivider shall pay the facilities reserve charge to the Department prior to subdivision approval by the Department except that subdivision approval may be given prior to construction of required improvements and the payment of the facilities reserve charge by the posting of a bond, as described in Section XIII of this Part.
5. In the event the facilities reserve charge has been paid for a subdivision and subsequently the subdivision is consolidated, the facilities reserve charge will be returned provided the consolidation is completed within 365 days following the prior subdivision approval.

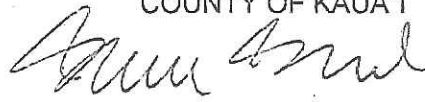
SECTION 6. Administrative rule material to be repealed is bracketed. New material is underscored. Deleted material is stricken through. In printing this rule amendment, the brackets, bracketed material, underscoring, strikes need not be included.

SECTION 7. If any provision of this rule amendment or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the rule amendment, which can be given effect without the invalid provision, or application, and to this end the provisions of this rule amendment are severable.

SECTION 8. This rule amendment shall be effective ten (10) days after it is filed with the County Clerk of the County of Kaua`i.

**AMENDMENTS TO
THE RULES AND REGULATIONS OF THE
BOARD OF WATER SUPPLY, OF THE COUNTY OF KAUAI, STATE OF HAWAII,
PRESCRIBED ON November 19, 2015**

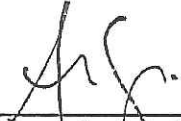
BOARD OF WATER SUPPLY
COUNTY OF KAUAI



Sherman Shiraishi, Chairperson

APPROVED AS TO FORM
AND LEGALITY:

DEPARTMENT OF WATER
COUNTY OF KAUAI



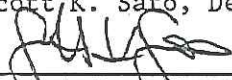
Andrea Suzuki
Deputy County Attorney



Kirk Saiki, P.E.
Manager & Chief Engineer

Scott K. Sato, Deputy County Clerk

Received this 19th day of



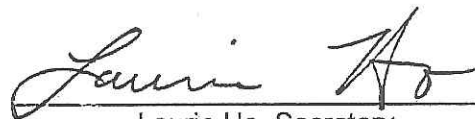
November 2015

for: Jade Fountain-Tanigawa
County Clerk, County of Kauai

CERTIFICATION

I hereby certify that the Board of Water Supply, County of Kauai, adopted the foregoing amendments to the Rules and Regulations of the County of Kauai Department of Water on **Thursday, November 19, 2015** under authority of Sec. 17.03D of the Kauai County Charter 2014, as amended, and that the provisions of Sec. 91-3, Haw. Rev. Stat., as amended, have been satisfied, including the holding of (1) public hearing on **Tuesday, November 10, 2015**, and the giving of proper notice for the public hearing, which notice was advertised in The Garden Island on **Friday, October 9, 2014 & Tuesday, November 10, 2015**.

Dated at Lihue, Kauai this 19th day of November, 2015.



Laurie Ho, Secretary
BOARD OF WATER SUPPLY

CERTIFICATION OF COUNTY CLERK

I hereby certify on November 19th, 2015, I accepted for filing from the Kauai Board of Water Supply the Amendment to the Rules and Regulations adopted on **Thursday, November 19, 2015**.

Scott K. Sato, Deputy County Clerk



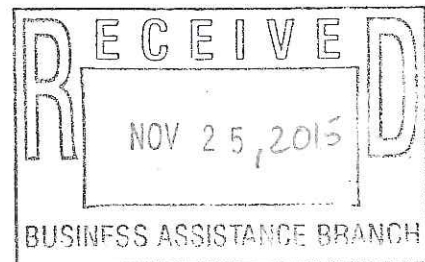
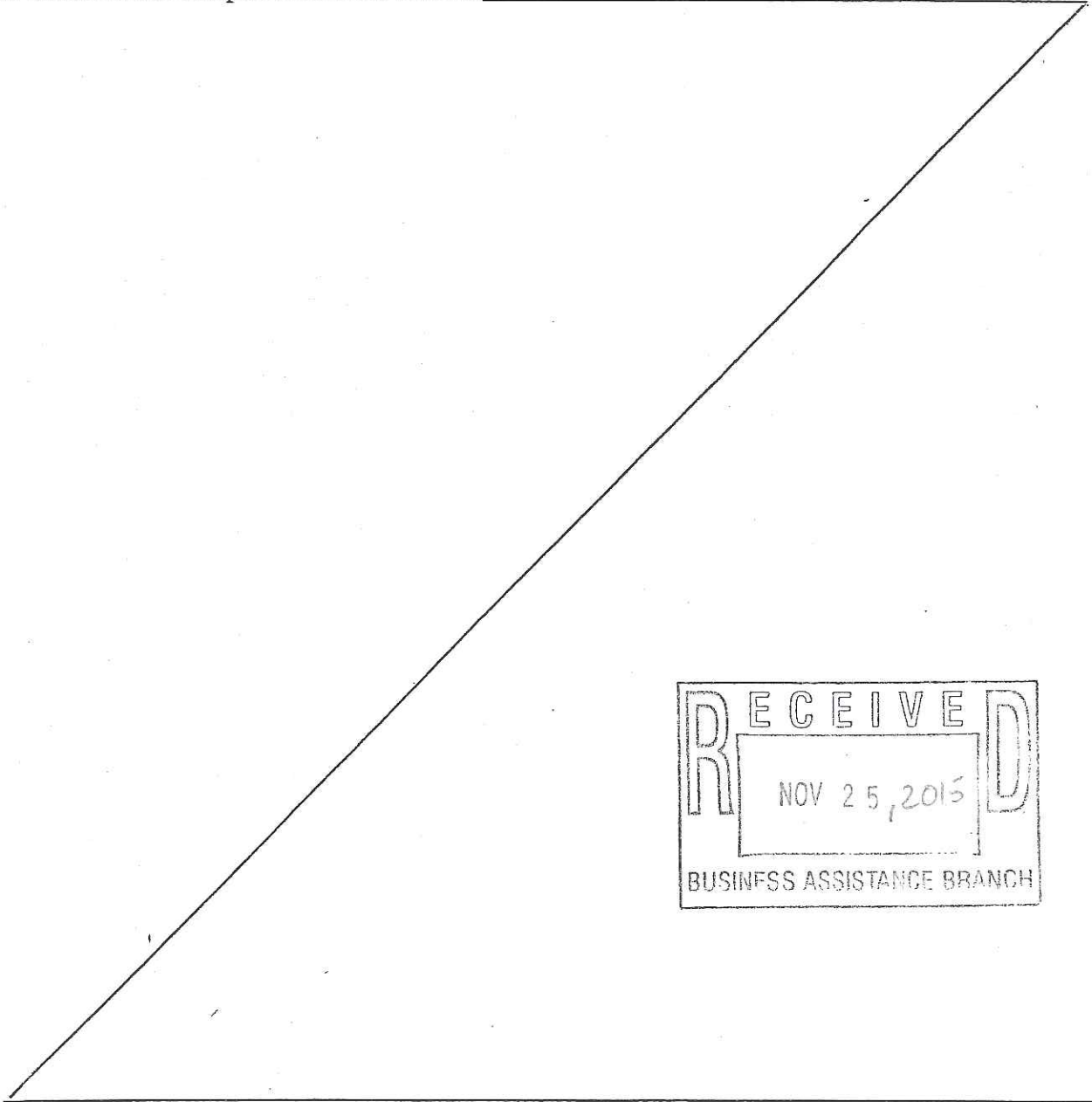
for: Jade Fountain-Tanigawa, County Clerk
County of Kauai

Exhibit 2

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendment and Compilation of Chapter 16-95
Hawaii Administrative Rules

1. Chapter 16-95, Hawaii Administrative Rules, entitled "Pharmacists and Pharmacies" is amended and compiled to read as follows:



“HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 95

PHARMACISTS AND PHARMACIES

Subchapter 1 General Provisions

§16-95-1	Objective; scope
§16-95-2	Definitions
§16-95-3	Repealed
§16-95-4	Repealed
§16-95-5	Repealed
§16-95-6	Repealed
§16-95-7	Repealed
§16-95-8	Repealed
§16-95-9	Repealed
§16-95-10	Repealed
§16-95-11	Repealed
§16-95-12	Repealed
§16-95-13	Repealed
§16-95-14	Display of license or permit
§16-95-15	Repealed
§16-95-16	Repealed
§16-95-17	Repealed
§16-95-18	License or permit required
§16-95-19	License or permit nontransferable

Subchapter 2 Applications

§16-95-21	Forms, documentation, and notification
§16-95-22	Application and requirements for pharmacist license by examination
§16-95-22.5	Application and requirements for pharmacist license by reciprocity
§16-95-23	Temporary license

- §16-95-24 Pharmacy intern permit
- §16-95-25 Repealed
- §16-95-26 Pharmacy permit
- §16-95-27 Repealed
- §16-95-28 Repealed
- §16-95-29 Repealed
- §16-95-30 Wholesale prescription drug distributor license requirements
- §16-95-31 Miscellaneous permit
- §16-95-32 Criminal conviction
- §16-95-32.2 Denial or rejection of application

Subchapter 3 Education and Experience Documentation

- §16-95-33 Education documentation for a pharmacist license
- §16-95-33.2 Education documentation for a pharmacy intern permit
- §16-95-34 Experience verification for a pharmacist by examination
- §16-95-35 Repealed
- §16-95-36 Experience verification for a pharmacist [licensed] license by reciprocity or temporary pharmacist license

Subchapter 4 Repealed

- §16-95-39 Repealed
- §16-95-40 Repealed
- §16-95-41 Repealed
- §16-95-42 Repealed
- §16-95-43 Repealed

Subchapter 5 Repealed

- §16-95-44 Repealed
- §16-95-45 Repealed
- §16-95-46 Repealed
- §16-95-47 Repealed
- §16-95-48 Repealed
- §16-95-49 Repealed
- §16-95-50 Repealed

Subchapter 6 Repealed

§16-95-51	Repealed
§16-95-52	Repealed
§16-95-53	Repealed
§16-95-54	Repealed

Subchapter 7 Repealed

§16-95-55	Repealed
§16-95-56	Repealed
§16-95-57	Repealed
§16-95-58	Repealed
§16-95-59	Repealed
§16-95-60	Repealed
§16-95-61	Repealed
§16-95-62	Repealed
§16-95-63	Repealed
§16-95-64	Repealed

Subchapter 8 Repealed

§16-95-65	Repealed
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Subchapter 9 Renewal

§16-95-70	Repealed
§16-95-71	Date for filing
§16-95-72	Automatic forfeiture for failing to renew
§16-95-73	Restoration of forfeited license or permit
§16-95-74	Board may refuse to renew <u>or restore</u> a license or permit

Subchapter 10 Scope of Practice

§16-95-79	Supervision by a registered pharmacist
§16-95-80	Physical presence of a registered pharmacist
§16-95-81	Emergency kits
§16-95-82	Valid prescriptions
§16-95-83	Substitution; drug product selection
§16-95-84	Transfer of prescriptions

- §16-95-85 Scope of practice of a pharmacy intern
- §16-95-86 Scope of practice of a pharmacy technician
- §16-95-87 Return or exchange of drugs prohibited

Subchapter 11 Record Keeping Requirements

- §16-95-93 Records of dispensing
- §16-95-94 Automated data processing systems
- §16-95-95 Security of records
- §16-95-96 Record keeping for wholesale prescription drug distributors

Subchapter 12 Advertising Practices

- §16-95-101 Procedures to advertise prescription drugs
- §16-95-102 Procedures to advertise related pharmacy services
- §16-95-103 Advertising of controlled substances prohibited

Subchapter 13 Disciplinary Sanctions, Application Denial, Hearings, Administrative Practice and Procedure

- §16-95-110 Grounds for revocation, suspension, refusal to renew or restore, denial, or conditioning of license or permit
- §16-95-111 Denial
- §16-95-112 Demand for hearing; proceedings upon demand for hearing
- §16-95-113 Administrative practice and procedure

Subchapter 14 Oral Testimony

- §16-95-118 Oral testimony

Subchapter 15 Fees

- §16-95-123 Fees established
- §16-95-124 Form of fee
- §16-95-125 Dishonored checks considered failure to meet requirements

Subchapter 16 Emergency Contraception Collaborative Agreement

- §16-95-130 Emergency contraception written collaborative agreement

SUBCHAPTER 1

GENERAL PROVISIONS

§16-95-1 Objective; scope. This chapter is intended to clarify and implement chapter 461, Hawaii Revised Statutes, to the end that the provisions thereunder may be best effectuated and the public interest and welfare most effectively served and protected. Other requirements of state or federal law, including the laws enforced by the state department of health and department of public safety, which also may be applicable to the practice of pharmacy or to licensees or permittees under chapter 461, [Hawaii Revised Statutes,] HRS, are not encompassed within the scope of this chapter. [Eff 5/16/64; am and ren §16-95-1, 6/22/81; am and comp 12/24/92; comp 12/25/04; am and comp 06/22/15; am and comp] (Auth: HRS §461-4.5) (Imp: HRS §461-4.5)

§16-95-2 Definitions. As used in this chapter unless the context clearly indicates otherwise:

"ACPE" means the Accreditation Council for Pharmacy Education, formerly known as the American Council on Pharmaceutical Education, which is the national agency for the accreditation of professional degree programs in pharmacy and providers of continuing pharmacy education.

"Automated data processing system" or "ADP system" means a system utilizing computer software and hardware for the purpose of record keeping.

"Board" means the board of pharmacy.

"BREG" means the business registration division of the department.

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

"Director" means the director of commerce and consumer affairs.

"Dispense" or "dispensing" means the furnishing of drugs pursuant to a prescription in a suitable container, appropriately labeled for subsequent administration to, or use by, a patient or other individual entitled to receive the drug.

"HAR" means the Hawaii Administrative Rules.

"HRS" means the Hawaii Revised Statutes.

"Immediate supervision" means that a registered pharmacist is physically present in the area or location where a pharmacy intern or pharmacy technician is working and oversees the correctness and accuracy of the prescription's ingredients, quantity, and label.

"Institutional facility" includes a:

- (1) Hospital;

- (2) Convalescent home;
- (3) Nursing home;
- (4) Extended care facility;
- (5) Mental institution;
- (6) Rehabilitation center;
- (7) Health maintenance organization;
- (8) Psychiatric center;
- (9) Mental retardation center;
- (10) Penal institution; or
- (11) Any other organization whose primary purpose is to provide a physical environment for patients to obtain health care services or at-home care services, except those places where physicians, dentists, veterinarians, osteopaths, podiatrists, or other prescribers who are duly licensed, engage in private practice.

"Institutional pharmacy" means a pharmacy providing services to an institutional facility

"NABPLEX" means the National Association of Boards of Pharmacy Licensure Examination, now known as the NAPLEX.

"NAPLEX" means the North American Pharmacist Licensure Examination, previously known as the NABPLEX.

"Partnership" means a general partnership, a limited partnership, a limited liability partnership, or a limited liability limited partnership.

"Pharmacy intern" means a student or graduate of a school or college of pharmacy, that is accredited or is a candidate for accreditation by the ACPE, and who is issued a permit by the board to work under the immediate supervision of a registered pharmacist.

"Pharmacy technician" means a nonlicensed individual, other than a pharmacy intern, who assists the pharmacist in various activities under the immediate supervision of a registered pharmacist.

"Wholesale distribution" means the transfer of prescription drugs to persons other than a consumer or patient, but does not include:

- (1) Intracompany sales, defined as any transaction or transfer between an entity and any division, subsidiary, parent, or affiliated or related company under common ownership and control;
- (2) The purchase or other acquisition, by an institutional facility that is a member of a group purchasing organization, of a drug for use by the entity's patient, from the group purchasing organization or from other institutional facilities that are members of the group purchasing organization;

- (3) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended, to a nonprofit affiliate of the organization to the extent otherwise permitted by law;
- (4) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among institutional facilities that are under common control. For purposes of this paragraph, "common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, working rights by contract, or otherwise;
- (5) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons. For purposes of this paragraph, "emergency medical reasons" includes[,] but is not limited to[,] transfers of prescription drugs by a pharmacy to another pharmacy to alleviate a temporary shortage, except that the gross dollar value of [such] the transfers shall not exceed five per cent of the total prescription drug sales revenue of either the transferor or transferee pharmacy during any period of twelve consecutive months;
- (6) The sale, purchase, or trade of a drug, or an offer to sell, purchase, or trade a drug, or the dispensing of a drug pursuant to a prescription;
- (7) The distribution of drug samples by manufacturers' representatives or distributors' representatives. For purposes of this paragraph, "drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug;
or
- (8) The sale, purchase, or trade of blood and blood components intended for transfusion. For purposes of this paragraph, "blood" means whole blood collected from a single donor and processed either for transfusion or further manufacturing; and "blood component" means that part of blood separated by physical or mechanical means.

"Wholesale distributor" means any person or entity in this State engaged in the transfer of prescription drugs to a person other than a consumer or patient, including[,] but not limited to, manufacturers; repackers; own label distributors; private label distributors; jobbers; brokers; warehouses, including manufacturers' and distributors' warehouses, chain drug warehouses, and wholesale drug warehouses; independent wholesale drug traders; prescription drug repackagers;

practitioners; birth control and other clinics; individuals; hospitals; nursing homes and their providers; health maintenance organizations and other health care providers; and retail and hospital pharmacies that conduct wholesale distributions. The term "wholesale distributor" shall not include any carrier for hire or person or entity hired solely to transport prescription drugs. For purposes of this definition, "manufacturer" means anyone who is engaged in manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling of a prescription drug; and "prescription drug" means any human drug required by federal law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act. [Eff 5/16/64; am 8/7/70; am and ren §16-95-2, 6/22/81; am and comp 12/24/92; comp 12/25/04; am and comp 06/22/15; am and comp] (Auth: HRS §461-4.5) (Imp: HRS §461-4.5)

§16-95-3 Repealed. [R 12/24/92]

§16-95-4 Repealed. [R 12/24/92]

§16-95-5 Repealed. [R 12/24/92]

§16-95-6 Repealed. [R 12/24/92]

§16-95-7 Repealed. [R 12/24/92]

§16-95-8 Repealed. [R 12/24/92]

§16-95-9 Repealed. [R 12/24/92]

§16-95-10 Repealed. [R 12/24/92]

§16-95-11 Repealed. [R 12/24/92]

§16-95-12 Repealed. [R 12/24/92]

§16-95-13 Repealed. [R 12/24/92]

§16-95-14 Display of license or permit. The holder of a license or permit shall conspicuously display, in the place of business, that license or permit and shall have the evidence of current validation in the holder's possession at all times. [Eff 5/16/64; am and ren §16-95-14, 6/22/81; am and comp 12/24/92; comp 12/25/04; am and comp 06/22/15; comp] (Auth: HRS §§461-4, 461-9, 461-16) (Imp: HRS §§461-4, 461-9, 461-16)

§16-95-15 Repealed. [R 12/24/92]

§16-95-16 Repealed. [R 12/24/92]

§16-95-17 Repealed. [R 12/24/92]

§16-95-18 License or permit required. It shall be unlawful for a person who is not licensed or who has not been issued a permit under chapter 461, HRS, and this chapter to engage in the practice of a pharmacist, to perform the duties of a pharmacy intern, to operate a pharmacy, to engage in the wholesale distribution of drugs, or to engage in any activities requiring a miscellaneous permit. [Eff and comp 12/24/92; comp 12/25/04; am and comp 06/22/15; comp] (Auth: HRS §461-4.5) (Imp: HRS §§461-4.5, 461-10)

§16-95-19 License or permit nontransferable. Any license or permit issued by the board shall be valid only for the person to which it is issued and shall not be transferable. [Eff and comp 12/24/92; comp 12/25/04; am and comp 06/22/15; comp] (Auth: HRS §461-4.5) (Imp: HRS §461-4.5)

SUBCHAPTER 2

APPLICATIONS

§16-95-21 Forms, documentation, and notification. (a) An application for license or permit shall be made under oath on forms provided by the board and shall not be considered complete unless accompanied with the required documentation and fees. It shall be each applicant's responsibility to furnish all information and any documentation requested by the board.

(b) The application form may require the applicant and any personnel of the applicant to provide the following:

- (1) The applicant's full name;
- (2) A statement that the applicant has attained the age of majority;
- (3) The applicant's current business or mailing address for publication, and the applicant's current residence address;
- (4) The applicant's social security number;
- (5) The applicant's educational history and evidence of the education;
- (6) The date and place of any conviction of a crime directly related to the practice of pharmacy, drugs, drug samples, wholesale or retail drug distribution, or distribution of controlled substances, unless the conviction has been expunged or annulled or is otherwise precluded from consideration by section 831-3.1, HRS;
- (7) The state or states or United States territory in which the applicant is currently licensed, and any information regarding any disciplinary proceedings pending or disciplinary actions taken by any state or jurisdiction against the license;
- (8) A statement that the applicant is a United States citizen or an alien authorized to work in the United States;
- (9) The names, addresses, phone numbers, and social security numbers of corporate officers or partners or other personnel of the applicant;
- (10) Verification that the corporation, partnership, or entity is properly registered with BREG;
- (11) Verification that the trade name, if any, is properly registered with BREG;
- (12) The name and license number of the pharmacist in charge of the prescription area and the name or names and license number or numbers of any other pharmacists employed;
- (13) The name, position, and title of any person responsible for the distribution of drugs; and

- (14) Any other information the board may require to investigate the applicant's qualifications for license or permit.
- (c) Any requirement that the board provide notice to licensees or permittees shall be deemed met if notice is sent to the address on file with the board.
- (d) Any change in the application or of any information filed with the board shall be reported to the board, in writing, within ten days of the change.
- (e) Upon closure of a pharmacy located in this State, the pharmacy shall:
 - (1) Provide written notice to the board within ten days; and
 - (2) Return all indicia of licensure. [Eff 5/16/64; am and ren §16-95-21, 6/22/81; am and comp 12/24/92; comp 12/25/04; am and comp 06/22/15; am and comp] (Auth: HRS §461-4.5) (Imp: HRS §§461-4.5, 461-5, 461-6, 461-7, 461-8.6, 461-14, 461-15)

Historical note: The substance of this section is based in part upon sections 16-95-13 and 16-95-35. [Eff 5/12/64; am and ren §§16-95-13, 16-95-35, 6/22/81; R 12/24/92]

- §16-95-22 Application and requirements for pharmacist license by examination. (a) An application for license by examination shall be accompanied by the required application fee, which shall not be refunded, and the examination fee. An examination fee may be refunded provided a written request for refund is made prior to the application deadline.
- (b) An applicant shall:
 - (1) Have attained the age of majority; and
 - (2) Hold a degree from a school or college of pharmacy which has received candidate status with or has been accredited by the ACPE;
 - (c) For issuance of the license, the applicant shall provide evidence of:
 - (1) At least fifteen hundred hours of practical experience; and
 - (2) Passage of either the NABPLEX or the NAPLEX, and the Hawaii Multistate Pharmacy Jurisprudence Examination (MPJE). The MPJE requires a passing score of at least seventy-five points.
 - (d) An applicant who is a participant in the National Association of Boards of Pharmacy's (NABP) score transfer program shall be responsible for having the score report sent to the board.

