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13
December 6, 2017 ~ SBRRB Meeting Checklist

Member Attendance				
	Airline Preference	From	Details	Attend
Anthony Borge, Chair	NA	Oahu	Parking Pass	X
Reg Baker	NA	Oahu	Parking Pass	X
Kyoko Kimura <i>Attached</i>	HA	Maui	Parking Pass	X
Harris Nakamoto, Vice Chair	NA	Oahu	NA	X
Director's ex officio - Carl Nagasaki <i>Mark Miki</i>	NA	Oahu	NA	X
Robert Cundiff	NA	Oahu	Parking Pass	X
Nancy Atmospera-Walch	NA	Oahu	NA	X
<i>Attached</i> Garth Yamanaka	HA	B.I.	Parking Pass	X

Pre Meeting Checklist	
Conference Room #436 (Confirm each month)	X
Poll Board Attendance - in process	✓
Draft Agenda to Chair for approval	✓
Prepare TAF's for Director's approval - ASAP (Linda) - Group TAF <i>Kyoko Garm</i>	✓
Copies of Rule Package for Lte. Gov's Office (2) and Scan for Posting on State Calendar	✓✓
Send Chair Minutes for Approval <i>Approved</i>	✓
Post approved agenda on SBRRB website & State Calendar, Lte. Governor's Office <i>Flash</i>	✓✓✓
Send Agendas to those people who requested it - IMPORTANT	✓
Upload Meeting Documents onto Board's Website in Calendar	✓
Include "discussion leader" names on the agendas to Board members only.	✓
Prepare Agenda ONLY for "Chair" with Names of Attendees	✓
Mail parking permits to those Board members noted (Sent in Nov. 2016 six (6) permits)	✓ <i>OK</i>

STAFF				
Jennifer Waihee-Polk				Via Ipad ✓
Dori Palcovich				✓

Post Meeting Checklist	

Visitors Sign-in-Sheet - Small Business Regulatory Review Board - December 13, 2017

	Name	Title	Organization	Email	Phone
1	Alton Miyasaka		DNIR - DAR	alton.k.miyasaka@hawaii.gov	75092
2	Walter Chun		-	osلمان222@gmail.com	375-2048
3	Norman Abu		DNIR - HOSTE	norman.abu@hawaii.gov	586-9116
4	Ed Stark		SEC	estark@hondolu.gov	723-7169
5	LOND ROGERS		SEC	lrogers@hondolu.gov	723-7176
6	Dale Ferris		Mule's Tail	dale@hondolu.gov	233-3333
7	Nicole Bennett		DNIR HOSTE	nicole.gibeneve@hawaii.gov	586-9087
8	Kristin Takaba		DNIR HOSTE	Kristin.A.Takaba@hawaii.gov	586-9116
9	Shannon Alwala		GA	Shannon@easthawaii.gov	
10	GREGG SEIKENS		PANCA	greggsepancahawaii.com	597-1212
11					
12					
13					
14					
15					

Palcovich, Dori

From: Dale Evans, Charley's Taxi <dale@charleystaxi.com>
Sent: Tuesday, December 12, 2017 1:59 PM
To: Palcovich, Dori; Anthony Borge
Cc: Higashi, Ross; Neilson-Nenezich, Rosemary; Fujihara, Craig H; Hayakawa, Sidney A; Sakata, Roy; Ann H. Kobayashi; Bette Kekiwi; Brandon Elefante; Carol A Fukunaga; Customer Service Department; Ernie Martin; Ikaika Anderson; Joey Manahan; Kirk Caldwell; Kymberly Pine; Randy Leong; Ron Menor; Roy K. Amemiya, Jr.; Sherilyn Kajiwara; Steven Wong; Trevor Ozawa; Yamada, Troy S.
Subject: SBRRB meeting 12/13/17 re TNCs vs small business Taxi & PUC operators

December 9, 2017

Small Business Regulatory Review Board
Agenda Item B, New Business
Wednesday, December 13, 2017, 10:00 a.m.
No. 1 Capitol District Building
250 South Hotel Street – Conference Room 436

Statement of Dale Evans, CEO, Charley's Taxi re

TNC MULTINATIONALS VS SMALL BUSINESS TAXI & PUC OPERATORS

Double Standards re Qualifications & Mandates.

Minimal Requirements on TNCs are Unenforced.

Rogue Operators Are Rampant.

Our community's transportation needs are facing a crisis! Honolulu Ranks #1 Worst City for Driving in WAZE 2017 ranking. [\[1\]](#)

The City & County of Honolulu has been in violation of Americans With Disabilities Act (ADA) for years. Honolulu's demand for paratransit is the highest per capita in the United States. Between 2001 and 2008, trip demand grew between 3% and 5% per year. Starting in 2009, the demand curve began a steeper upward trend with trips growing 5% to 6% per year through 2015. In comparison, from 2009 to 2015, trips provided on TheBus fixed-route service rouse slight, then declined and leveled off." [\[2\]](#) TheBus ridership is down ten million in the past 5 years. [\[3\]](#)

Since the state and city's 2016 legislation to 'accommodate' TNCs (transportation network companies Uber and Lyft), many taxicab drivers have left the business (some estimate by about 50% drop) to join Uber and/or Lyft. People with Special Needs (the elderly, disabled), dialysis/chemotherapy patients, low/fixed income constituents who rely on door-to-door taxi service are most vulnerable from the diminishing supply of taxicabs in Honolulu.

TNC IMPACTS ON CONSUMERS

- NO DATABASE ON TNC VEHICLES & DRIVERS
- NO INSURANCE.
- PRICE GOUGING, HIGHER FARES
- LACK OF SUPPLY INDUCED BY SURGE PRICING
- TRIP REFUSAL OR DELAY
- TNC CATER TO RICH, SERVICE RESTRICTED TO SUBSCRIBERS ONLY USING TNC APP, NO CASH ACCEPTED
- GUARANTEED PAYMENT
- EXTRA FEES NOT INCLUDED IN FARE ESTIMATES
- LONGER ROUTES, HIGHER FARES
- CONSUMERS GOUGED DUE TO RAMPANT KICKBACKS.

TNC IMPACTS ON SMALL BUSINESS TAXI & PUC OPERATORS

- TNC DRIVERS ARE MOSTLY CASUALS, UNCOMMITTED.
- "NO RULES", ESCAPE COSTS, MARKET SHARE PLUNGES: TAXI DRIVERS FLEE
- NO ENFORCEMENT BY CITY & STATE
- SHUTTLE & LIMOUSINE PUC OPERATORS COMPETITIVELY UNDERCUT ON RATES
- TNC OPERATIONS UNDETECTED
- NO AIRPORT TRANSPONDERS
- TRAFFIC CONGESTION, USING UP PUBLIC ROAD & STREET PARKING
- PREDATORY PRICING

The Hawaii Motor Carrier Act Policy

<https://law.justia.com/codes/hawaii/2009/volume-05/title-15/chapter-271/hrs-0271-0001-htm/>

§271-1 Declaration of policy. The legislature of this State recognizes and declares that the transportation of persons and of property, for commercial purposes, over the public highways of this State constitutes a business affected with the public interest. It is intended by this chapter to provide for fair and impartial regulation of such transportation in the interest of preserving for the public the full benefit and use of the highways consistent with the public safety and the needs of commerce; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers, to encourage the establishment and maintenance of reasonable rates and charges for transportation and related accessorial service, without unjust discrimination, undue preference or advantage, or unfair or destructive competitive practices. This chapter shall be administered and enforced with a view to carrying out the above declaration of policy. [L 1961, c 121, pt of §2; Supp, §106C-1; HRS §271-1]

The purpose of the City & County of Honolulu's Regulation of Common Carriers and Their Fees

https://www.honolulu.gov/rep/site/ocs/roh/ROH_Chapter_12_.pdf

(a) Because the transporting of passengers or property for hire in a taxicab is a vital and integral part of the public transportation system in the city, it shall be supervised, regulated and controlled exclusively pursuant to this article.

TNC IMPACTS ON CONSUMERS

- **TNC DRIVERS ARE MOSTLY CASUALS, UNCOMMITTED.** Most Uber and Lyft drivers work part time to supplement their income. Uber is the only source of income for almost 24% of drivers. About half of Uber drivers quit after just one year. [4] People with Special Needs cannot rely on Uber and Lyft for service.

- **NO DATABASE ON TNC VEHICLES & DRIVERS.** Customer Services Department (CSD) aka “Taxi Control” receives COIs as basis to maintain a database on taxicabs but no COIs from TNCs pursuant to ROH 12-1.23 that was not repealed or revised in the 2016 PTC ordinances. [5] While taxicabs must file Certificate of Insurance (COI) naming city as additional insured with 30-day notice of cancellation, no such requirement on Transportation Network Companies’ (TNC) vehicles for city to identify TNC vehicles.

However, while Uber and Lyft steadfastly opposed cooperating with authorities to provide driver and vehicle information for Taxi Control to maintain a database, their “privacy” contention is specious as Uber spokesman Kayla Whaling confirms that such information on the car and driver is voluntarily and regularly provided: ““When you request a ride on Uber, you are provided with the license plate, make and model of the vehicle as well as the photo of driver and their name,” said Whaling. [6]

- **NO INSURANCE.** Taxi drivers who moved to Uber and Lyft cancelled taxicab insurance \$100k, \$200k auto liability, \$25k property damage (Uber Lyft don’t even have state-mandated auto liability of \$50k, \$100k auto liability \$25k PD.) [7] To operate at Honolulu International Airport, Uber Lyft drivers are exempted to prove legally required automobile liability insurance as required under HB260, HD1 SD1 CD1. Double standards as all other airport permittees must submit Certificate of Insurance automobile liability for every car naming the State’s Airports Division as additional insured, whereas Uber & Lyft are allowed to only provide EXCESS COVERAGE that is limited only to when the passengers occupy the vehicle. All taxicabs and PUC vehicles must name the airports division as additional insured, provide COI with 30-day cancellation notice to state.

- **PRICE GOUGING, HIGHER FARES:** Transients: visitors, military, bar customers are typically gouged because they are unaware of local routes, mileage, taxi fares. [8] Price gouging, surge pricing or prime time tip, typical surge is 1.75; night time and peaks always at least 2x higher compared to Weights & Measures certified taximeters. Taxicabs are prohibited from charging surge pricing; not approved under Taxicab Ordinance.

- **LONGER ROUTES, HIGHER FARES.** Uber/Lyft Apps use on-metered fares based on “fare estimate” and “route” that must be accepted by customer even though the fare is approximate and the “GPS route” is not “shortest most economical route” as required in taxi ordinance. [9]

- **LACK OF SUPPLY INDUCED BY SURGE PRICING:** Uber, Lyft drivers are mostly part-timers, “casuals”, who work predominantly when prices are surging. They take off, not worth it to work for low ball fares. Double standards as Taxicab rates do not allow surge pricing, sets one maximum price, allowing lower than maximum taximeter rates.

- **TRIP REFUSAL OR DELAY:** TNC business model is based on “virtual pricing” aka Surge Pricing, Prime Time Tip. Thus, service is prioritized for consumers willing to pay higher rates, to delay or not service customers who don’t accept surge prices. TNC drivers simply take off during non-surgings times or if working, don’t “accept” trips. Whereas Taxicabs are prohibited from trip refusal [10] and are mandated to use an approved/inspected taximeter, to take and charge fares based on shortest most economical route. TNC rates are set by the smartphone algorithm, which are not inspected and approved by Weights & Measures in accordance with Article 1 Section 8 of the US Constitution. [11]

- **TNC CATER TO RICH & CORPORATE ACCOUNTS, SERVICE RESTRICTED ONLY TO SUBSCRIBERS USING TNC APP, NO CASH ACCEPTED.** Higher paying customers get priority willing to pay surge prices. Drivers reject trips based on ratings; and just don’t accept short trips or no-tippers (seniors, people with disabilities, low income.) HAR 19-20.1-8 (b) (5) mandates: *Furnish service in 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;*

- **GUARANTEED PAYMENT:** Low income and people with special needs are most vulnerable because they pay cash, usually not have credit cards, don't use phone App, not tech savvy. No runaways because driver is automatically paid by credit card. *Trip refusal is prohibited under the taxicab ordinance. ROH 12-1.4 © *ibid*.*
- **EXTRA FEES NOT INCLUDED IN FARE ESTIMATES.** Safe ride fee \$1.50. Booking fee \$1.50, Cancel fee \$5 if customer doesn't show up in 5 minutes, Cleaning fee \$250-\$350. *These fees are not allowed under Taxicab ordinance. ROH 12-1.10 © (1) *Ibid*.*
- **CONSUMERS GOUGED DUE TO RAMPANT KICKBACKS.** Consumers pay higher than taxi fares as Uber's rogue drivers supplement their Uber income by engaging in "Mahalo" practices (kickbacks) that are prohibited under the taxicab ordinance ROH 12-1.4 (e). [12] Uber drivers make deals to pay hotel door attendants to get lucrative fares such as \$10 kickback for airport trips. The doorman tells visitors that s/he will call Uber (Uber doesn't have a phone, works only on the App). Of course, TNC drivers are not prohibited from doing kickbacks.

TNC IMPACT ON SMALL BUSINESSES

TAXICAB & PUC OPERATORS

- **"NO RULES", ESCAPE COSTS, MARKET SHARE PLUNGES.** Taxicab drivers have left the taxi business, many to join Uber/Lyft, where it takes less than 5-minutes to sign up, no vetting before drivers are signed up on the App. Operating as a taxicab is significantly higher in comparison with low/no cost TNC qualifications. The *Vehicle vetting process* has been "relaxed": **No Insurance.** Whereas taxicabs incur about \$4000 annual premium to be insured for \$100k, \$200k auto liability, \$50k property damage, most TNC drivers vehicles are uninsured, non-compliant with state law [HB260 HD1 SD1 CD1](#), effective September 1st of 2016 that only requires half of the coverage required of taxicabs. Commercial use is not covered under TNC drivers' personal auto insurance. **No Taximeters.** Whereas taxicabs must be equipped with state-inspected/certified taximeters, TNC drivers use non-inspected, non-certified smartphone Apps. Taximeter companies report many taximeters have been removed and returned, having impact on small business taximeter companies. **No Domelights, No Permanent Markings on Vehicles.** Taxicabs are required to use domelights, the size and design mandated by the city's CSD/Taxi Control. TNC operators are exempt from displaying a domelight and any permanent markings on their vehicles that is required of PUC operators.
- Moreover, the *Driver vetting process* prior to the 2016 PTC Ordinance 16-38 legislation has been relaxed to not require **INS Work Authorization** (green card), Federal **IRS and state General Excise Tax clearance, Fingerprinting** (PTC drivers can be certified using alias names to avoid detection for criminal background searches. The federal, state, county Medical Fitness for Duty standards for commercial motor vehicle drivers. Ord. 16-38 simply requires the driver to submit "proof that the driver is free of any known medical condition that would put a passenger at risk".
- **NO ENFORCEMENT.** *City has no database on drivers and vehicles. Taxi Control limited to only one audit per year, restricts access to vital information. Uber Lyft reportedly refuse to provide information to CSD re cars and drivers whereas taxi ordinance requires inspection of records.*

- **SHUTTLE & LIMOUSINE PUC OPERATORS REGULATED FARES ARE UNDERCUT.** *Uber's \$24 fare is about 25% of PUC and Uber Select fares. Uber Select PUC drivers lost 75% of trips since airport opened Lyft & Uber stands at airport.*

- **TNC OPERATIONS UNDETECTED:** Uber and Lyft avoid detection, by taking off the Uber/Lyft placard. Uber and Lyft are not required to put permanent markings on vehicles that are required under taxicab ordinance. ROH 12-1.20. HAR and under the PUC administrative rules. TNCs are exempt from displaying permanent bumper decals that were issued by the City as a basis for identity and current licensure. Uber and Lyft instead use removable placards that the drivers hide when picking up passengers at the airport terminals.

- **NO AIRPORT TRANSPONDERS.** Administrative Rules for Honolulu International Airport require taxicab operators to comply fully with Taxicab Ordinance. HAR 19-38.1-1 Definitions. **[13]** *Whereas Taxicabs and PUC operators are easily detected, identified by the License decals and names and PUC Licensee name and license numbers permanently displayed on bumpers or rear fenders, Uber and Lyft vehicles are unmarked except for removable placards on front windshield.*

Airport security is unable to detect Uber & Lyft cars easily, as Uber Lyft picking up at arrival terminals curbside, not at green median for pre-arranged pick-ups. Hiding detection by taking off the Uber decal. HAR 19-20-8 © (3) requires (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.*

- **TRAFFIC CONGESTION, USING UP PUBLIC ROAD & STREET PARKING.** *Having no taxistands, rogue drivers get free public street parking. Taxi drivers restricted to 30-seconds to load or unload passengers on public streets.*

- **PREDATORY PRICING.** Low ball prices (not estimated price range) were advertised on Uber's press release for Waikiki \$24, Downtown \$17, Kapolei \$36) but the Uber App is regularly surge pricing when customer books. The customer has to accept the surge-priced fare to book a ride. Another example of double Standards as taxicabs not allowed to surge price. HAR 19-20.1-8 (b) (5) *Furnish service in 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 purchases; and (b) Wear the identification badge (issued under this chapter) in plain sight while at the airport.*

Both Aloha Airlines and Hawaiian Airlines accused Mesa Airlines of predatory pricing with Aloha Airline being eradicated from the market. **[14]**

ENDNOTES

[1] <https://www.usatoday.com/story/travel/destinations/2017/12/09/best-and-worst-u-s-cities-driving-annual-waze-rankings/937536001/>

Best and worst cities for driving (2017 edition)

Honolulu, with a satisfaction rating of 4.69, is the worst U.S. city for driving in Waze's rankings. NICHOLAS KAMM, AFP/Getty Images

[2] Paratransit Growth Management Study, Department of Transportation Services C&C Honolulu, by Innovative Paradigms/Nelson Nygaard, May 2017. p. 4 Executive summary.

[3] Why are fewer people riding TheBus? Civil Beat.

<http://www.civilbeat.org/2017/12/why-are-fewer-people-riding-thebus/>

[4] Driving on the Uber Platform. An Analysis of the Labor Market for Uber's Driver-Partners in the United States. Jonathan Hall, Alan Krueger, January 22, 2015.

https://s3.amazonaws.com/uber-static/comms/PDF/Uber_Driver-Partners_Hall_Kreuger_2015.pdf

[5] ROH 12-1.23. Evidence of financial responsibility.

(a) The director shall require evidence of financial responsibility from the owner and/or operator of a taxicab company before issuing a taxicab license and decal to engage in the taxicab business. The owner and/or operator shall have insurance in force or other evidence of financial responsibility so long as the taxicab is used in business. Such evidence of financial responsibility may be in one of the following two forms:

(1) Insurance Policy.