(e) A foreign graduate, in addition to the requirements [above] in subsections (a) to (d) and in lieu of the candidacy or accreditation requirements by the ACPE in subsection (b)(2), shall provide verification of passing the following:

- (1) The Foreign Pharmacy Graduate Equivalency Examination (FPGEE); and
- (2) The Test of English as a Foreign Language (TOEFL); [Eff 5/16/64; am 3/16/80; am and ren §16-95-22, 6/22/81; am and comp 12/24/92; comp 12/25/04: am and comp 06/22/15; am and comp] (Auth: HRS §461-4.5) (Imp: HRS §§461-5, 461-6)

§16-95-22.5 Application and requirements for pharmacist license by reciprocity. (a) An application for license by reciprocity shall be filed on forms provided by the board. The applicant shall submit:

- (1) Evidence of current and valid licensure to practice pharmacy in another state or jurisdiction with qualifications which equal or exceed those of this State;
- (2) Information regarding any disciplinary action taken or any complaints or investigations pending against the applicant;
- (3) Evidence of having practiced for at least fifteen hundred hours as a licensed pharmacist within the five years preceding the date of application; and
- (4) A completed official NABP licensure transfer application within ninety days from the date of issuance by the NABP, unless extended by the NABP.

(b) The board shall not issue a license by reciprocity unless the other state or jurisdiction grants reciprocal licensure to this state's licensees.

(c) The board may deny licensure by reciprocity if the applicant fails to fulfill the requirements herein or has had any disciplinary action taken or if any complaints are pending. [Eff and comp 12/24/92; comp 12/25/04; am and comp 06/22/15; comp] (Auth: HRS §461-4.5) (Imp: HRS §461-8.5)

§16-95-23 Temporary license. (a) An application for temporary license may be filed at the same time as an application for examination and shall be accompanied by the non-refundable application fee. Following a determination by the board that the qualifications for admission to the examinations listed in section

461-6, [Hawaii Revised Statutes] HRS exist, a temporary license to practice pharmacy may be issued, provided the applicant:

- (1) Passes the Hawaii MPJE with a score of at least seventy-five points;
- (2) Submits a verification, by an official of the licensing authority of that other state or territory of the United States, of a current and valid license to practice pharmacy in the other state or territory of the United States; and
- (3) Submits evidence that the applicant has practiced for at least fifteen hundred hours as a licensed pharmacist within the five years preceding the date of application.

(b) The temporary license shall be valid only until the results of the next administration of the NABPLEX or the NAPLEX examinations are received by the board.

(c) In the event the pharmacist fails to take and pass either the NABPLEX or NAPLEX examination, the temporary license may be extended, for good and just cause, provided a request for extension is made in writing. In no case shall the temporary license be extended beyond three consecutive administrations of the examinations. [Eff 5/16/64; am 3/16/80; am and ren §16-95-23, 6/22/81; am and comp 12/24/92; comp 12/25/04; am and comp 06/22/15; am and comp] (Auth: HRS §§461-4.5, 461-7) (Imp: HRS §§461-4.5, 461-7)

§16-95-24 Pharmacy intern permit. (a) An application for a permit to work as a pharmacy intern may be filed at any time. The board may delegate to the board's executive officer the authority to issue a pharmacy intern permit to qualified applicants.

(b) An applicant shall provide verification that the applicant [has satisfactorily completed at least one year of instruction in a college of pharmacy and] is currently enrolled in or is a graduate of a college of pharmacy which has received candidate status with or has been accredited by the ACPE.

(c) [A copy of the applicant's diploma, an] An official transcript showing the date of graduation, or a letter from the dean or registrar that the applicant [has completed the first year of school] is currently enrolled at [a] an ACPE accredited college of pharmacy shall be submitted with the application.

(d) The applicant shall provide the name and license number of the supervising pharmacist and the name and address of the pharmacy at which the applicant is employed or will be employed. [Eff 5/16/64; am and ren §16-95-24, 6/22/81; am and comp 12/24/92; comp 12/25/04; am and comp 06/22/15; am and

comp
5, 461-9)

] (Auth: HRS §461-4.5) (Imp: HRS §§461-4.5, 461-

Historical note: The substance of this section is based substantially upon sections 16-95-44 and 16-95-45. [Eff 5/16/64; am 8/7/70; am 6/11/77; am and ren §§16-95-44, 16-95-45, 6/22/81; R 12/24/92]

§16-95-25 Repealed. [R 12/24/92]

§16-95-26 Pharmacy permit. (a) An application for a pharmacy permit shall be filed in duplicate at least fifteen days before a board meeting and must be accompanied by the application fee which shall not be refunded.

- (b) The application shall include:
 - (1) A floor plan of the prescription area which shall diagram the space and location of fixtures such as counters, tables, drawers, shelves, storage cabinets including a locked cabinet, library, sink with hot and cold water, proper sewage outlet, and refrigeration storage equipment;
 - (2) The name and license number of the pharmacist in charge and any other pharmacists employed;
 - (3) A letter of verification or bill of sale that the pharmacy has been bought with the effective date of sale if the pharmacy was purchased;
 - (4) Evidence that the entity is currently registered with BREG. If a corporation, partnership, or limited liability company has been registered for more than one year, a "Certificate of Good Standing" from the department shall be attached. If a corporation, partnership, or limited liability company has been registered for less than one year, a "file-stamped" copy of the document filed with BREG shall be attached;
 - (5) Evidence that the trade name, if any, is properly registered with BREG;
 - (6) An attestation that, at a minimum, the pharmacy [possess] possesses or has electronic access to the following reference materials:
 - (A) United States Pharmacopeia National Formulary, and all supplements;
 - (B) Federal Drug Enforcement Administration regulations;

- (C) State uniform controlled substances laws, chapter 329, HRS.
 - (D) State food and drug laws, 328 HRS;
 - (E) State pharmacy law, chapter 461, HRS, and chapter 16-95 HAR;
 - (F) Prescription files and;
 - (G) Drug Facts and Comparison or other current drug information guide; and
- (7) An attestation that, at a minimum, the pharmacy possesses the following technical equipment and supplies[;]:
- (A) Class A prescription balance or a balance of greater sensitivity and appropriate weights;
 - (B) Mortar and pestle (glass or porcelain);
 - (C) Refrigerator;
 - (D) Bottles and vials of assorted sizes;
 - (E) Graduates or other similar measuring device; and
 - (F) Prescription labels.
- (c) No permit shall be issued unless all deficiencies have been corrected and approved by the board.
- (d) The board may delegate to its executive officer the authority to issue a permit upon receipt of a completed application and documentation evidencing clear compliance with this section. [Eff 5/16/64; am and ren §16-95-26, 6/22/81; am and comp 12/24/92; comp 12/25/04; am and comp 06/22/15; am and comp] (Auth: HRS §461-4.5) (Imp: HRS §§461-4.5, 461-12, 461-14)

Historical note: The substance of this section is substantially based upon section 16-95-51. [Eff 5/16/64; am 6/11/77; am and ren §16-95-51, 6/22/81; R 12/24/92]

§16-95-27 Repealed. [R 12/24/92]

§16-95-28 Repealed. [R 12/24/92]

§16-95-29 Repealed. [R 12/24/92]

§16-95-30 Wholesale prescription drug distributor license requirements.

(a) Application for a wholesale prescription drug distributor license shall be made under oath on a form to be provided by the board. In addition to providing information required by section 16-95-21(b), the applicant shall provide the following information as it pertains to the applicant including any officer, director, manager, or other persons in charge of wholesale drug distribution, storage, or handling:

- (1) Any convictions under any federal, state, or local laws relating to drug samples, wholesale or retail drug distribution, or distribution of controlled substances;
- (2) Any felony conviction under federal, state, or local laws;
- (3) Each person's past experience in the manufacture or distribution of prescription and controlled drugs;
- (4) Any suspension, [revocation,] revocation, disciplinary action, or pending investigation by any federal, state, or local government of any license currently or previously held for the manufacture or distribution of any drugs, including controlled substances;
- (5) Verification of at least one year of experience in the distribution or handling of prescription drugs for any person responsible for the distribution of drugs; and
- (6) A current list of officers, directors, managers, and other persons in charge of the wholesale distribution, storage, and handling of prescription drugs, including a description of each person's duties and a summary of each person's qualifications.

(b) A map of the facilities shall also be submitted. The map shall identify:

- (1) The storage area for drugs;
- (2) The storage area for quarantined drugs; and
- (3) The placement of the lighting, ventilation, and temperature control equipment.

(c) No license shall be issued prior to receipt of a satisfactory inspection report from the state department of health. At a minimum, the board requests that the department of health shall ensure that:

- (1) The facilities are of suitable size and construction to facilitate cleaning, maintenance, and proper operations;
- (2) The storage areas are designed to provide adequate ventilation, temperature, sanitation, humidity, space, equipment, and security conditions;
- (3) A quarantine area is available for prescription drugs that are outdated, damaged, deteriorated, misbranded, or adulterated, or

- whose immediate or sealed outer or sealed secondary containers have been opened;
- (4) The facility is maintained in a clean and orderly fashion;
 - (5) The facility is free from infestation by insects, rodents, birds, or vermin of any kind;
 - (6) The facility is secure from unauthorized entry;
 - (7) Access from outside the premises is kept to a minimum and well controlled;
 - (8) The outside perimeter of the premises is well-lighted;
 - (9) Entry into areas where prescription drugs are held is limited to authorized personnel;
 - (10) The facilities are equipped with an alarm system to detect entry after hours;
 - (11) The facilities are equipped with a security system that will provide suitable protection against theft and diversion;
 - (12) All prescription drugs are stored at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of the drugs, or in accordance with the standards regarding conditions and temperatures for the storage of prescription drugs adopted by the state department of health.
 - (A) If no storage requirements are established for a prescription drug, the drug may be held at controlled room temperature, as defined in the current United States Pharmacopeia National Formulary and all supplements, to help ensure that its identity, strength, quality, and purity are not adversely affected;
 - (B) Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices, or logs shall be used to document the proper storage of prescription drugs;
 - (13) Upon receipt, each outside shipping container of prescription drugs is examined visually to confirm the identity of the drugs and to prevent the acceptance of contaminated prescription drugs that are unfit for distribution. This examination shall be adequate to reveal container damage that would suggest possible contamination or other damage to the contents;
 - (14) Each outgoing shipment of prescription drugs is inspected carefully to confirm the identity of the drugs and to ensure that no prescription drugs are delivered that have been damaged in storage or held under improper conditions;
 - (15) Returned, damaged,

outdated, deteriorated, mishandled, or adulterated prescription drugs are physically separated from other prescription drugs and stored, in such a way that no cross-contamination or confusion is possible, until they are destroyed or returned to the supplier;

(16) Any prescription drugs whose immediate or sealed outer or sealed secondary containers are found upon arrival to have been opened or used are identified as such, and are physically separated from other prescription drugs and stored, in such a way that no cross-contamination or confusion is possible, until they are destroyed or returned to the supplier; and

(17) If the conditions under which a prescription drug has been returned cast doubt on the drug's safety, identity, strength, quality, or purity, then the drug is either destroyed or returned to the supplier, unless examination, testing, or other investigation proves that the drug meets appropriate standards of safety, identity, strength, quality, and purity. In determining whether the conditions under which a drug has been returned cast doubt on the drug's safety, identity, strength, quality, or purity, the wholesale distributor shall consider, among other things, the conditions under which the drug has been held, stored, or shipped before or during its return and the condition of the drug and its container, carton, or labeling as a result of storage or shipping.

(d) Written policies and procedures for the receipt, security, storage, inventory, and distribution of prescription drugs, including policies and procedures for identifying, recording, and reporting losses or thefts and for correcting all errors and inaccuracies in inventories shall be submitted. Written policies and procedures shall include:

(1) A procedure whereby the oldest approved stock of a prescription drug is distributed first. The procedure may permit deviation from this requirement if the deviation is temporary and appropriate;

(2) A procedure for handling recalls and withdrawals of prescription drugs. The procedures shall be adequate to deal with recalls and withdrawals caused by:

(A) Any action initiated at the request of the department of health, the Food and Drug Administration, or any other federal, state, or local law enforcement or other government agency;

(B) Any voluntary action by the manufacturer to remove defective or potentially defective drugs from the market; or

- (C) Any action undertaken to promote public health and safety by replacing existing merchandise with an improved product or new package design;
- (3) A procedure to ensure that the distributor prepares for, protects against, and handles properly any crisis that affects security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or in other emergencies; and
- (4) A procedure to ensure that all outdated prescription drugs are segregated from other drugs and either returned to the manufacturer or destroyed. This procedure shall require written documentation of the disposition of outdated prescription drugs. The documentation shall be maintained for five years after disposition of the outdated drugs. [Eff and comp 12/24/92; comp 12/25/04; am and comp 06/22/15; comp]
(Auth: HRS §461-4.5) (Imp: §461-4.5)

§16-95-31 Miscellaneous permit. An application for a miscellaneous permit shall be filed at least fifteen days before a board meeting and shall be accompanied by the application fee, which shall not be refunded, and required fees. [Eff and comp 12/24/92; comp 12/25/04; am and comp 06/22/15; comp] (Auth: HRS §461-4.5) (Imp: HRS §§461-4.5, 461-16)

§16-95-32 Criminal conviction. When an applicant or the applicant's personnel has been convicted of a crime related to the pharmacy profession and it is determined that the conviction may be considered under section 831-3.1, HRS, the board may request the following documents from the applicant:

- (1) Copies of any court records, judgments, orders, or other documents that state the facts and statutes upon which the applicant was convicted, the judgment of the court with regard to that conviction, the sentence imposed, and the record of compliance with the sentence imposed; and
- (2) Affidavits from any parole officer, employer, or other persons who can attest to a firm belief that the applicant has been sufficiently rehabilitated to warrant the public trust. [Eff and comp 12/24/92; comp 12/25/04; am and comp 06/22/15; comp] (Auth: HRS §461-4.5) (Imp: HRS §§461-4.5, 461-21)

§16-95-32.2 Denial or rejection of application. (a) An application for issuance of a license or permit shall be denied when an application is insufficient or incomplete; is not accompanied with the required fees; or when an applicant has failed to provide satisfactory proof that the applicant meets the requirements for the license or permit. In addition, the board may deny issuance of a license or permit in accordance with sections 436B-19 and 461-21, HRS, and section 16-95-110.

(b) An application shall be automatically rejected and the applicant shall be denied a license or permit when the applicant, after having been notified to do so:

- (1) Fails to pay the appropriate fees within sixty days from notification; or
- (2) After being requested by the board, fails to provide any information or documentation concerning the requirements for licensure or permit within sixty days of the request.

(c) Any application which has been denied or rejected shall remain in the possession of the board and shall not be returned.

(d) An applicant, whose application has been denied or rejected, may file for an administrative hearing pursuant to chapter 91, HRS. [Eff and comp 12/24/92; comp 12/25/04; am and comp 06/22/15; comp] (Auth: HRS §461-4.5) (Imp: HRS §§461-4.5, 461-5, 461-14, 461-15, 461-21)

SUBCHAPTER 3

EDUCATION AND EXPERIENCE DOCUMENTATION

§16-95-33 Education documentation for a pharmacist license. (a) The board will accept the following as verification of education requirements for a pharmacist:

- (1) A certified copy of an official transcript showing the date of graduation from a college of pharmacy which has received candidate status with or has been accredited by the ACPE[.];
- (2) In lieu of the [above] requirements of paragraph (1), at the time of application, the board will accept a certified letter from the college registrar or dean verifying that the applicant is on track to graduate. However, prior to the issuance of the license, the applicant shall have complied with chapter 461, HRS, and shall have provided a certified copy of an official transcript from a college of pharmacy,

which has received candidate status with or has been accredited by the ACPE and has been conferred a degree.

(b) The board will accept the following as verification of education requirements from a foreign graduate:

- (1) A certified copy of the foreign diploma or a certified copy or official transcript showing the date of graduation from the foreign college of pharmacy; and
- (2) An original or certified copy of the certificates evidencing the passage of the FPGEE examination. [Eff 5/16/64; am 6/11/77; am and ren §16-95-33, 6/22/81; am and comp 12/24/92; comp 12/25/04; am and comp 06/22/15; comp]
(Auth: HRS §461-4.5) (Imp: HRS §461-5)

§16-95-33.2 Education documentation for a pharmacy intern permit. The board will accept the following as verification of education requirements for a pharmacy intern permit:

- (1) A [certified copy of a diploma or a] certified copy of an official transcript showing the date of graduation from a college of pharmacy which has received candidate status with or has been accredited by the ACPE; or
- (2) A verification letter from the college dean or registrar that the applicant [has completed the first year of pharmacy school] is currently enrolled at a school or college of pharmacy which has received candidate status with or has been accredited by the ACPE. [Eff and comp 12/24/92; comp 12/25/04; am and comp 06/22/15; am and comp] (Auth: HRS §461-4.5) (Imp: HRS §§461-4.5, 461-5, 461-9)

Historical note: The substance of this section is based substantially upon sections 16-95-44 and 16-95-45. [Eff 5/16/64; am 8/7/70; am 6/11/77; am and ren §§16-95-44, 16-95-45, 6/22/81; R 12/24/92]

§16-95-34 Experience verification for a pharmacist by examination. (a) An applicant shall have at least fifteen hundred hours of practical experience under the supervision of a registered pharmacist. Practical experience shall have been acquired subsequent to graduation or completion of the first year's attendance at a school or college of pharmacy which has received candidate status with or has been accredited by the ACPE and may include:

- (1) Post graduate experience;
- (2) Supervised practice during vacations;
- (3) Experience gained concurrent with attendance at a pharmacy school; and
- (4) Experience gained during pharmacy school coordinated externships and clinical clerkship programs.

(A) For purposes of this section, externship means a pharmacy school coordinated practical experience program which was:

- (i) Conducted outside the classroom in licensed pharmacies;
- (ii) Developed to provide a broad experience in all distributive and patient oriented practice tasks;
- (iii) Supervised by a licensed preceptor or licensed pharmacist with a one to one teaching and supervisory relationship between the preceptor or pharmacist and the extern; and
- (iv) A component of the pharmacy school's curriculum for which academic credit is given.

(B) For purposes of this section, clinical clerkship means a pharmacy school coordinated practical experience program which:

- (i) Was conducted in patient care settings where the student is provided with actual experience in patient care;
- (ii) Placed emphasis on all phases of drug therapy relative to the disease states of individual patients;
- (iii) Provided clinical service on either an outpatient or an inpatient basis as a primary student activity;
- (iv) May minimize general drug distributive functions; and
- (v) Is a component of the pharmacy school's curriculum for which academic credit is given.

(b) The board will accept a written statement of practical experience, signed by an official of the licensing authority of another state, the pharmacy school, the employing pharmacy, or the supervising pharmacist who is licensed in any state or territory of the United States, attesting that the applicant worked under the immediate supervision of the pharmacist in a pharmacy in the United States or territory of the United States, selling drugs, billing prescriptions, preparing pharmaceutical preparations, and keeping records and making reports required

under state and federal statutes. The statement shall also show the beginning and ending dates of the applicant's practical experience and the total number of hours worked.

(c) The board will not accept any pro gratis practical experience hours granted upon graduation for which an applicant has not actually worked. [Eff 5/16/64; am 6/11/77; am and ren §16-95-34, 6/22/81; am and comp 12/24/92; comp 12/25/04; am and comp 06/22/15; am and comp]
(Auth: HRS §461-4.5) (Imp: HRS §§461-4.5, 461-5)

Historical note: The substance of this section is based substantially upon sections 16-95-44, 16-95-45 and 16-95-47. [Eff 5/16/64; am 8/7/70; am 6/11/77; am and ren §§16-95-44, 16-95-45, 16-95-47, 6/22/81; R 12/24/92]

§16-95-35 Repealed. [R 12/24/92]

§16-95-36 Experience verification for a pharmacist license by reciprocity or temporary pharmacist license. The applicant for a pharmacist license by reciprocity shall provide proof [or] of current licensure and at least fifteen hundred hours of practical experience as a registered pharmacist within five years preceding the date of application in the form of:

- (1) A statement signed by an official of the licensing authority from another state or territory of the United States, attesting that the license is current, is valid, unencumbered, and in good standing and a statement signed by the applicant's employer or employers attesting that the applicant has practiced pharmacy as a licensed pharmacist for fifteen hundred hours or more within the five years preceding the date of application; or
- (2) If the applicant is self-employed, a statement by the applicant attesting that the applicant owned and operated an independent pharmacy and that the applicant has practiced pharmacy as a licensed pharmacist for fifteen hundred hours or more within the five years preceding the date of application. [Eff and comp 12/24/92; comp 12/25/04; am and comp 06/22/15; am and comp] (Auth: HRS §461-4.5) (Imp: HRS §§461-4.5, 461-5, 461-8.5)

SUBCHAPTER 4 -- REPEALED

§16-95-39 Repealed. [R 12/24/92]

§16-95-40 Repealed. [R 12/24/92]

§16-95-41 Repealed. [R 9/28/04]

§16-95-42 Repealed. [R 9/28/04]

§16-95-43 Repealed. [R 9/28/04]

SUBCHAPTER 5 -- REPEALED

§16-95-44 Repealed. [R 12/24/92]

§16-95-45 Repealed. [R 12/24/92]

§16-95-46 Repealed. [R 12/24/92]

§16-95-47 Repealed. [R 12/24/92]

§16-95-48 Repealed. [R 12/24/92]

§16-95-49 Repealed. [R 12/24/92]

§16-95-50 Repealed. [R 12/24/92]

SUBCHAPTER 6 – REPEALED

§16-95-51 Repealed. [R 12/24/92]

§16-95-52 Repealed. [R 12/24/92]

§16-95-53 Repealed. [R 12/24/92]

§16-95-54. Repealed. [R 12/24/92]

SUBCHAPTER 7 – REPEALED

§16-95-55 Repealed. [R 12/24/92]

§16-95-56 Repealed. [R 12/24/92]

§16-96-57 Repealed. [R 12/24/92]

§16-95-58 Repealed. [R 12/24/92]

§16-95-59 Repealed. [R 12/24/92]

§16-95-60 Repealed. [R 12/24/92]

§16-95-61 Repealed. [R 12/24/92]

§16-95-62 Repealed. [R 12/24/92]

§16-95-63 Repealed. [R 12/24/92]

§16-95-64 Repealed. [R12/24/92]

SUBCHAPTER 8 – REPEALED

§16-95-65 Repealed. [R 12/24/92]

SUBCHAPTER 9

RENEWAL

§16-95-70 Repealed [R 03/12/15]

§16-95-71 Date for filing. All licensees and permit holders shall complete and submit a renewal application together with the required fees on or before December 31 of the odd-numbered year. A completed renewal application with the required fees sent by the United States mail shall be considered timely filed if the envelope bears a postmark no later than December 31 of the odd-numbered year or if filed on-line with the department by that date. [Eff and comp 12/24/92; comp 12/25/04; am and comp 06/22/15; comp] (Auth: HRS §461-4.5) (Imp: HRS §§461-8, 461-16)

Historical note: The substance of this section is based in part upon section 16-95-15. [Eff 5/16/64; am and ren §16-95-15, 6/22/81; R 12/24/92]

§16-95-72 Automatic forfeiture for failing to renew. The failure to timely renew the license or permit or to pay the applicable fees or paying fees with a check which is dishonored upon first deposit shall cause the license or permit to be automatically forfeited. [Eff and comp 12/24/92; comp 12/25/04; comp 06/22/15; comp] (Auth: HRS §461-4.5) (Imp: HRS §§461-4.5, 461-8, 461-16, Act 196, SLH 1992)

§16-95-73 Restoration of forfeited license or permit. (a) A forfeited pharmacist license may be restored within three years of the forfeiture provided the applicant:

- (1) Within the first year of the forfeiture:
 - (A) Applies for restoration on a form provided by the board;
 - (B) Pays the penalty, current biennial and renewal fees; and
 - (C) Complies with the continuing education requirements under section 461-8, HRS;
- (2) Within the second and third year of the forfeiture:
 - (A) Applies for restoration on a form provided by the board;
 - (B) Submits an official statement signed by the applicant's employer or employers or if the applicant was self-employed, a statement signed by the applicant attesting that the applicant has been employed for a minimum of fifteen hundred hours as a licensed pharmacist within the five years preceding the date of application;
 - (C) If applicable, provides a statement signed by a licensing official of each other state or territory of the United States in which a license is held or once held, indicating that the license is current, valid, unencumbered, and in good standing or, if the license is not current, valid, and unencumbered, [and if] whether any disciplinary action had been taken against the licensee. The applicant shall be responsible for obtaining any additional information required by the board to review the reasons the license is not current, valid, unencumbered, or in good standing;
 - (D) Takes and passes the Hawaii MPJE; [and]
 - (E) Pays the penalty, current biennial, and renewal fees; and[;]
 - (F) Complies with the continuing education requirements under section 461-8, HRS.