(A) The director shall retain the original insurance policy issued by a company licensed to do business in the State of Hawaii. The policy shall be duly countersigned by its authorized Hawaii agent complete with all endorsements and attachments or a certified copy thereof. Such policy shall provide for primary public liability insurance coverage in the amount of \$100,000.00 because of bodily injury to or death of one person in any accident, and in the amount of \$200,000.00 because of bodily injury to or death of two or more persons in any one accident, and property damage insurance in the amount of \$50,000.00 because of damage to or destruction of property of others in any one accident for each taxicab for hire. All policies must be valid for the duration of the taxicab business license. Insurance policies on vehicles regulated under this article shall contain a provision that the policy will not be reduced in coverage or canceled without 30 calendar days' prior written notice to the director by the authorized Hawaii agent for the insurance company.

https://www.honolulu.gov/rep/site/ocs/roh/ROH_Chapter_12_.pdf

[6] They were requesting an Uber. Instead, a phony picked them up and robbed them. Jobveth Devera, Hawaii News Now, 12/10/17

<http://www.hawaiinewsnow.com/story/37036029/man-posing-as-uber-driver-robs-and-assaults-passengers-before-fleeing>

[7] Although the Hawaii State Legislature passed **HB260 HD1 SD1 CD1**, effective September 1st of 2016, we are informed and believe that no insurance policy has been issued to any Uber and/or Lyft driver(s) in compliance with this law. The law's required limits are one-half (**\$50k, \$100k automobile liability, \$25k property damage**) those required from taxicab operators (\$100k, \$200k auto liability; \$50k property damage).

Moreover, Uber's so-called \$1-million excess policy only applies over the driver's auto policy (personal auto coverage is not applicable to commercial and/or livery activities). As for Uber's policy, coverage is limited to only when the car is occupied with Uber passenger(s). So if a guest is dropped off at your hotel and gets into an accident with another guest on the way out, Uber's insurance does not apply.

[Why The Insurance Industry Is Taking Aim At Uber and Lyft](#)

Uber offers those drivers non-primary umbrella coverage with \$1 million coverage for ... primary insurance and protect drivers against lawsuits for loss or injury when ... in costly coverage disputes and delayed compensation to accident victims."

[Uber Insurance Problems - Bowman & Chamberlain, LLC](#)

This article addresses problematic *Uber insurance* problems. ... In support of this argument, *Uber* cites the *lack* of company control over *drivers* and the vehicles they ... left the *driver* and third-party *victims* exposed and without *coverage*. ... their *drivers*, *what happens* to Sofia's family, who lost their little girl?

[8] Director to establish rate of fare and baggage charge – Exceptions – Conditions – Receipt required upon request. ROH 12-1.20 © (1)

1. (1) When Fares or Charges Permitted. Fares are only applicable to the use of the taxicab when actually occupied by or standing at the direction of the passenger for hire or when occupied by parcels or baggage transported for hire; provided, that no other charges shall be made for the use of a taxicab for hire except as provided herein. (Emphasis added.)

[9] ROH 12-1.20. Taxicab certification numbers.

https://www.honolulu.gov/rep/site/ocs/roh/ROH_Chapter_12_.pdf

Sec. 12-1.20 Taxicab certification numbers.

No person may operate a taxicab unless the taxicab is clearly identified and marked as prescribed herein with a taxicab certification number assigned by the director. The taxicab certification number shall be prominently posted on the exterior surfaces of the front and rear bumpers and on the sign or dome light, described in Section 12-1.16, of the taxicab. The taxicab certification number posted on the taxicab as prescribed in this section must be no less than two inches in height, and must conform to such other requirements or specifications as the director may prescribe by rule.

[10] Prohibited acts: Responding to Calls: ROH 12-1.4 ©

https://www.honolulu.gov/rep/site/ocs/roh/ROH_Chapter_12_.pdf

1. (c) Responding to Calls. The operator of a taxicab or taxicab company shall not refuse to furnish an unengaged, available taxicab and driver during the business hours of such taxicab or taxicab company upon call or request from an orderly person located within two miles of such stand, by the most direct street route. No taxicab driver, while on duty and not engaged in another call, shall fail to drive an available taxicab in response to a call or request from an orderly person.

[11] Trip Route: ROH 12-1.21

https://www.honolulu.gov/rep/site/ocs/roh/ROH_Chapter_12_.pdf

Sec. 12-1.21 Trip route.

No operator of a taxicab may transport a passenger except to the requested trip destination by the most direct or economical route unless specifically instructed or agreed to by the passenger.

Taximeters are subject to approval and inspection under U.S. Constitution, Article 1, Section 8:

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;
https://www.usconstitution.net/xconst_A1Sec8.html

[12] ROH 12-1.4 Prohibited acts. Kickbacks

(e) Kickbacks.

(1) Taxicab companies and drivers are prohibited from paying kickbacks to hotel doorpersons or other persons that dispatch taxicabs. It shall also be unlawful for a hotel doorperson or other person to solicit or receive such a kickback from a taxicab company or taxi driver. This provision shall not apply to legitimate commissions paid to tour and travel companies, legitimate payments to taxicab companies or salaries or wages paid to dispatchers employed by taxicab companies.

(2) For the purpose of this subsection, "kickback" means a payment by a taxicab company or driver to a hotel doorperson or other person who dispatches the taxicab company or driver to carry a passenger for hire, property for hire or both, when the payment is required, explicitly or implicitly, by the hotel doorperson or other person as consideration for the dispatch.

[13] HAR 19-38.1.1, On-Demand Taxi Service at Public Airports.

<https://hidot.hawaii.gov/airports/files/2013/01/38-OnDemandTaxiService.pdf>

"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.

HAR 19-38.1-5 (3)

<https://hidot.hawaii.gov/airports/files/2013/01/38-OnDemandTaxiService.pdf>

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.

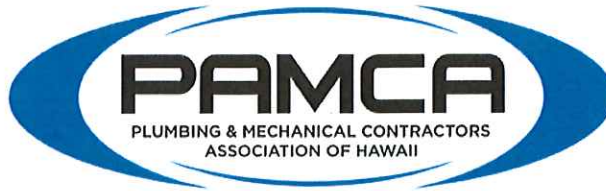
HAR 19-20.1 Prearranged Ground Transportation

HAR 19-20.1-8 (b) (5) Furnish service in 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 purchases; and (b) Wear the identification badge (issued under this chapter) in plain sight while at the airport.

HAR 19-20.1-8 © (2) and (3)

(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

Directors
Cheng, President
Alanay, Vice-President
Matsuzaki, Secretary
Ann Tango, Treasurer
Javid Fujikawa, Director
Samuel Fujikawa, Director
Tyrus Kagawa, Director
Barry Lai, Director
Mark Suzuki, Director



1088 BISHOP STREET #408
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PH: (808) 597-1216

GREGG S. SERIKAKU
EXECUTIVE DIRECTOR
greggs@pamcahawaii.com

December 4, 2017

Mr. Anthony Borge, Chair
Mr. Robert Cundiff, Vice Chair
Small Business Regulatory Review Board
Department of Business and Economic Development and Tourism
Via email: DBEDT.sbrrb.info@hawaii.gov

Dear Chair Borge, Vice Chair Cundiff and Members of the Board:

SUBJECT: Proposed Hawaii Administrative Rule- HIOSH Silica Standards

I am Gregg Serikaku, Executive Director of the Plumbing and Mechanical Contractors Association of Hawaii, and I would like to provide our concerns regarding the proposed amendments to HAR Title 12, Subtitle 8, Hawaii Occupational Safety and Health Division, adopting the Federal OSHA silica exposure standards and regulations.

As you are aware, the proposed requirements for preventing, testing, monitoring, and recording for silica exposure are very complex and requires extensive technical training, equipment upgrades, and jobsite coordination, as well as individual health testing to establish medical baselines for all affected employees. Such measures will no doubt involve significant costs and time to implement, particularly for small businesses who do not have the resources for dedicated safety staff. Nevertheless, our Association and member contractors remain fully committed to providing our employees with a safe work environment and the necessary procedures to reduce silica exposure and other safety hazards.

We are concerned, however, that the State's adoption of these amendments may be premature since there are currently several lawsuits in other jurisdictions challenging the federal OSHA silica exposure standards. Adoption by the State prior to settlement of these lawsuits may create an unnecessary burden for all contractors, especially if these lawsuits result in significant modifications to the standards.

We respectfully request that you consider delaying adoption of this proposed rule until the current challenges to the federal requirements are settled. Once settled, we believe it is reasonable and appropriate to pursue adoption on the State level.

Thank you for your time and consideration of our request.

Sincerely yours,

A handwritten signature in blue ink that reads "Gregg S. Serikaku".

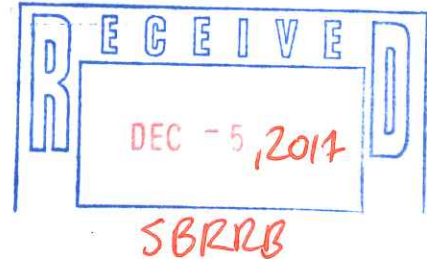
Gregg S. Serikaku
Executive Director



SAH - Subcontractors Association of Hawaii
1188 Bishop St., Ste. 1003**Honolulu, Hawaii 96813-3304
Phone: (808) 537-5619 ✦ Fax: (808) 533-2739

December 13, 2017

Mr. Anthony Borge, Chair
Mr. Robert Cundiff, Vice Chair
Small Business Regulatory Review Board
Department of Business, Economic Development and Tourism
Via e-mail: DBEDT.sbrrb.info@hawaii.gov



Chair Borge, Vice Chair Cundiff and Members of the Board:

I am Tim Lyons, President of the Subcontractors Association of Hawaii. At the outset I offer my apologies for not being present at today's meeting however travel plans were made far in advance of the agenda announcement which brings my testimony to you.

The Subcontractors Association of Hawaii is an association of association's. In other words, it is composed of nine (9) separate and distinct subcontracting organizations each with their own Board of Directors and their own Executive staff. We are here to comment on the proposed Hawaii Administrative Rules offered by HIOSH, Department of Labor and Industrial Relations.

More specifically we are here to comment on two (2) sections. One, the silica standard and secondly, clarifying rules on self-safety and health inspections.

We think it first very important to discuss the basic principal that forms an operational link between the federal occupational safety and health law (OSHA) and the State of Hawaii occupational safety and health law (HIOSH). It is the federal government that allows states to operate their own safety and health program and in fact, to Hawaii's credit, Hawaii was one of the first states to pursue and gain approval for such a program. Many Hawaii businesses bought into that concept because we thought at the time it allowed us the flexibility for certain changes to be made to federal standards that would make a rule or regulation more suitable for Hawaii. This was done under the concept of a state standard being "at least as effective as" the federal standard. That seemed to exist for quite a number of years until an interpretation came out that in effect means that the state standard must duplicate the federal standard as opposed to having a net effect of being at least as effective. It is not only Hawaii that has suffered from this interpretation but California and Arizona have had a number of cases where their standards which varied from the federal standard and were challenged as not being the same as the federal standard. We suppose that this is actually a debate for another day however we bring it to your attention now because we think it is critical in looking at the two (2) standards that we mentioned above.

As it relates to the silica standard, we find that this standard is so complicated that most small businesses will have a very difficult time understanding it and some of them never will understand it. In essence what it requires is that where there is an employee exposure above 25 micrograms per cubic meter of air (25 ug/m³) as an eight (8) hour time-weighted average (TWA) you must take action. So, what did I say?

I don't have the slightest idea what that means and I don't think that any other small business is going to either; yet, they would have to follow it. The rule and regulation that you have in the front of you, incorporates the federal standard and it will require the employer to ascertain whether his employees are being exposed to silica crystalline in their work that exceeds the permissible exposure level (PEL). This is going to require employee exposure records; the establishment of a medical record in order to create a baseline for all employees that could run into that exposure. This is true for not only employees engaged in an activity where there might be silica dust but also for employees who might be on the jobsite and exposed to activities of other employers where the dust might drift to their jobsite. Employers are required to measure, monitor and record all exposures. They have to have a written record and include observations, employee complaints, date work was performed, location, name and social security number. In the rule before you, the silica air contaminant limits are established by merely saying "see section 1910.1053 for the PEL-TWA, PEL-STEL and PEL-C Ceiling-Skin Designation". Again, what small business with three (3) or four (4) employees is going to have the slightest idea of what all of this means?

Now is as good a time as any to bring to your attention the fact that HIOSH, again, under the direction from OSHA was successful in gaining state legislation just this last legislative session that increased maximum civil penalties from \$7700.00 per violation to \$12,471.00 for each violation. They were also successful in legislation that approved penalties for repeated violations by raising the penalty amount from \$77,000.00 to \$124,709.00. It is in the face of those penalties that we are deeply concerned with this regulation, especially with not understanding its details and how small businesses are to comply with it. It seems to us that the way the regulation reads, the employer is guilty and must prove his innocent exposure level to HIOSH.

One item that has provided some relief is the specified exposure control methods which are all identified in what is known as Table 1. Some of these include identifying certain tools and a work practice such as an integrated water delivery system that will mitigate the problem. Some of them also provide that it might be mitigated with the purchase of manufacturer's dust emission equipment or HEPA filtered vacuum or shroud and dust collection system.

Our concern is that the rule requires the employer to assess exposure of each employee "who is or may reasonably be expected to be exposed" and if an employee representative is on the jobsite for observing this monitoring, the employer has to provide the observer with protective clothing and equipment at no cost. The employer has to come up with a written exposure control plan. We are confused by a requirement that says that each employee who uses a respirator for 30 or more days per year must have medical surveillance. The problem here is that 30 or more days per year is not defined. Is that for 10 minutes every day for 30 days or does that only count if it is a full day for 30 days? Employers are also required to make available an initial baseline medical exam within 30 days after the initial assignment on a job with silica exposure and the exam has to consist of medical and work history, a physical exam and a chest x-ray interpreted by a NIOSH-Certified B Reader.

In short, we too are very concerned about the disease known as silicosis. We too are concerned about our employees being exposed to situations in which they can contract any workplace disease however, we are also concerned with regulations that put such a burden on us that we can't operate. We think you could also safely say that just the minor portion of the regulations which we have discussed will impose significant costs on small business for the recordkeeping requirements itself, including the fact that the rules also require retention of those records for 30 years.

In light of all this, the question might arise as to what we want? We would prefer to see a much delayed effective date for this regulation and during that time a sincere outreach program by the Consultation and Training Branch including assistance with actual free PEL air sampling readings and mitigation suggestions so that businesses can accomplish compliance. We do not mean just information on how to meet it but actual compliance steps. Small businesses will need to be "walked through" these regulations if compliance and employee safety is the goal. We think it is an injustice that HIOSH's Pre-public Hearing Small Business Impact Statement says in its memo in Item 7 that "small businesses were not involved in the proposed changes because the proposed changes are required by OSHA". We think that HIOSH misses the point of having small businesses involved. Part of reason for small businesses to be involved is for the agency to understand the compliance difficulties small businesses will have in meeting a regulation and to further understand if there are any other methods that can be used in order to achieve that same compliance without imposing upon small businesses undue regulations and stringent impositions with no flexibility.

We find it interesting that although Section 201M-4 HRS allows for the establishment of a Small Business Advisory Committee under the Department of Labor to discuss these proposed regulations, that is an opportunity that they chose not to take. We also find it even more curious that the DLIR does have, already established a HIOSH Advisory Committee and while these regulations were referenced, they were never fully discussed nor, to my knowledge were any of the Committee Members provided copies of the proposed rules, even if for discussion purposes.

We mentioned at the beginning we had one other concern and that concern lies in Section 12-110-3 "Safety & Health Inspections". This section was in the majority already in the rules and regulations however it is now being clarified. One of the clarifications provides that where there are projects that employ 1 – 99 persons that there should be an employee assigned to make at least one inspection, each work day for safety and health and that there should be a written record of this daily safety and health inspection including:

- The date and start time of the inspection.
- The name of the employee (inspector).
- The scope of the inspection.
- A description of all potential hazards.
- The name and title of the person responsible for correcting the hazard.
- Information on how the hazard was eliminated or corrected.

We have great concern how seriously HIOSH is going to pursue this requirement on a small contractor who has two (2) employees, one of which will wind up spending a good part of each and every day, filling out this written report. This will be someone who has very little safety and health training and the will have a difficult time recognizing all the potential and actual hazards of HIOSH's 1400 page safe and

health regulations and noting what corrections might be needed. Large companies typically have safety and health personnel on payroll and I can understand this requirement for those companies. For the small contractors it does not seem to make sense.

Our suggestion is that when the legislature passed a requirement for written safety and health programs we appealed to the legislature asking them to exempt small business with less than 25 employees from a written safety and health program. The legislature responded and provided for an exception for employers with less than 25 employees as long as they were not doing contract work with the State in excess of \$100,000.00 (see Section 12-110-2 (a)(3)). We think that should create a sufficient precedent for that same exception to be included in Section 12-110-3.

In conclusion we really want to thank the Board for bearing through these and many other rules and regulations on behalf of the small business. We know it is tedious work but it is these very "nitty gritty" and "picky" regulations that drive small businesses absolutely crazy and in many cases, out of business.

Thank you for your consideration.

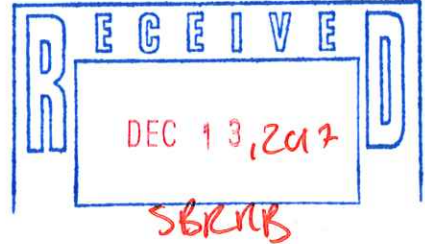
Sincerely,



Tim Lyons, CAE
President

SMCA
— est. 1961 —
SHEET METAL
CONTRACTORS ASSOCIATION
— HAWAII —

December 13, 2017



Mr. Anthony Borge, Chair
Mr. Robert Cundiff, Vice Chair
Small Business Regulatory Review Board
Department of Business, Economic Development and Tourism
Via e-mail: DBEDT.sbrrb.info@hawaii.gov

Chair Borge, Vice Chair Cundiff and Members of the Board:

I am Blake Parsons, Executive Director of the Sheet Metal Contractors Association of Hawaii.

I'm writing to urge you to support a delay in the effective date of the silica regulation and encourage HIOSH, DLIR to implement programs and initiatives to help small businesses like our contractors better understand how to comply with these onerous regulations. Furthermore, we request that you support an exemption for small businesses from Section 12-110-3 "Safety & Health Inspections" similar to that exemption for small business from written safety and health programs.

Our contractors take safety seriously. Their employees are like family. Our contractors understand that their employees need these jobs to continue caring for their families; however, onerous regulations like these jeopardize that ability because it might run our contractors right out of business.

Many of our contractors have less than then 10 employees and these regulations would require them to have at least one employee working full time inspecting the job-site and/or in the office recordkeeping. This is an insurmountable burden.

Our small businesses need help working through these *forced* major shifts in their business processes.

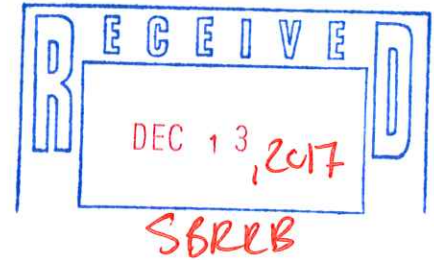
The health of our employees and our State will be better served if these regulations are properly implemented, rather than if these regulations are effected and improperly understood.

Thank you for your time and consideration. We appreciate the work you do to protect small businesses and the livelihoods of our contractors and their employees.

Mahalo,

Blake Parsons
Executive Director

Walter Chun, PhD., CSP, CHSP, CHST
1045 Lolena Place
Honolulu, HI 96817
Oshman222@gmail.com



December 12 2017

Small Business Regulatory Review Board
Mr. Anthony Borge, Chair
Mr. Robert Cundiff, Vice Chair
Department of Business, Economic Development and Tourism
Via email: DBEDT.sbrrb.info@hawaii.gov

RE: COMMENTS REGARDING DISCUSSION AND ACTION ON PROPOSED
AMENDMENTS TO HAWAII ADMINISTRATIVE RULES . HEARING DATE:
DECEMBER 13, 2017

Dear Mr. Borge and Members of the Board,

My name is Walter Chun, I am a safety and health professional and consultant in the State of Hawaii. I have over 45 years of experience in the occupational safety and health profession and have consulted with various employers in Hawaii for the last 22 years. I was a past U.S. DOL OSHA Area Director in the Pacific in the early 1990s and was responsible for monitoring the Hawaii State Plan among other duties.

The OSHAct, Public Law 91-596 allows states to assume responsibility for administration and enforcement of our occupational safety and health laws. The Congressional intent, Section 2 (11) states, "*by encouraging the States to assume the fullest responsibility for the administration and enforcement of their occupational safety and health laws by providing grants to the States to assist in identifying their needs and responsibilities in the area of occupational safety and health, to develop plans in accordance with the provisions of this Act, to improve the administration and enforcement of State occupational safety and health laws, and to conduct experimental and demonstration projects in connection therewith...*" It is clear that Congress wanted the States to be stakeholders and to actively participate in the development and implementation of their own occupational safety and health efforts.

The overall perception that Hawaii must do the same things OSHA does is highly questionable. Simply doing what OSHA does will not help to improve the administration and enforcement of occupational safety and health laws. HIOSH indicates in their justifications that they must adopt the OSHA standards. Their rationale is that the requirement by OSHA for the state plan is that Hawaii is "as effective as". Based on the congressional intent the criteria that Hawaii does exactly what OSHA does are in conflict with the HIOSH impressions.

To meet the Congressional intent for the state plans requires direct involvement of the community. Effective occupational safety and health programs cannot be developed in a vacuum and implemented by an "iron fist". Improvement in the administration and enforcement is achieved through a team process. HIOSH must be involved with the business community. HIOSH is reluctant to work with the business community and it is detrimental to small businesses.

HIOSH explains that they did not pursue less restrictive alternatives or other methods of compliance for small business because they are following the OSHA standard. Their rationale of adopting the federal standards will ensure that the State will be "at least as effective as" OSHA. **Nothing** prevents HIOSH in pursuing the evaluation and controls of silica that is reasonable and practicable for small businesses. We believe that HIOSH owes the business community the opportunity to develop and implement safety and health programs that are better than the OSHA standards. ***The most critical and important element of the OSHAct when it comes to the State plans is the allowance and encouragement of Hawaii "to improve the administration and enforcement of State occupational safety and health laws, and to conduct experimental and demonstration projects in connection therewith".***

Our State has a large population of small businesses. The impact of one HIOSH inspection to many of these small businesses, especially with the adoption of the new penalties, can cripple if not destroy a small business. Before Hawaii adopts rules meant for 50 states across the country we owe it to ourselves to do everything reasonable and necessary to develop and experiment with programs, procedures and rules that are effective in protecting Hawaii workplaces. The one size fits all rule does not fit in Hawaii's business community.

Specific comments regarding the various proposed changes to the Hawaii Administrative Rules (HAR) offered by the Department of Labor and Industrial Relations, HIOSH.

- **Funding for HIOSH:** The 50% funding that is provided to HIOSH by OSHA is 50% because HIOSH chose a high budget. The rationale and justification of the HIOSH budget are factors that are controlled by the State. HIOSH should not use the grant as an excuse for not meeting the BLS Consumer Price Index guides. HIOSH did not meet or attempt to meet the BLS Consumer Price Index requirements:
 - The probable monetary costs and benefits including the total amount expected to be collected in penalties, fees and the manner in which the moneys will be used. Telling us that it goes to the general fund is not helpful.

- information regarding the methods used to reduce the impact on small businesses; What actions did HIOSH take in this regard?
 - The availability and practicability of less restrictive alternatives.
 - Consideration of creative, innovative, or flexible methods of compliance for small businesses.
- **Occupational Exposure to Respirable Crystalline Silica standard:** The HIOSH justification is explained that the cost of adopting this standard is not new because the HIOSH permissible exposure limit (PEL) was lower than the OSHA PEL. If the HIOSH PEL was lower than the OSHA limit the HIOSH requirements were also more restrictive. That being the case why is adoption of the OSHA standard needed? If the HIOSH PEL is lower than the OSHA standard how much money would the employers in Hawaii save when the OSHA standard and PEL is adopted?
 - The standard requires employers to assess the exposure of each employee who is or may reasonably be expected to be exposed to respirable crystalline silica at or above the action level. How does HIOSH expect the small businesses to do this? How much would work activity monitoring cost for these employers? What does “reasonably be expected” mean? What sampling data showing the exposures to Hawaii workers was completed by HIOSH? How is this data shared with small businesses? Why can’t HIOSH develop this data rather than impose it on the small businesses?
 - HIOSH did not get input from the business community to answer these questions. Further these types of questions must be answered up front rather than waiting for employers to be cited and then try to figure out what they “should have done”.

§12-50-2 Definitions This section does not define “training”. Section §12-50-2(b)10 describes requirements for training but it is not defined. Employers can be cited for each failure to train an employee and it may be considered a separate violation. **Discussion:** Without a clear definition for acceptable “training” employers are subject to a wide interpretation by HIOSH.

§12-56-2: The fees for certifying safety and health professionals are increased. The reason or rationale for this increase is not provided. It should be noted that the use of the certified safety and health professionals by HIOSH and the community is almost non-existent. HIOSH has not provided information relative to the effectiveness of this program and the benefit to businesses. How much of the government grant is used for the certification of safety and health professionals? Overall comment to increasing the fees – HIOSH does not explain or justify the reason for the increase.

Confined Space in Construction standard - The HIOSH justifications are copied statistics from OSHA. These are OSHA numbers based on fatalities and dollars of savings across the country for 50 states. HIOSH did not provide the number of fatalities that would be prevented in Hawaii. The monetized benefits for Hawaii businesses are not addressed.

Summary:

- Congressional intent was to get States to get involved with administration and enforcement of occupational safety and health laws by developing and experimenting with what works best for them.
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- By ignoring and intentionally excluding business from the decisions that affect workplace safety and Health HIOSH has created a dictatorial and distrusting agency. Overcoming this distrust will take a long time.
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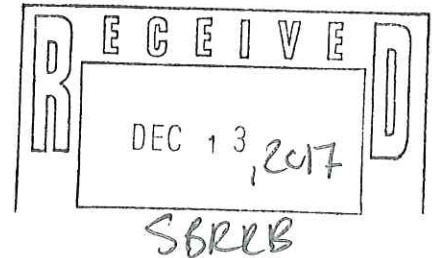
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December 12 2017

Small Business Regulatory Review Board
Mr. Anthony Borge, Chair
Mr. Robert Cundiff, Vice Chair
Department of Business, Economic Development and Tourism
Via email: DBEDT.sbrrb.info@hawaii.gov

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We appreciate the opportunity to bring our concerns to you.

Thank You,

Walter Chun

Walter Chun, PhD., CSP, CHSP, CHST

1065 Ahua Street
Honolulu, HI 96819
Phone: 808-833-1681 FAX: 839-4167
Email: info@gcahawaii.org
Website: www.gcahawaii.org

*Shannon
Alivado*



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Sent via E-mail: dbedt.sbrrb.info@hawaii.gov

December 13, 2017

Honorable Anthony Borge
Chair
Small Business Regulatory Review Board, DBEDT
P.O. Box 2359
Honolulu, Hawaii 96804

SUBJECT: COMMENTS REGARDING DISCUSSION AND ACTION ON PROPOSED AMENDMENTS TO HAR TITLE 12, SUBTITLE 8, HIOSH DIVISION, PROMULGATED BY DLIR, PARTICULARLY, SILICA REQUIREMENTS
Hearing Date: Wednesday, December 13, 2017, 10:00 a.m.

Dear Chair Borge and Members of the Board,

Thank you for the opportunity to comment on the proposed rules affecting silica crystalline by the Hawaii Occupational Safety and Health Division (HIOSH), promulgated by the State of Hawaii Department of Labor and Industrial Relations. The General Contractors Association of Hawaii (GCA) is an organization comprised of over five hundred general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The GCA's mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

The GCA is a chapter of the Associated General Contractors of America (AGC), which has been at the forefront of this regulation governing crystalline silica, from the beginning. AGC has also been in conversation with the Occupational Safety and Health Administration (OSHA) about their concerns, and even brought suit against this regulation. As the AGC awaits the outcome of its' lawsuit – OSHA has implemented the rule, but implementation has had its shortcomings and has impacted the construction industry dramatically.

GCA has **comments** regarding HIOSH's adoption of the federal rule governing crystalline silica and is requesting this Board to defer adoption of the proposed rule until clarification on the silica mandates are provided, particularly with respect to cost, implementation and enforcement. While GCA recognizes the importance of safety and the protection of employees and the public, the rule proposed by HIOSH will detrimentally revise the standard on occupational exposure to respirable crystalline silica and will have a considerable cost impact to the cost of construction.

According to AGC the rule is not technologically and economically feasible as the control methods contradict existing safety practices and compliance with it will cost the construction industry nearly five billion annually. One local company in Hawaii has calculated that it has already spent thousands of dollars in an attempt to comply with the federal rule. Due to the flaws associated with how the air testing for silica is done – GCA is requesting a delayed

implementation of this rule and more time to allow employers to get up to speed so they can adequately comply.

While both federal and state law require consultation with a Small Business Advisory Committee – this proposed rule has not been brought to either the federal or state committees, nor has it been vetted or discussed with the HIOSH Advisory Board, which provides community oversight to new rules and regulations governing employers and employees. DLIR, nor HIOSH has any education or information about the State's adoption of the federal rule prior to coming before this Board. The impact to small business will be detrimental as purchase of new tools and equipment are imperative for compliance. For example, Table 1 requires tools that have integrated water delivery systems that will continuously feed water during any cutting process. These changes in tools and mechanisms will have a dramatic and impactful effect to construction operations.

While GCA understands the impacts of silica and the possible safety issues, any mandated regulations should be reasonable and afford the industry time to respond and adequately comply. Furthermore, local state agencies, laboratories and third party consultants may not understand the new requirements; more concerning is that these parties may not have the ability to adequately analyze air sample accurately.

At this time, we respectfully ask that this Board defer action on the silica proposal until HIOSH is able to adequately provide training, education and adequate enforcement on this new regulation.

Thank you for the opportunity to present our views on this matter.

With best regards,



Cedric Ota
President

SAH - Subcontractors Association of Hawaii
1188 Bishop St., Ste. 1003**Honolulu, Hawaii 96813-3304
Phone: (808) 537-5619 ♦ Fax: (808) 533-2739

Silica Enforcement

The below signed individuals wish to express their reservations about the HIOSH proposed Silica Standard as one which is overly burdensome and too complicated for businesses to understand and comply with. WE NEED HELP.


Michael Mazzone

Erle NAGAO

Brian ANAANA

Alepoti Sula

Jeff Mullen


JENI PACHECO

Daniel Dordick

Johan vanderKooft

Renee Yamada



Patrick Balmaja


MARIO GERONIMO

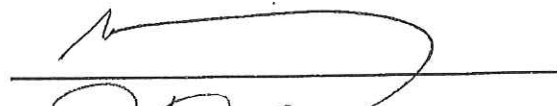

Gary Omer

Dwight M. KOKUBUN


Barbara Kono

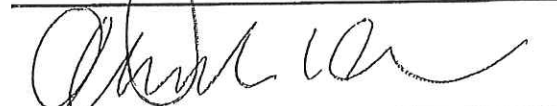




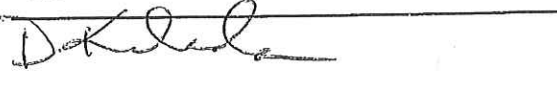












JUST IN TAKATUKI

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Holly Chud-Ming

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John Casbol

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John

Derek Hira

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Mary Smith

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Daniel Nakamura

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Jason Kim

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Casey Nishizaki

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KAYE ROIDE

JOY NAKAYAMA

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Chad Hagashibara

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Jeff Tanaka

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Alvin Fukuyama

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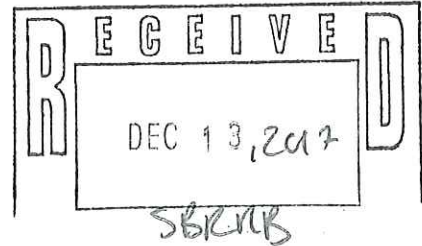
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SMCA
est. 1981
SHEET METAL
CONTRACTORS ASSOCIATION
HAWAII

December 13, 2017

Mr. Anthony Borge, Chair
Mr. Robert Cundiff, Vice Chair
Small Business Regulatory Review Board
Department of Business, Economic Development and Tourism
Via e-mail: DBEDT.sbrrb.info@hawaii.gov



Chair Borge, Vice Chair Cundiff and Members of the Board:

I am Blake Parsons, Executive Director of the Sheet Metal Contractors Association of Hawaii.

I'm writing to urge you to support a delay in the effective date of the silica regulation and encourage HIOSH, DLIR to implement programs and initiatives to help small businesses like our contractors better understand how to comply with these onerous regulations. Furthermore, we request that you support an exemption for small businesses from Section 12-110-3 "Safety & Health Inspections" similar to that exemption for small business from written safety and health programs.

Our contractors take safety seriously. Their employees are like family. Our contractors understand that their employees need these jobs to continue caring for their families; however, onerous regulations like these jeopardize that ability because it might run our contractors right out of business.

Many of our contractors have less than then 10 employees and these regulations would require them to have at least one employee working full time inspecting the job-site and/or in the office recordkeeping. This is an insurmountable burden.

Our small businesses need help working through these *forced* major shifts in their business processes.

The health of our employees and our State will be better served if these regulations are properly implemented, rather than if these regulations are effected and improperly understood.

Thank you for your time and consideration. We appreciate the work you do to protect small businesses and the livelihoods of our contractors and their employees.

Mahalo,

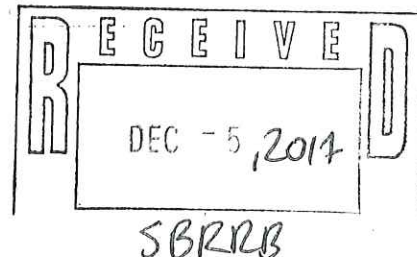
A handwritten signature in black ink, appearing to read "Blake Parsons".

Blake Parsons
Executive Director

SAH - Subcontractors Association of Hawaii
1188 Bishop St., Ste. 1003**Honolulu, Hawaii 96813-3304
Phone: (808) 537-5619 ♦ Fax: (808) 533-2739

December 13, 2017

Mr. Anthony Borge, Chair
Mr. Robert Cundiff, Vice Chair
Small Business Regulatory Review Board
Department of Business, Economic Development and Tourism
Via e-mail: DBEDT.sbrrb.info@hawaii.gov



Chair Borge, Vice Chair Cundiff and Members of the Board:

I am Tim Lyons, President of the Subcontractors Association of Hawaii. At the outset I offer my apologies for not being present at today's meeting however travel plans were made far in advance of the agenda announcement which brings my testimony to you.

The Subcontractors Association of Hawaii is an association of association's. In other words, it is composed of nine (9) separate and distinct subcontracting organizations each with their own Board of Directors and their own Executive staff. We are here to comment on the proposed Hawaii Administrative Rules offered by HIOSH, Department of Labor and Industrial Relations.

More specifically we are here to comment on two (2) sections. One, the silica standard and secondly, clarifying rules on self-safety and health inspections.

We think it first very important to discuss the basic principal that forms an operational link between the federal occupational safety and health law (OSHA) and the State of Hawaii occupational safety and health law (HIOSH). It is the federal government that allows states to operate their own safety and health program and in fact, to Hawaii's credit, Hawaii was one of the first states to pursue and gain approval for such a program. Many Hawaii businesses bought into that concept because we thought at the time it allowed us the flexibility for certain changes to be made to federal standards that would make a rule or regulation more suitable for Hawaii. This was done under the concept of a state standard being "at least as effective as" the federal standard. That seemed to exist for quite a number of years until an interpretation came out that in effect means that the state standard must duplicate the federal standard as opposed to having a net effect of being at least as effective. It is not only Hawaii that has suffered from this interpretation but California and Arizona have had a number of cases where their standards which varied from the federal standard and were challenged as not being the same as the federal standard. We suppose that this is actually a debate for another day however we bring it to your attention now because we think it is critical in looking at the two (2) standards that we mentioned above.

As it relates to the silica standard, we find that this standard is so complicated that most small businesses will have a very difficult time understanding it and some of them never will understand it. In essence what it requires is that where there is an employee exposure above 25 micrograms per cubic meter of air (25 ug/m³) as an eight (8) hour time-weighted average (TWA) you must take action. So, what did I say?

I don't have the slightest idea what that means and I don't think that any other small business is going to either; yet, they would have to follow it. The rule and regulation that you have in the front of you, incorporates the federal standard and it will require the employer to ascertain whether his employees are being exposed to silica crystalline in their work that exceeds the permissible exposure level (PEL). This is going to require employee exposure records; the establishment of a medical record in order to create a baseline for all employees that could run into that exposure. This is true for not only employees engaged in an activity where there might be silica dust but also for employees who might be on the jobsite and exposed to activities of other employers where the dust might drift to their jobsite. Employers are required to measure, monitor and record all exposures. They have to have a written record and include observations, employee complaints, date work was performed, location, name and social security number. In the rule before you, the silica air contaminant limits are established by merely saying "see section 1910.1053 for the PEL-TWA, PEL-STEL and PEL-C Ceiling-Skin Designation". Again, what small business with three (3) or four (4) employees is going to have the slightest idea of what all of this means?