(b) A forfeited pharmacy or miscellaneous permit, or a wholesale distributor license may be restored within three years of the forfeiture, provided the applicant:

- (1) Applies for restoration on a form provided by the board;
- (2) Pays all penalty fees, current biennial, and renewal fees;
- (3) Submits a signed statement to report changes, if any, to the information on file with the board; and
- (4) In the case of a wholesale distributor, passes a facility inspection conducted by the department of health.

(c) The board may deny restoration of a forfeited license or permit if during the time the license or permit was forfeited, the license or permit holder engaged in any activities identified in section 436B-19 or 461-21, HRS, or both.

(d) A person whose license or permit has been forfeited and who fails to restore the license or permit as provided in this section, shall apply as a new applicant. [Eff and comp 12/24/92; comp 12/25/04; am and comp 06/22/15; am and comp] (Auth: HRS §461-4.5) (Imp: HRS §§461-4.5, 461-8, 461-16)

Historical note: The substance of this section is based substantially upon sections 16-95-16 and 16-95-17. [Eff 5/16/64; am 3/16/80; am and ren §§16-95-16, 16-95-17, 6/22/81; R 12/24/92]

§16-95-74 Board may refuse to renew or restore a license or permit. (a) The board may refuse to renew or restore a license or permit for failure or refusal of the licensee or permit holder to:

- (1) Properly complete or timely submit the renewal application form and submit all fees and required documentation;
- (2) Meet and maintain the conditions and requirements necessary to qualify for the issuance of the license or permit; and
- (3) Comply with chapter 461, HRS, and this chapter.

(b) An applicant, whose application has not been renewed or restored for the [above reasons,] reasons stated in subsection (a), may file for an administrative hearing pursuant to chapter 91, HRS. [Eff and comp 12/24/92; comp 12/25/04; am and comp 06/22/15; am and comp] (Auth: HRS §461-4.5) (Imp: HRS §461-4.5)

SUBCHAPTER 10

SCOPE OF PRACTICE

§16-95-79 Supervision by a registered pharmacist. (a) A registered pharmacist shall immediately supervise all activities and operations of a pharmacy, and immediately supervise the functions and activities of pharmacy interns and pharmacy technicians to ensure that all functions and activities are performed in accordance with laws and rules governing the practice of pharmacy.

(b) A pharmacist either employed within an institutional facility or providing services to an institutional facility shall be responsible for ensuring that

the institutional facility establishes, maintains, and operates in accordance with written policies and procedures as outlined in section 16-95-80. [Eff and comp 12/24/92; comp 12/25/04; am and comp 06/22/15; comp]
(Auth: HRS §461-4.5) (Imp: HRS §§461-4.5, 461-9, 461-10, 461-11, 461-12, 461-13)

Historical note: The substance of this section is based in part on section 16-95-46. [Eff 5/16/64; am and ren §16-95-46, 6/22/81; R 12/24/92]

§16-95-80 Physical presence of a registered pharmacist. (a) A registered pharmacist shall be physically present during the hours of operation of a prescription area.

(b) At any time a registered pharmacist is not in the prescription area, (except in cases of emergencies), the entire stock of prescription drugs shall be secured from access to unauthorized persons and the means of access shall only be in the control of the pharmacist.

(c) A pharmacist in an institutional pharmacy shall ensure that written policies and procedures have been established by the institutional facility for providing drugs to the medical staff and other authorized personnel of the institutional facility by use of night cabinets, and access to the institutional pharmacy and emergency kits when the pharmacist is not in the area. A "night cabinet" is a cabinet, room, or any other enclosure not located within the prescription area. The written policies and procedures shall provide that a pharmacist shall be "on call" during those periods when night cabinets are utilized and shall provide policies and procedures regarding the following:

- (1) Security of the night cabinet to ensure that the night cabinet is sufficiently secured to deny access to unauthorized persons by force or otherwise;
- (2) The development and maintenance of an inventory listing of all drugs included in the cabinet and the requirement that the pharmacist ensures, at a minimum, that:
 - (A) Drugs available therein are properly labeled;
 - (B) Only prepackaged drugs are available therein in amounts sufficient for immediate therapeutic requirements; and
 - (C) An appropriate practitioner's prescription regarding the dispensing of drugs exists[.];
- (3) Access to the pharmacy. In the event a drug is not available from floor supplies or night cabinets and the drug is required to treat the immediate needs of a patient whose health would otherwise be

jeopardized, the drug may be obtained from the institutional pharmacy in accordance with this subsection. Authorized personnel may remove drugs therefrom provided:

- (A) The authorized personnel are designated, in writing, by the institutional facility;
 - (B) The authorized personnel have been instructed by the pharmacist of the proper methods of access, and the records and procedures regarding removal of the drugs; and
 - (C) The authorized personnel are required to complete a form which shall include the patient's name and room number, the name of drug, drug strength, dosage, quantity of drug removed, date, time, and the signature of the authorized personnel[.]; and
- (4) The prompt detection, removal, disposal, handling, and replacement, if possible, of a drug [which] that has been recalled by the U.S. Food and Drug Administration or the manufacturer to ensure that recalled drugs are removed from the pharmacy's inventory, emergency kit, night cabinet, remote dispensing machine, or from the patient if deemed necessary according to the federal and manufacturer's guidelines. [Eff and comp 12/24/92; comp 12/25/04; am and comp 06/22/15; am and comp] (Auth: HRS §461-4.5) (Imp: HRS §§461-1, 461-4.5, 461-9, 461-10, 461-11, 461-12)

Historical note: The substance of this section is based in part on section 16-95-4. [Eff 5/16/64; am and ren §16-95-4, 6/22/81; R 12/24/92]

§16-95-81 Emergency kits. (a) A pharmacist may provide emergency kits to an institutional facility which does not have an institutional pharmacy to meet the immediate therapeutic needs of patients.

(b) The pharmacist and the medical staff of the institutional facility shall jointly determine the drugs, and quantity, to be included in the emergency kit.

(c) The exterior of emergency kits shall be labeled by the pharmacist to clearly indicate that the kit is an emergency drug kit. [there] There shall be a listing of the drugs contained in the emergency kit, including name, strength, quantity, and expiration date of the drugs, which shall be maintained and kept in an accessible location near to the emergency kit, along with the name, address, and telephone number of the supplying pharmacy.

(d) All drugs contained within the emergency kit shall be labeled to identify, at a minimum, the brand or generic name, strength, route of administration, if other than oral, quantity, source, manufacturer, if generic, lot number, expiration date, and other information as may be required by the medical staff of the institutional facility to prevent any misunderstanding or risk of harm to the patients of the facility.

(e) On or before the earliest expiration date of any drug contained in the emergency kit, the pharmacist shall replace any expired drugs, relabel, and reseal the kit.

(f) The pharmacist shall ensure that the institutional facility has established written policies and procedures which shall provide, but not be limited to, policies and procedures covering:

- (1) Storage of emergency kits in secured areas which shall be in an environment for preservation of the drugs;
- (2) Procedures to ensure that drugs are removed only pursuant to a valid prescription or practitioner's order and recordation of any removal; and
- (3) Procedures to notify the pharmacist within twenty-four hours of any removal of any drug from the emergency kit. [Eff and comp 12/24/92; comp 12/25/04; am and comp 06/22/15; am and comp _____] (Auth: HRS §461-4.5) (Imp: HRS §§461-1, 461-9, 461-10, 461-11, 461-12)

§16-95-82 Valid prescriptions. (a) A pharmacist may fill and dispense prescriptions provided the prescription is valid. A valid prescription shall be legibly written and contain, at [the] a minimum, the following information:

- (1) The date of issuance;
- (2) The original signature of the practitioner;
- (3) The practitioner's name and business address;
- (4) The name, strength, quantity, and specific instructions for the drug to be dispensed;
- (5) The name and address of the person for whom the prescription was written or the name of the animal and address of the owner of the animal for which the drug is prescribed, unless the pharmacy filling the prescription has such address on file;
- (6) The room number and route of administration if the patient is in an institutional facility; and
- (7) If refillable, the number of allowable refills.

(b) Except where a written prescription is required by law, a practitioner or the practitioner's agent may use a phone order, provided:

- (1) Only a pharmacist or a pharmacy intern shall receive the oral prescription;
- (2) The oral prescription shall be immediately reduced to writing, including the practitioner's oral code designation, by the pharmacist or pharmacy intern and shall be kept on file for five years; and
- (3) The oral prescription contains all of the information required under subsection (a).

(c) A faxed prescription for a noncontrolled substance sent by a practitioner or the practitioner's agent is acceptable provided it contains all of the information required under subsection (a) and is kept on file for five years.

(d) Any pharmacist shall comply with any applicable state or federal laws or rules governing the validity of prescriptions. [Eff and comp 12/24/92; comp 12/25/04 ; am and comp 06/22/15; am and comp]
(Auth: HRS §461-4.5) (Imp: HRS §§461-11, 461-13)

Historical note: The substance of this section is based in part upon sections 16-95-9 and 16-95-10. [Eff 5/16/64; am and ren §§16-95-9, 16-95-10, 6/22/81; R 12/24/92]

§16-95-83 Substitution; drug product selection. (a) It shall be unlawful to dispense a different drug in place of the drug prescribed without the express consent of the person prescribing.

(b) Drug product selection shall comply with part VI of chapter 328, HRS. [Eff and comp 12/24/92; comp 12/25/04; am and comp 06/22/15; comp] (Auth: HRS §461-4.5) (Imp: HRS §§328-92, 328-94, 328-97, 328-98, 461-11, 461-13, 328)

Historical note: The substance of this section is based in part upon section 16-95-83 is based substantially upon §16-95-11. [Eff 5/16/64; am and ren §16-95-11, 6/22/81; R 12/24/92]

§16-95-84 Transfer of prescriptions. (a) Transfers of prescription information for the purpose of initial fill or refill dispensing is permissible between pharmacies provided the pharmacist transferring the prescription provides all information necessary for a valid prescription, and records on the prescription, the name and location of the pharmacy receiving the prescription, the

name of the pharmacist receiving the prescription information, the date of transfer, and the name of the pharmacist transferring the prescription, or [note] notes the pharmacist's name on the electronic files, and [record] records that the prescription is inactivated or made void for future refills at the location from which it is being transferred.

(b) The pharmacist receiving the transferred prescription information shall indicate the name of the pharmacist transferring the prescription as well as the transferring pharmacist's or pharmacy name, the transferring pharmacy's name, location, and original prescription number, the original date the prescription was written, the number of refills or quantity remaining on the prescription, and the last date the prescription was filled.

(c) All records of transferred prescriptions shall be maintained for a period of five years from the date of filling or refilling. [Eff and comp 12/24/92; comp 12/25/04; am and comp 06/22/15; am and comp]
(Auth: HRS §461-4.5) (Imp: HRS §§461-10, 461-11, 461-13)

§16-95-85 Scope of practice of a pharmacy intern. A pharmacy intern may perform all functions under the definition of "practice of pharmacy" as stated in section 461-1, HRS, except where prohibited by any state or federal law or rule and excluding the final drug verification before it is dispensed. The pharmacy intern shall at all times be under the immediate supervision of a licensed or registered pharmacist. [Eff and comp 06/22/15; am and comp] (Auth: HRS §461.9) (Imp: HRS §§461-4.5, 461-9)

§16-95-86 Scope of practice of a pharmacy technician. A pharmacy technician may perform the following tasks, not requiring professional judgment, under the immediate supervision of a pharmacist:

- (1) Process prescription labels, drug packaging, stocking, delivery, record keeping, pricing, documentation of third party reimbursements, and preparing, labeling, compounding, storing, and providing medication; and
- (2) Medication preparation is permissible provided that the pharmacy technician:
 - (A) Has a working knowledge of the pharmaceutical medical terms, abbreviations, and symbols commonly used in the prescribing, dispensing, and charting of medications;
 - (B) Is able to perform the arithmetic calculations required for the usual dosage determination and solution preparation;

- (C) Has a thorough knowledge and understanding of the pharmacy technician's duties and responsibilities, including standards of ethics and applicable laws and regulations governing the practice of pharmacy;
- (D) Has a working knowledge of drug dosages, route of administration, and dosage forms and therapeutics;
- (E) Has a working knowledge of the procedures and operations relating to the manufacturing, packaging, and labeling of drug products; and
- (F) Has an appropriate working knowledge of the procedures and operations relating to aseptic compounding and parenteral admixture operations. [Eff and comp 12/24/92; comp 12/25/04; am and comp 06/22/15; am and comp] (Auth: HRS §461-4.5) (Imp: HRS §§461-9, 461-10, 461-11)

§16-95-87 Return or exchange of drugs prohibited. No prescription drug shall be accepted for return or exchange after the drug has been taken from the premises where dispensed or sold by prescription. [Eff and comp 12/24/92; comp 12/25/04; am and comp 06/22/15; comp] (Auth: HRS §461-4.5) (Imp: HRS §461-11)

Historical note: Section 16-95-87 is substantially identical to section 16-95-12. [Eff 5/15/64; am and ren §16-95-12, 6/22/81; R 12/24/92]

SUBCHAPTER 11

RECORD KEEPING REQUIREMENTS

§16-95-93 Records of dispensing. (a) Records of dispensing for original and refill prescriptions are to be made and kept by pharmacies for five years and, in addition to the requirements of section 16-95-82, shall include but not be limited to the following:

- (1) Quantity prescribed and quantity dispensed;
- (2) Date of dispensing;
- (3) Serial number or, if an institution, equivalent control system;
- (4) Identification of the pharmacist responsible for dispensing; and
- (5) Record of refills to date.

(b) An institutional pharmacy will have fulfilled the requirements of this section if the information required by [paragraphs (1) to (4) of subsection (a)] subsection (a)(1) to (4) is kept on accurate patient profiles or medication administration records showing all drugs administered to the patient for five years; and the institutional facility keeps the original patient charts evidencing the prescription orders and medication administration records in the institutional facility's files for at least five years. [Eff and comp 12/24/92; comp 12/25/04; am and comp 06/22/15; am and comp] (Auth: HRS §461-4.5) (Imp: HRS §§461-4.5, 461-10, 461-11, 461-13)

§16-95-94 Automated data processing systems. As an alternative to procedures set forth in section 16-95-93, an ADP system may be employed for the record keeping system provided the following conditions have been met:

- (1) The ADP system shall have the capability of producing hard copy documents of all drug orders of original and refilled prescription information. The hard copy produced must be of a print size that is readable without the aid of any special device;
- (2) Information to be kept on the ADP system shall include, but not be limited to the information required in section 16-95-82, valid prescriptions, and section 16-95-93, records of dispensing;
- (3) The pharmacist responsible for entries into the ADP system shall ensure that the information entered into the computer is accurate and complete;
- (4) The documentation used to satisfy the above requirements shall be provided to the pharmacy within seventy-two hours of the date of dispensing;
- (5) An auxiliary record keeping system shall be established for the documentation of refills in the event the ADP system is inoperative for any reason. The auxiliary system shall ensure that all refills are authorized by the original prescription and that the maximum number of refills is not exceeded. When the ADP system is restored to operation, the information regarding drug orders and prescriptions filled and refilled during the inoperative period shall be entered in the ADP system within ninety-six hours;
- (6) Any pharmacy using an ADP system shall comply with all applicable state and federal laws, rules, and regulations; and
- (7) A pharmacy shall make arrangements with the supplier of data processing services or materials to assure that the pharmacy continues to have adequate and complete records for any drug

order, prescription, and dispensing if the relationship with such supplier terminates for any reason. The pharmacy shall assure continuity in the maintenance of records. [Eff and comp 12/24/92; comp 12/25/04; am and comp 06/22/15; comp] (Auth: HRS §461-4.5) (Imp: HRS §§461-9, 461-10, 461-11, 461-12, 461-13)

§16-95-95 Security of records. To maintain the confidentiality of patient's prescriptions or drug orders, there shall exist adequate safeguards for security of the records whether kept manually or in an ADP system. [Eff and comp 12/24/92; comp 12/25/04; comp 06/22/15; comp] (Auth: HRS §461-4.5) (Imp: HRS §§461-9, 461-10, 461-11, 461-12, 461-13)

§16-95-96 Record keeping for wholesale prescription drug distributors.

(a) Wholesale distributors shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of prescription drugs. These inventories and records shall include the following information:

- (1) The source of the drugs, including the name and principal address of the seller or transferor, and the address of the location from which the drugs were shipped;
 - (2) The identity and quantity of the drugs received and distributed or disposed of; and
 - (3) The dates of receipt and distribution or other disposition of the drugs.
- (b) The wholesale distributor shall also maintain records to reflect:
- (1) Storage. All prescription drugs shall be stored at appropriate temperatures and under appropriate conditions in accordance with the requirements, if any, in the labeling of the drugs, or in accordance with the standards regarding conditions and temperatures for the storage of prescription drugs.
 - (A) If no storage requirements are established for a prescription drug, the drug may be held at controlled room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality, and purity are not adversely affected.
 - (B) Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices, or

logs shall be used to document the proper storage of prescription drugs.

- (2) Examination of materials.
 - (A) Documentation shall be maintained for at least five years demonstrating that each outside shipping container of prescription drugs was examined visually to confirm the identity of the drugs and to prevent the acceptance of contaminated prescription drugs or prescription drugs that are otherwise unfit for distribution shall be maintained. This examination shall be adequate to reveal container damage that would suggest possible contamination or other damage to the contents.
 - (B) Documentation shall be maintained for at least five years demonstrating that each outgoing shipment of prescription drugs was inspected carefully to confirm the identity of the drugs and to ensure that no prescription drugs were delivered that have been damaged in storage or held under improper conditions.
- (3) Returned, damaged, outdated, deteriorated, misbranded, and adulterated prescription drugs.
 - (A) Prescription drugs that are damaged, outdated, deteriorated, misbranded, or adulterated shall be physically separate from other prescription drugs and stored, in such a way that no cross-contamination or confusion are possible, until they are destroyed or returned to the supplier.
 - (B) Any prescription drugs whose immediate or sealed outer or sealed secondary containers are found upon arrival to have been opened or used shall be identified as such, and shall be physically separated from other prescription drugs and stored, in such a way that no cross-contamination or confusion are possible, until they are destroyed or returned to the supplier.
 - (C) If the conditions under which a prescription drug has been returned cast doubt on the drug's safety, identity, strength, quality, or purity, then the drug shall be either destroyed or returned to the supplier, unless examination, testing, or other investigation proves that the drug meets appropriate standards of safety, identity, strength, quality, and purity. In determining whether the conditions under which a drug has been returned cast doubt on the drug's safety, identity,

quality, or purity, the wholesale distributor shall consider, among other things, the conditions under which the drug has been held, stored, or shipped before or during its return and the condition of the drug and its container, carton, or labeling as a result of storage or shipping.

(c) Inventories and records shall be made available for inspection and photocopying by the department or any authorized federal, state, or local law enforcement officials for a period of five years following disposition of the drugs.

(d) Records described in this section that are kept at the inspection site or that can be retrieved immediately by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two working days of a request by the department or any authorized official of a federal, state, or local law enforcement agency. [Eff and comp 12/24/92; comp 12/25/04; am and comp 06/22/15; comp] (Auth: HRS §461-4.5)

SUBCHAPTER 12

ADVERTISING PRACTICES

§16-95-101 Procedures to advertise prescription drugs. (a) Advertising of prescription drugs is to provide the public with information in a manner consistent with public health and safety. Prescription drug advertising is for the purpose of providing information and not to create a demand for drugs. A pharmacy, if it chooses to advertise, will advertise prescription prices, drugs, and reference to prescription prices and drugs in accordance with this section:

- (1) A pharmacy may post its prices for prescription drugs on a prescription price poster. The form of the posting shall be legible[.];
- (2) A pharmacy may advertise prescription prices by publication or display in any media. For purposes of this section, "media" includes but is not limited to newspapers, magazines, calling cards, and directories, including all listings in telephone directories[.];
- (3) Any advertisement for prescription drugs shall be made in three commonly prescribed quantities[.];
- (4) Any advertisement for prescription drugs or prices shall be truthful, reasonable, fully informative, and understandable to the public and shall not be false or misleading[.];

(5) Any advertisement for prescription drugs shall state the time period during which the prices advertised will be effective[.]; end

(b) The price for prescription drugs advertised shall not be below cost as defined in section 481-3, HRS, as amended.