Now is as good a time as any to bring to your attention the fact that HIOSH, again, under the direction from OSHA was successful in gaining state legislation just this last legislative session that increased maximum civil penalties from \$7700.00 per violation to \$12,471.00 for each violation. They were also successful in legislation that approved penalties for repeated violations by raising the penalty amount from \$77,000.00 to \$124,709.00. It is in the face of those penalties that we are deeply concerned with this regulation, especially with not understanding its details and how small businesses are to comply with it. It seems to us that the way the regulation reads, the employer is guilty and must prove his innocent exposure level to HIOSH.

One item that has provided some relief is the specified exposure control methods which are all identified in what is known as Table 1. Some of these include identifying certain tools and a work practice such as an integrated water delivery system that will mitigate the problem. Some of them also provide that it might be mitigated with the purchase of manufacturer's dust emission equipment or HEPA filtered vacuum or shroud and dust collection system.

Our concern is that the rule requires the employer to assess exposure of each employee "who is or may reasonably be expected to be exposed" and if an employee representative is on the jobsite for observing this monitoring, the employer has to provide the observer with protective clothing and equipment at no cost. The employer has to come up with a written exposure control plan. We are confused by a requirement that says that each employee who uses a respirator for 30 or more days per year must have medical surveillance. The problem here is that 30 or more days per year is not defined. Is that for 10 minutes every day for 30 days or does that only count if it is a full day for 30 days? Employers are also required to make available an initial baseline medical exam within 30 days after the initial assignment on a job with silica exposure and the exam has to consist of medical and work history, a physical exam and a chest x-ray interpreted by a NIOSH-Certified B Reader.

In short, we too are very concerned about the disease known as silicosis. We too are concerned about our employees being exposed to situations in which they can contract any workplace disease however, we are also concerned with regulations that put such a burden on us that we can't operate. We think you could also safely say that just the minor portion of the regulations which we have discussed will impose significant costs on small business for the recordkeeping requirements itself, including the fact that the rules also require retention of those records for 30 years.

In light of all this, the question might arise as to what we want? We would prefer to see a much delayed effective date for this regulation and during that time a sincere outreach program by the Consultation and Training Branch including assistance with actual free PEL air sampling readings and mitigation suggestions so that businesses can accomplish compliance. We do not mean just information on how to meet it but actual compliance steps. Small businesses will need to be "walked through" these regulations if compliance and employee safety is the goal. We think it is an injustice that HIOSH's Pre-public Hearing Small Business Impact Statement says in its memo in Item 7 that "small businesses were not involved in the proposed changes because the proposed changes are required by OSHA". We think that HIOSH misses the point of having small businesses involved. Part of reason for small businesses to be involved is for the agency to understand the compliance difficulties small businesses will have in meeting a regulation and to further understand if there are any other methods that can be used in order to achieve that same compliance without imposing upon small businesses undue regulations and stringent impositions with no flexibility.

We find it interesting that although Section 201M-4 HRS allows for the establishment of a Small Business Advisory Committee under the Department of Labor to discuss these proposed regulations, that is an opportunity that they chose not to take. We also find it even more curious that the DLIR does have, already established a HIOSH Advisory Committee and while these regulations were referenced, they were never fully discussed nor, to my knowledge were any of the Committee Members provided copies of the proposed rules, even if for discussion purposes.

We mentioned at the beginning we had one other concern and that concern lies in Section 12-110-3 "Safety & Health Inspections". This section was in the majority already in the rules and regulations however it is now being clarified. One of the clarifications provides that where there are projects that employ 1 – 99 persons that there should be an employee assigned to make at least one inspection, each work day for safety and health and that there should be a written record of this daily safety and health inspection including:

- The date and start time of the inspection.
- The name of the employee (inspector).
- The scope of the inspection.
- A description of all potential hazards.
- The name and title of the person responsible for correcting the hazard.
- Information on how the hazard was eliminated or corrected.

We have great concern how seriously HIOSH is going to pursue this requirement on a small contractor who has two (2) employees, one of which will wind up spending a good part of each and every day, filling out this written report. This will be someone who has very little safety and health training and the will have a difficult time recognizing all the potential and actual hazards of HIOSH's 1400 page safe and

health regulations and noting what corrections might be needed. Large companies typically have safety and health personnel on payroll and I can understand this requirement for those companies. For the small contractors it does not seem to make sense.

Our suggestion is that when the legislature passed a requirement for written safety and health programs we appealed to the legislature asking them to exempt small business with less than 25 employees from a written safety and health program. The legislature responded and provided for an exception for employers with less than 25 employees as long as they were not doing contract work with the State in excess of \$100,000.00 (see Section 12-110-2 (a)(3). We think that should create a sufficient precedent for that same exception to be included in Section 12-110-3.

In conclusion we really want to thank the Board for bearing through these and many other rules and regulations on behalf of the small business. We know it is tedious work but it is these very "nitty gritty" and "picky" regulations that drive small businesses absolutely crazy and in many cases, out of business.

Thank you for your consideration.

Sincerely,



Tim Lyons, CAE
President

SAH - Subcontractors Association of Hawaii
1188 Bishop St., Ste. 1003**Honolulu, Hawaii 96813-3304
Phone: (808) 537-5619 ✦ Fax: (808) 533-2739

Suggested HIOSH Questions

What actions does HIOSH intend to take to inform the small business community on the effective date and applicability of these regulation once adopted?

Will HIOSH offer free air sampling readings, without penalties, to requesting small businesses?

Will HIOSH provide some kind of template or guide for the required employee exposure records and a definition of what is to be included in the employee's medical record?

Since there does not seem to be any "B" x-ray readers in Hawaii, where exactly does it say that HIOSH will accept a lesser qualified x-ray reader?

What is the ball park estimated cost of integrated water delivery systems for a handheld power saw? Or a dust collector?

And if you do not know how, can it be said that the cost impact is only "a small increase" if a company has 10 or 15 of those tools?

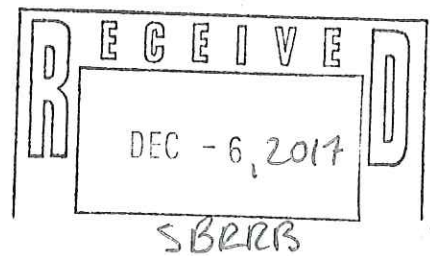
HIOSH will have to purchase air monitoring equipment for compliance purposes. Could not the Consultation and Education Branch spend a year responding to requests for readings in various specific work situations in order to determine silica PEL exposure in order to assist small business with compliance?

Use of a respirator for 30 days or more a year requires medical surveillance. What is a day; 10 minutes or 8 hours?

Why did HIOSH not fully discuss these proposed rules with your own Advisory Committee or, did you?

Why did you not convene a Small Business Advisory Committee as suggested in 201M-4 HRS?

Do you have any comment regarding the suggestion to provide an exception to the written daily safety and health inspection for companies with less than 25 employees?



Small Business Regulatory Review Board Meeting

Wednesday, December 13, 2017

10:00 a.m.

No. 1 Capitol District Building

250 South Hotel Street, Honolulu, HI

Conference Room 436



SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)
No. 1 Capitol District Bldg., 250 South Hotel St. 5th Fl., Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804
Email: dbedt.sbrrb.info@hawaii.gov
Website: dbedt.hawaii.gov/sbrrb

Tel 808 586-2594

David Y. Ige
Governor

Luis P. Salaveria
DBEDT Director

Members

Anthony Borge
Chairperson
Oahu

Robert Cundiff
Vice Chairperson
Oahu

Garth Yamanaka
2nd Vice Chairperson
Hawaii

Harris Nakamoto
Oahu

Nancy Atmospera-Walch
Oahu

Kyoko Kimura
Maui

Reg Baker
Oahu

Director, DBEDT
Voting Ex Officio

AGENDA

Wednesday, December 13, 2017 ★ 10:00 a.m.
No. 1 Capitol District Building
250 South Hotel Street - Conference Room 436

I. Call to Order

II. Approval of November 15, 2017 Meeting Minutes

III. Old Business

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to Hawaii Administrative Rules (HAR) Title 13, Chapter 74, **License & Permit Provisions and Fees for Fishing, Fish, and Fish Products**, promulgated by Department of Land and Natural Resources – **Discussion Leader – Mark Ritchie**
- B. Discussion and Action on Testimony, dated November 13, 2017, from Mr. Bryan Marks, Advanced Fire Protection, LLC, regarding proposed new HAR Title 12, Chapter 44.1, **Testing, Certifying, and Credentialing Individuals Who Perform Maintenance and Testing of Portable Fire Extinguishers, Fire Protection Systems, and Fire Alarm Systems**, promulgated by Hawaii State Fire Council / Department of Labor and Industrial Relations (DLIR) – **Discussion Leader – Tony / Kyoko**

IV. New Business

- A. Discussion and Action on Proposed Amendments to HAR Title 12, Subtitle 8, Hawaii Occupational Safety and Health Division, promulgated by DLIR - **Discussion Leader - Kyoko**
1. Part 1, General Legal and Administrative Provisions for Occupational Safety and Health
 - a. Chapter 50, **General Provisions and Definitions**
 - b. Chapter 52.1, **Recording and Reporting Occupational Injuries and Illnesses**
 - c. Chapter 56, **Program Fees and Library Policies, General Safety and Health Requirements**
 2. Part 2, General Legal and Administrative Provisions for Occupational Safety and Health
 - a. Chapter 60, **General Safety and Health Requirements**
 3. Part 3, Construction Standards
 - a. Chapter 110, **General Safety and Health Requirements**
 4. Part 5, Occupational Safety and Health Standards for Shipyard Employment
 - a. Chapter 170, **Shipyards**
 5. Part 6, Marine Terminals
 - a. Chapter 180, **Marine Terminals**

6. Part 7, Safety and Health Regulations for Longshoring
 - a. Chapter 190, **Longshoring**
7. Part 8, Other Safety and Health Standards
 - a. Chapter 208, **Other Safety and Health Standards**

B. Discussion and Action on Requested Proposed Amendments to the Department of Transportation's HAR Title 19, Chapter 20.1, **Commercial Services at Public Airport**, and HAR Chapter 38.1, **On-Demand Taxi Service at Public Airports**, submitted by Ms. Dale Evans, CEO, Charley's Taxi and Limousine – **Discussion Leader – Tony / Kyoko**

V. Legislative Matters

A. Discussion and Action on the Delegation of Authority to Board Members(s) and/or Staff to Submit Testimony and/or Testify on behalf of the Board during the 2018 Hawaii State Legislative Session

VI. Administrative Matters

A. Discussion and Action on the Board's Draft 2017 Annual Report Summary for Submission to the Hawaii State Legislature pursuant to Section 201M-5(f), Hawaii Revised Statutes (HRS)

B. Findings and Recommendations by the Board's Investigative Task Force regarding the Development and Redesign of the Board's Website including Content, Features, and Short- and Long-Term Goals in accordance with Section 92-2.5 (b)(1), HRS

C. Discussion and Action on the Board's Nomination(s) of Proposed Board Members for Submission to the Governor including Mr. Stu Burley and Mr. Will Lydgate, in accordance with Section 201M-5(b)(3), HRS

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

VII. Next Meeting: Scheduled for Wednesday, January 24, 2018, at 10:00 a.m., Capitol District Building, Conference Room 436, Honolulu, Hawaii

VIII. 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.

II. Approval of November 15, 2017 Meeting Minutes

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING - Draft

November 15, 2017

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

- I. **CALL TO ORDER:** Chair Borge called the meeting to order at 10:02 p.m., with a quorum present.

MEMBERS PRESENT:

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

ABSENT MEMBERS:

- Harris Nakamoto

STAFF: DBEDT

Dori Palcovich

Office of the Attorney General

Jennifer Waihee-Polk

II. **APPROVAL OF OCTOBER 18, 2017 MINUTES**

Vice Chair Cundiff made a motion to accept the October 18, 2017 minutes, as amended. Ms. Kimura seconded the motion, and the Board members unanimously agreed.

III. **OLD BUSINESS**

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 12, Chapter 15, Hawaii Worker’s Compensation Medical Fee Schedule and Exhibit A, Workers’ Compensation Supplemental Medical Fee Schedule, promulgated by Department of Labor and Industrial Relations (DLIR)

Ms. Kimura reminded the members that this Board heard these rule changes, which relate largely to fees, prior to the public hearing. There was quite a bit of testimony at the public hearing, with one testifier strongly opposed to the acupuncturists’ fee increase despite other acupuncturists supporting it.

Ms. JoAnn Vidinhar, Administrator at DLIR’s Disability Compensation Division, explained that 23 testifiers attended the public hearing. Six of those testified about the acupuncturist’s fee increase; two opposing testifiers claimed there was no shortage of acupuncturists; four were in support of the increases. As DLIR used results from the last survey that was conducted,

and also looked at the past three years of fees, because acupuncturists did not have a rate increase in over thirty (30) years, DLIR kept the recommended increase in the fees.

Chair Borge stated that it is important for the small businesses who will be receiving increased fees to become engaged in the vetting process in order for employees to be adequately covered. In response, Ms. Vidinhar explained that her division was asked by the Legislature to convene a “workers’ compensation working group,” (consisting of all industry stakeholders), in order to discuss and understand concerns that will ultimately provide for a fair and equitable fee schedule; Chair Borge requested the working group list.

Ms. Kimura made a motion to send the amendments to the Governor for adoption and Mr. Ritchie seconded the motion; all members agreed except Mr. Baker who abstained.

B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 13, Chapter 74, License & Permit Provisions and Fees for Fishing, Fish, and Fish Products, promulgated by Department of Land and Natural Resources

Deferred until next Board meeting.

C. Discussion and Action on the Small business Statement After Public Hearing and Proposed Amendments to HAR Title 23, Chapter 200, Regulations of Controlled Substances, and Chapter 201, Regulated Chemicals for the Manufacture of Controlled Substances, promulgated by Department of Public Safety (DPS)

Mr. Jared Redulla, DPS Administrator, explained that the proposed rule changes had been delayed since 2015 when this Board first heard them, due to various administrative changes, retirements and a procedural error. However, public hearing occurred over the summer of 2017 with no testifiers attending and no testimony received.

Background of these rules was explained; because the states on the mainland as well as Hawaii are in an opioid epidemic, the governor created an opioid task group to review all the focus areas surrounding the opioid problem. While Hawaii does not currently have the same opioid epidemic as the mainland, it was reported that last year Hawaii’s accidental overdose deaths exceeded the amount of traffic fatalities.

The proposed increase in the registration fees is expected to cover services provided by DPS. The fees are collected and placed into a revolving fund to pay for investigative activities/incidents involving registrant issues and controlled substances (of which, 800 incidents occurred last year) as well as for administrative expenses. Fees are paid by manufacturers, distributors, practitioners such as doctors, dentists, veterinarians, medical facilities such as hospitals, long-term care facilities, pharmacies, out-of-state pharmacies that move products into Hawaii, and scientific researchers.

The fees will also help pay for DPS's universal, prescription drug monitoring program which is the most prevalent tool Hawaii has in assisting its prescribers and practitioners. The drug monitoring database allows prescribers and practitioner's access to provide appropriate health care decision-making along with looking at potential acts of diversion such as criminal activity and fraud.

Chair Borge questioned whether DPS is able to track the effectiveness of the monitoring. Mr. Redulla responded that DPS's most important key resource is the prescription drug monitoring base which is the key to monitoring what is being dispensed to the public and what prescribers are doing. Thus, with this information, DPS expects that health care providers will make better and safer alternative decisions in treating patients. Insurance companies are also looking to this type of information as they want to make sure that what is being paid out is appropriate and not fraudulent.

Vice Chair Cundiff made a motion to send the amendments to the Governor for adoption. Ms. Atmospera-Walch seconded the motion, and the Board members unanimously agreed.

D. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 18, Chapter 231, Administration of Taxes, promulgated by the Department of Taxation (Do Tax), as follows:

1. Amendments to Section 3-14.17, Revocation of Licenses Because of Abandonment

Mr. Jacob Herlitz, DoTax Rules Specialist, explained that the rule amendments allow DoTax to revoke tax licenses due to abandonment by publishing notice on its website for a 45-day period. Although the current rules require DoTax to notify licensees via postal mail, because there are currently hundreds of thousands of licenses considered to be abandoned, it would be extremely costly to mail notices out. The rule changes apply to any tax license.

At the public hearing, one testifier raised concerns that the proposed rule changes violates the due process clause of the U.S. Constitution. DoTax respectfully disagreed with these concerns and have relied on the Department of the Attorney General's conclusion that the rules are "as to form." It was Mr. Herlitz's understanding that if a business' license is cancelled, it could be reinstated several years later.

Second Vice Chair Yamanaka made a motion to send the amendments to the Governor for adoption. Mr. Baker seconded the motion, and the Board members unanimously agreed.

2. Proposed New Section 3-14.26, Registration of Representatives

Mr. Jacob Herlitz explained that the proposed new rule paves a foundation for DoTax to set guidelines connected with its new computer system so that businesses who represent taxpayers would be allowed to electronically act on behalf of their client and electronically access the client's confidential taxpayer information.

At the public hearing, one testifier voiced concerns about possible future regulatory problems. Mr. Herlitz stated that simply registering a name and password and ensuring power of attorney does not pose any future regulatory issues; it was noted that this process is currently taking place.

Second Vice Chair Yamanaka made a motion to send the amendments to the Governor for adoption. Mr. Baker seconded the motion, and the Board members unanimously agreed.

3. Amendments to Section 9.9-03, Taxpayers Subject to EFT Program

These amendments require a participant in the EFT (electronic funds transfer) program to electronically make all payments including those based on annual returns for any tax type. Although statutorily, DoTax has authority to enroll taxpayers under the EFT program whereby taxpayers are required to pay electronically, taxpayers are currently required to only pay "periodic" returns, not "annual" reconciliation tax returns. Thus, the changes will require payments to be electronically made for "annual" reconciliation as well as "periodic" returns.

Mr. Baker commented that when DoTax requests "public commentary," it places notice on its website and in the newspaper. However, in an attempt to engage more feedback and participation, he suggested alternatives to "getting the word out" such as submitting an email broadcast to solicit feedback and by involving the chambers of commerce and trade associations so that they can disseminate to their members. He added that these alternatives may likely engage the businesses for more feedback and make for a healthier process.

Mr. Ritchie made a motion to send the proposals to the Governor for adoption and recommended that in an attempt to receive more feedback, commentary, and participation from small business taxpayers, DoTax considers sending out email broadcasts and involving the chambers of commerce and trade associations. Vice Chair Cundiff seconded the motion, and the Board members unanimously agreed.

IV. LEGISLATIVE MATTERS

A. Update on the Board's Proposed Bill for the 2018 Legislative Session – "Relating to the Small Business Regulatory Review Board" – Clarifies the intent of the Small Business Regulatory Review Board's powers when reviewing state and county administrative rules that impact small business

Mr. Ritchie attended the recent Governor's bill briefing where there were no objections to the Board's proposed "housekeeping" bill. Final approval has yet been made.

In regards to the Board's budget proposal, DBEDT prioritized the Board's requests for: 1) operating expenses, and 2) website upgrade expenses as 33rd and 34th, respectively, out of 36 total requests. Chair Borge will work on setting up an appointment with the Department of Budget & Finance Director Wesley Machida; Mr. Baker will also attend.

V. ADMINISTRATIVE MATTERS

A. Assignment of Board Members for “Discussion Leader Assignments” for State and County Agencies’ Administrative Rule Review

The members reviewed the existing discussion leader assignments and arrived at the following new assignments:

- Office of the Governor – Robert Cundiff, Backup
- Department of Accounting & General Services – Reg Baker, Back-up
- Department of Agriculture – Garth Yamanaka, Back-up
- Department of the Attorney General – Robert Cundiff, Back-up
- Department of Budget & Finance – Mark Ritchie, Back-up
- Public Utilities Commission – Kyoko Kimura, Discussion Leader / Reg Baker, Back-up
- Department of Business, Economic Development & Tourism – Robert Cundiff, Back-up
- Department of Commerce & Consumer Affairs – Reg Baker, Discussion Leader / Kyoko Kimura, Back-up
- Department of Education – Harris Nakamoto, Back-up
- Department of Hawaii Home Lands – Garth Yamanaka, Back-up
- Department of Labor & Industrial Relations – Reg Baker, Back-up
- Department of Taxation – Reg Baker, Discussion Leader / Garth Yamanaka, Back-up
- Department of Transportation – Nancy Atmospera-Walch, Back-up

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

Chair Borge thanked Mr. Baker for the “plug” he made on his weekly live-streamed show, “Hawaii Business with Reg Baker,” encouraging small businesses to attend this Board’s monthly meetings. Mr. Baker noted that he has “penciled in” Thursday, January 25, 2018 for this Board to be on this show. If any members are interested in being part of the show, let DBEDT staff know.

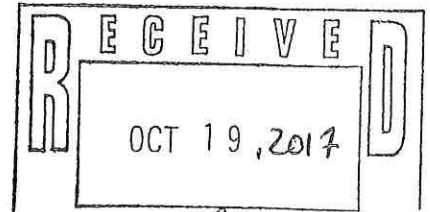
Chair Borge sent a letter to the Governor asking for assistance in amending the Governor’s Administrative Director 09-01; he will follow-up with the Governor on this.

VI. NEXT MEETING – The next meeting is scheduled for Wednesday, December 13, 2017, in Conference Room 436, 250 South Hotel Street, Honolulu, Hawaii at 10:00 a.m.

VII. ADJOURNMENT – Vice Chair Cundiff made a motion to adjourn the meeting and Second Vice Chair Yamanaka seconded the motion; the meeting adjourned at 11:40 a.m.

III. Old Business

- A. Discussion and Action on Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 13, Chapter 74, **License & Permit Provisions and Fees for Fishing, Fish, and Fish Products**, promulgated by DLNR



RULE-MAKING CHECKLIST
FOR
"SMALL BUSINESS STATEMENT" AFTER PUBLIC HEARING
(§201M-3, Section 2, Act 168, Session Laws of Hawaii 1998, as amended)

DEPARTMENT OR AGENCY: Department of Land and Natural Resources
Chapter and Title: Chapter 13-74, LICENSE AND PERMIT PROVISIONS AND FEES FOR FISHING, FISH, AND FISH PRODUCTS
Name and Phone Number of Contact Person: Mr. Alton Miyasaka, 587-0092

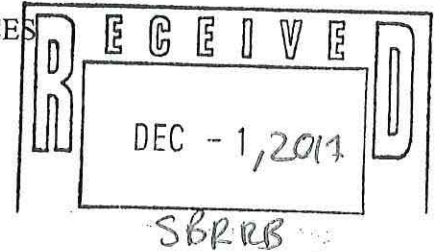
1. Summarize how the comments or testimonies from small business were solicited.
The Division of Aquatic Resources met several times with different commercial marine license holders to gather comments on the proposed fee increase. The Department also held a total of eight Statewide public hearings, at least one on each of the main Hawaiian Islands, to gather testimonies on the proposal. During the hearings, we asked specifically for comments on a revised plan to increase the fees in one step from \$50 to \$150/year to occur upon rule approval instead of the proposed two step increases to first \$100/year upon approval then to \$150/year on January 1, 2018. We also asked for comments on a proposed weekly reporting requirement for dealers to report to us purchases made directly from commercial fishers.
2. Summarize the written and oral comments or testimonies received from the public and small business regarding any proposed rule that affects small business.
In general, commercial fishers were opposed to what they viewed as relatively large increases but were also understanding of the need for the increases as the fees were last raised almost 20 years ago in 1999. Some opposing fishers would have preferred multiple but slow, regular increases instead of a few large increases. Some questioned what they would receive for these higher fees.
Some commercial fishers said that they had no problem with the proposed fee increases with the full-time fishers saying they would have supported higher fees. We did not receive any comment on the proposed weekly, instead of monthly, dealer reporting requirement. Additional discussions immediately after the hearings were held to answer any questions persons attending had. These discussions seemed to be well received.
3. Summarize the department's or agency's response to the comments or testimonies received in Item 2.
Given the relatively small annual fee for the license and the amount of income that may be generated from commercial fishing, the proposed increases would not be a significant burden for the serious fisher. The type of fishers that would be most impacted by the increases are the part-time commercial fishers that are more typical of non-commercial fishers but sell their catch to recover their fishing costs (known as expense fishers). The part-time crew fishers are the other type of fishers that only fish a few times a year but fill in as crew to keep the vessel operator company or just take-home fish for the table. These fishers are expected to not renew their licenses at the higher fee level but that decision would be made by the fishers based on their individual fishing activity. In our view, the

proposed increases are long overdue, the proposed fees are not unreasonable, and the revenues are needed to recover our costs.

4. How many persons attended the public hearings?
Forty-seven persons signed on the attendance sheet. In addition, a small but unknown number of persons attended but did not sign in.
5. How many persons orally testified at the public hearings?
Thirty-three persons testified at the hearings
6. How many persons submitted written comments or testimonies in response to the proposed rule?
The Division received 3 written testimonies on this proposed rule.
7. If there was a request to change the proposed rule at the public hearing in a way that affects small business and no change was made, explain why the request was not accepted.
Some commercial fishers were opposed to the increases while some were in support. One fisher suggested a higher operator of vessel fee with a reduced fee for crew. The Department will address this option in a future rule on a proposed commercial vessel license with fees. Fishers who were opposed to the increases did not provide their acceptable alternative option but implied the fees should remain the same until more information was provided. We held open discussions after the hearing to answer both related and unrelated questions with the public appearing to be satisfied with the answers. We did not receive any comments on the weekly dealer reporting requirement.

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Aquatic Resources
Honolulu, Hawaii 96813

December 8, 2017



Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

RECONSIDERATION OF REQUEST FOR APPROVAL TO ADOPT AMENDMENTS
TO HAWAII ADMINISTRATIVE RULES, CHAPTER 13-74: AMENDING SECTION
13-74-20 (COMMERCIAL MARINE LICENSE) AND ADDING SECTION 13-74-46
(COMMERCIAL MARINE DEALER REPORT).

THE PROPOSED AMENDMENTS ARE ATTACHED TO THIS AGENDA AS
EXHIBIT 1. A REDLINED DOCUMENT SHOWING ALL CHANGES BETWEEN
THE VERSION SUBMITTED TODAY AND THE VERSION THAT THIS BOARD
APPROVED FOR PUBLIC HEARING ON JANUARY 13, 2017 IS ATTACHED TO
THIS AGENDA AS EXHIBIT 2. EXHIBIT 3 IS THE SUMMARY MINUTES OF THE
STATEWIDE PUBLIC HEARINGS.

Submitted for your reconsideration and final approval is a proposed amendment to Hawaii Administrative Rules (HAR), Chapter 13-74, attached hereto as Exhibit 1. This request was deferred from the Board meeting of November 9, 2017. There are two main proposed rule changes: 1) the addition of a new section, HAR §13-74-46, which establishes that commercial marine dealers submit weekly reports, and 2) to amend HAR §13-74-20 to raise the fees for the issuance or renewal of commercial marine licenses from its current \$50 for residents or \$200 for others to a uniform rate of \$150 per year.

The Board provided their preliminary approval to hold statewide public hearings to discuss these proposed rule amendments at its meeting of January 13, 2017. The Division of Aquatic Resources (DAR) conducted eight public hearings, and the summary minutes of those hearings are attached as Exhibit 3 for your information. Forty-seven persons signed the attendance sheets with twenty-nine persons testifying at the hearings.

We have made two primary changes to the version the Board approved for public hearing on January 13, 2017. A redline of these changes is attached hereto as Exhibit 2.

First, with respect to HAR §13-74-20, the fee for the issuance or renewal of licenses will be \$150 on the date the rule goes into effect, rather than \$100 upon approval and a second increase to \$150 on January 1, 2018. During the hearings, we asked specifically for comments on a revised plan to increase the fees in one step from \$50 to \$150/year to occur upon rule approval, instead of the initially proposed two-step increases to first \$100/year upon approval then to \$150/year on January 1, 2018. This change was in response to a six-month delay in the holding of hearings and an anticipated effective date of the rule amendments around late December 2017 to early January 2018. Of those

fishers supporting the increase, no one opposed raising the fees in one step instead of two.

Of those commercial fishers who were opposed, they viewed the increases as relatively large but were also understanding of the need for the increases as the fees were last raised almost 20 years ago in 1999. Those opposing would have preferred multiple but slow, regular increases instead of a few large increases. Some questioned what they would receive for these higher fees and would remain opposed unless their questions were satisfactorily answered.

Some commercial fishers said that they had no problem with the proposed fee increases, with many of the full-time fishers saying they would have supported higher fees. Some part-time fishers said the \$150/year fees for crew members who are only on the vessel once or twice during the year was going to be a burden. They suggested that a lower crew fee be considered for these fishers.

Given the relatively small annual fee for the license and the amount of income that may be generated from commercial fishing, the proposed increases would not be a significant burden for the serious fisher. The type of fishers that would be most impacted by the increases are the part-time commercial fishers that are more typical of non-commercial fishers but sell their catch to recover their fishing costs (known as expense fishers). The part-time crew fishers are the other type of fishers that only fish a few times a year but fill in as crew to accompany the vessel operator for safety or just take-home fish for the table. Some of these fishers are expected to not renew their licenses at the higher fee level but that decision would be made by the fishers based on their individual fishing activity. Our commercial licensing statistics suggest that this component (part-time crew) may be a relatively small portion of all persons getting commercial licenses, indicating that most persons in this category do not get licenses now. Persons in this category will also be addressed in future rules relating to licenses for commercial fishing vessels. In our view, the proposed increases are long overdue, the proposed fees are reasonable, and the revenues are needed to recover our costs.

Second, with respect to the new section HAR §13-74-46, the rule presented now states that reports shall be submitted weekly to the department for a weekly reporting period beginning on a Sunday and ending on the following Saturday by the following Tuesday rather than a weekly or monthly reporting period as provided by the department. We asked for comments on a proposed weekly reporting requirement for dealers to report to us purchases made directly from commercial fishers. We understand that this requirement would be difficult for those dealers who do not have the capacity to file weekly reports if they are not computer proficient or do not have internet access. Ultimately, we did not receive any comment on the proposed weekly, instead of monthly, dealer reporting requirement.

DAR supports a weekly reporting period because the bottomfish fishery is jointly managed by the State and Federal agencies and is currently under an annual catch limit (ACL). It is critical to keep accurate and timely catch information to monitor the ACL to have a reliable prediction of when the limit is approaching and to take the steps to close the fishery before the ACL is reached. Timely dealer information verifies the reported catch information to ensure data accuracy.

These are not substantial changes from the version of the rule approved for public hearing on January 13, 2017. First, the original version of HAR § 13-74-20 explicitly stated that the fees for the issuance or renewal of licenses would be \$150 by January 1, 2018, and the single step was raised and discussed at the hearings. Second, the original version of HAR § 13-74-46 stated that reports would be required to be submitted weekly if required by the department, and the weekly reporting requirement was raised and discussed at the hearings.

RECOMMENDATION:

That the Board approve the adoption of the amendments to Chapter 13-74, as set forth in Exhibit 1 attached hereto.

Respectfully submitted,



for Bruce S. Anderson, PhD.
Administrator

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE
Chairperson

Public Hearing Minutes Summary
Amendments to Hawaii Administrative Rules
CHAPTER 13-74
License and Permit Provisions and Fees for
Fishing, Fish, and Fish Products

Hearing Locations, Dates, & Times:

1) Kaunakakai, Molokai on Thursday, September 28, 2017 at the Mitchell Pauole Center Conference Room, 90 Ainoa Street, from 5:30 PM; 2) Honolulu, Oahu on Friday, September 29, 2017 at the Stevenson Middle School Cafeteria, 1202 Prospect Street, from 6:00 PM; 3) Lanai City, Lanai on Friday, September 29, 2017 at the Lanai High/Elementary School Cafeteria, 555 Fraser Avenue, from 5:30 PM; 4) Kahului, Maui on Wednesday, October 4, 2017 at Maui Waena School Cafeteria, 795 Onehee Street, from 5:30 PM; 5) Kailua-Kona, Hawaii on Tuesday, October 3, 2017 at the Honokohau Harbor Big Game Fishing Clubhouse in from 5:30 PM; 6) Hilo, Hawaii on Tuesday, October 3, 2017 at the Hawaii County Aupuni Center Conference Room, 101 Pauahi Street, Suite 101, from 5:30 PM; 7) Lihue, Kauai on Thursday, October 5, 2017 at the Chiefess Kamakahelei Middle School Cafeteria, 4431 Nuhou Street, from 6:00 PM; and 8) Kapa'a, Kauai on Tuesday, October 10, 2017 at the Kapa'a Elementary School, 4886 Kawaihau Road, from 6:00 PM.

I. Introduction

A. Opening

1. The Public Hearing is called to order.
2. This is a formal Public Hearing on proposed Administrative Rules of the Department of Land and Natural Resources Relating to License and Permit Provisions and Fees for Fishing, Fish, and Fish Products. These proposed rule amendments would raise the current annual commercial marine license fee from \$50/year to \$100 then \$150/year. The amendments would also establish deadlines for dealers to report their purchases directly from licensed commercial fishers.
3. A staff biologist with the Division of Aquatic Resources conducted the public hearings.

B. Purpose

4. The purpose of the hearings was to provide the public the opportunity to provide comments in the form of oral and written testimony on these proposed Department administrative rule amendments relating to the fees for commercial marine licenses and deadlines for dealer reporting.

5. Persons attending were asked to sign in so we can make a complete record of all persons attending this hearing.
6. There was a separate sheet to sign for those wishing to present testimony on the proposed rule changes.

C. Public attending

A total of 49 persons signed the attendance sheets at all hearings. Typically, not everyone attending signs in. No one from the public attended the Lanai and Molokai hearings.

II. Background

- A. Approvals to conduct this public hearing have been obtained by the Board of Land and Natural Resources at its meeting on January 13, 2017, Small Business Regulatory Review Board on June 20, 2016, and Governor Ige on August 14, 2017.
- B. Copies of the administrative rules were made available for inspection at the table near the entrance.

III. Notice of public hearing

- A. The Legal Notice of this public hearing was published in the August 28, 2017, Sunday issue of the Honolulu Star Advertiser. Notices were also published in The Garden Island, Maui News, West Hawaii Today, Hawaii Tribune Herald, and the Molokai Dispatch (9/6/17).

IV. Hearing procedures

- A. The hearings were conducted as follows:
 1. Explanation of the proposed changes to the administrative rules;
 2. A call for those who signed up to testify as they are listed on the sign in sheet;
 3. After those who signed up have presented their testimonies, persons who did not sign up were asked if they wished to testify;
 5. After all persons have given their testimonies, anyone wishing to add to their testimony could do so;
 6. We are recording this hearing to make a written record, so please state your name for the record before giving your testimony.
 7. Please remember to respect the opinions of all testifiers and that this hearing is not an opportunity for accusations or rebuttals.

V. Rule Explanation

Summary of Proposed Administrative Rule Amendments

Note: Language to be deleted is bracketed while new language to be added is underlined.

Chapter 13-74, License and Permit Provisions and Fees for Fishing, Fish, and Fish Products, amendments are proposed:

Section 13-74-20(c): Provides that the commercial marine license annual fee will be raised from \$50 to \$100 upon approval of these amendments.

Section 13-74-20(d): Provides that the commercial marine license annual fee will be raised from \$100 to \$150 on January 1, 2018. Due to the delay in holding this hearing, we are proposing that both increases would occur at once, changing from \$50 directly to \$150 in one step, upon approval of this amendment. We are seeking comments on this change.

Section 13-74-20(e): Provides that no one may renew a license earlier than two months prior to its expiration date. This provision is to prevent persons from renewing years in advance to avoid paying the higher fees.

Section 13-74-46: This new section establishes the dealer reporting deadlines and the information that will be required to be included in the report. We are proposing to make all primary dealer reporting deadlines on a weekly schedule. The reporting period would be from Sunday to Saturday, with the report due by the following Tuesday. We are seeking specific comments on this change.

VI. Testimonies

- A. The following are the testimonies of persons in attendance that wished to provide their comments.

Oahu

- 1) Roy Morioka (oral testimony): I'm Roy Morioka and I am not in support of the proposed rule amendments to the commercial marine license (CML) fees. It would cause an inordinate burden on commercial fishers of the State of Hawaii. I fish with 3 people aboard my vessel, which is my normal crew size. The fees would go from \$50 to \$150. That 3-person crew varies from trip to trip. I have 6-7 persons that fish with me so multiply that by \$150 and it becomes inordinately expensive. I would not expect them to pay \$150 for a CML. Regarding the dealer report, I'd like to know what comprises a dealer and believe this should be defined in the language of the rule. As a commercial fisherman who sells his catch to the United Fishing Agency, is that the dealer or the person actually buying the fish at the auction? This kind of clarification would be

helpful. If you look at the bottomfish catch report, there's an order of magnitude between what the fisher reports catching and what is being sold. It's like night and day. 80% is sold so what is happening to the other 20%? Where is it being missed? I am requesting clarification on who a dealer is. Thank you.