(c) A pharmacist or the pharmacist's agent upon request however communicated to the pharmacist shall give the current price for any drug sold at the pharmacist's pharmacy for informational purposes only and the price quoted shall not be false or misleading but must be truthful, reasonable, informative, and understandable to the public. [Eff and comp 12/24/92; comp 12/25/04; am and comp 06/22/15; am and comp] (Auth: HRS §§461-1, 461-4.5, 461-21) (Imp: HRS §§461-4.5, 461-21)

Historical note: The substance of this section is substantially identical to sections 16-95-5, 16-95-6 and 16-95-7. [Eff 5/16/64; 9/1/74; am 2/3/78; am and ren §§16-95-5, 16-95-6, 16-95-7, 6/22/81; R 12/24/92]

§16-95-102 Procedures to advertise related pharmacy services.

Advertising of related pharmacy services is to provide the public with information in a manner consistent with public health and safety and shall be truthful, reasonable, fully informative, and understandable to the public and shall not be false or misleading. A pharmacy may advertise that it performs the following services:

- (1) Personal medication record. To qualify as providing this service, a system must be maintained which enables the immediate retrieval of information concerning individual pharmacy patients which is of sufficient scope to enable a determination by the pharmacist of rational drug utilization. In accomplishing this purpose the design and use of the system must be to ascertain and record all patient information necessary to assist the pharmacist in avoiding adverse drug reactions, drug-drug interactions, and inappropriate use of drugs.
- (2) Professional consultation with patient and practitioners. The availability of patient consultation means that the pharmacist routinely informs the patient, either directly or indirectly, on what the patient is taking, how to take it, what to expect, what special precautions should be observed, and how the medication is to be properly stored. This service is to assure that the patient understands the proper use of the drug and that the practitioner's intentions will materialize in a drug regimen of optimal

effectiveness, safety, and duration. Practitioner consultation denotes the availability and practice of pharmacists acting as drug information specialists who discuss with practitioners drug effects interactions, side effects, and drugs of choice for diseased conditions.

- (3) "Emergency prescription service" means the providing of pharmaceutical services, which includes prescription dispensing, at any time after usual pharmacy hours. This means that a pharmacist is available, can be readily contacted, and will respond with reasonable expediency at any hour, day or night, in a manner consistent with security and personal safety.

Should the pharmacy choose to advertise the performance of the foregoing services, it shall conform with the definition of that service as herein set forth. [Eff and comp 12/24/92; comp 12/25/04; am and comp 06/22/15; comp] (Auth: HRS §461-4.5) (Imp: HRS §§461-1, 461-4.5, 461-21)

Historical note: The substance of this section is based substantially on section 16-95-5. [Eff 5/16/64; am 2/3/78; am and ren §16-95-5, 6/22/81; R 12/24/92]

§16-95-103 Advertising of controlled substances prohibited. No person shall advertise or promote to the public in any manner the sale of a Scheduled II, III, IV, or V controlled substance as defined in the Federal Controlled Substances Act and the rules promulgated thereunder as well as any other controlled substances as defined in chapter 329, HRS, as amended, and the rules promulgated thereunder by the state department of health. [Eff and comp 12/24/92; comp 12/25/04; comp 06/22/15; comp] (Auth: HRS §461-4.5) (Imp: HRS §461-4.5)

Historical note: The substance of this section is substantially identical to section 16-95-8. [Eff 9/1/74; am 2/3/78; am and ren §16-95-8, 6/22/81; R 12/24/92]

SUBCHAPTER 13

DISCIPLINARY SANCTIONS, APPLICATION DENIAL, HEARINGS, ADMINISTRATIVE PRACTICE AND PROCEDURE

§16-95-110 Grounds for revocation, suspension, refusal to renew or restore, denial, or conditioning of license or permit. (a) In addition to any other acts or conditions provided by law, the board may revoke, suspend, refuse to renew or restore, deny, or condition a license or permit for any one or more of the following acts or omissions:

- (1) Procuring a license or permit through misrepresentation or deceit;
- (2) Failing to meet or maintain the requirements or conditions necessary to qualify for license or permit;
- (3) Conviction of, or pleading nolo contendere to a crime that is substantially related to the qualification, functions, or duties of a pharmacist;
- (4) Committing any act or omission in the practice of pharmacy or wholesale distribution which constitutes dishonesty, fraud, or misrepresentation with the intent to substantially benefit the pharmacist or wholesale distributor or with the intent to substantially injure another person;
- (5) Aiding or abetting an unlicensed person to directly or indirectly evade chapter 461, HRS, or this chapter;
- (6) Failing to maintain records or to make accessible any records as required in subchapter 11;
- (7) Violating any provisions of the department of health or department of public safety;
- (8) Except as provided by law, accepting returns or exchanges of prescription drugs after the drugs have been dispensed;
- (9) Dispensing a different drug or brand in place of the drug or brand prescribed without the express consent of the person prescribing;
- (10) Failing to comply with the state's drug formulary or substitution laws as set forth in part VI of chapter 328, HRS;
- (11) Professional misconduct, gross carelessness, or manifest incapacity;
- (12) Violation of any state or federal law, including violation of a drug, controlled substance, or poison law;
- (13) False, fraudulent, or deceptive advertising;
- (14) Making a false statement on any document submitted or required to be filed by this chapter;

- (15) Habitual intemperance or addiction to the use of habit-forming drugs;
- (16) Violating the provisions of chapter 461, HRS, this chapter, or any order of the board;
- (17) Failure to comply with the pharmaceutical compounding requirements found in [Chapters] chapters 795 (nonsterile preparations) and 797 (sterile preparations) of the United States Pharmacopeia National Formulary, as amended;
- (18) Failure to report, in writing to the licensing authority, any disciplinary decision issued against the licensee or the applicant in another jurisdiction within thirty days of the disciplinary decision.

(b) The board may make recommendations regarding quality improvements to prevent or minimize errors. The board may also fine or impose conditions or limitations upon a license or permit. A hearing on that fine, condition, or limitation may be conducted in accordance with chapter 91, HRS. The violation of any condition or limitation on a license or permit may be cause to impose additional sanctions against the licensee or permittee. Any fine imposed by the board after a hearing in accordance with chapter 91, HRS, shall be no less than \$100 and no more than \$1,000 for each violation, and each day of violation may be deemed a separate violation. [Eff and comp 12/24/92; comp 12/25/04; am and comp 06/22/15; am and comp] (Auth: HRS §461-4.5)
 (Imp: HRS §§461-4.5, 461-17, 461-21, 461-22,)

§16-95-111 Denial. In the event an application for the issuance of a license or permit or for the reinstatement thereof is denied, the board shall notify the applicant by letter of the board's action which shall include a concise statement of the reasons therefor and a statement informing the applicant of the applicant's right to a hearing if the applicant so desires. [Eff and comp 12/24/92; comp 12/25/04; comp 06/22/15; comp] (Auth: HRS §461-4.5) (Imp: HRS §§461-4.5, 461-8, 461-14, 461-21, 461-22)

Historical note: The substance of this section is substantially identical to section 16-95-27. [Eff 5/16/64; am and ren §16-95-27; 6/22/81; R 12/24/92]

§16-95-112 Demand for hearing; proceedings upon demand for hearing.

(a) Any person whose application for a license or permit or whose application for the reinstatement of a license or permit has been denied by the board shall be

entitled to a hearing, provided that a demand for a hearing is filed with the board within sixty days of the date of denial of the application.

(b) If a demand for hearing is filed within the time prescribed, the board shall order a hearing in accordance with chapter 91, HRS, relating to contested cases and unless the context otherwise requires, the rules set forth in chapter 16-201, the rules of practice and procedure of the department. [Eff and comp 12/24/92; comp 12/25/04; am and comp 06/22/15; comp] (Auth: HRS §461-4.5) (Imp: HRS §§91-9, 91-9.5, 91-10, 91-11, 91-12, 461-4.5, 461-21)

Historical note: The substance of this section is substantially identical to sections 16-95-28 and 16-95-29. [Eff 5/16/64; am and ren §§16-95-28, 16-95-29, 6/22/81; R 12/24/92]

§16-95-113 Administrative practice and procedure. The rules of practice and procedure for pharmacies and pharmacists shall be as provided in chapter 16-201, the rules of practice and procedure of the department as adopted, and as may subsequently be amended, which are incorporated by reference and made a part of this chapter. [Eff and comp 12/24/92; comp 12/25/04; comp 06/22/15; comp] (Auth: HRS §461-4.5) (Imp: HRS §§91-2, 461-4.5)

SUBCHAPTER 14

ORAL TESTIMONY

§16-95-118 Oral testimony. (a) The board shall accept oral testimony on any item which is on the 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 before the meeting, and at that time to 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 at the beginning of the testimony shall 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 12/24/92; comp 12/25/04; comp 06/22/15; comp]
 (Auth: HRS §461-4.5) (Imp: HRS §§92-3, 461-4.5)

SUBCHAPTER 15

FEES

§16-95-123 Fees established. The fees are as established in chapter 16-53. The fees for wholesale prescription drug distributors license shall be the same fees as established for a pharmacy in chapter 16-53. [Eff and comp 12/24/92; comp 12/25/04; comp 06/22/15; comp]
 (Auth: HRS §461-4.5) (Imp: HRS §§461-4.5, 26-9)

§16-95-124 Form of fee. The fees, if in the form of a money order or check, shall be made payable to the department [of commerce and consumer affairs]. [Eff and comp 12/24/92; comp 12/25/04; am and comp 06/22/15; am and comp] (Auth: HRS §461-4.5) (Imp: HRS §461-4.5)

§16-95-125 Dishonored checks considered failure to meet requirements.
The dishonoring of any check upon first deposit shall be considered a failure to meet requirements. [Eff and comp 12/24/92; comp 12/25/04; comp 06/22/15; comp] (Auth: HRS §461-4.5) (Imp: HRS §461-4.5)

SUBCHAPTER 16

EMERGENCY CONTRACEPTION COLLABORATIVE AGREEMENT

§16-95-130 Emergency contraception written collaborative agreement. (a) Each arrangement between a licensed pharmacist and a licensed physician relating to the distribution to a patient of emergency contraception drugs shall be documented in a signed collaborative agreement in accordance with the form attached hereto as Exhibit ["A"] A entitled "Emergency Contraception Drug Therapy Collaborative Agreement" dated [1204] December 2004, located at the end of this chapter and made a part of this chapter. The agreement shall be delivered to the board by the licensed pharmacist within ten days of the execution of the agreement by the pharmacist and the physician.

(b) Before a pharmacist may participate in the collaborative agreement, the pharmacist shall have completed an emergency contraception training course approved by the ACPE, curriculum-based programs from an ACPE-accredited college of pharmacy, applicable state or local health department programs, or programs recognized by the board of pharmacy. Training shall include procedures listed in Exhibit ["A"] A, entitled, "Emergency Contraception Drug Therapy Collaborative Agreement", dated December 2004 and located at the end of this chapter, the management of the sensitive communications often encountered in emergency contraception, providing service to minors, quality assurance, referral for additional services, and documentation.

(c) By executing the collaborative agreement, both the physician and pharmacist agree and acknowledge that:

- (1) They accept the responsibility for the distribution of the emergency contraception drugs and that the licensed pharmacist shall dispense only certain drugs approved for emergency contraception by the United States Food and Drug Administration. Some of the currently approved drugs are listed in the attached Exhibit ["B"] B entitled [brands and doses,] "Brands and Doses", dated [0814] August 2004, located at the end of this chapter and made a part of this chapter however, drugs approved for emergency contraception are not limited to this list. Other drugs listed in Exhibit ["B"] B

entitled "Brands and Doses", dated August 2004 and located at the end of this chapter, may be dispensed instead of Plan B® in the following circumstances:

- (A) Plan B® is unavailable;
- (B) Plan B® is not covered under the patient's health insurance plan and another drug listed in Exhibit ["B"] B is covered; or
- (C) The patient chooses another listed drug after the pharmacist advises the patient that side effects are usually less with Plan B®.

The list of approved drugs in Exhibit ["B"] B also shall include adjunctive drugs for treatment of nausea and vomiting that may be associated with emergency contraceptives;

- (2) The licensed pharmacist shall provide the patient with drug information concerning dosage, potential adverse side effects, and follow-up contraceptive care;
 - (3) The collaborative agreement shall be effective for a period of at least two years from the date of its delivery to the board, unless rescinded in writing by either the physician or the pharmacist, with written notice to the other and the board, or unless the pharmacy board invalidates the agreement or changes the terms of the agreement. After the two year period, the agreement shall continue to be valid from month to month unless rescinded, invalidated, or changed as provided herein. The licensed pharmacist or the licensed physician, who rescinds the agreement, shall notify the board within three business days of the rescission. At the time the collaborative agreement is rescinded, the licensed pharmacist shall not have prescriptive authority to dispense emergency contraceptives until another collaborative agreement with a physician is completed and received by the board; and
 - (4) Each drug therapy prescription authorized by the physician and dispensed by the pharmacist shall be documented in a patient profile.
- (d) Additionally, the collaborative agreement between the licensed pharmacist and licensed physician shall include:
- (1) The name, address, and phone number of the licensed pharmacist and pharmacy and the signature of the licensed pharmacist;
 - (2) The name, address, and phone number of the licensed physician and the signature of the licensed physician;

- (3) The purpose of the collaborative agreement, which is to permit emergency contraception drug therapy within one hundred [and] twenty hours of the patient having unprotected sexual contact and to ensure that the patient receives appropriate information from the licensed pharmacist regarding the drug therapy;
 - (4) The procedures, delineated in Exhibit ["A"] A, to be followed by the licensed pharmacist when the patient requests drug therapy, including any applicable referrals;
 - (5) Any limitation agreed upon by both the licensed pharmacist and the licensed physician including[,] but not limited to[,] approved drugs that may not be prescribed to the patient or whether the licensed pharmacist's or the licensed physician's decision shall control in the event of a disagreement on the prescription for a patient;
 - (6) A provision that the licensed pharmacist shall refer the patient to a licensed physician;
 - (7) A statement that the label placed on the drug therapy product shall contain the names of both the pharmacist and the physician signers of this [Agreement] agreement;
 - (8) An informed consent, included in Exhibit ["A"] A, to be used by the licensed pharmacist to inform the patient about the emergency contraception drug therapy. The informed consent shall be signed by both the licensed pharmacist and the patient; and
 - (9) A screening checklist for emergency contraception pills, included in Exhibit ["A"] A, to be filled in by the patient and signed by both the licensed pharmacist and the patient.
- (e) Any modification to an existing collaborative agreement previously delivered to the board shall be submitted to the board by the licensed pharmacist at least ten working days prior to the intended implementation of the changed collaborative agreement.
- (f) The board shall have the authority to reject a collaborative agreement if the board determines that the collaborative agreement is not in compliance with this section or is not in the best interests of the patient.
- (g) The form of the collaborative agreement, the informed consent form, and the screening checklist for emergency contraception drugs attached as Exhibit ["A"] A hereto, shall be made available by the board to licensed pharmacists and licensed physicians." [Eff and comp 12/25/04; am and comp 06/22/15; am and comp] (Auth: HRS §461-4.5)
(Imp: HRS §461-1)

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 16-95, 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.

KERRI OKAMURA
Chairperson, Board of Pharmacy

APPROVED AS TO FORM:

Deputy Attorney General

EXHIBIT ["A"] A

Emergency Contraception Drug Therapy Collaborative Agreement

As a licensed physician authorized to prescribe medications in the State of Hawaii, I authorize the licensed pharmacist _____ to initiate emergency contraception drug therapy according to the terms and conditions that follows and according to Hawaii Administrative Rule §16-95-130. This Agreement provides written terms and conditions for initiating emergency contraception drug therapy in accordance with the laws and rules of the State of Hawaii. This agreement shall be delivered to the Department of Commerce and Consumer Affairs within seven (7) days of the execution of the agreement by the licensed pharmacist and the licensed physician. Any modification to an existing collaborative agreement previously delivered to the Department shall be delivered also to the Department by the licensed pharmacist at least ten working days prior to the intended implementation of the changed collaborative agreement.

Purpose: Permit the use of drug therapy within 120 hours of the patient having unprotected sexual contact and to ensure the patient receives adequate information to successfully complete drug therapy.

Procedures: When the patient's pharmacist requests drug therapy, the pharmacist shall assess the need for drug therapy and/or referral for contraceptive care and reproductive health care. The pharmacist shall determine the following:

1. The date of the patient's last menstrual period to rule out established pregnancy;
2. Whether the elapsed time since unprotected intercourse is less than 120 hours;
3. Whether the patient has been a victim of sexual assault; and
4. That the patient is at least 14 years of age.

Referrals: The licensed pharmacist shall refer the patient to the licensed physician for follow-up. If drug therapy services are not available at the pharmacy, the pharmacist shall refer the patient to another licensed pharmacist. Also, the pharmacist shall refer the patient to see either a medical doctor or family planning clinic provider if:

- A. The pharmacist cannot rule out that the patient is pregnant or if the elapsed time since the patient having unprotected intercourse is greater than 120 hours;
- B. The pharmacist is concerned that the patient may have been exposed to a sexually transmitted disease;
- C. The patient does not have a regular contraceptive method; and
- D. The patient does not have a health care provider and needs free or low cost family planning services.

This Emergency Contraception Drug Therapy collaborative Agreement was developed using the collaborative agreements of Washington and California, who developed their guidelines from the American College of Obstetricians and Gynecologists and the World Health Organization and physicians, pharmacists and nurses. This Agreement has been approved by the Board of Pharmacy, State of Hawaii.

If the pharmacist is concerned that the patient may have contracted a sexually transmitted disease through unprotected sexual activity and/or if the patient indicates that she has been sexually assaulted, the pharmacist may recommend referral to a medical doctor, a family planning clinic, a sexual assault treatment center, the police, or multiple referrals to these entities as the pharmacist may deem appropriate, while providing drug therapy.

While drug therapy can be used repeatedly without serious health risks, patients who request drug therapy shall be referred to a medical doctor or family planning clinic provider for consideration of the use of a regular contraceptive method.

Drug Therapy product selection: The pharmacist shall provide medication from a list of drugs approved for emergency contraception by the United States Food and Drug Administration ("FDA") listed in Exhibit "B" and agreed upon as part of this collaborative Agreement. Plan B® shall be the preferred drug therapy. The list shall include emergency contraceptives and adjunctive medications for treatment of nausea and vomiting associated with emergency contraceptives. The list shall be maintained at the pharmacy and shared by all participants in the agreement. Along with the medication, the pharmacist shall provide drug information concerning dosage, potential adverse effects, and follow-up contraceptive care.

Prescription labeling: The label placed on the drug therapy product shall contain the names of both the pharmacist and the physician signers of this Agreement.

Documentation: Each drug therapy prescription authorized by the physician and initiated by the pharmacist shall be documented in a patient profile.

Training: The pharmacist who participates in the drug therapy shall have received appropriate training that includes programs approved by the American Council of Pharmaceutical Education (ACPE), curriculum-based programs from an ACPE-accredited college of pharmacy, state or local health department programs, or programs recognized by the board of pharmacy. Training must include procedures listed above, the management of the sensitive communications often encountered in emergency contraception, service to minors, quality assurance, referral for additional services, documentation and a crisis plan if the pharmacy operations are disrupted by individuals opposing the emergency contraception.

Further, the pharmacist agrees to participate in the Emergency Contraception Hotline.

Term of the Agreement: This agreement shall be effective for a period of at least two years from the date of its delivery to the Department unless rescinded in writing earlier by either the physician or the pharmacist, with written notice to the other and to the Department, or unless the Pharmacy Board invalidates such Agreement or changes the terms of the agreement. After the two year period, the agreement shall continue to be valid month to month unless rescinded, invalidated, or changed as provided herein. The licensed pharmacist or the licensed physician, who rescinds the agreement, shall notify the Department within three business days of the rescission. At the time the collaborative agreement is rescinded, the licensed pharmacist shall not have prescriptive authority to dispense emergency contraceptives until another collaborative agreement with a physician is completed and delivered to the Department.

(Name of Pharmacy)

Informed Consent for Emergency Contraception Drug Therapy

Name of Patient: _____ Age: _____

Address: _____

Phone No.: _____

First day of last menstrual period: ___/___/___
Mo/Day/Year

Date of unprotected sexual intercourse: ___/___/___
Mo/Day/Year

If more than one exposure, give date and time of initial exposure: _____

Was this sexual intercourse the result of sexual assault? Yes ___ No ___

Before giving your consent, be sure that you understand both the pros and cons of Emergency Contraceptive Pills (ECPs). If you have any questions, we will be happy to discuss them with you. Do not sign your name at the end of this form until you have read and understood each statement and the pharmacist has answered your questions and can witness your signature. This information is confidential.

I understand that:

1. ECPs contain hormones that act to prevent pregnancy. These pills are taken after having unprotected sex (sex without birth control or birth control failure). They are to be used as an emergency treatment only and not as a routine method of contraception.
2. ECPs work by preventing or delaying the release of an egg from the ovary, preventing fertilization, or causing changes in the lining of the uterus that may prevent implantation of a fertilized egg. I understand that if I am already pregnant, ECPs will not stop or interfere with the pregnancy.
3. ECP treatment should be started within 5 days (120 hours) of unprotected sex.
4. ECPs are not 100 percent effective.
5. Reactions to the pills may include: nausea and vomiting, fatigue, dizziness, breast tenderness, early or late menstrual period.
6. I should see a physician if my period has not started within 3 weeks after treatment.
7. I should use condoms, spermicides, or a diaphragm, or continue taking birth control pills to prevent pregnancy if I have sex before my next period. After that, I should continue to use a method of contraception.
8. ECPs will not protect me from or treat sexually transmitted diseases and I should seek diagnosis and treatment if I am concerned because I have had sex with a new partner in the past month or my partner has had sex with someone else in the past month or my partner has a sexually transmitted disease.
9. I understand that it may be useful to share this treatment information with my regular health care provider. Therefore, I request and authorize the release of this information to the following designated provider:

Yes ___ No ___

10. Designated Provider's Name: _____

Patient's Signature: _____ Date: _____

Additional Terms or Limitations:

Physician's Name: _____

Street Address/City/State; Zip Code: _____

Phone Number: _____ MD License No.: _____

Physician's Signature: _____ Date: _____

Pharmacist's Name: _____

Street Address/City/State/Zip Code where Drug Therapy will occur (include name of pharmacy, pharmacy license number, pharmacist-in-charge and pharmacist-in-charge license number):

_____ Pharmacist License No.: _____

Phone Number: _____

Pharmacist's Signature: _____ Date: _____

Pharmacist-in-charge's Signature: _____ Date: _____

Screening Checklist for Emergency Contraceptive Pills

Patient Name: _____ Today's Date: _____

Address: _____ Age: _____

These questions are to help us understand what you need right now.