- 2) Ed Watamura: This is Ed Watamura representing the Wailua Boat Club. About 50% of the members in the club are commercial. There is an overwhelming outrage over the large increase that would be multiplied by the crew. The typical situation with small boat fishermen is the crew is not selling fish so they are technically not commercial fishermen. They come along for fun and we give them a couple of fish at the end of the day. They take home a little to eat but mainly come out for fun. We cannot ask them to pay \$150. So basically, we are going to be absorbing that cost by ourselves. Highly unlikely you are going to get compliance. If your goal is to increase revenues, I don't think you're going to see it. If anything, guys are going to get one license and the crew are going to be unlicensed. You should, as quick as possible, create a vessel license. Personally, I can see paying the \$450 for the vessel license but most would only get the one license for \$150 and the crew don't have a license. There is no enforcement, there's no way to check, especially for trollers. You could meet them at the dock and ask them if this is a commercial trip and all they have to say is "No." Bottomfishing is a different story because you can stop them and they cannot say no if there's more than five fish per person. The vessel license is the best scenario and the best win-win.
- 3) Ron Dellinger: My name is Ron Dellinger. I don't want to repeat everything that's already been said. I am strongly opposed because I don't see the benefit to the fisherman. It's a 200% increase that we are paying for but we don't get any more. I think a lot of CML holders will give up their licenses. You will lose the data as well from these fishers. You need this data to monitor the fishery but you will not have it. I think you want to make more money but you will end up shooting yourself in the foot.
- 4) Glorianne Young: My name is Glorianne Young, I'm opposed. I do not have a CML but sometimes my son goes out fishing and he asks me I can come. If I go with you guys, you can't go bottomfishing because I do not have a CML and definitely, I will not get a CML if it costs \$150. Another thing I'm concerned about is who he goes fishing with if he doesn't have a full crew. A lot of people will not have a CML at this rate. This will jeopardize my son's safety since he fishes the BRFA's and he has to go farther to find the bottomfish. I like the idea of a vessel CML because with it, he can find the crew

easier since they will not need a CML than trying to find crew with CMLs.

- 5) Bob Lee: I'm Bob Lee and I have a commercial license. I am opposed to the proposal as written now solely on the drastic fee change. It baffles me how we can have the same fee for 20 years then suddenly it triples. I don't mind having marginal increases but what is the justification for tripling it all at once with so little notice. I know that it helps pay for the programs but that's been there for years. We've had on-line reporting for years. What has changed to justify such a drastic increase? It doesn't make sense to me.
- 6) Roger Takabayashi: I'm Roger Takabayashi and I have a commercial license. I do not sell, everything is given away. I only have it to maximize my ability to catch more (bottomfish). I oppose this but echo everything everyone else has said so far. I will support a vessel license since I cannot see my crew, cousin to cousin to cousin, each getting a commercial fishing license. That doesn't make sense.
- 7) I am Edwin Taniguchi and a member of the Wailua Boat Club. I currently have a CML and I hardly ever go out and use it. One of the club members told me that if I wanted to go fishing I have to get a CML. I go out may be once a year. I've been maintaining the license but I told the DLNR and the club members that I would not be renewing my license. I cannot afford to pay \$150 but I agree with the others that it makes more sense to get a vessel license so the captain can legally have a crew without a CML. Thank you.
- 8) Roy Morioka again. Previous comments regarding a vessel license, I support wholly a vessel based CML. It is the fairest application of a CML. It alleviates the issue of foreign crewmembers on the longline vessels by eliminating the need for each crew member to have a CML. It becomes a fairness doctrine. There should be a graduated fee based on crew size. One fee for 1-2 persons per vessel, a higher fee for 3-4 persons per vessel, and a higher fee for 5+. This accommodates the type of fishing that is occurring on each vessel. A lone operator would pay for one license and satisfy that person's needs. But if you have a vessel like mine and you need three guys, then it would be appropriate that I pay a little more.
- 9) Edwin Taniguchi: No question that smaller boats should pay less than larger boats, but a person shouldn't have to pay for 5 persons if 3 are just along for the ride. Somehow it has to be more thought out.

Maui

- 10) Basil Oshiro (oral and written testimonies) : I am objecting to the fee raise for the licenses. I have questions about it. First thing, will this report reach Alton Miyasaka, who is retiring. If it doesn't go through, we don't know what is going to happen. What will be the give back? What will we see in return? With the fee raise, are we going to see better harbors? Are we going to see restrooms at Kahului? That kind of small stuff. Raising the fees is penalizing just the commercial fishermen. There is one recreational guy, Ryan over here. Recreational guys need to step up to the plate too. They are not paying anything. Just the commercial guys are paying. Before they even raise the fees, they need to make something to involve the recreational guys. Right not they get it free. They need to give on their side too. If there is bad spending from DAR, they have to be held responsible for that portion. We want to know where the special funds go. It is 300 or 500 million they get. Where does that funding all go? Russell was trying to explain to me outside. Hawaii being an Island state, everybody uses the ocean, so that way we need more funding from recreational, commercial or subsistence fisherman. This price of \$150 isn't justifiable. Is it going to help the fishermen? My other part is on data. They are charging us more, but we not getting support back. Data from the BFRA and data from the size and bag limits. If you go on the site it is hard to find information. Education for the ethnic groups. They are not here. They have to somehow get an outreach program for these people. So they know what is going on too. Not just the few that we have here. So that is the other thing if you have anything on the other ethnic groups that have CMLs? They rarely show up to these meetings or hearings. So I guess, I don't know, DAR? Do you folks have a program for outreach to these people? We don't just have locals like what we have here. So that is about it on my side. Thank you.
- 11) Melvin Lopez: Opposed to this increase. To me, one of the biggest issues is the long liners. They are getting away scott free. They are the one making the big money. We are the ones paying the taxes and not them. I pay choke taxes every year. My business and everything else. I don't think we should be paying anything more. If they like make the increase, hit the long liners. If they are going to raise them, I can see raising them, but not \$150. All of us are all small time fisherman. Most of us only take one guy out every time we go. And it is not always the same one guy. So for us to go out and I got to pay for my crew members every time we go, if I get four different guys that coming with me, I got to pay for four different licenses. And only one guy at a time going to come with me. So to me, I don't think the way you guys stay setting them up is right. To me it is totally wrong. I can see an increase, but this amount is just too much one time. If anything you guys should hit the guys that

making all the money. Those long liners, they are all illegal's over there. They are not citizen's you know. They no pay taxes. So they should be paying a big amount, just so they can make money over here in Hawaii. You know, us guys who are paying our tax, why are we being penalized for it? I don't think that is right. That is all I have to say.

- 12) Clarence Yamamoto: For the record I oppose any type of fee increase. I think that the big commercial vessels should cover the majority of the expense--that you guys feel the short falls will be. For us guys, again, we are small vessels. So they should make it where a certain size of vessel will pay more for a commercial license, where the smaller vessels will pay a little bit less. Again, we provide a service to the community. We sell on the roadside, so people can afford to buy our fish. We don't always sell directly to the market. If Licenses get to high, people may decide to go under the radar and sell without a license. So that data will be lost. That data is really important along with botcams and fish transects to help manage the resources properly. You take out on piece of that puzzle it may be very problematic. We don't know what the outcome may be. And again, I think all of us kind of view this as another takeaway. We don't see any benefits to us as small kind commercial fisherman. That is all I got.
- 13) Richard Magsayo: Go to the next guy. I am opposed to it!
- 14) Walter Baula: Nah—I don't want to testify, I opposed.
- 15) Clifton Akiyama: I would like to ask for another class of fisherman to be added to this. Commercial fisherman and recreational fisherman and put in Subsistence fisherman and have a different class of license for them. They are not big time like the commercial guys. We don't run commercial registered vessels. We are mostly subsistence fisherman. Part-time fisherman. Maybe you can consider putting that classification in there. Thank you.

Lihue, Kauai

- 16) Shyla Moon: member of the Western Pacific Fisheries Management Council Advisory Panel (AP) but speaking for herself and not as a representative of the Council or the AP. Not opposed to the fee increases but had questions about what the fees would be used for. She was also not sure about the weekly dealer reporting deadline so wouldn't comment on this provision.
- 17) Cory Nakamura: opposed to the proposed fee increases due to insufficient information to make a decision

- 18) Warren Koga: opposed to the proposal
- 19) Scott Shibuya: opposed to the proposal
- 20) Ryan Koga: opposed to the proposal; non-residents should pay more, they do in other states
- 21) Clayton Kubo: I am not a current commercial marine license holder but I used to have a license in the 1980-90s; the fees haven't been raised in a long time; ice and other costs go up, that's the way it is; \$150 is a no brainer, not much for a commercial license (support proposal).
- 22) Howard Mikasa (written testimony only): suggest a temporary fishing license or a one-day pass for a fee of \$10-20. Often, a captain will take crew members fishing for only a few times a year making it a costly expense. Having Day Passes will help generate funding for the State and lessen the burden on fishermen.

Kapaa, Kauai

- 23) Frank Medeiros: I am a commercial fisher, have been for 45 years, and my whole family fishes, my two sons and grandson. We have 5 commercial licenses in my family. I had my boat registered as a commercial fishing vessel (registered "CF" under DOBOR) and I ran into all kinds of problems with who is on the boat, are they all licensed, cannot go fishing unless everyone licensed.

I used to be a member of the Western Pacific Fishery Management Council but I thought there was a conflict of interest so I quit. We tried to raise the commercial fishing license fees years ago. In Alaska, where the fees are \$100,000s a year, enforcement is unbelievable. We should do something like that here. They don't only do fishing, they check for safety equipment, too. It would be good if the fees could be used to help commercial fishers, like improve the boating facilities and hire more enforcement officers. We also tried to raise the 3-pound minimum size of the ahi. Somebody catching coolers full of small ahi and selling them. We wanted a 5 or 10-pound limit but we were opposed by the recreational fishers. One guy owns three service stations and he's crying about not being able to sell 3-pound ahi. Come on.

The commercial license is more of a burden with the reporting requirement and the fines, if you are delinquent. I got fined for delinquent reports even though I mailed them before I went on a trip.

It seems my reports got lost in the mail. If the forms had a space for the date that you filled it out, that would be proof of when you did it. It took me a while to resolve this, I ended up paying a small fine, but it creates more problems, than if I didn't have a license. The only people getting fines are the ones that get a license and try to be compliant. If you don't have a license, the dealers buy from you anyway, and you don't get delinquent fines.

Some guys on Kauai fish without licenses, catch more fish than the commercial licensed guys. And they sell all their fish for cash. The restaurants rather pay cash. They don't report their catch, the catch data is all under-reported, and they don't get fined. The system works against the people who are trying to do it right.

We were trying to raise the fees a long time ago. If the fees are high, only the serious guys would get the license and the part-time guys will get out of the business. My two sons and grandson all make their living fishing.

The money always seems to go somewhere else. The harbors are in poor shape, they need dredging, it's hard to drive your boat out in some places. With all the state people, what are they doing? Where are the enforcement wardens? They supposed to be checking the markets and restaurants. But they don't do that.

We don't mind paying the fees, if they go back into the program, help the fisherman, something to improve the harbors. I don't mind paying for the license, if it's enforced. I have nothing against raising the fees.

The report form is so complicated, it makes the fisherman less likely to fill it out. Keep it simple. It's hard to fill out. Two hours in this area, caught this fish in this location fishing for x hours. You need a computer to keep track.

He mentioned a number of topics from keeping your ahi catch from burning, Department of Health HACCP food safety regulations, need for more enforcement, fish quality, and lay netting in stream mouths. He asked about new licensing requirements for charter boat clients, if the clients will need a license as well. Mr. Miyasaka responded that the proposed rule amendment would not include licensing for charter clients.

Hilo, HI

24) Cory Harden: I support the proposal. Our State constitution says that the State will conserve Hawaii's beauty and natural resources and

shall promote the use of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State. All public natural resources of the State are held in trust for the benefit of the people. DLNR's mission statement says to enhance, protect, conserve, and manage Hawaii's unique cultural and natural resources held in trust for present and future generations. Everyone knows that DLNR is underfunded and understaffed. I support the proposed amendments as a way that persons who benefit from the resources help to contribute to adequate funding for DLNR to protect the resources. Not protecting the marine resources would be unfair to the people in the future who might end up without enough fish. DLNR might consider adjusting fees for those fishers who do not go out that often. I do want to hear from dealers and fishers about how these changes will affect them.

- 25) Craig Severance (written and oral testimonies): Aloha, I've submitted written testimony. I'm Craig Severance and I'm in support of this proposed amendment. I serve on the Western Pacific Fisheries Management Council, Science and Statistical Committee, Social Science Planning Committee, and weighmaster for Hilo Trollers. Tonight, I'm speaking for myself. I think we all recognize that the Division of Aquatic Resources is chronically understaffed and there has not been a raise in fees for almost 20 years. This fee is more reasonable than one proposed 3-4 years ago to separate the part-time from the full-time commercial fishers. I support with caveats. One, the fees must stay within the division and they should not go into the general fund. Second, the division should look into a non-commercial marine license because the only way we are going to get decent data on the non-commercial/recreational catch is with a decent sampling frame and a list of active fishers. Current estimates vary so widely that it is not credible for management purposes. We need to know how much is coming out of the ocean so we can manage it well. The requirement that all persons on a commercial fishing trip need to have a commercial marine license is burdensome at \$50. When it becomes \$150 it will become quite burdensome on some and that flies in the face of Aloha. The state should consider some kind of exemption for visitors, at least if they are not going out for more than a few trips.
- 26) Gary Beals (written and oral testimonies): Gary Beals, fisherman from Hilo. I support this but I didn't come here with the intension of giving testimony. I have a set of questions to ask. (Mr. Miyasaka responded that he would answer the questions after the hearing.) 1) Why would a charter boat have to get a license if he has no intention of selling the fish? 2) What is the purpose of requiring a commercial marine license (CML)? 3) Will each person fishing on a commercial

vessel be required to hold a CML or only the operator? 4) Why are outside funds (license fees) required to pay for license issuance when the State budget pays for State employees? 5) Will additional safety equipment be required by the State and/or Coast Guard on a vessel holding a vessel license? 6) Have any of the funds collected by the commercial fish special fund been used for research in the bottomfish restricted fishing areas? and 7) Do the license holders have any input as to how the funds are used?

- 27) Carl Shioji: I'm Carl Shioji, member of the Hilo Trollers, part-time commercial fisher from Hilo, defers expenses by selling fish. I agree with Mr. Beals. Although Craig is a good friend of mine, I'm opposed to this fee increase. If the fee is increased, I cannot see the money going to the general fund. I would strongly advise we delay the implementation of this increase until all questions have been satisfactorily answered and approved by us. If we disagree with some answers, we can discuss. The reason for my concerns is the bottomfishing closures, especially the one off Hilo, that was supposed to close only for a few years but they are still closed (almost 20 years later).

Kona, HI

- 28) Steve Kaiser (oral & written testimonies): While I have no issue with the increase in the cost of the license, I do think it opens a discussion on some of the issues which may arise.

As we already know the numbers of recreational fisherman selling fish is already an issue. Has the department seen the increase in a license fee an issue for many of the current holders to drop out and go underground with sales? If this does happen catch data will be lost. And how is this going to be enforced? DOCARE is already stretched thin and are poorly equipped to handle ocean based resources. And speaking of data while data is being collected what is being done with this data? How or what studies are being done beyond measuring the take?

Recently a study was released that showed the highest contribution to population decline is over fishing. Yet in many areas the loss of habitat due to urban run-off has been disastrous. Having dove the area outside of Puako where the loss of coral is now approaching 100%. And having recently visited Oahu and seeing the loss of coral in Maunalua Bay was shocking from what I remember 25 years ago. Koas or fish houses have lasted for hundreds of years yet many of the Koas I had fished for 40 years are now dead and vacant. And the lack of even seeing a live coral was shocking. Added to this invasive algae on Oahu and the ever increasing numbers of Roi on this island

I am somewhat dismayed and have to question these types of reports as results driven and far from objective.

So keeping in mind the above points, as a fisherman I don't mind paying to protect my resource and investment. The fish and habitat that is protected today will help to sustain my business. And yet in Puako the continued development with no plan for the increase in sewage abatement is shocking. I know that UH Hilo has the area under study but with sampling only 4 times a year over a 2-year period as funding is not available, is this really how we want to solve our issues? The lack of a concise and deliberate plan to deal with invasive species is a disappointment that is now becoming critical.

As a long-time fisherman who has returned to Hawaii after 25 years. What happened to the artificial reef program? The maintenance and deployment of FADS? The push to make taape and underutilized species popular or in the case of roi eradication? A managed shark fishery was once discussed? The recent court stoppage of the most regulated fishery in Hawaii (Aquarium Fish) has me very worried as the same rhetoric could be applied to commercial and even recreational fisheries. Don't think it could happen? This is not a question of conservation, it's about preservation vs. conservation and the groups leading this are well organized and funded so please don't think it couldn't happen.

- 29) Jim Lovell: My name is Jim Lovell. I'm an aquarium collector and I also have a CML. I understand the expenses that are involved with licensing, that \$50 is silly, I don't have any problem whatsoever. The \$150 is still reasonable for a commercial license. Instead of going to \$100 then \$150, just go straight to \$150. I'm not sure why, there must be good reasons. I know DLNR is talking about a boat license so we can have deck hands. I'd like to see this as something we can do with these licenses. My daughters can come on the boat and not make me in violation of any law. I'm in support, thank you for your time.
- 30) Scott Davidson: I understand the revenues that would be generated for the department but what is being returned to the fisherman. We're not getting that information on the Internet. We submit the information and you are saying we need to close the bottomfish fishery because you're reporting this much fish. You're out there and you get nicked because you're out there and you close it. Are you communicating with the harbors division or the fishers to tell us what we have to do? You got DLNR up there with binoculars watching in a restricted zone. We need information. If we want to go for pelagic fish, what are we supposed to do to comply with you

people? We got to figure this out. Of course, we have to save the resources, but, we need information from you. We have many more skiffs out there. We need to work together to make this work. These price changes. What are we paying for? Are we paying for new boats for you? Are we paying for the trails and DLNR? I just trying to find out where the money is going.

- 31) Nathan Abe: I know the fees haven't been raised for almost 20 years and I know where the money goes. I think you should work towards a better system. Get the vessel license going. Everyone on the boat supposed to have a license. When you raise the fee to \$150 and everyone on the vessel has to have a license, this system, I don't know if you guys have figured out statistically the revenues but you might end up with less revenues. But with a vessel license and everybody being covered, and one guy selling the fish, that sounds like something you guys should think about. You also have to think about the shoreline fisherman. People who sell opihi. For the menpachi fishers, that price is a little high and I know it's going to go even higher. Should consider having three categories. One license for the vessel, one for shoreline. You have to think outside the box about the revenues you need. These changes might cost you less revenues. These fees are used for research/stats. How many people going to actually pay \$150? For a lot of fishermen, the only guy with a license is the owner. The deckhand doesn't have one so people will go underground. You won't get the fishing report. Don't tell me restaurants don't buy fish under the books. If the price goes too high, you might have less revenues.

Mailed Testimony

- 32) Gregg Nelson (written testimony only): Per the media's view, everyone feels it's fine and dandy to raise the fees for the above mentioned. That said, in the County of Hawaii alone, how many full-time fishermen do you have? Now would you go back and compare to how many full-time fishermen you had in 2000.

The DLNR's fees and rules (ever since making us put "BF" on boats) and the rest of the lobbying has made many of us fishermen retire since 2000, because we can't afford to fish nor take care of our families. Sad to see no fish for sale in small communities, whereas in 1989, lots of fish and fishermen could be found. Shame on you and your rules for losing fishermen. You have left only the "elite" to help support the DLNR.

- D. Late testimonies: Persons unable to attend today or wishing to present additional comments, may mail written testimony to us by October 13, 2017. Please mail testimonies to:

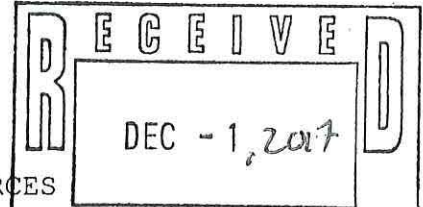
Department of Land and Natural Resources
1151 Punchbowl Street, Rm 330
Honolulu, HI 96813

VII. Decision-making on the proposals:

- A. Based on the testimonies presented, the Department will submit its findings and recommendations to the Board of L&NR.
- B. Depending on the comments received tonight, our goal will be to present these proposed rules, the hearing minutes, findings and recommendations to the Board at its meeting on November 9, 2017 (November 10, Friday is the Veteran's Day holiday). If approved by the Board, the Department of the Attorney General will conduct a final legal review. If approved, the proposed rules will be presented to the Small Business Regulatory Review Board, Department of Business, Economic Development, and Tourism (DBEDT) for their review. After their review, the proposed rules will be sent to the Governor for his final approval.
- C. Should the Governor grant approval, certified copies will be filed with the Lt. Governor's office, and after 10 days, it becomes effective as law.
- D. Are there any questions regarding this process?

VIII. Adjournment

- A. On behalf of the Board of Land and Natural Resources and DAR, thank you for attending the public hearings. The public hearings are now adjourned.
- B. Thank you for attending the hearings.



DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to Chapter 13-74
Hawaii Administrative Rules

(November 9, 2017)

1. Section 13-74-20, Hawaii Administrative Rules, is amended to read as follows:

"§13-74-20 Commercial marine license. (a) No person shall take marine life for commercial purposes whether the marine life is caught or taken within or outside of the State, without first obtaining a commercial marine license. Additionally, any person providing vessel charter services in the State for the taking of marine life in or outside of the State shall obtain a commercial marine license.

(b) Licenses to persons with proof of identity to engage in the activities described in subsection (a) shall require the person's name, address, age, place of birth, length of residence in the State, height, weight, color of hair and eyes, citizenship, and such other information as the department may require.

(c) The fee for the issuance or renewal of a commercial marine license shall be:

- (1) Residents, \$50;
- (2) All other persons, \$200;
- (3) Duplicate license, \$10.] \$150. The fee for a duplicate license shall be \$10.

(d) No person may:

- (1) Renew a commercial marine license more than two months prior to its expiration date; or
- (2) Be issued more than one commercial marine license at any one time.

[[d)] (e) The department may require persons issued the commercial marine license to submit reports of their fishing activity. Such reports shall be submitted to the department monthly; provided that persons taking bottomfish as defined in chapter 13-94, in the main Hawaiian islands, shall, in addition to

their monthly report for species other than bottomfish, submit trip reports of their bottomfish fishing activity if requested. The monthly and trip reports shall be subject to section 13-74-2, sections 189-3 and 189-3.5, HRS, and as may be otherwise provided by law." [Eff 8/12/93; am 1/15/99; am 10/18/10; am] (Auth: HRS §§189-2, 189-3, 189-3.5) (Imp: HRS §§189-2, 189-3, 189-3.5)

2. Chapter 13-74, Hawaii Administrative Rules, is amended by adding a new section 13-74-46 to read as follows:

"§13-74-46 Commercial marine dealer report. (a) Every commercial marine dealer shall submit to the department a report of all marine life obtained, purchased, transferred, exchanged, or sold during a weekly reporting period, which begin on Sundays and end on the following Saturdays. A report shall be submitted to the department by the Tuesday following the end of each weekly reporting period. Reports shall contain the following information:

- (1) The name, address, and telephone number of the commercial marine dealer;
- (2) The time period for which the report is being submitted;
- (3) The species, numbers, weights, and values of each of the varieties of marine life landed in the State that the dealer obtained, purchased, transferred, exchanged, or sold during the reporting period;
- (4) The name and current license number of the commercial marine licensee from whom the marine life was obtained or purchased; and
- (5) Other information as required on forms provided by, or as directed in writing by, the department.

(b) Reports shall be submitted to the department weekly." [Eff] (Auth: HRS §189-10)
(Imp: HRS §189-10)

Ramseyer Format (11/9/17)

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

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

7. These amendments to chapter 13-74, 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 November 9, 2017 and filed with the Office of the Lieutenant Governor.

SUZANNE D. CASE
Chairperson
Board of Land and Natural
Resources

APPROVED AS TO FORM:

Deputy Attorney General

EXHIBIT I

III. Old Business

B. Testimony from Mr. Bryan Marks, Advanced Fire Protection, LLC, regarding proposed new HAR Title 12, Chapter 44.1, **Testing, Certifying, and Credentialing Individuals Who Perform Maintenance and Testing of Portable Fire Extinguishers, Fire Protection Systems, and Fire Alarm Systems**, promulgated by Hawaii State Fire Council / DLIR

Aloha,

I would like to submit testimony, in regards to the changes which the Hawaii State Fire Council would like to make to the certifications of technicians who perform the work on fire protection equipment. I would like to make some corrections to the notes or comments of the last meeting held on October 18, 2017, in regards to section D:

D. Discussion and Action on Proposed New HAR Title 12, Chapter 44.1, Testing, Certifying, and Credentialing Individuals Who Perform Maintenance and Testing of Portable Fire Extinguishers, Fire Protects Systems, and Fire Alarm Systems, promulgated by Hawaii State Fire Council / Department of Labor and Industrial Relations (DLIR)

First paragraph claims that this would benefit the individuals who perform the maintenance and testing. This in no way benefits them this is becoming a financial burden and may be totally unaffordable for some individuals costing them their jobs. In the past, the cost to become certified was \$25 per test which there was 2 exams to take for a total of \$50. Recently, it had jumped up to \$100 per exam but there were still only 2 exams/certifications to obtain. The proposed regulations would increase the certification process to 4 or 5 licenses plus the secondary certifications by an outside private party will cost even more and will not be readily available on neighbor islands, forcing some to fly to Oahu or wait for a class or test to be available. This not only hurts the employees but the small businesses as well, costing jobs and forcing a small business to close its doors.

Second paragraph indicates that these fire extinguishers and systems are primarily used by firefighters. This is completely false as these systems and equipment are meant to be used at the early stages of a fire by the occupants of the building and are deployed way before the fire department evens arrives on site. Some systems are not even meant to completely extinguish an established fire. Companies who install these systems are required by the manufacture to get trained and certified by them in order for the company to buy the materials. Who better than the manufacture who designs tests and develops these systems to do the required training. This process is already in effect. It is required and it's also very expensive due to some of the training is done on the mainland.

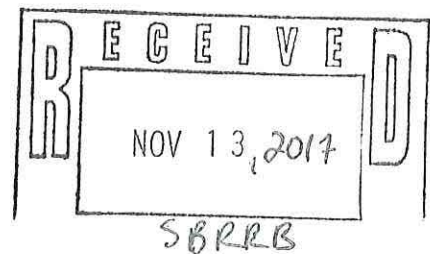
Third paragraph is ambiguous: "Training will be individualized as it can be done at home." What does this mean? How can all these new testing and training be applied fairly to everyone on all islands. In the past neighbor island companies took their test locally but exams had to be sent to Honolulu for the exam to be scored. In some cases, it took more than a month to get test results and even longer to get our certificates.

Please do not mistake my response as an indication that I think all is well or that I'm against improving the current system. When I took the test back in 1985, it was ok but it is still the same test with the same outdated questions. Yes, something needs to be done to improve the certification process like new tests. Tests which actually have something to do with the job at hand but does not put an unfair financial burden on employees who are working hard to support their families or to make a small company struggle more with trying to find new employees.

Sincerely,

Bryan Marks

Advanced Fire Protection, LLC



The amendments will also require that a unit's transient accommodations tax license number be displayed both inside the accommodation and in all online advertisements, either directly in the advertisement or by a link. Mr. Herlitz was unsure as to how many of the transient accommodations were considered to be small business. DoTax is most interested in the on-line requirement of the enforcement because it is insufficiently staffed to go door-to-door to check if the operators are following the law.

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

D. Discussion and Action on Proposed New HAR Title 12, Chapter 44.1, Testing, Certifying, and Credentialing Individuals Who Perform Maintenance and Testing of Portable Fire Extinguishers, Fire Protects Systems, and Fire Alarm Systems, promulgated by Hawaii State Fire Council / Department of Labor and Industrial Relations (DLIR)

Messrs. Ed Suzuki and Lloyd Rogers, Administrative Specialists from the Hawaii State Fire Council at DLIR, explained that the proposed new rules formalize a statewide certification process. This has been a work-in-progress over the past three years and benefits individuals who perform maintenance and testing of portable fire extinguishers, fire protection systems, and fire alarm systems.

The statewide program will be administered by the County fire departments and include the maintenance and testing of fire alarm systems and private fire hydrants, portable fire extinguishers, water-based fire extinguishing systems, and other fire extinguishing systems formally classified as non-water based fire extinguishing systems. These systems are considered life-saving, and once installed they must be maintained. The people using these systems are primarily firefighters who need to have assurance that the systems operate as they were intended. It is, therefore, very important that these individuals have the technical expertise required to maintain the systems.

It was acknowledged that training will be individualized as it can be done at home and not "on-sight;" however, a County of Kauai representative, for example, will be required to come into Oahu to take the certification test. Currently, the Fire Council has been assisting with the many questions and concerns of the vendors. It was Mr. Suzuki's understanding that neighbor island small businesses, including Kauai, were following the Honolulu model in regards to fire extinguishing systems. The cost for a license will continue to be \$100.00 for three years; however, instead of Honolulu collecting the fee, each county will collect its own fee.

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

V. ADMINISTRATIVE MATTERS

A. Discussion and Action on Creating an Informal Investigative Task Force for the Purpose of Developing and Redesigning the Board's Website, to include Goals, Content, and Features, in accordance with Section 92-2.5(b), Hawaii Revised Statutes (HRS)

SBRRB Pre-Public Hearing Impact Statement

Department Agency: Hawaii State Fire Council

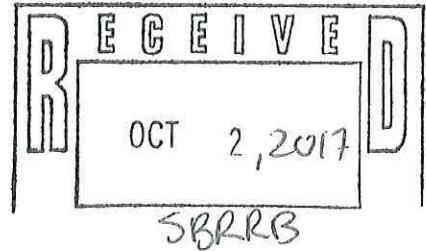
Administrative Rule Title and Chapter: Title 12, Chapter 44.1

Chapter Name: Testing, Certifying, and Credentialing Individuals Who Perform Maintenance and Testing of Portable Fire Extinguishers, Fire Protection Systems, and Fire Alarm Systems

Contact Person/Title: Ed Suzuki

Phone Number: 808-723-7169

E-mail Address: esuzuki@honolulu.gov Date: November 2017



A. Title 12, Chapter 44.1 is a new administrative rule, authorized by Hawaii Revised Statutes Chapter 132-16(c)(3), that formalizes a statewide certification process for individuals who perform maintenance and testing of portable fire extinguishers, fire protection systems and fire alarm systems. Historically, the Honolulu Fire Department (HFD) tested fire protection system technicians who -maintained and tested portable fire extinguishers, water-based fire extinguishing systems, and non-water fire extinguishing systems. The process has become antiquated as the HFD does not have the resources to update the certification program. Consequently, the Hawaii State Fire Council (SFC) revised the process while still allowing the counties to administer and enforce -the program. This administrative rule will standardize the process by requiring a certification of training -provided by a third party vendor.

The statewide program will be administered by the county fire departments and will also include the -maintenance and testing of fire alarm systems and private fire hydrants, in addition to portable fire extinguishers, water-based fire extinguishing systems, and other fire extinguishing systems, formally classified as non-water based fire extinguishing systems.

B. Yes, an electronic copy may be found at <http://labor.hawaii.gov/sfc> or a written copy will be available for review at each county's fire department headquarters from 0745-1530, Monday through Friday.

I. New

II. Yes

III. No

IV. No

IV.1. The administrative rule will directly affect businesses responsible for maintenance and testing of portable fire extinguishers, water-based fire extinguishing systems, other fire extinguishing systems, fire alarm systems, and private fire hydrants by requiring certificates of training for each individual who will be maintaining, and testing these systems and appliances The impact will be through costs associated with:

1. Obtaining certificates of training through a third party vendor to maintain, and test fire protection systems as highlighted in the paragraph above.
2. Fees collected in obtaining statewide certificate of fitness (COF) to conduct maintenance and testing of fire protection systems will not change from the fee schedule adopted in 2002 by the HFD. (Note: Fire alarm systems and private fire hydrant are new fees)

IV.2. The anticipated costs with obtaining certificates of fitness and certificates of training are as follows:

Certificates of Fitness

- *Fire Alarm Systems - \$100
- Portable Fire Extinguishers - \$100
- Water-Based Fire extinguishing Systems - \$100
- Other Fire extinguishing Systems - \$100 (Previously Non-Water Based Fire Extinguishing Systems)
- *Private Fire Hydrants - \$100
- Renewal - \$100/3 years/COF

* - Newly created categories

Certificates of Training

NICET

- Certificates of training can range from \$165 for Level I in Inspection and Testing of Water-Based Systems to \$525 for Level II. Level III will cost \$440.
- Travel costs to Oahu to take the exams (\$200 = air + ground transportation). (Affects Kauai)

ICC

- Online examinations range from \$50 to \$225 at Pearson Vue in Honolulu or via mail

Code Books

- Businesses would be investing in nationally recognized code books and this may not necessarily be an added expense. There are also free online versions of the NFPA standards. However, the associated costs with purchasing current code books to prepare for examination range from \$106 per NFPA code book to \$1475 for the entire collection of NFPA published codes and standards.

We do not anticipate any increases to a business through indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional service, or revenue loss.

IV.2.a. The HFD presently charges a fee of \$100 each for portable fire extinguisher water and non-water based fire extinguishing system licenses, along with same \$100 renewal fee. In 2002 there was a fee increase from \$25 to \$100.

IV.2.b. Fire alarm systems - \$100 (100% increase)

Portable fire extinguishers - \$100 (no increase)

Water-based fire extinguishing Systems - \$100 (no increase)

Other fire extinguishing Systems - \$100 (no increase)

Private fire hydrants - \$100 (100% increase)

Renewal - \$100 for 3 years per each COF (no increase)

There was no increase in fees (for existing categories) from the 2002 City and County adopted Fire Code fee schedule.

- IV.2.c. The fees are -to cover costs for the administration of the program, including but not limited to, review and validation of applications, maintaining a record system, and other related costs. There are two new categories that will charge the same fee as established ones. These were added to cover fire protection systems not covered in the earlier program.
- IV.2.d. Fee schedule is the same as existing Honolulu maintenance, and testing license program with no fee increases.
- IV.3. The estimated revenue generated from the collection of fees is anticipated to be \$4000/year. (Active licensees divided by three times \$100). The fees collected may be deposited into each county's general fund or fire prevention bureau's operating budget for educational programs, contingent on the county approval processes.
- IV.4. Existing license holders will be allowed to continue conducting maintenance, and testing until their licenses expire. Awareness of the new rules and fees were solicited over two years ago by notifying companies with existing licensed individuals with an open comment period. The feedback included a much needed progress in having qualified and competent technicians to perform the work. Some fire protection companies have already required their employees to attain the third party certification, while others expressed concern over the added cost to the individual and the business. Apprentices will be allowed to work together with license holders to gain experience before becoming third party certified, but the license holder is the authorized person to satisfactorily pass the fire protection system or appliance.
- IV.5. The third party testing process is to ensure competency in the work performed by fire protection system technicians and support a more uniform maintenance program for these systems and appliances. These are life safety systems that need to be reliably maintained to protect building occupants and for emergency use by fire department personnel. There are no practical means to reduce the cost of a vendor providing certification of training, evaluations of skills and verification of work experience. The State and counties are unable to maintain a testing and certification program with the resources they presently possess.
- IV.6. In some cases, testing will be available on each island to reduce cost associated with interisland travel. Fee collection and certification distribution may be done at any county fire headquarters every three years to lessen the impact in maintaining certificates of fitness. Industry codebooks may be readily obtained through websites. In some cases, they may be free to access online.

IV.7. Over two years ago, the SFC contacted each vendor through emails informing them of the changes to the inspection, maintenance, and testing program. By word of mouth, others in the industry requested to be placed on the mailing list. Their comments and questions were solicited through emails and reviewed. Telephone calls were also fielded to address the comments and questions. Some portions of the administrative rules were amended to address their concerns. The questions and comments were posted on the SFC website for all interested parties to review. The vendors are updated periodically as milestones are met, keeping them apprised of the progress of the administrative rule.

IV.7.a. Yes, the administrative rules were amended to clarify sections that were unclear. In some cases, the concept of a statewide certification process was new and needed clarification in understanding the process. Individuals were also unclear on what certifications would be acceptable. Consequently, a matrix was created to help understand the requirements. In one case, an individual had a concern on why there were only test sites on Oahu. Investigation by the SFC found one test provider would possibly provide an alternate means to take the test while another would not make accommodations as there was concern of the proprietary test questions and low numbers of test takers on the neighbor islands.

IV.8. The proposed rules are in line with other states. These rules are as stringent as Alaska, Georgia, and Texas in mandating a NICET Level II in fire alarm systems, portable fire extinguishers, water-based fire extinguishing systems, and commercial cooking fire suppression systems. The requirements reflect the minimum requirements other states enforce.

	Fire Alarms	Fire Extinguishers	Water Based	Special Hazards	Hydrants
Alaska	NC	NC	NC	NC	N/A
Georgia					
New	N/A	\$100	\$100	\$100	N/A
Renewal	N/A	\$50	\$50	\$50	N/A
Hawaii					
New	\$100	\$100	\$100	\$100	\$100
Renewal	\$100	\$100	\$100	\$100	\$100
Texas					
New	\$120	\$70	\$100	N/A	N/A
Renewal	\$200	\$50	\$200	N/A	N/A

*Alaska is on a three year renewal cycle and do not charge fees

*Georgia is on an annual renewal cycle

*Texas is on a two year renewal cycle

IV.8.a. A survey of fire protection technicians displayed a varied background of training and knowledge of the fire code in maintaining these systems. The proposed rule will standardize the training

and certification qualifications of individual performing, maintenance, and testing of fire protection systems and appliances.