1. Have you had unprotected sex during the last 5 days? Yes ___ No ___

2. On what day(s) did you have unprotected sex in the past 5 days?

Monday ___ Tuesday ___ Wednesday ___ Thursday ___ Friday ___ Saturday ___ Sunday ___

3. What time of day was the first unprotected sex in the past 5 days? ___ A.M. ___ P.M.

4. Have you had unprotected sex prior to the last five days? Yes ___ No ___

5. When was the first day of your last menstrual period? Date: _____

6. Are you currently using a method of birth control?

- No method ___ Birth Control Pills ___
Condoms ___ Diaphragm ___
IUD ___ Other Method ___
Contraceptive Shot (Depo Provera®) ___

7. Did you have unprotected sex as a result of sexual assault (or, did anyone pressure you into having sex when you didn't want to?)

Yes ___ No ___

8. Would you like a pharmacist to call you in the next couple of weeks to see how you're doing?

Yes ___ No ___

If yes, what time of the day is best to call? ___ A.M. ___ P.M.

Patient's Signature: _____ Date: _____

For Pharmacist Use Only

Date and time of interview: _____ EC Provided: Yes ___ No ___

Referral made for (check all that apply):

- Contraception follow-up ___ Evaluation for STD ___ Other medical evaluation ___
Pregnancy counseling ___ Assault Counseling ___ No referrals made ___

Date and time of callback: _____ Referrals made then? _____

Pharmacist's Signature: _____ Date: _____

Informed Consent for Emergency Contraception Drug Therapy Continued

Pharmacist's Signature: _____ Date: _____

Pharmacist only: Referral made to: _____

Rx No.: _____

EXHIBIT ["B"] B

Brands and Doses

Of Oral Contraceptive Pills Used For Emergency Contraception

There are now two prepackaged emergency contraceptive pill products (dedicated emergency contraceptive pills) as well as 14 brands of birth control pills that can be used for emergency contraception.

Brand	Manufacturer	Pills per Dose (Treatment schedule is one dose ASAP after unprotected intercourse, and a second dose 12 hours later)	Ethinyl Estradiol per Dose (mcg)	Levonorgestrel per Dose (mg)*
<i>Dedicated Emergency Contraceptive Pills</i>				
Plan B	Women's Capital Corporation	1 white pill	0	0.75
Preven	Gynetics	2 blue pills	100	0.50
<i>Oral Contraceptive Pills</i>				
Levora	Watson	4 white pills	120	0.60
Levlen	Berlex	4 light-orange pills	120	0.60
Lo/Ovral	Wyeth-Ayerst	4 white pills	120	0.60*
Low-Ogestrel	Watson	4 white pills	120	0.60*
Nordette	Wyeth-Ayerst	4 light-orange pills	120	0.60
Alesse	Wyeth-Ayerst	5 pink pills	100	0.50
Aviane	Duramed	5 orange pills	100	0.50
Levlite	Berlex	5 pink pills	100	0.50
Ogestrel	Watson	2 white pills	100	0.50*
Ovral	Wyeth-Ayerst	2 white pills	100	0.50*
Tri-Levlen	Berlex	4 yellow pills	120	0.50
Triphasil	Wyeth-Ayerst	4 yellow pills	120	0.50
Trivora	Watson	4 pink pills	120	0.50

Adapted from RA Hatcher, et al, *Contraceptive Technology: Seventeenth Revised Edition*. New York NY: Ardent Media, 1998. Updated by Felicia Steward, MD 2001.

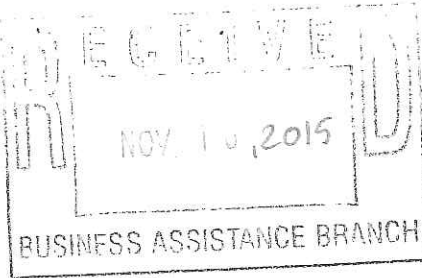
* This progestin in Ovral, Lo/Ovral, Low-Ogestrel, Ogestrel and Ovrette is norgestrel, which contains two isomers only one of which (levonorgestrel) is bioactive; the amount of norgestrel in each dose is twice the amount of levonorgestrel.

Anti-nausea Treatment Options for use with Emergency Contraception

Drug	Dose	Timing of Administration
<i>Non-prescription Drugs</i>		
Meclizine hydrochloride (Dramamine, Bonine)	One or two 25mg tablets	1 hour before first EC dose; repeat if needed in 24 hours
Diphenhydramine hydrochloride (Benadryl)	One or two 25mg tablets or capsules.	1 hour before first EC dose; repeat as needed every 4-6 hours.
Dimenhydrinate (Dramamine)	One or two 50mg tablets or 4- 8 teaspoons liquid	30 minutes to 1 hour before first ECP dose; repeat as needed every 4-6 hours.
Cyclizine hydrochloride (Marezine)	One 50mg tablet	30 minutes before first EC dose; repeat as needed every 4-6 hours.

Adapted from RA Hatcher, et al, *Contraceptive Technology: Seventeenth Revised Edition*. New York NY: Ardent Media, 1998. Updated by Felicia Steward, MD 2001.

Exhibit 3



§19-38.1-1

HAWAII ADMINISTRATIVE RULES

TITLE 19

DEPARTMENT OF TRANSPORTATION

SUBTITLE 2

AIRPORTS DIVISION

CHAPTER 38.1

ON-DEMAND TAXI SERVICE AT PUBLIC AIRPORTS

§19-38.1-1	Definitions
§19-38.1-2	Purpose
§19-38.1-3	Applicability
§19-38.1-4	Airports without a taxi management concessionaire
§19-38.1-5	Airports with a taxi management concessionaire
§19-38.1-6	Taxi driver qualification; taxi vehicle requirements
§19-38.1-7	Taxi management concession
§19-38.1-8	Insurance
§19-38.1-9	Signs
§19-38.1-10	Taxi driver conduct
§19-38.1-11	Indemnification and hold harmless
§19-38.1-12	Severability
§19-38.1-13	Enforcement
§19-38.1-14	Cumulative penalty
§19-38.1-15	Subordination to sponsor's assurance
§19-38.1-16	Repeal

Historical note. This chapter is based substantially on chapter 19-38. [Eff 12/16/93; R OCT 04 1997

§19-38.1-1 Definitions. Unless the context indicates otherwise, as used in this chapter:

"Department" means the state department of transportation.

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

"On-demand taxi service" means those taxi services in which a customer has made no prior arrangement for services.

"Open-access taxi system" means a taxi system that will allow all qualifying taxi drivers and vehicles to provide taxi service at public airports.

"Public airport" or "airport" means any area of land and water under state jurisdiction which is used, or intended for use, for landing and taking-off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, including approaches, together with all airport buildings and facilities located thereon.

"State" means the State of Hawaii.

"Taxi" or "taxicab" means the motor vehicle used to provide taxi service in or at a public airport.

"Taxi driver" means the operator or driver of a taxi.

"Taxi driver authorization" means an authorization issued by the director or taxi management concessionaire for the purpose of authorizing a taxi driver to provide on-demand taxi service at a public airport, pursuant to this chapter.

"Taxi management concessionaire" means the concessionaire hired by the State to provide an open-access taxi system at a public airport.

"Taxi service" means the service of providing a motor vehicle for hire by the public in or at a public airport, which motor vehicle shall have a driver other than the hirer and be used for the purpose of transporting the hirer and incidental personal property to a destination over a route controlled by the hirer and is subject to a metered rate or tariff as prescribed and authorized by county ordinance or rules.

"Taxi vehicle permit" means a permit issued by the director or taxi management concessionaire for the purpose of authorizing a motor vehicle to be used in providing on-demand taxi service at a public airport, pursuant to this chapter. [Eff **OCT 04 1997**]
(Auth: HRS §261-12) (Imp: HRS §261-7)

§19-38.1-2 Purpose. The purpose of this chapter is to regulate the open-access taxi system at public airports and to ensure safe, orderly and reliable taxi service for the travelling public.

[Eff **OCT 04 1997**] (Auth: HRS §261-12)
(Imp: HRS §261-7)

§19-38.1-3 Applicability. This chapter applies to airports with or without taxi management concessionaires, unless indicated otherwise. [Eff **OCT 04 1997**]
 (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-38.1-4 Airports without a taxi management concessionaire. (a) At airports without a taxi management concessionaire, the following permit or authorization shall be obtained to provide on-demand taxi service at airports:

- (1) No taxi shall be used to provide taxi service from a public airport without a taxi vehicle permit. The taxi vehicle permit shall be in the form of a vehicle decal, and issued by the director upon payment of the monthly or per trip fee and upon qualification of the vehicle as required by this chapter. The permit is limited only to the airport where issued, and is renewable on a monthly basis, upon payment of the appropriate fee. The permit shall not be assigned or otherwise transferred, and shall be prominently displayed while operating at the airport in a manner prescribed by the director.
- (2) No taxi driver shall be allowed to provide taxi service from a public airport without having obtained the authorization of the director. The taxi driver authorization shall be in the form of a driver identification badge issued by the director and shall not be assigned or otherwise transferred. The driver identification badge shall be valid only at the airport where issued, and shall be worn while operating at the airport in a manner prescribed by the director. The driver shall pay a fee of \$5 to the director for the cost of processing the initial application of the driver identification badge. The taxi driver identification badge shall be renewed annually.
- (3) No permit shall be issued to an applicant, including existing authorized taxi vehicles and drivers, who are in arrears of payment of taxes, rent, or other charges to the State or political division or subdivision, agency, authority, commission or instrumentality

thereof. An applicant shall meet the taxi driver qualification or taxi vehicle requirement standards as required by this chapter.

(b) At airports without a taxi management concessionaire, the following fees shall apply:

(1) Taxi vehicles authorized to be used for providing taxi service at public airports that do not have a taxi management concessionaire hired by the State shall, as a condition for the issuance of a permit, be assessed the following fees, payable to the State as applicable:

- (A) A monthly fee of \$400 per taxi vehicle at Honolulu International Airport, or a single trip fee of \$4 for each trip originating from Honolulu International Airport;
- (B) A monthly fee of \$400 per taxi vehicle at Kahului Airport, or a single trip fee of \$4 for each trip;
- (C) A monthly fee of \$250 per taxi vehicle at Kona International Airport at Keahole;
- (D) A monthly fee of \$150 per taxi vehicle at Lihue Airport;
- (E) An annual fee of \$100 per taxi vehicle at all other public airports.

(2) The fees shall:

- (A) Be paid in advance of the period the taxi vehicle is used to provide taxi service;
- (B) Not be subject to proration; and
- (C) Not be non-refundable.

(c) At airports without a management concessionaire, the following procedures shall apply for review of suspension or termination of taxi vehicle permits or taxi driver authorization.

(1) A taxi vehicle permit or taxi driver authorization, issued under this chapter may be suspended or revoked by the director for violation of this chapter. The suspension or revocation may be contested by providing notice to the director within fourteen days after receipt of a written notice of suspension or revocation that provides the reasons for the suspension or revocation and the length of the proposed suspension. Upon receipt of the

notice to contest, the director may appoint a hearing officer to conduct a contested case hearing and allow the presentation of evidence or testimony to contest the facts upon which the suspension or revocation is based. If the director upholds the proposed suspension or revocation based on the hearing officer's recommendation, the period of suspension or revocation shall begin five days following receipt of the final decision and order of the director.

- (2) The taxi vehicle permit or taxi driver authorization may be terminated with or without cause by the director or by the taxi driver authorized to provide taxi service at a public airport, upon thirty days prior written notice. Upon notification of termination, the taxi vehicle decal or driver identification badge shall be returned within three business days to the director or taxi management concessionaire. [Eff **OCT 04 1997**] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-38.1-5 Airports with a taxi management concessionaire. (a) At airports with a taxi management concessionaire, the concessionaire shall develop an appropriate permitting system to qualify taxi drivers and taxis, in accordance with section 19-38.1-6.

- (1) No taxi shall be used to provide taxi service from a public airport without a taxi permit issued by the taxi management concessionaire.
- (2) No taxi driver shall be allowed to provide taxi service from a public airport without having obtained the authorization of the taxi management concessionaire.
- (3) No permit or authorization shall be issued to an applicant who is in arrears of payment of taxes, rent, or other charges to the State or political division or subdivision, agency, authority, commission or instrumentality thereof. An applicant shall meet the taxi driver qualification or taxi vehicle requirement standards as required by this chapter, as appropriate.

(b) At airports with a taxi management concessionaire, the taxi management concessionaire shall develop a procedure to suspend or revoke taxi vehicle permits and taxi driver authorizations for violation of this chapter in accordance with procedures established in the lease between the concessionaire and the director.

(c) Taxi driver participation fees shall be subject to prior review and approval of the director.

[Eff **OCT 04 1997**] (Auth: HRS §261-12)
(Imp: HRS §261-7)

§19-38.1-6. Taxi driver qualification; taxi vehicle requirements. (a) No taxi driver shall be authorized to operate at a public airport without the necessary permits, licenses, approvals, qualifications, and certification required by this chapter or by the laws of the State or any other governmental body having the jurisdiction to regulate the operation of a motor vehicle or the carrying of baggage or people for hire on any vehicle in the State.

(b) With regard to qualifications, the taxi driver shall:

- (1) Have a valid motor vehicle driver license issued by the State and evidence of having one year driving experience in the county in which the application is made;
- (2) Be a citizen or alien who has been admitted for permanent residence or who has otherwise been granted employment authorization by the United States Immigration and Naturalization Services;
- (3) Be at least 18 years of age;
- (4) Not have outstanding arrest warrants or criminal convictions pending for offenses committed while driving intoxicated or recklessly;
- (5) Not be addicted to the use of drugs or alcohol, and shall sign a form consistent with the Drug-Free Workplace Act;
- (6) Be subject to background checks or clearances if required by Federal Motor Carrier Safety Regulations and applicable state statutes;

- (7) Submit a certificate from a licensed physician indicating the applicant's condition as to visual acuity and hearing ability, and shall be, in the opinion of the physician, free of medical conditions that may render the driver unfit for the safe operation of a motor vehicle; and
- (8) Pass a written examination, to be administered by the director or taxi management concessionaire in the English language, covering airport taxicab operations, vehicle safety procedures, applicable department's Motor Vehicle Safety Office and Hawaii Administrative Rules, local traffic laws, passenger courtesy and assistance procedures, public relations, and knowledge of major destinations in the county in which the application is made.

(c) A taxi driver shall comply with instructions issued by the director regarding the taxi staging sequence to implement an open-access taxi system pertaining to:

- (1) Location of designated passenger pickup areas, taxicab stands, taxicab hold areas;
- (2) Queuing procedure to wait their turn to pickup passengers; and
- (3) Circulation path while on the airport.

(d) Any vehicle being issued a permit under this chapter shall be licensed by the appropriate governmental regulatory agency, operating in conformance with the requirements and procedures prescribed by such agency, and at all times display a current safety sticker and current evidence of licensing and registration by the applicable regulatory agency of the government.

(e) Taxi vehicles shall:

- (1) Be equipped with a taxicab meter in accordance with the terms and conditions as set forth by the state Office of Weights and Measures (the taxicab meter must be mounted in a permanent manner in a position that is visible to all passengers);
- (2) Display in the interior of the taxicab the typical authorized fares to major destinations in the county;
- (3) Provide a seating capacity for at least five passengers, including the driver, and shall be in safe mechanical condition, clean and acceptable in appearance, and in damage-free condition;

- (4) Have an illuminated taxicab domelight mounted on the roof of the vehicle, in accordance with the county rules and regulations as applicable;
- (5) Comply with the rules and regulations set forth by the department's Motor Vehicle Safety Office; and
- (6) Where required by the director, have a two-way radio with the capability to operate on the appropriate airport frequency to meet taxi service dispatch requirements.

(f) The director may in the interest of public safety or in the interest of improving airport operations, establish additional airport procedures and requirements covering taxi driver qualifications, identification and conduct, and vehicle standards.

(g) Failure to meet the established standards for taxi driver qualification, taxi driver conduct, and vehicle requirement shall be grounds for non-issuance or revocation of the taxi vehicle permit or taxi driver authorization. The taxi vehicle permit or driver identification badge shall be returned to the issuing agency within three business days after the notice of revocation is received. [Eff **OCT 04 1997**]
(Auth: HRS §261-12) (Imp: HRS §261-7)

§19-38.1-7 Taxi management concession. The director may lease a concession area to a taxi management concessionaire to provide an open-access taxi system at a public airport. [Eff **OCT 04 1997**]
(Auth: HRS §261-12) (Imp: HRS §261-7)

§19-38.1-8 Insurance. (a) As a condition for the issuance of a taxi vehicle permit, each taxi vehicle shall have liability and other insurance of the type and amount required for taxi license as required by the county in which the vehicle will be used for taxi service.

(b) In addition to motor vehicle liability insurance, the taxi drivers issued a taxi driver authorization to participate in providing on-demand taxi services at public airports shall maintain and keep in force adequate comprehensive general liability insurance as determined by the director to provide coverage against

claims arising out of the taxi driver's operations on airport premises for injury to persons or damage to property. This requirement may be satisfied by taxi drivers being party to a taxi concessionaire's or company's comprehensive general liability insurance policy.

(c) An applicant for a taxi vehicle permit or taxi driver authorization, shall provide the director or taxi management concessionaire with a certificate of insurance naming the applicant as the insured and the department and the taxi management concessionaire, when applicable, as additional insured under each insurance policy for coverage to individuals providing taxi service under this chapter. Certificates of insurance for each such policy shall be provided to the director or taxi management concessionaire within thirty days prior to commencing taxi service. The insurer shall provide certificates of insurance to the director or taxi management concessionaire within thirty days of any material changes to any policy including coverage and shall provide notification within thirty days of cancellation.

[Eff **OCT 04 1997**] (Auth: HRS §261-12)
(Imp: HRS §261-7)

§19-38.1-9 Signs. No taxi vehicle used as a taxi at a public airport shall display any sign that extends more than six inches above the roof. Flashing lights and audible devices, other than that required by safety ordinances and regulations, are prohibited. The external display of any rates or fees on a taxi is also prohibited. [Eff **OCT 04 1997**]
(Auth: HRS §261-12) (Imp: HRS §261-7)

§19-38.1-10 Taxi driver conduct. A taxi driver who is issued a taxi driver authorization to provide on demand taxi services at public airports shall:

- (1) Be authorized to provide taxi service only in the area designated by the director who may change any designated area when such change is deemed necessary and is in the best interest of safety to persons and property;
- (2) Maintain the designated taxi service area in a safe, clean and sanitary condition;

- (3) Keep all taxis operated at any public airport in good mechanical condition, clean and suitable for providing taxi service (the department may prohibit the operation of any taxi unsuitable for providing taxi service);
 - (4) Furnish service on a fair, equal and non-discriminatory basis to the public;
 - (5) Conduct business in an orderly, courteous and businesslike manner;
 - (6) Present a clean and neat appearance at all times;
 - (7) Be suitably uniformed or clothed;
 - (8) Refrain from use of profanity, offensive or rough and disturbing behavior;
 - (9) Not solicit at public airports any gratuities or any other business not directly related to providing taxi service at a public airport;
 - (10) Upon finding lost or forgotten article in the taxi, report and turn the article over to the airport lost and found;
 - (11) At all times comply with all applicable laws, ordinances, terms or agreements, and rules and regulations; and
 - (12) Comply with instructions and procedures issued by the director or taxi management concessionaire regarding driver and vehicle identification requirements, fee payment process, and taxi operation pertaining to:
 - (A) Location of designated passenger pickup areas, taxi stands, taxi hold areas;
 - (B) Queuing procedures; and
 - (C) Operating routes.
- [Eff **OCT 04 1997**] (Auth: HRS §261-12)
(Imp: HRS §261-7)

§19-38.1-11 Indemnification and hold harmless.
Applicants for a taxi vehicle permit or taxi driver authorization to provide on-demand taxi services at public airports shall indemnify and hold harmless the director, department and the State from any action or claim arising out of their use of the airport and operation of a taxi service pursuant to this chapter. Failure to comply with the requirement of this section shall be grounds for non-issuance of the taxi vehicle permit or taxi driver authorization.
[Eff **OCT 04 1997**] (Auth: HRS §261-12)
(Imp: HRS §261-7)

§19-38.1-12 Severability. The provisions of this chapter are declared to be severable and if any portion or the application thereof is held to be invalid for any reason, the validity of the remainder of this chapter shall not be affected. [Eff **OCT 04 1997**]
(Auth: HRS §261-12) (Imp: HRS §261-7)

§19-38.1-13 Enforcement. This chapter may be enforced by police officers or any person deputized pursuant to section 261-17, Hawaii Revised Statutes. [Eff **OCT 04 1997**] (Auth: HRS §261-12)
(Imp: HRS §261-17)

§19-38.1-14 Cumulative penalty. In addition to the penalties provided in this chapter, penalties for violations of this chapter shall be as set forth in section 261-21, Hawaii Revised Statutes. [Eff **OCT 04 1997**] (Auth: HRS §261-12)
(Imp: HRS §261-21)

§19-38.1-15 Subordination to sponsor's assurance agreement. A taxi vehicle permit or taxi driver authorization to provide on-demand taxi service at a public airport shall be subordinate and subject to the terms and conditions of any sponsor's assurance agreement executed between the State and the United States of America, which is in force during the term of the taxi vehicle permit or taxi driver authorization. [Eff **OCT 04 1997**] (Auth: HRS §261-12)
(Imp: HRS §261-7)

§19-38.1-16 Repeal. Chapter 19-38 is repealed. [Eff **OCT 04 1997**] (Auth: HRS §261-12)
(Imp: HRS §261-12)

DEPARTMENT OF TRANSPORTATION

The repeal of Chapter 19-38, and Chapter 19-38.1, Hawaii Administrative Rules, on the Summary Page dated September 10, 1997 were adopted on September 10, 1997 following public hearings held on March 24 and 25, and April 15, 1997 after public notice was given in the Honolulu Advertiser, Honolulu Star-Bulletin, Maui News, and West Hawaii Today on February 13, 1997 and in the Hawaii Herald-Tribune on March 11, 1997.

The repeal of Chapter 19-38 and adoption of Chapter 19-38.1, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

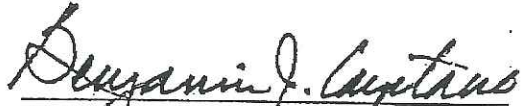
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OFFICE

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KAZU HAYASHIDA
Director of Transportation

APPROVED:



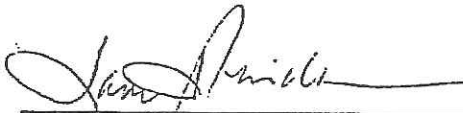
BENJAMIN J. CAYETANO
Governor
State of Hawaii

Date: 9/23/97

SEP 24 1997

Filed

APPROVED AS TO FORM:


Deputy Attorney General

HAWAII ADMINISTRATIVE RULES

TITLE 19

DEPARTMENT OF TRANSPORTATION

SUBTITLE 2

AIRPORTS DIVISION

CHAPTER 20.1

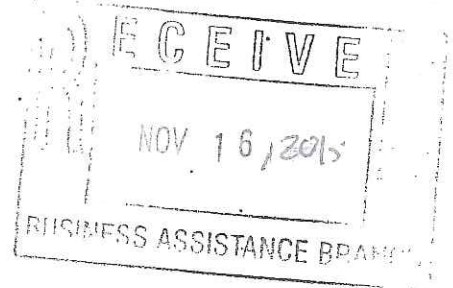
COMMERCIAL SERVICES AT PUBLIC AIRPORT

Subchapter 1 General Provisions

§19-20.1-1	Applicability
§19-20.1-2	Definitions
§19-20.1-3	Permit or authorization required
§19-20.1-4	Payment of fees
§19-20.1-5	Records; audit of records; reports
§19-20.1-6	Insurance
§19-20.1-7	Entry to air operations area
§19-20.1-8	Airport activity
§19-20.1-9	Revocation of permit; termination
§19-20.1-10	Subordination to sponsor's assurance agreement
§19-20.1-11	Indemnification and hold harmless
§19-20.1-12	Severability
§19-20.1-13	Enforcement
§19-20.1-14	Penalty

Subchapter 2 Aircraft Ground Handling

§19-20.1-15	Scope
§19-20.1-16	Definitions
§19-20.1-17	Fee
§19-20.1-18	Exemption
§19-20.1-19	Statement of contracted services



Subchapter 3 Baggage Pickup and Delivery

§19-20.1-20	Scope
§19-20.1-21	Definitions
§19-20.1-22	Fees
§19-20.1-23	Restrictions

Subchapter 4 Commercial Photography

§19-20.1-24	Scope
§19-20.1-25	Definition
§19-20.1-26	Fees
§19-20.1-27	Soliciting prohibited
§19-20.1-28	News media exempt

Subchapter 5 Greeting Services for Hire

§19-20.1-29	Scope
§19-20.1-30	Definition
§19-20.1-31	Fees
§19-20.1-32	Soliciting prohibited

Subchapter 6 In-flight Catering

§19-20.1-33	Scope
§19-20.1-34	Definition
§19-20.1-35	Fees

Subchapter 7 Merchandise Delivery

§19-20.1-36	Scope
§19-20.1-37	Definitions
§19-20.1-38	Fees
§19-20.1-39	Monthly delivery report
§19-20.1-40	Controls
§19-20.1-41	Designated areas
§19-20.1-42	Identification of merchandise
§19-20.1-43	Safety and security
§19-20.1-44	Unauthorized storage

Subchapter 8 Porter Services

§19-20.1-45	Scope
§19-20.1-46	Definitions
§19-20.1-47	Requirements to obtain permit
§19-20.1-48	Fees
§19-20.1-49	Unauthorized storage
§19-20.1-50	Motorized passenger carts
§19-20.1-51	Soliciting prohibited
§19-20.1-52	Statement of contracted services
§19-20.1-53	Airline lessees

Subchapter 9 Prearranged Ground Transportation

§19-20.1-54	Scope
§19-20.1-55	Definitions
§19-20.1-56	Fees
§19-20.1-57	Exemptions
§19-20.1-58	Taxi services
§19-20.1-59	Signs
§19-20.1-60	Restrictions
§19-20.1-61	Records of off-airport rent-a-car permittees

SUBCHAPTER 1

GENERAL PROVISIONS

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

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

[Eff MAY -4 2002] (Auth: HRS §261-12)
(Imp: HRS §261-7)

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

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

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

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

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

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

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

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

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

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

"Public airport" means that area of land and water under governmental jurisdiction which is used for landing and taking-off of aircraft, any appurtenant areas which are used for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

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

"State" means the State of Hawaii.

[Eff MAY - 4 2002] (Auth: HRS §261-12)
(Imp: HRS §261-7)

§19-20.1-3 Permit or authorization required.

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

[Eff MAY - 4 2002] (Auth: HRS §261-12)
(Imp: HRS §261-7)

§19-20.1-4 Payment of fees. (a) The required fees for each type of commercial services are specified in the applicable subchapter.

(b) Time of payment.

- (1) Annual fees shall be paid annually in advance of providing commercial services at or in public airports; and
- (2) Monthly fees (including percentage fees) shall be paid on or before the twentieth day of the succeeding month.

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

(d) Payments due under this chapter shall be made at or sent to the airports division, department of transportation, Honolulu International Airport, Honolulu, Hawaii 96819; or any of its offices located at Hilo International Airport, Hilo, Hawaii 96720; Kona International Airport at Keahole, Kailua-Kona, Hawaii 96740; Kahului Airport, Kahului, Hawaii 96732; or Lihue Airport, Lihue, Hawaii 96766.

[Eff MAY - 4 2002] (Auth: HRS §261-12)
(Imp: HRS §261-7)

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

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

(b) The permittee shall maintain up-to-date records and books in accordance with a recognized system of bookkeeping and such records and books shall reflect a segregation of airport revenue in the general ledger, reconciled and supported by original source documents. Such records including original source documents shall be kept for three years in the State following the end of the permit year.

(c) The State shall be granted access, at all reasonable times, to all books, accounts, records and reports including gross income tax reports, showing daily receipts; and at any reasonable time on twenty-four hours notice the permittee will permit a complete audit to be made by the State's accountant or by a certified public accountant of the permittee's entire business affairs and records relating to the business conducted at, from or in connection with the airport for the term of the permit. The permittee will

cooperate fully in the making of any inspection, examination or audit. Should such audit by the State's accountant or by a certified public accountant disclose that fees have been underpaid by two percent or more for any period under examination, the State shall, in addition to the remedies provided in subsection (e) of this section, be entitled to reimbursement of the reasonable cost of any such audit in addition to the deficiency. If such audit by the State's accountant or by a certified public accountant shall disclose that fees have been underpaid by five percent or more for the period under examination, the State shall, in addition to the foregoing rights, have the right, upon ten days' notice, to revoke the authorization to conduct the applicable commercial service at public airports.

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

(e) Without prejudice and in addition to any other remedies the State may have for such default, if the permittee shall fail to promptly furnish any monthly report, the State may have such report prepared by an accountant to be selected by the State, at the expense and on behalf of the permittee. The permittee shall furnish to such accountant all records requested for the purpose of preparing such reports, and the permittee shall pay to the State all expenses incurred by the State in securing such reports. Furthermore, the State may select procedures which would produce a reasonable gross receipts expectation, and assess percentage fees based upon gross receipts so computed. In the event that records have not been

prepared and kept in accordance with this chapter, the State shall, in addition to all other payments required herein, be entitled to demand and receive an additional payment of ten percent of the gross receipt fee for the periods involved. [Eff MAY -4 2002]
(Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-6 Insurance. (a) The permittee shall maintain and keep in force adequate insurance as determined by the director to protect both the department and the permittee against claims for public liability and property damage. The following types of insurance are required:

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

(b) The permittee shall provide the department with a certificate of insurance naming the permittee as the insured and the department as additional insured to the extent of liability arising out of the named insured's operations at the public airport with a thirty day advance notice of material changes in coverage or cancellation. [Eff MAY -4 2002]
(Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-7 Entry to air operations area. Except as may be authorized by the director, no person providing commercial services at any public airport shall be permitted entry into the air operations area. [Eff MAY -4 2002] (Auth: HRS §261-12)
(Imp: HRS §261-12)

§19-20.1-8 Airport activity. (a) Each permittee's activity shall be limited to the area designated by the director. The director may change the designated areas when such action is deemed necessary and in the best interest of safety to persons or property.

(b) The permittee shall:

- (1) Maintain its designated activity area in a safe and clean condition in compliance with all applicable statutes, laws, ordinances, rules and regulations;
- (2) Be liable for the fair value of any janitorial or maintenance service for cleaning or repairing airport premises necessitated by the permittee's failure to properly and adequately maintain its designated area;
- (3) Conduct business in an orderly, courteous and businesslike manner;
- (4) Be suitably dressed or uniformed;
- (5) Furnish service on a fair, equal and not unjustly discriminatory basis to all users thereof, and will charge fair, reasonable and not unjustly discriminatory prices for each unit of service; provided that the permittee may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers; and
- (6) Wear the identification badge (issued under this chapter) in plain sight while at the airport.

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

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

- (2) All vehicles operating under a permit authorized by this chapter shall be licensed by the state public utilities commission or appropriate governmental regulatory agency, if so required, and at all times display a current safety inspection sticker and current evidence of licensing by the applicable regulatory agency of the government.
- (3) The department shall issue decals which shall be placed by the permittee on those vehicles utilized at a public airport that meet the requirements of the department. No vehicle shall be used to provide commercial services authorized by this chapter at any public airport without a decal issued by the department. Vehicles shall be parked only at locations designated by the director for the permitted activity. Vehicles issued decals shall not be used at any public airport for any purpose other than the activity authorized by the permit. [Eff MAY -4 2002]
(Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-9 Revocation of permit; termination. A permit issued under this chapter may be revoked by the department for violation of this chapter, upon ten days prior written notice. The permit may be terminated without cause by the department or by the permittee upon thirty days prior written notice.
[Eff MAY -4 2002] (Auth: HRS §261-12)
{Imp: HRS §261-7}

§19-20.1-10 Subordination to sponsor's assurance agreement. A permit shall be subordinate and subject to the terms and conditions of any sponsor's assurance agreement executed between the State and the United States of America, which is in force during the term of the permit. [Eff MAY -4 2002]
(Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-11 Indemnification and hold harmless. The permittee shall indemnify, defend and hold harmless the department and the State from any action

or claim for compensation arising out of the use of the permit or the airport. [Eff MAY - 4 2002]
(Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-12 Severability. The provisions of this chapter are declared to be severable and if any portion or the application thereof is held to be invalid for any reason, the validity of the remainder of this chapter shall not be affected.
[Eff MAY - 4 2002] (Auth: HRS §261-12)
(Imp: HRS §261-7)

§19-20.1-13 Enforcement. This chapter may be enforced by police officers or any person deputized pursuant to section 261-17, Hawaii Revised Statutes.
[Eff] (Auth: HRS §261-12)
(Imp: HRS §261-17)

§19-20.1-14 Penalty. Penalties for violations of this chapter shall be as set forth in section 261-21, Hawaii Revised Statutes. [Eff MAY - 4 2002]
(Auth: HRS §261-12) (Imp: HRS §261-21)

SUBCHAPTER 2

AIRCRAFT GROUND HANDLING

§19-20.1-15 Scope. The special provisions set forth in this subchapter shall apply to aircraft ground handling services at public airports.
[Eff MAY - 4 2002] (Auth: HRS §261-12)
(Imp: HRS §261-7)

§19-20.1-16 Definitions. Unless the context clearly indicates otherwise, as used in this chapter: "Aircraft ground handling services" shall include the following services performed for arriving or departing aircraft:

- (1) Ramp services, including but not limited to, providing passenger or crew stairs, ground power units, baggage, mail and cargo loading

and unloading, air start units, aircraft pushback and towing, air conditioning or heating equipment, and fueling;

- (2) Aircraft cabin cleaning, including, but not limited to, interior cleaning service, lavatory service, and drinking water service;
- (3) Passenger services, including, but not limited to, reservations, ticketing, seat selection, passenger check-in, document processing, passenger boarding, and VIP lounge services;
- (4) Cargo handling, including, but not limited to, warehousing, document processing, cargo buildup or breakdown, loading or unloading, and transportation;
- (5) Aircraft maintenance, including, but not limited to, maintenance, and preventive maintenance; and
- (6) Aircraft flight planning and flight dispatch service.

"Aircraft ground services operators" means all persons authorized to perform aircraft ground handling services at public airports and includes permittees, airline lessees, and airport lessees.

"Airport lessee" means any person other than an airline lessee that has entered into a lease with the department for the use of land or facilities at a public airport. [Eff MAY - 4 2002]

(Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-17 Fee. Any person authorized to provide aircraft ground handling services shall, in consideration of using state facilities for conducting business, pay the department an annual administrative expense fee of \$100. [Eff MAY - 4 2002]

(Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-18 Exemption. Airport or airline lessees authorized by their lease to provide aircraft ground handling services for others at a public airport are exempt from the permit and fee requirements under this chapter. [Eff MAY - 4 2002] (Auth: HRS §261-12)

(Imp: HRS §261-7)

§19-20.1-19 Statement of contracted services.
The permittee shall provide to the department upon request a statement certified by the serviced airline that a contract for aircraft ground handling services presently exists. This chapter shall become a part of all such contracts to which it applies, and shall be attached to the contracts so that contracting parties are aware of the rights, duties, and responsibilities of the permittee. [Eff MAY - 4 2002]
(Auth: HRS §261-12) (Imp: HRS §261-7)

SUBCHAPTER 3

BAGGAGE PICKUP AND DELIVERY

§19-20.1-20 Scope. The special provisions set forth in this subchapter shall apply to baggage pickup and delivery services at public airports.
[Eff MAY - 4 2002] (Auth: HRS §261-12)
(Imp: HRS §261-7)

§19-20.1-21 Definitions. Unless the context clearly indicates otherwise, as used in this chapter: "Baggage pickup and delivery services" means (1) the prearranged pickup of unaccompanied baggage at a public airport and delivery to a destination outside the airport for the benefit of an arriving passenger, or another on behalf of the passenger or (2) the prearranged delivery of unaccompanied baggage from a location outside a public airport to a certain location at or in a public airport which is designated for that purpose by the airport manager for a departing passenger, or for another on behalf of a departing passenger, or (3) the prearranged transfer of unaccompanied baggage from public airport baggage claim areas to curbside or other areas within the public airport, or (4) the prearranged transfer of unaccompanied baggage from curbside or other areas within the public airport to check-in counters or other areas within the public airport where transfer services were arranged for in advance by the passenger or another on behalf of the passenger.

"Unaccompanied baggage" means that baggage which is unclaimed by the passenger at a public airport but for which prior arrangements have been made (1) by or on behalf of an arriving passenger for the pickup of such baggage from the public airport and delivery to a destination outside the public airport, (2) by or on behalf of a departing passenger for the delivery of such baggage from a location outside the public airport to a certain location at or in the public airport which is designated for that purpose by the airport manager, (3) to transfer such baggage from public airport baggage claim areas to curbside or other areas within the public airport, or (4) to transfer such baggage from curbside or other areas within the public airport to check-in counters or other areas within the public airport.

[Eff MAY - 4 2002] (Auth: HRS §261-12)
(Imp: HRS §261-7)

§19-20.1-22 Fees. Any person providing baggage pickup and delivery services in or at a public airport shall, in consideration of using state airport facilities for conducting business, pay to the department the following fees:

- (1) For each public airport at which baggage pickup and delivery services are provided, an annual administrative expense fee of \$100.
- (2) A percentage fee equal to three and one-half percent of the monthly gross receipts derived by the permittee, from or in connection with providing baggage pickup and delivery services in or at any public airport. The permittee's gross receipts shall include all consideration or compensation, of any kind or nature whatsoever, paid by passengers, customers and clients to the permittee or to any person who is employed by or has a working arrangement with the permittee for providing baggage pickup and delivery services.
- (3) An annual identification badge fee of \$5 per badge.

- (4) An annual registration fee of \$50 for each vehicle in excess of five vehicles registered by a permittee at a public airport for baggage pickup and delivery services. [Eff MAY - 4 2002]
(Auth: HRS §261-12) (Imp: HRS: §261-7)

§19-20.1-23 Restrictions: (a) The permittee shall:

- (1) Refrain from the use of profanity, boisterous or rough and disturbing behavior or actions, unsafe use of baggage carts or other equipment, and the playing of radios, pre-recorded tapes or discs, or other musical instruments or devices in public areas or areas in which the sounds from such activities may intrude upon public areas;
- (2) Not provide any of the services authorized by the permit, including the placement and use of any vehicle or equipment, in such a manner as to disturb other airport tenants or users; and
- (3) Not solicit gratuities or business in the conduct of baggage pickup and delivery services at public airports.

(b) All business activities conducted by the permittee at any public airport, unless otherwise authorized by the department, shall be limited to those passengers and clients who have made prior arrangements for baggage pickup and delivery service with the permittee. The permittee shall have evidence of such prior arrangements in the form of schedules, passenger manifests, or other similar documentation which identifies the passengers and clients, available for inspection by the director at all times during the period the permittee is engaged in business activities at the public airport, including at the time of all pickups, deliveries and transfers. [Eff MAY - 4 2002]
(Auth: HRS §261-12) (Imp: HRS §261-7)

SUBCHAPTER 4

COMMERCIAL PHOTOGRAPHY

§19-20.1-24 Scope. The special provisions set forth in this subchapter shall apply to commercial photography services at public airports.

[Eff MAY -4 2002] (Auth: HRS §261-12)

(Imp: HRS §261-7)

§19-20.1-25 Definition. Unless the context clearly indicates otherwise, as used in this chapter:

"Commercial photography" means the taking of still or motion pictures of persons and things by a person for (1) sale for a monetary or any other valuable consideration, or (2) for any other commercial purpose. [Eff MAY -4 2002]

(Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-26 Fees. Any person providing commercial photography services in or at a public airport shall, in consideration of using state airport facilities for conducting business, pay to the department the following fees (as applicable):

- (1) For each public airport at which commercial photography services is provided an annual administrative expense fee of \$100;
 - (2) An annual identification badge fee of \$5 per badge;
 - (3) A percentage fee equal to ten percent of the person's monthly gross receipts derived from providing commercial photography services at public airports; and
 - (4) A daily fee of \$100 in advance for persons providing commercial photography services on a short-term basis. [Eff MAY -4 2002]
- (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-27 Soliciting prohibited. To solicit, offer and provide commercial photography to any person other than to any person for whom commercial

photography has been arranged in advance, as provided above, is prohibited. [Eff MAY - 4 2002]
(Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-28 News media exempt. Commercial photography as defined herein shall not apply to representatives of newspapers, magazines, television stations, or other news media. [Eff MAY - 4 2002]
(Auth: HRS §261-12) (Imp: HRS §261-7)

SUBCHAPTER 5

GREETING SERVICES FOR HIRE

§19-20.1-29 Scope. The special provisions set forth in this subchapter shall apply to greeting services for hire at public airports.
[Eff MAY - 4 2002] (Auth: HRS §261-12)
(Imp: HRS §261-7)

§19-20.1-30 Definition. Unless the context clearly indicates otherwise, as used in this chapter: "Greeting services for hire" means the service of providing, on behalf of or at the request of another person, meeting, welcoming, receiving, salutation, meeting with salutation, farewell or departure services, with or without the bestowal of leis, floral arrangements or other gifts, to airline passengers.
[Eff MAY - 4 2002] (Auth: HRS §261-12)
(Imp: HRS §261-7)

§19-20.1-31 Fees. Any person providing greeting services for hire in or at a public airport shall, in consideration of using state airport facilities for conducting business, pay to the department the following fees:

- (1) For each public airport at which greeting services for hire are provided an annual administrative expense fee of \$100;

- (2) An annual identification badge fee of \$5 per badge; and
- (3) A percentage fee equal to three percent of the person's monthly gross receipts derived from providing greeting services for hire at a public airport. [Eff MAY -4 2002]
(Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-32 Soliciting prohibited. To solicit, offer and provide greeting services for hire to any person other than to any person for whom greeting services had been arranged in advance, as provided, is prohibited. [Eff MAY -4 2002] (Auth: HRS §261-12)
(Imp: HRS §261-7)

SUBCHAPTER 6

IN-FLIGHT CATERING

§19-20.1-33 Scope. The special provisions set forth in this subchapter shall apply to in-flight catering services at public airports.
[Eff MAY -4 2002] (Auth: HRS §261-12)
(Imp: HRS §261-7)

§19-20.1-34 Definition. Unless the context clearly indicates otherwise, as used in this chapter:
"In-flight catering services" means the delivery of prepared and packaged food beverages at any public airport for consumption aboard an aircraft while in flight. [Eff MAY -4 2002] (Auth: HRS §261-12)
(Imp: HRS §261-7)

§19-20.1-35 Fees. Except for the concessionaires and airline lessees authorized to provide in-flight catering services at public airports, any person providing in-flight catering services in or at public airports shall, in consideration of using state airport facilities for conducting business, pay to the department the following fees:

- (1) An annual administrative expense fee of \$100 in advance of providing in-flight catering services at a public airport; and
- (2) A percentage fee equal to three and one-half per cent of its monthly gross receipts derived from providing in-flight catering services at public airports.
[Eff MAY - 4 2002] Auth: HRS §261-12)
(Imp: HRS §261-7)

SUBCHAPTER 7

MERCHANDISE DELIVERY

§19-20.1-36 Scope. The special provisions set forth in this subchapter shall apply to merchandise delivery services at public airports.
[Eff MAY - 4 2002] (Auth: HRS §261-12)
(Imp: HRS §261-7)

§19-20.1-37 Definitions. Unless the context clearly indicates otherwise, as used in this chapter: "Merchandise" means items, such as fresh fruits, flowers, candies, meat products and ice cream, which are:

- (1) Sold to an airline passenger or the passenger's agent at a location other than a public airport; and
- (2) Delivered to that passenger or that passenger's agent at the airport by the seller or the seller's agent.

Duty free or in-bond goods are specifically excluded from this definition.

"Piece" means the unit in which the merchandise is packaged for an individual airline passenger.

"Time of delivery" means the time the merchandise is delivered into one of the areas designated by the director. [Eff MAY - 4 2002] (Auth: HRS §261-12)
(Imp: HRS §261-7)

§19-20.1-38 Fees. Any person providing merchandise delivery services in or at a public airport, in consideration of using state airport

facilities for conducting business, shall pay the following fees:

- (1) An annual administrative expense fee of \$100 for each public airport at which merchandise is delivered.
- (2) Except for the first vehicle, an annual fee of \$200 for each vehicle thereafter upon registration of the vehicle with the department and issuance of decal pursuant to this subchapter.
- (3) A monthly fee based on the use of public airport facilities during the month. The monthly fee shall be:
 - (A) Equal to the total number of pieces of merchandise delivered during the month times 25 cents; in other words, 25 cents for each piece of merchandise delivered during the month.
 - (B) Paid on or before the twentieth day of the succeeding month.
- (4) An annual identification badge fee of \$5 per badge. [Eff MAY - 4 2002]
(Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-39 Monthly delivery report. (a) The permittee shall submit, along with the payment of the monthly fee required under this subchapter, a delivery report for each calendar month, on or before the twentieth day of the succeeding month.

(b) The monthly delivery report shall include:

- (1) A listing of every delivery made during the month in chronological order; this listing shall provide the following information for each delivery:

- (A) Date of delivery;
- (B) Time of delivery; and
- (C) Number of pieces of merchandise.

- (2) The total number of pieces of merchandise delivered during the month.

(c) The permittee shall be subject to penalties, including revocation of permit, if any false information is provided on the monthly delivery report. [Eff MAY - 4 2002] (Auth: HRS §261-12)
(Imp: HRS §261-7)

§19-20.1-40 Controls. (a) The department shall conduct regular inspections of permittee activities to help ensure:

- (1) Accurate reporting of the number of pieces of merchandise delivered; and
- (2) Compliance with the provisions of this chapter.

(b) The department shall, upon reasonable notice, be given access to any of the permittee's records, books or documents to verify reports submitted by the permittee. [Eff MAY - 4 2002]
(Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-41 Designated areas. (a) The permittee shall deliver merchandise only to areas designated by the director.

(b) The permittee shall be allowed to keep the merchandise in the designated areas for a maximum of four hours starting from the time the merchandise is placed in the designated area. [Eff MAY - 4 2002]
(Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-42 Identification of merchandise. (a) The merchandise for each delivery made at a public airport shall be clearly and conspicuously marked with the:

- (1) Permittee's name; and
- (2) Time of delivery.

(b) The merchandise may be marked individually or as a group as long as it is readily identifiable at all times while it is at the airport.

(c) The permittee shall have an authorized representative, wearing the identification badge issued under this chapter, present at all times next to the merchandise, overseeing the merchandise as long as the merchandise is at the airport.

[Eff MAY - 4 2002] (Auth: HRS §261-12)
(Imp: HRS §261-7)

§19-20.1-43 Safety and security. (a) In order to help ensure the public health, safety and airport security, any merchandise shall be removed to a storage area by authorized department personnel if:

- (1) The merchandise is unclaimed after four hours from the time of delivery; or
- (2) The merchandise is left unattended for any amount of time in violation of section 19-20.1-42.

(b) Any merchandise not claimed after two days in storage may be summarily disposed of by the department without notice to the permittee.

(c) The cost of removal, storage or disposal of merchandise shall be assessed to the permittee. The proceeds, if any, from the sale or disposal of any unclaimed merchandise shall be used to offset the cost of removal, storage and disposal and the balance remaining shall be payable to the permittee or passenger upon proof of entitlement thereto.

[Eff MAY - 4 2002] (Auth: HRS §261-12)

(Imp: HRS §261-7)

§19-20.1-44 Unauthorized storage. Permittees shall not keep, place, or store hand trucks, vehicles, carts, or any other equipment or supply item in any area of a public airport except in those locations or spaces specifically prescribed for such use or activity. Any improper placement or storage shall result in an assessment of a \$10 fine for each item or article which is improperly placed or stored, or in the seizure of the item or article at the owner's risk and expense, plus applicable storage and service fees resulting therefrom, or in both a fine and seizure. Upon seizure of any item or article, the department shall send a written notice by registered or certified mail, with return receipt, to the owner of the item or article at the address on record with the department if the owner is known. The notice shall contain a brief description of the item or article, the location of seizure, and intended disposition of the property if not claimed within ten days after the mailing of the notice. If the owner is not known or cannot be located, the item or article shall be held for forty-

five days from date of seizure after which time it shall be disposed of as unclaimed lost property.

[Eff MAY -4 2002] (Auth: HRS §261-12)

(Imp: HRS §261-7)

SUBCHAPTER 8

PORTER SERVICES

§19-20.1-45 Scope. The special provisions set forth in this subchapter shall apply to porter services at public airports.

[Eff MAY -4 2002] (Auth: HRS §261-12)

(Imp: HRS §261-7)

§19-20.1-46 Definitions. Unless the context clearly indicates otherwise, as used in this chapter:

"Accompanied baggage" means baggage which is claimed by a passenger at a public airport.

"Porter" means one who performs porter services.

"Porter services" means the carrying of baggage for passengers at public airports and other services incidental to portorage generally rendered by porters in and about air transportation terminals, including but not limited to:

- (1) The carrying of baggage from baggage claim areas to curbside or to other areas within the airport as requested by the passenger;
- (2) The loading of baggage aboard conveyance used by the passenger in departing the airport;
- (3) The carrying of baggage from curbside to the check-in counters or to other areas within the airport as requested by the passenger; and
- (4) The transporting of handicapped passengers by motorized carts to and from gate areas.

"Portorage" with respect to porter services shall generally mean the handling of accompanied baggage whereas "portorage" with respect to baggage pickup and delivery services shall generally mean the handling of unaccompanied baggage.

"Unaccompanied baggage" means baggage which is not claimed by a passenger at a public airport but for which prior arrangements have been made:

- (1) For pickup at a public airport and delivery to a destination off the airport for arriving passengers; or
- (2) For delivery to a point at a public airport designated by the director for departing passengers. [Eff MAY - 4 2002]
(Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-47 Requirements to obtain permit. To obtain the permit under this chapter, a person must:

- (1) Pay the fees prescribed by this subchapter; and
- (2) Have an existing written contract with an airline to perform porter services.
[Eff MAY - 4 2002] (Auth: HRS §261-12)
(Imp: HRS §261-7)

§19-20.1-48 Fees. Except for airline lessees authorized to provide porter services in their leases with the department, no person shall provide porter services in or at a public airport without paying the department the following fees:

- (1) For each public airport at which porter service is provided, an annual administrative expense fee of \$100; and
- (2) An annual identification badge fee of \$5 per badge. [Eff MAY - 4 2002]
(Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-49 Unauthorized storage. The permittee shall not keep, place, park, or store hand trucks, baggage carts, motorized passenger carts, or any other equipment or supply item in any area of a public airport except in those locations or spaces specifically prescribed for that use or activity. Any improper placement or storage shall result in an assessment of a \$10 penalty for each item or article which is improperly placed or stored, or in the

seizure of the item or article at the owner's risk and expense, plus applicable storage and service fees resulting therefrom, or in both a penalty and seizure. Upon seizure of any item or article, the department shall send a written notice by registered or certified mail, with return receipt, to the owner of the property at the address on record with the department. The notice shall contain a brief description of the item or article, the location of seizure, and intended disposition of the property if not claimed within ten days after mailing of the notice. If following reasonable attempts by the department, the owner cannot be located, the item or article shall be held for forty-five days from date of seizure after which time it shall be disposed of as unclaimed lost property. [Eff MAY - 4 2002]
(Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-50 Motorized passenger carts. (a) The department shall issue decals which shall be placed on motorized passenger carts approved for use at a public airport. No carts shall be used to provide porter services at any public airport without a decal issued by the department. Carts shall be operated only on routes and locations designated by the director. Carts issued decals shall not be used on the airport for any purpose other than the transport of handicapped passengers and their escorts to and from gate areas.

- (b) No motorized passenger cart shall be operated:
- (1) In a careless or negligent manner or in disregard of the rights and safety of others;
 - (2) Without due caution or circumspection, or at a speed or in a manner which endangers or is likely to endanger persons or property;
 - (3) While the operator thereof is under the influence of intoxicating liquor, narcotic, or habit forming drug; and
 - (4) If the vehicle is so constructed, equipped, loaded or in such other condition as to endanger or be likely to endanger persons or property.

(c) The permittee shall be liable for any injury or damage to persons or property resulting from or attributed to the use of the carts at public airports.
[Eff MAY -4 2002] (Auth: HRS §261-12)
(Imp: HRS §261-7)

§19-20.1-51 Soliciting prohibited. No porter shall solicit tips from passengers.
[Eff MAY -4 2002] (Auth: HRS §261-12)
(Imp: HRS §261-7)

§19-20.1-52 Statement of contracted services. The permittee shall provide to the department upon request a statement certified by the serviced airline that a contract for porter services presently exists. This chapter shall become a part of all such contracts so that contracting parties are aware of the rights, duties, and responsibilities of the permittee.
[Eff MAY -4 2002] (Auth: HRS §261-12)
(Imp: HRS §261-7)

§19-20.1-53 Airline lessees. (a) With the exception of sections 19-20.1-3 and 19-20.1-48, this chapter shall apply to airline lessees who provide their own porter services.

(b) Airline lessees who provide porter services to other airlines shall be subject to this chapter.
[Eff MAY -4 2002] (Auth: HRS §261-12)
(Imp: HRS §261-7)

SUBCHAPTER 9

PREARRANGED GROUND TRANSPORTATION

§19-20.1-54 Scope. The special provisions set forth in this subchapter shall apply to prearranged ground transportation services at public airports.
[Eff MAY - 4 2002] (Auth: HRS §261-12)
(Imp: HRS §261-7)

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

"Hotel" includes motel.

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

"Prearranged ground transportation services" includes the providing for hire of a motor vehicle, including off-airport rent-a-car vehicles, at any public airport for the purpose of transporting the hirer of, or passenger in, such motor vehicle and personal property where such hire or transportation was contracted or arranged for by the hirer, passenger, or another on behalf of the hirer or passenger, in advance of the hirer or passenger's arrival at the public airport or, upon or after his arrival at the public airport, by communicating with an operator whose place of business is situated outside the public airport, for ground transportation services to be performed, at least in part, at the public airport.

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

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

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

[Eff MAY - 4 2002] (Auth: HRS §261-12)

(Imp: HRS §261-7)

§19-20.1-56 Fees. Persons authorized to provide prearranged ground transportation services at public airports shall, in consideration of using state airport facilities for conducting business, pay the following fees as applicable:

- (1) Off-airport rent-a-car service.
 - (A) An annual administrative expense fee of \$100 in advance.
 - (B) An annual fee of \$20 for each off-airport rent-a-car vehicle in the permittee's fleet as of October 1 of each year.
 - (C) An annual registration fee of \$250 for each courtesy vehicle used for transportation of customers to and from any public airport.
- (2) Courtesy vehicle service other than off-airport rent-a-car or hotel firms.
 - (A) An annual administrative expense fee of \$250 in advance.
 - (B) An annual registration fee of \$250 for each courtesy vehicle used for transportation of customers to and from any public airport.
- (3) Taxi, bus, limousine and stretchout.
 - (A) An annual administrative expense fee of \$100, in advance, per permittee

providing these prearranged ground transportation services at any public airport.

- (B) An amount equal to the following percentages of the monthly gross receipts which the operator derives from providing these prearranged ground transportation pickup services at the public airports listed below.
 - (i) Seven percent at Honolulu International Airport.
 - (ii) Three percent at public airports other than Honolulu International Airport.

(4) Hotel courtesy vehicles.

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

- (A) An annual administrative expense fee of \$250 in advance.
- (B) An annual registration fee of \$250 for each courtesy vehicle used for transportation of customers to and from any public airport.
- (C) An annual fee of \$2 per sleeping room for rental by the hotel.
[Eff MAY - 4 2002]
(Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-57 Exemptions. The director may, in the public interest, exempt all persons providing ground transportation services at certain public airports from the payment of the fees required under this subchapter. [Eff MAY - 4 2002]
(Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-58 Taxi services. The director reserves the right to revoke any non-exclusive privilege of providing taxi service at any public airport, except prearranged taxi service, and grant an exclusive taxi

service concession to any person in the manner prescribed by section 102-2, Hawaii Revised Statutes. [Eff MAY - 4 2002] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-59 Signs. No person shall display any sign that extends more than six inches above the roof, hood, or truck of any motor vehicle used to provide ground transportation at public airports. Flashing lights and audible devices, other than that required by safety ordinances and regulations are prohibited. The display of any rates or fees on motor vehicles is also prohibited. [Eff MAY - 4 2002] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-60 Restrictions. (a) Permittees and operators shall not solicit passengers or fares on airport premises. Pickup shall be limited to those passengers and clients who have made prior arrangement for the ground transportation service provided by the permittee. The permittee, and its employees, agents and operators shall have evidence of such prior arrangements in the form of schedules, passenger manifests or other similar documentation which identifies the passengers and clients, available for inspection by the director at all times during the period the permittee is engaged in business activities at the public airport, including at the time of all pickups.

(b) Permittees shall not use dispatchers, agents, customer service assistants, operators, employees or any other persons who have a working arrangement with the permittee to engage in any effort to solicit or obtain ground transportation business on any public airport premises. [Eff MAY - 4 2002] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-61 Records of off-airport rent-a-car permittees. Permittees who provide off-airport rent-a-car ground transportation services in or at public airports shall be obligated to maintain a record and original source documents which shall account for all

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

[Eff MAY - 4 2002] (Auth: HRS §261-12)
(Imp: HRS §261-7)

DEPARTMENT OF TRANSPORTATION

The repeal of Chapters 19-20, 19-21, 19-22, 19-23.2, 19-24, 19-25, 19-29 and 19-32, and the adoption of Chapter 19-20.1, Hawaii Administrative Rules, noted on the Summary Page dated March 26, 2002, were approved on March 26, 2002, following public hearings held on February 26 and 27, 2002, after public notice was given in the Honolulu Star-Bulletin, Maui News, MidWeek, Hawaii Tribune-Herald, West Hawaii Today and Garden Island on January 21, 2002.

The repeal of Chapters 19-20, 19-21, 19-22, 19-23.2, 19-24, 19-25, 19-29 and 19-32, and the adoption of Chapter 19-20.1, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

Brian K. Minaai

BRIAN K. MINAAI
Director of Transportation

APR 24 4:11 PM '02

APPROVED:

Benjamin J. Cayetano

BENJAMIN J. CAYETANO
Governor
State of Hawaii

Date: 4/24/02

APPROVED AS TO FORM:

James J. Ruckelshaus

Deputy Attorney General

Filed: APR 24 2002

occupied the land under revocable permit, as illustrated by the following example: if a lessee had occupied the land under revocable permit for ten continuous years, the twenty-five per cent premium shall be part of the annual lease rent for the first ten years of the lease.] not to exceed four years."

2. Adding a new section to read as follows:

"SECTION 7A. The department of land and natural resources shall establish policies to expedite the completion of lease negotiations under this Act by the sunset date of this Act."

3. Amending section 7 to read as follows:

"SECTION 7. This Act shall take effect on July 1, 1988, and shall be repealed on July 1, [1994.] 1995."

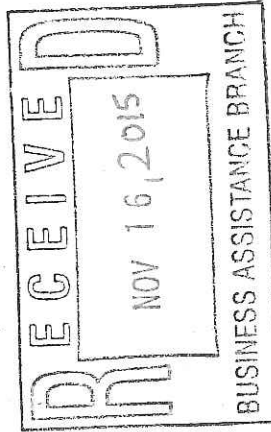
SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 7. This Act shall take effect upon approval; provided that sections 1, 2, 3, and 4 shall take effect on July 1, 1994.

(Approved June 9, 1994.)

Note

- 1. Edited pursuant to HRS §23G-16.5.



ACT 163

S.B. NO. 3292

A Bill for an Act Relating to Airport Taxi Service.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that Hawaii's airport system plays a critical role in the State's visitor-based economy by facilitating the movement of passengers to and from the State and between islands. As the main point of entry to Hawaii, the State's airports are the first places to which visitors are exposed, and present the first opportunity to convey a strong impression of Hawaii's assets to visitors.

An important aspect of any efficient airport operation is a well-managed, reasonably-priced ground transportation system that includes a sound plan for taxicab services. If visitors have favorable impressions of airport-based taxis, they will return to visit again, thereby helping to keep transportation costs down in the long run. Taxis and taxicab drivers are among the first people in Hawaii to which first-time visitors are exposed. Because of this, it is essential that drivers provide top-quality service by using clean, new vehicles; treating visitors courteously; and demonstrating the Aloha Spirit. The type of service received upon first arriving in Hawaii is crucial to a visitor's decision to return in the future.

The legislature further finds that a sound, comprehensive master plan would give taxi drivers the necessary incentives to enhance taxi service, thereby improving the Hawaiian experience for out-of-state visitors, and increasing the percentage of returning visitors.

The purpose of this Act is to appropriate funds to the department of transportation to develop a master plan that will help create an economical and efficient airport taxi system with resulting benefits for taxi customers, taxi operators, and Hawaii's visitor-based economy.

SECTION 2. There is appropriated out of the airport revenue fund of the State of Hawaii the sum of \$75,000, or so much thereof as may be necessary for fiscal year 1994-1995, for the development of a master plan for the economical and efficient management of airport taxicab service. This plan shall be developed by the department of transportation as follows:

- (1) The department of transportation shall conduct a thorough review of airport taxi service for its entire statewide system of airports and formulate a management plan that addresses the issues set forth in this Act;
- (2) Airport taxi permit fees, if any, shall be calculated based upon a rational analysis of the costs to operate and administer the airport taxi system and shall not exceed those costs;
- (3) The department shall consult with and involve members of the local taxi industry as well as technical experts in the field at various strategic points during the development of the plan; and
- (4) The department shall submit a report on a proposed master plan to the legislature no later than twenty days prior to the convening of the regular session of 1995.

SECTION 3. The sum appropriated shall be expended by the department of transportation. Any unexpended or unencumbered balance of any appropriation made by this Act as of the close of business on June 30, 1995 shall lapse into the airport revenue fund.

SECTION 4. This Act shall take effect upon approval.

(Approved June 9, 1994.)

ACT 164

H.B. NO. 929

A Bill for an Act Relating to Limitation of Actions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 657-8, Hawaii Revised Statutes, is amended to read as follows:

"§657-8 Limitation of action for damages based on construction to improve real property. (a) No action to recover damages for any injury to property, real or personal, or for bodily injury or wrongful death, arising out of any deficiency or neglect in the planning, design, [suretyship, manufacturing and supplying of materials.] construction, supervision and administering of construction, and observation of construction relating to an improvement to real property shall be commenced more than two years after the cause of action has accrued, but in any event not more than ten years after the date of completion of the improvement.

Exhibit 4

DEPARTMENT OF TAXATION

Adoption of Chapter 18-231
Hawaii Administrative Rules

_____, 2016

1. Chapter 18-231, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

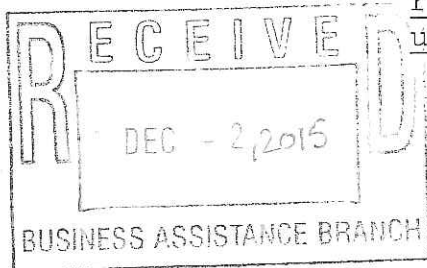
"§18-231-3-1.1 Request for Reconsideration of Assessment. (a) A request for reconsideration of assessment means the process by which a taxpayer requests the department to grant a reconsideration of assessment under section 18-231-3-1.2.

(b) A request for reconsideration of assessment is a purely administrative matter. A taxpayer's appeal rights are unaffected by a request for reconsideration of assessment, and a request for reconsideration of assessment does not constitute an appeal to either the Board of Review or the Tax Appeal Court.

(c) The department may grant or deny any request for reconsideration of assessment in its sole discretion.

(d) A request for reconsideration of assessment shall be made by the taxpayer in writing to the auditor or tax return examiner listed on the Notice of Final Assessment or Denial Letter. The request for reconsideration of assessment shall be signed by the taxpayer and shall include:

- (1) A detailed summary of facts and circumstances that the taxpayer believes would, if taken into consideration, result in a different assessment;
- (2) A list of the new documentation, evidence, or other information that supports the taxpayer's position under paragraph (1); provided that if the department grants a request for reconsideration of assessment under subsection (g), the taxpayer shall



provide all such listed documentation, evidence, or other information within thirty days unless otherwise specified by the department; and

- (3) An explanation of why the taxpayer did not provide the facts, documentation, evidence, or information under paragraphs (1) and (2) during the audit or before the department issued the Notice of Final Assessment or Denial Letter.

(e) The department may through publication add additional requirements for a request for reconsideration of assessment or provide guidance as to the circumstances in which a request may be granted.

(f) The department may require the taxpayer to pay no more than thirty per cent of the assessment prior to granting a request for reconsideration of assessment. The amount paid under this subsection shall be applied according to section 231-27, HRS, and shall not be considered a payment under protest under section 40-35, HRS.

(g) The granting of a request for reconsideration of assessment is merely an acknowledgment that the department will consider the additional documentation, evidence, or other information listed in the taxpayer's request, and in no way ensures or indicates that the department will issue a new, modified, or amended Notice of Final Assessment or Denial Letter after such reconsideration.

(h) The department shall notify the taxpayer in writing of the grant or denial of a request for reconsideration of assessment. If the department elects to grant a request for reconsideration of assessment, the department shall notify the taxpayer in writing that:

- (1) The department has granted the taxpayer's request for reconsideration of assessment; and
(2) Reconsideration of assessment does not affect the taxpayer's appeal rights and the

taxpayer should take steps to ensure it perfects any appeal rights related to the existing Notice of Final Assessment or Denial Letter. [Eff]
(Auth: HRS §231-3(9)) (Imp: HRS §231-3)

2. Chapter 18-231, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

§18-231-3-1.2 Reconsideration of Assessment.

(a) For purposes of this section, "reconsideration of assessment" means the process by which the department reevaluates the results of:

- (1) A prior audit where tax was assessed and remains unpaid; or
- (2) A prior denial of a taxpayer's claim of a refund or tax credit.

(b) Upon granting a request for reconsideration of assessment under section 18-231-3-1.1, the department may:

- (1) Request additional substantiation, worksheets, spreadsheets, explanations and other documentation; and
- (2) Amend or rescind existing assessments, issue new assessments, or let existing assessments stand in its sole discretion.

(c) A taxpayer that disputes the result of a reconsideration of assessment may pay the full amount in dispute under protest as provided by section 40-35, HRS, or pay the full amount in dispute and participate in the expedited appeals and dispute resolution program as provided by section 231-7.5, HRS." [Eff

] (Auth: HRS §231-3(9)) (Imp: HRS §231-

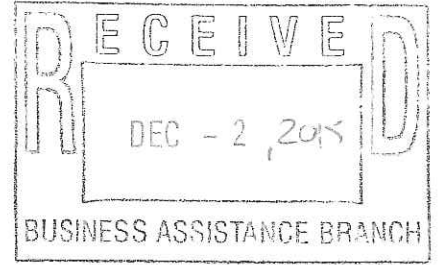
3)

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

Proposed Hawaii Administrative Rules
Hearing Date: January 6, 2016

4. These amendments to Chapter 18-231, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

Proposed Hawaii Administrative Rules
Hearing Date: January 6, 2016



DEPARTMENT OF TAXATION

Amendments to Chapter 18-251
Hawaii Administrative Rules

_____, 2016

1. Section 18-251-1-04, Hawaii Administrative Rules, is amended by amending subsection (b) to read as follows:

"(b) Motor vehicles or vehicles provided in conjunction with public relations and promotional activities, such as familiarization trips (commonly known as "fam trips") and get-away prize packages, shall be subject to the rental motor vehicle surcharge tax.

Example:

ABC Cars participates in a visitor industry project to encourage travel agents to cultivate Hawaii as a vacation destination by providing [~~6~~] six cars for a one-week familiarization tour of the islands. All [~~6~~] six of the cars are subject to the rental motor vehicle surcharge tax[~~-as follows: \$2 a day for 7 days, for 6 cars totaling \$84 (\$14 x 6) surcharge tax due~~].

Example:

In conjunction with a company promotion, DEF Cars (DEF) gives away coupons to its special customers for "free rentals", no rental rate charge for one day. All customers, including those renting a car for one day or less, who use their coupons are asked to sign rental agreements and contract for a collision damage waiver or to sign an acknowledgment. Cars used by customers in this promotion are subject to the rental motor

vehicle surcharge tax for each day's rental, including the day for which no rental rate is charged.

Example:

GHI Rentals (GHI) has a "frequent GHI driver" program, which gives a free day's rental after a customer has rented a car from GHI five times. After the customer has rented a car from GHI on five occasions, the customer does not pay the rental fee on the next (or sixth) rental. All customers receiving a free rental are asked to sign rental agreements and contract for a collision damage waiver or to sign an acknowledgment. Cars used by customers for the sixth rental period, which are provided without charge, in the GHI frequent driver program are subject to the rental motor vehicle surcharge tax." [Eff 1/27/92; am] (Auth: HRS §§231-3(9), 251-15(b)) (Imp: HRS §251-1)

2. Section 18-251-2-02, Hawaii Administrative Rules, is amended to read as follows:

"§18-251-2-02 Surcharge tax on rental motor vehicles or vehicles; computation of tax. (a) For purposes of this chapter, "day" means a twenty-four hour period of time, which shall be computed from the time that the motor vehicle or vehicle is rented or leased.

Example:

Ms. Visitor rents a car for a day. She picks up her car at [9] 9:00 a.m. on Monday and returns it to the car rental station at 8:59 a.m. on Tuesday. There is a surcharge tax [~~of \$2~~] at the rate set forth in section 251-2, HRS, for the one-day rental.

Proposed Hawaii Administrative Rules
Hearing Date: January 6, 2016

(b) For purposes of this chapter, "any portion of a day" means one minute or more of a twenty-four hour period of time that the motor vehicle or vehicle is rented or leased; provided that the computation of time shall not include any incidental grace period allowed by a lessor. The grace period shall be without any additional rental charge, overtime or service fee, or any other charge or fee or waiver relating to a delayed return of a vehicle.

Example:

Mr. Businessman travels from Oahu to Maui for business and rents a car from ABC Rental on Maui from 8:00 a.m. to [~~12 noon~~] 12:00 p.m. when Mr. Businessman returns to Oahu. At 1:00 p.m. ABC Rental rents the same car to Ms. Visitor until 8:00 p.m. Assuming ABC Rental is not a car-sharing organization, ABC Rental is subject to [~~a \$4~~] the rental motor vehicle surcharge tax[~~, \$2 surcharge tax~~] for the daily rate for each portion of a day's rental. In other words, rental motor vehicle surcharge tax is due for two days total rental.

Example:

Mr. Tourist travels to Maui and rents a car. He picks up his car at [~~11~~] 11:00 a.m. on Friday and returns it to the car rental station at 11:01 a.m. on Monday. The rental car company charges Mr. Tourist the rental rate for three days and one hour. Mr. Tourist has rented the car for three days and a portion of a fourth day; therefore, [~~there is a~~] rental motor vehicle surcharge tax [~~of \$8.~~] is due for four days total rental.

Example:

Ms. Mover is moving to a new house and rents a truck for a day. She picks up the truck at [~~9~~]

Proposed Hawaii Administrative Rules
Hearing Date: January 6, 2016

9:00 a.m. on Wednesday and returns it to the truck rental location at 9:10 a.m. on Thursday. The rental company has a grace period of [~~15~~] fifteen minutes and only charges Ms. Mover for one day's rental. Ms. Mover has rented the truck for one day, and [~~there is a~~] rental motor vehicle surcharge tax [~~of \$2.~~] is due for one day total rental.

(c) The substitution of a motor vehicle or vehicle with another motor vehicle or vehicle shall not incur an additional rental motor vehicle surcharge tax amount for a day or portion of a day if:

- (1) The substitution is made on the same rental contract or agreement;
- (2) The rental or lease period is uninterrupted, continuous; and
- (3) If the rental or lease period is longer than one day, the rental or lease period shall occur over consecutive days.

When there is a substitution of vehicle, the burden is upon the lessor to show that the substitution is proper and not a surcharge tax avoidance scheme and subject to the rental motor vehicle surcharge tax.

Example:

Mr. Sales flies to Oahu for a one-day trip. He rents a car at the airport and drives off to his meeting in Kaaawa. Before he gets too far, Mr. Sales realizes that the car is not in very good condition. He decides to return to the airport station and exchange the car for another one in proper working condition. The second car is a substitute for the first car, therefore, the rental motor vehicle surcharge tax is due [~~is \$2.~~] for one day total rental.

Example:

Proposed Hawaii Administrative Rules
Hearing Date: January 6, 2016

To ease traveling to neighbor islands for its customers, ABC Rentals (ABC) has a "one-stop 7-day islandhopping" special: a customer signs one rental car contract; pays the rental fee for seven days; and may pick up a car from any of ABC's business locations on any island during that time period. Ms. Visitor decides on the special rate. She picks up a car at the airport on Oahu at [~~8~~] 8:00 a.m. on Monday; returns the car to the Oahu station at [~~8~~] 8:00 a.m. on Tuesday; and flies to Molokai, picking up a car there at [~~9~~] 9:00 a.m. At [~~5~~] 5:00 p.m., she returns the car to the Molokai station and flies to Maui, picking up a car at [~~6~~] 6:00 p.m. Ms. Visitor spends the rest of the week on Maui, returning the car to the Maui station at 7:55 a.m. the next Monday. Ms. Visitor actually used three different cars on Tuesday. The second and third cars she used are substitutes for the first car; thus, the rental motor vehicle surcharge tax is due for one day total rental for that day [~~is~~ only \$2], and the [~~total~~] rental motor vehicle surcharge tax is due for seven total days for the entire [~~7~~] seven days' special rental [~~is~~ \$14].

(d) The rental motor vehicle surcharge tax due on a motor vehicle or vehicle which is not returned to the lessor or is abandoned by persons renting or leasing the motor vehicle or vehicle shall be calculated on:

- (1) The days or portion of days set forth in the rental contract or agreement; or
- (2) The days or portion of days for which the person renting or leasing the motor vehicle or vehicle is actually charged if that number of days is greater than set forth in the rental contract or agreement.

Example:

ABC Cars rents a car to Jane and John Doe. The rental contract states that the car will be

Proposed Hawaii Administrative Rules
Hearing Date: January 6, 2016

rented from Monday [9] 9:00 a.m. and must be returned by Wednesday [9] 9:00 a.m. Because they are late for their flight back to the mainland, instead of returning the car to the car rental station, the Does leave the car at the airport terminal. The car is towed away by airport security. ABC does not locate the car until the following Monday at [11] 11:00 a.m; thus, the car is gone from the car rental station for a total of eight days. The surcharge tax, however, is only calculated on the two days set forth in the Does' contract [~~7, and the surcharge tax due is \$4~~].

(e) The status of the person renting or leasing the vehicle shall have no bearing on the imposition of the rental motor vehicle surcharge tax. Motor vehicles or vehicles rented or leased to the following persons are nevertheless subject to the rental motor vehicle surcharge tax:

- (1) Persons which are nonprofit charitable or educational corporations, associations, or similar organizations exempt from tax under the federal Internal Revenue Code of 1986, as amended; and
- (2) Persons who present cards or certificates stating that the holder is exempted from state sales taxes.

Example:

VIP Rentals (VIP), rents a car to a customer who is a staff member of a foreign embassy. The staff member presents a diplomatic card stating: "The bearer of this card shall not be subject to state sales taxes under treaty agreements between the United States and the staff member's country." The waiver from payment of tax stated on the card does not apply here: first, the tax is not a sales tax but a surcharge tax, and second, the incidence of tax falls on the rental agency, not the customer. The rental car agency

is not prohibited from passing on the cost of the rental motor vehicle surcharge tax to the customer.

- (f) The designation by the lessor of:
- (1) The rental or lease period; or
 - (2) Consideration received from the rental or lease of a motor vehicle or vehicle to a specific time period;

is not controlling and may not necessarily determine the number of days a motor vehicle or vehicle is rented or leased.

Example:

DEF Rental Cars (DEF) has a variety of rental fees, depending upon the number of days a customer rents a vehicle. There is an hourly rate, daily rate, weekly rate, and monthly rate. DEF also has a special business rate. If the business traveler rents a car for five weekdays, the business traveler may keep the car over the weekend without an additional rental charge. When DEF rents a car to a customer for a week under the special business rate and the car is kept for seven days, the car is subject to the rental motor vehicle surcharge tax for all seven days." [Eff 1/27/92; am] (Auth: HRS §§231-3(9), 251-15(b)) (Imp: HRS §251-2)

3. Section 18-251-2-04, Hawaii Administrative Rules, is amended to read as follows:

"§18-251-2-04 Surcharge tax on rental motor vehicles or vehicles; adjustments. The rental motor vehicle surcharge tax is imposed in accordance with sections 18-251-2-02 and 18-251-2-03; provided that the lessor shall not be required to pay the surcharge tax if the entire rental contract is voided and all fees, charges, and consideration in any form are

returned to the person renting or leasing the motor vehicle or vehicle.

Example:

Cheep Fleet (Cheep) rents a car to Mr. Roe. Mr. Roe takes the car out on Monday at [9] 9:00 a.m. Dissatisfied with the car's performance, at [noon] 12:00 p.m. Mr. Roe exchanges the car for another one. At [5] 5:00 p.m., he's back. This time he demands that Cheep return his money. Cheep voids the rental car contract and returns all money collected from Mr. Roe: the rental fee, insurance fee, extra driver fee, and the pass-on of the rental motor vehicle surcharge tax. Cheep does not charge Mr. Roe an administrative service fee for the return of the car. The rental motor vehicle surcharge tax will not be imposed on Cheep for the use of the cars by Mr. Roe." [Eff 1/27/92; am] (Auth: HRS §§231-3(9), 251-15(b)) (Imp: HRS §251-2)

4. Section 18-251-2-05, Hawaii Administrative Rules, is amended to read as follows:

"§18-251-2-05 Surcharge tax on rental motor vehicles or vehicles; subject to general excise tax.

(a) The rental motor vehicle surcharge tax imposed on a lessor is included as gross income subject to the general excise tax, chapter 237, HRS, [~~and is not deductible~~] except as provided in subsection (b).

(b) Rental motor vehicle surcharge taxes which are:

- (1) Separately stated and visibly passed on; and
- (2) Collected from persons renting or leasing vehicles by lessors holding certificates of registration under chapter 251, HRS, and this chapter;

shall be excluded from gross income subject to the general excise tax.

Example:

ABC Rentals (ABC) rents cars to residents and visitors. Every person renting a car is given a rental car agreement which includes a breakdown of charges for the customer. The [~~\$2-a day~~] surcharge tax amount is listed separately in every contract. The surcharge taxes that ABC collects from its customers are not included as gross income for general excise tax purposes.

Example:

Cheep Fleet (Cheep) targets the budget traveler and advertises a flat daily rate, "\$12, no more, no less" in its flyers. Cheep's rental contracts do not [~~breakout~~] break out any costs and simply lists "Total Due: \$12" on the last line. Although [~~\$2~~] a portion of the \$12 represents the surcharge tax which must be paid under this chapter, because the surcharge tax is not visibly broken out and shown on the contract, the entire \$12 is gross income subject to the general excise tax." [Eff 1/27/92; am
] (Auth: HRS §§231-3(9), 251-15(b)) (Imp: HRS §251-2)

5. Section 18-251-2-06, Hawaii Administrative Rules, is amended to read as follows:

"§18-251-2-06 Surcharge tax on tour vehicles; imposition and rates. There is levied on the tour vehicle operator, and assessed and collected each month, a tour vehicle surcharge tax for each tour vehicle used or partially used during the month [~~as follows:~~

- ~~(1) \$65 each month for each tour vehicle that falls into the over twenty five passenger seat category; and~~
- ~~(2) \$15 each month for each tour vehicle that falls into the eight to twenty five~~

passenger seat category.] at the rates set forth in section 251-2(b), HRS.

Example:

ABC Bus Tours (ABC) owns [10] ten buses that fall in the over twenty-five seat category and sells around-the-island tours on Hawaii. ABC also provides "as needed" transportation services to large groups. In January[7] 1992, ABC conducts tours using [5] five buses; uses [1] one bus to transport one group of visitors that disembarked from a ship in Hilo to a luau and back to the ship; and does not use the remaining [4] four buses, which are serviced that month. The tour vehicle surcharge tax for the month of January[7] 1992[7] is imposed on [6] six buses[7] totaling ~~(6 X \$65) \$390~~.

Example:

DEF Sightseeing (DEF) owns [10] ten vans and minibuses with passenger capacities between eight to twenty-five persons. As part of a model transportation project, DEF agrees to use all of its vehicles to transport workers from neighborhood sites to central locations downtown in the morning and to return the workers back to the neighborhood sites in the early evening. The project lasts for one month. DEF also uses [4] four of the vehicles in the evening to regularly transport tourists to places of interest. DEF uses the same vehicles each evening. One evening, however, one of the vehicles breaks down and DEF uses an alternate minibus for an hour. Because [5] five of the vehicles only were used for commuting purposes, these are not subject to the surcharge tax for the month of the project. The surcharge tax is imposed on the other [5] five vehicles - the [4] four that were usually used in the evenings and the additional [1] one used on the night of the breakdown. The [~~total~~]

tour vehicle surcharge tax for the month is [~~5-X~~
~~\$15)-\$75] imposed on five minibuses." [Eff
1/27/92; am 1/2/93; am] (Auth: HRS
§§231-3(9), 251-15(b)) (Imp: HRS §251-2]~~

6. Section 18-251-2-07, Hawaii Administrative Rules, is amended to read as follows:

"§18-251-2-07 Surcharge tax on tour vehicles; cost not deductible from public service company tax. The tour vehicle surcharge tax imposed on a tour vehicle operator is not deductible from gross income subject to the public service company tax, chapter 239, HRS.

[Example:

~~GHI Tours (GHI) owns 10 vans and minibuses with passenger capacities between eight to twenty five persons. GHI uses all of its vehicles every month in its business. The amount of GHI's total tour vehicle surcharge tax liability for each month, \$150, is not deductible from gross income under the public service company tax law, chapter 239, HRS.]~~" [Eff
1/27/92; am 1/2/93; am] (Auth: HRS
§§231-3(9), 251-15(b)) (Imp: HRS §251-2)

7. Chapter 18-251, Hawaii Administrative Rules, is amended by adding a new subchapter to read as follows:

"SUBCHAPTER 5.1

IMPOSITION OF CAR-SHARING VEHICLE SURCHARGE TAX

§18-251-2.5-01 Car-sharing vehicle surcharge tax. (a) For purposes of the car-sharing vehicle surcharge tax:

Proposed Hawaii Administrative Rules
Hearing Date: January 6, 2016

"Average paid use period" means the total time a lessor's vehicles are rented or leased divided by the total number of rentals entered into. Average paid use period is calculated per taxable period.

"Organization" means any entity that is required to register and file returns of its own under chapter 237, HRS.

"Paid use period" means the total time a lessor's vehicle is rented or leased and is computed from the time the vehicle is rented or leased until the time the vehicle becomes available for rent or lease to a different customer or becomes unavailable to any customer. "Paid use period" shall not include any complimentary grace period provided by a lessor.

"Taxable period" means the organization's taxable year.

(b) For purposes of determining the total number of rentals entered into by a lessor, a single rental continues until the vehicle rented becomes available to a different customer or becomes unavailable to any customer.

(c) The determination of whether a lessor is a car-sharing organization is made on a per organization basis.

Example:

Customer rents a vehicle from Lessor at 10:00 a.m. Customer parks and shops for one hour. During the time Customer is shopping, the vehicle remains available only to Customer and is not available to other customers of Lessor. Customer then returns to the vehicle, drives home to deliver her purchases, and relinquishes the vehicle at 1:00 p.m. the same day, at which time the vehicle becomes available to other customers of Lessor. Lessor has entered into one rental for which the paid use period is three hours. Even if Customer is not charged for the time she is shopping, the rental in this example may not be treated as two separate rentals because the vehicle did not become available to a different

customer of Lessor during that time and remained available to Customer.

Example:

Customer rents a vehicle from Lessor at 8:00 a.m. and relinquishes the vehicle at 8:00 a.m. the following day. The vehicle becomes available to other customers of Lessor at that time. Customer then decides she needs to use a car again, immediately returns to the same vehicle, rents the vehicle from Lessor at 8:02 a.m., and relinquishes the vehicle at 10:02 a.m. the same day. Because the vehicle became available to other customers between periods of rental, Lessor has entered into two rentals, one with a paid use period of one day and another with a paid use period of two hours.

Example:

Customer rents a vehicle from Lessor at 8:00 a.m. The vehicle is faulty and Customer returns the vehicle to Lessor's facility at 8:10 a.m., at which time it is put into the shop for maintenance, repaired and re-enters Lessor's fleet the following day. The paid use period is ten minutes because after ten minutes of rental the vehicle became unavailable to any customer.

Example:

Customer rents a vehicle from Lessor at 8:00 a.m. and returns the vehicle at 10:00 a.m. the following day. Lessor has entered into one rental for which the paid use period is twenty-six hours. Note that even if Lessor is a car-sharing organization, Lessor is liable for tax for two days at the rate set forth in section 251-2, HRS, because the paid use period is six hours or more.

Example:

Lessor rents a vehicle for a two-day period, beginning at 9:00 a.m. Monday and ending 9:00 a.m. Wednesday by which time the vehicle must be returned to lessor. The customer returns the vehicle at 5:00 a.m. Wednesday. The paid use period is forty-eight hours unless Lessor can prove that the vehicle became available to other customers at 5:00 a.m. or became unavailable to any customer at 5:00 a.m. Note that even if Lessor is a car-sharing organization, Lessor is liable for tax for two days at the rate set forth in section 251-2, HRS, because the paid use period is six hours or more.

Example:

Customer rents a vehicle from Lessor at 1:00 p.m. Lessor offers a complimentary grace period based on traffic conditions. Customer returns the vehicle at 3:15 p.m. the same day. Per Lessor's terms, Customer's rental qualifies for a complimentary grace period of fifteen minutes. The paid use period for the rental is three hours.

Example:

For a taxable period, Lessor enters into seventy-five separate rentals consisting of twenty-five thirty-minute rentals, twenty-five one-hour rentals, and twenty-five twelve-hour rentals. Lessor has rented vehicles for a total of 337.5 hours during the taxable period. The average paid use period is calculated by dividing 337.5 total rental hours by seventy-five total rentals. The average paid use period for the taxable period is 4.5. Lessor satisfies the average paid use period requirement to qualify as a car-sharing organization.

Example:

For a taxable period, Lessor enters into two hundred separate rentals consisting of seventy-five thirty-minute rentals, fifty one-hour rentals, forty two-hour rentals, twenty-five twelve-hour rentals, and ten two-day (forty-eight hours each) rentals. Lessor has rented vehicles for a total of 947.5 hours during the taxable period. The average paid use period is calculated by dividing 947.5 total rental hours by two hundred total rentals. The average paid use period is 4.73. Lessor satisfies the average paid use period requirement to qualify as a car-sharing organization. [Eff]
(Auth: HRS §§231-3(9), 251-15(b)) (Imp: HRS §§251-1, 251-2.5)

§18-251-2.5-02 Car-sharing vehicle surcharge tax; imposition. (a) The car-sharing vehicle surcharge tax is levied per half-hour or part of a half-hour that a vehicle is rented or leased by a car-sharing organization. The car-sharing vehicle surcharge tax is levied at the rate and in the manner set forth in section 251-2, HRS, on all rentals of six hours or more. For purposes of calculating the tax, the time length of rentals shall not include any complimentary grace period provided by a lessor.

Example:

CarShare, a car-sharing organization, rents a vehicle for two hours. CarShare is liable for the car-sharing surcharge tax for a total of four half-hours at the rate set forth in section 251-2.5, HRS.

Example:

CarShare rents a vehicle for two hours and also rents a vehicle for six hours. CarShare is

liable for car-sharing surcharge tax for four half-hours at the rate set forth in section 251-2.5, HRS, for the two hour rental. CarShare is liable for car-sharing surcharge tax for one day at the rate set forth in section 251-2, HRS, for the six hour rental because that rental is six hours or longer.

Example:

CarShare rents a vehicle for two hours and rents a vehicle for twenty-six hours. CarShare is liable for car-sharing surcharge tax for four half-hours at the rate set forth in section 251-2.5, HRS, for the two hour rental. CarShare is liable for car-sharing surcharge tax for two days at the rate set forth in section 251-2, HRS, for the twenty-six hour rental because that rental is six hours or longer and is for all or part of two days.

Example:

Customer rents a vehicle from CarShare at 1:00 p.m. CarShare offers a complimentary grace period based on traffic conditions. Customer returns the vehicle at 7:10 p.m. the same day. Customer's rental qualifies for a complimentary grace period of fifteen minutes and customer is charged for a rental of five hours and fifty-five minutes. The car-sharing organization is liable for car-sharing surcharge tax for twelve half-hours at the rate set forth in section 251-2.5, HRS, because the rental period is not six hours or longer.

Example:

Customer rents a vehicle from a CarShare at 1:00 p.m. CarShare offers a complimentary grace period based on traffic conditions. Customer returns the vehicle at 7:30 p.m. the same day.

Customer's rental qualifies for a complimentary grace period of fifteen minutes and customer is charged for a rental of six hours and fifteen minutes. CarShare is liable for car-sharing surcharge tax for one day at the rate set forth in section 251-2, HRS, because the rental is six hours or longer." [Eff] (Auth: HRS §§231-3(9), 251-15(b)) (Imp: HRS §§251-1, 251-2.5)

8. Section 18-251-3-02, Hawaii Administrative Rules, is amended to read as follows:

"§18-251-3-02 Display of registration certificate. (a) Each person at all times shall conspicuously display the certificate of registration or a notice as set forth in subsection (b) at each place for which the certificate of registration is issued.

(b) Where the person providing rental motor vehicles to the public or engaging in the tour operator business has more than one place of business, the director shall issue one certificate of registration. The person may post a notice at each place of business notifying the public where the certificate may be inspected.

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

Example:

Hawaii, Inc. provides rental motor vehicles to the public at two places of business located at the Honolulu Airport and in Waikiki. To register, Hawaii, Inc. must list both places of business and pay a \$20 fee. A master certificate shall be issued. Hawaii, Inc. is not required to post a copy of the certificate at either place of business but may post a notice at each place of business stating that the business of providing rental motor vehicles to the public has been

Proposed Hawaii Administrative Rules
Hearing Date: January 6, 2016

properly registered and that a true copy of the certificate may be inspected or examined at a place designated in the notice." [Eff 1/27/92; am] (Auth: HRS §§231-3(9), 251-15(b)) (Imp: HRS §251-3)

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

10. These amendments to Chapter 18-251, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.