- IV.8.b. The HRS §132-16.c.(3) states, "Establish, in conformance with the adopted state fire code and nationally recognized standards, statewide qualifications and procedures, to be administered by the county fire departments, for testing, certifying, and credentialing individuals who perform maintenance and testing of portable fire extinguishers, fire protection systems, and fire alarm systems; provided that the county fire departments may establish and charge reasonable certification fees ." The statute authorizes the establishment of qualifications for licensed individuals. Inspection, maintenance, and testing requirements for each fire protection system and appliance will be addressed in the state fire code.
- IV.8.c. The administrative rule proposal aligns with the State law to create a statewide testing, certification and credentialing process for administering the program by the counties in conformance with the adopted state fire code. (See IV.8.b. above) Presently, only Honolulu certifies these individuals.
- IV.8.d. The fees collected will remain the same as the existing program. However, individuals who conduct maintenance and testing of fire alarm systems, and private fire hydrants would incur a new fee.

The State and counties are not able to establish and maintain a state-wide training and certification program. Therefore, the additional costs incurred are due to a third party certification process to meet or exceed current industry standards. The costs cannot be deferred as third party vendors are involved and the existing Hawaii system is antiquated. The fees collected may be deposited into each county's general fund or fire prevention bureau's operating budget for educational programs, contingent on the county adoption process.

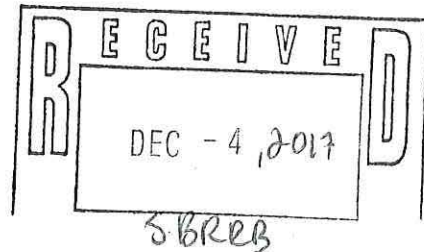
- IV.8.e. The biggest effect is the third party testing, which in some cases may involve travel to Oahu. Fees and code books would remain the same.

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

Adoption of Chapter 12-44.1
Hawaii Administrative Rules

SUMMARY

Chapter 12-44.1, Hawaii Administrative Rules, entitled "Testing, Certifying, and Credentialing Individuals Who Perform Maintenance and Testing of Portable Fire Extinguishers, Fire Protection Systems, and Fire Alarm Systems," is adopted to read as follows:



HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 7

BOARDS

CHAPTER 44.1

TESTING, CERTIFYING, AND CREDENTIALING INDIVIDUALS WHO
PERFORM MAINTENANCE AND TESTING OF PORTABLE FIRE
EXTINGUISHERS, FIRE PROTECTION SYSTEMS, AND
FIRE ALARM SYSTEMS

Subchapter 1 Rules of General Applicability

§12-44.1-1	Definitions
§12-44.1-2	General provisions
§12-44.1-3	Application for certificate of fitness
§12-44.1-4	Violations
§12-44.1-5	Appeals

§12-44.1-1 Definitions. The following definitions shall apply to this chapter.

"Certificate of fitness" means a credential issued by the county fire department to any person for the purpose of granting permission to such person to conduct or engage in any operation or act to maintain and test portable fire extinguishers, fire protection systems, or fire alarm systems, or any combination of the above.

"Fire alarm system" means a system or portion of a combination system that consists of components and circuits arranged to monitor and annunciate the status of fire alarm or supervisory signal-initiating devices

and to initiate the appropriate response to those signals.

"Fire protection system" means any fire alarm device or system, or fire extinguishing device or system, or any combination of the above, that is designed and installed for detecting, controlling, or extinguishing a fire or otherwise alerting occupants or the fire department or both that a fire has occurred.

"Other fire extinguishing system" means any fixed fire extinguishing system which uses an extinguishing agent other than water. They may include dry chemical, foam, halogen-type (including nonhalogenated), carbon dioxide, and special hazard systems.

"Portable fire extinguisher" means a portable device, carried or on wheels and manually operable, containing an extinguishing agent that can be expelled under pressure for suppressing or extinguishing fire.

"Private fire hydrant" means a valved connection on a water supply system having one or more outlets that is used to supply hose and fire department pumpers with water and is located on private property.

"Water-based fire extinguishing system" means any class I, II, or III standpipe system, and combined standpipe system, automatic sprinkler system, or automatic water spray fixed system utilizing water as an extinguishing agent. [Eff]

(Auth: HRS §132-16) (Imp: HRS §132-16)

§12-44.1-2 General provisions.

(a) Certificates of fitness may only be issued to a person 18 years of age or older.

(b) Certificates of fitness are nontransferable.

(c) Certificates of fitness are valid for three years.

(d) The holder of a certificate of fitness may only perform maintenance and testing on the type or types of extinguishers or systems for which the

certificate of fitness was issued.

[Eff] (Auth: HRS §132-16) (Imp:
HRS §132-16)

§12.44.1-3 Application for certificate of fitness. (a) An application for a certificate of fitness to maintain and test portable fire extinguishers, fire protection systems, or fire alarm systems, or any combination of the above, found on the State Fire Council website, shall be submitted to a county fire department along with copies of the following supporting documents:

- (1) Applicant's driver's license;
- (2) Approved third-party certificate; and
- (3) Proof of applicable training regarding private fire hydrants.

(b) A current listing of approved third-party certifying organizations may be found on the State Fire Council website.

(c) The county fire departments shall issue certificates of fitness to persons who are qualified to maintain and test portable fire extinguishers, fire protection systems, or fire alarm systems or any combination of the above.

(d) The county fire departments shall collect applicable fees.

(e) The fee for each certificate of fitness is payable by check or money order to the county fire department and is nonrefundable. Cash will not be accepted. [Eff]

(Auth: HRS §132-16) (Imp: HRS §132-16)

§12-44.1-4 Violations. (a) The county fire department may deny or suspend the certificate of fitness for up to one year if it finds that the holder of the certificate of fitness:

- (1) Violated any portion of the state fire code in maintaining and testing portable fire extinguishers, fire protection systems, or fire alarm systems;
- (3) Falsified any record required to be maintained by the state fire code;
- (4) Falsely obtained or attempted to obtain a certificate of fitness; or
- (5) Engaged in testing and maintaining a portable fire extinguisher, fire protection system, or fire alarm system, or any combination of the above, for which a certificate of fitness is required under this chapter during the suspension or expiration of any certificate of fitness.

(b) No new certificate of fitness shall be issued to a person for a period of up to one year from the date the certificate of fitness was suspended during which time the person shall cease all operations as a maintainer and tester of portable fire extinguishers, fire protection systems, or fire alarm systems, or any combination of the above.

[Eff] (Auth: HRS §132-16) (Imp: HRS §132-16)

§12-44.1-5 Appeals. (a) Appeal of a certificate of fitness application denial or suspension must be in writing and filed with the county fire chief from which the denial or suspension was issued within 20 days after the date of mailing of the denial or suspension. Deposit of an appeal in the mail addressed to the county fire chief from which the denial or suspension was issued with a postmark dated within the 20 days shall be deemed a timely filing.

(b) A hearing shall be held in accordance with chapter 91, Hawaii Revised Statutes. Computation of time shall be in accordance with section 1-29, Hawaii Revised Statutes. [Eff] (Auth: HRS §132-16) (Imp: HRS §132-16)

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

The adoption of chapter 12-44.1, Hawaii Administrative Rules, on the Summary Page dated _____, was adopted on _____, following a public hearing held on _____, after public notice was given in the Honolulu Star Advertiser on _____.

The adoption of chapter 12-44.1 shall take effect ten days after filing with the Office of the Lieutenant Governor.

Manuel P. Neves, Chairperson
State Fire Council

APPROVED:

David Y. Ige
Governor
State of Hawaii

Dated: _____

APPROVED AS TO FORM:

Deputy Attorney General

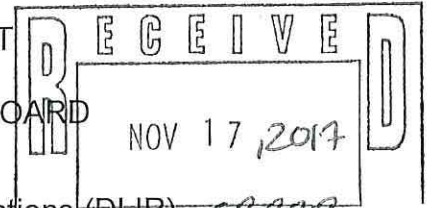
Filed

IV. New Business

A. Discussion and Action on Proposed Amendments to HAR Title 12, Subtitle 8, **Hawaii Occupational Safety and Health Division**, promulgated by DLIR, as follows:

1. Part 1, **General Legal and Administrative Provisions for Occupational Safety and Health**
 - a. Chapter 50, **General Provisions and Definitions**
 - b. Chapter 52.1, **Recording and Reporting Occupational Injuries and Illnesses**
 - c. Chapter 56, **Program Fees and Library Policies, General Safety and Health Requirements**
2. Part 2, General Legal and Administrative Provisions for Occupational Safety and Health
 - a. Chapter 60, **General Safety and Health Requirements**
3. Part 3, Construction Standards
 - a. Chapter 110, **General Safety and Health Requirements**
4. Part 5, Occupational Safety and Health Standards for Shipyard Employment
 - a. Chapter 170, **Shipyards**
5. Part 6, Marine Terminals
 - a. Chapter 180, **Marine Terminals**
6. Part 7, Safety and Health Regulations for Longshoring
 - a. Chapter 190, **Longshoring**
7. Part 8, Other Safety and Health Standards
 - a. Chapter 208, **Other Safety and Health Standards**

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



Department or Agency: Department of Labor and Industrial Relations (DLIR) *SBRRB*
Administrative Rule Title and Chapter: Title 12, Chapters 50, 52.1, 56, 60, 110, 170, 180, 190 and 208
Chapter Name: 50 General Provisions and Definitions, 52.1 Recording and Reporting Occupational Injuries and Illnesses, 56 Program Fees and Library Policies, General Safety and Health Requirements (60 and 110), 170 Shipyards, 180 Marine Terminals, 190 Longshoring, 208 Other Safety and Health Standards.
Contact Person/Title: Nicole G. Bennett, OSH Program Specialist
Phone Number: 586-9081
Email Address: nicole.g.bennett@hawaii.gov **Date:** November 16, 2017

- A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.
- B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7? Yes No **X** (If Yes, please provide webpage address and when and where rules may be viewed in person.)

<http://labor.hawaii.gov/hiosh/> 830 Punchbowl St., Rm 423, Honolulu, HI 96813

I. Rule Description: Amendment, Compilation

II. Will the rules affect small business? Yes

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

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

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

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

IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS§201M-2(a)) No

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

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

All small businesses that are under the jurisdiction of the Hawaii Occupational Safety and Health Division (HIOSH), including state and local government, private sector businesses that are both non-construction and construction, and certain maritime activities. Primary adverse effect is a small increase in expenses as described below.

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

The Occupational Exposure to Respirable Crystalline Silica standard should not have any additional costs for employers as Hawaii has always maintained a lower permissible exposure limit (PEL) for silica in its standards than the Occupational Safety and Health Administration (OSHA) PEL. The proposed rules do not change the HIOSH PELs.

For the Electric Power Generation, Transmission, and Distribution standard OSHA believes that the adoption of the requirements will have little impact on the regulated community since almost all employers are already complying with the requirements. OSHA expects that the average increase in prices necessary for small firms to offset the compliance costs to be 0.039 %. In Hawaii, this may affect small construction firms hired by utilities to provide construction for facilities.

The final OSHA rule affects establishments in a variety of different industries involving electric power generation, transmission, and distribution. The rule primarily affects firms that construct, operate, maintain, or repair electric power generation, transmission, or distribution installations. These firms include electric utilities, as well as contractors hired by utilities and primarily classified in the construction industry.

OSHA last issued rules for the construction of transmission and distribution installations in 1972. Those provisions are now out of date and inconsistent with the more recently promulgated general industry standard covering the operation and maintenance of electric power generation, transmission, and distribution lines and equipment. OSHA is revising the construction standard to make it more consistent with the general industry standard and is making some revisions to both the construction and general industry requirements.

The final rules for general industry and construction include new or revised provisions on host employers and contractors, training, job briefings, fall protection, insulation and working position of employees working on or near live parts, minimum approach distances, protection from electric arcs, deenergizing transmission and distribution lines and equipment, protective grounding, operating mechanical equipment near overhead power lines, and working in manholes and vaults. The revised standards will ensure that employers, when appropriate, must meet consistent requirements for work performed under the construction and general industry standards.

OSHA's analysis found that the sectors with the largest impact (All Other Heavy Construction, Ornamental Shrub and Tree Services, "have cost impacts as a percentage of revenues of only about 0.1 percent each and cost impacts as a percentage of profits of only about 2 percent each. Based on these results, *there would be no threat to the economic viability of any affected industry even if the costs of the final rule were nine times higher than OSHA estimated*, as the highest cost impact as a percentage of revenues in any affected industry would still be less than 1 percent.

Nationwide, OSHA estimated the total cost of compliance to be \$49.5 million, which would be offset by the benefits of few injuries (118.5), fatalities (19.75), monetized benefits per the injury and fatality prevention (\$179.2 million). Overall, OSHA estimated a net benefit of \$129.7 million annually.

For the Confined Spaces in Construction standard, OSHA estimates that compliance with this new standard will prevent 5.2 fatalities and 780 lost workday injuries each year nationwide. OSHA estimates that the yearly cost of compliance will be \$60.3 million with the safety benefits based on lives saved and injuries prevented to be \$93.6 million. The final results being approximately \$1.55 of benefits for every dollar spent.

OSHA's estimate of the costs and benefits of the Beryllium rule entailed preventing 180 fatalities and 46 cases of chronic beryllium disease annually once the full effects are realized. The OSHA cost estimate is \$73,868,230 and more than offset by the monetized benefits of \$560,900,000 annually, generating a net benefit of \$487,005,194 annually. Using the NAICS Codes, OSHA identified 87 industries affected by the standard. Since Hawaii does not have large scale and heavy manufacturing, foundries, and pulp mills only 27 of the 87 industries have a presence in Hawaii that work with Beryllium.

Falls from heights and on the same level (a working surface) are among the leading causes of serious work-related injuries and deaths. OSHA has issued a final rule on Walking-Working Surfaces and Personal Fall Protection Systems to better protect workers in general industry from these hazards by updating and clarifying standards and adding training and inspection requirements. OSHA's rule affects a wide range of workers, from painters to warehouse workers. It does not change construction or agricultural standards.

The rule incorporates advances in technology, industry best practices, and national consensus standards to provide effective and cost-efficient worker protection. Specifically, it updates general industry standards addressing slip, trip, and fall hazards, and adds requirements for personal fall protection systems. The rule benefits employers by providing greater flexibility in choosing a fall protection system. For example, it eliminates the existing mandate to use guardrails as a primary fall protection method and allows employers to choose from accepted fall protection systems they believe will work best in a particular situation - an approach that has been successful in the construction industry since 1994. In addition, employers will be able to use non-conventional fall protection in certain situations, such as designated areas on low-slope roofs.

As much as possible, OSHA aligned fall protection requirements for general industry with those for construction, easing compliance for employers who perform both types of activities. For example, the final rule replaces the outdated general industry scaffold

standards with a requirement that employers comply with OSHA's construction scaffold standards.

OSHA estimated that compliance would cost employers \$305 million nationwide, offset by a benefit of \$614.5 million, for a net benefit of \$309.5 million. The benefit was derived by preventing injuries (5,842 fewer lost workdays) and fatalities (29).

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

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

12-56-2 Certified safety and health professional last updated 2/8/1997:

- application fee of \$50
- certification fee of \$300
- renewal fee of \$100

12-56-4(a) Certificate of fitness (explosives) last updated 3/29/99:

- application fee of \$150
- renewal fee for certificate of fitness of \$50

12-56-5 HIOSH sponsored workshops fee of \$5, last updated 2/8/1997.

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

12-56-2 Certified safety and health professional:

- application fee of \$75 = 50% increase
- certification fee of \$460 = 53% increase
- renewal fee of \$150 = 50% increase

12-56-4(a) Certificate of fitness (explosives):

- application fee of \$225 = 50% increase
- renewal fee for certificate of fitness of \$75 = 50% increase

12-56-5 HIOSH sponsored workshops fee of \$10 = 100% increase

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

Update of the current fees to reflect the current cost of labor and supplies required to complete these requests.

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

BLS Consumer Price Index

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

The money collected for the fees in Chapter 56 go into the general fund and not to HIOSH. DLIR does not anticipate any increased costs or direct benefits to HIOSH, other than maintaining conformity with federal standards and the attendant funding.

The required adoption of the federal standards via the rules helps ensure that the federal government continues to fund 50% of the Health, Safety and Administrative & Technical Support Branches and 90% of the Consultation & Training Branch of HIOSH in both the short and long-term. HIOSH's federal funds provided for by OSHA are budgeted at \$1,987,800 in FY2017-2018.

4. The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or other mitigating techniques.
5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.
6. Consideration of creative, innovative, or flexible methods of compliance for small businesses. The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules.

Less restrictive alternatives and other methods of compliance for small business were not explored as the proposed changes conform state standards to federal ones. The proposed amendments bring the HIOSH standards into conformity with the federal OSHA standards. The Occupational Safety and Health Act of 1970 permits states to operate their own occupational safety and health programs so long as the development and enforcement of safety and health standards are "...at least as effective in providing safe and healthful employment or places of employment..." as the OSHA standards.

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

Small businesses were not involved in the proposed changes because the proposed changes are required by OSHA. The Occupational Safety and Health Act of 1970 permits states to operate their own occupational safety and health programs so long as the development and enforcement of safety and health standards are "...at least as effective in providing safe and healthful employment or places of employment..." as the OSHA standards. Other changes include fixing typographical errors and updating the fees for certain activities under Chapter 56 using the CPI.

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

There are no standards being amended that are more stringent than those mandated by any comparable or related federal, state or county standards.

Small Business Regulatory Review Board / DBEDT

Phone: (808) 586-2594

Email: DBEDT.sbrrb.info@hawaii.gov

This Statement may be found on the

SBRRB Website at:

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

Equal Opportunity Employer/Program

Auxiliary aids and services are available upon request to individuals with disabilities.

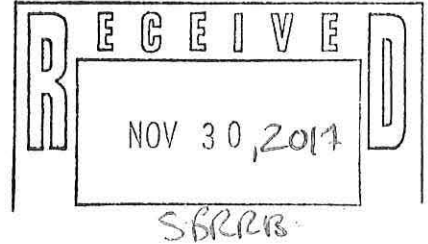
TDD/TTY Dial 711 then ask for (808) 586-8866.

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

Amendment and Compilation of Chapters 12-50, 12-52.1,
12-56, 12-60, 12-110, 12-170, 12-180, 12-190,
and 12-208

Hawaii Administrative Rules

(Date of Adoption)



1. Chapter 12-50, Hawaii Administrative Rules,
entitled "General Provisions and Definitions", is
amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 8

HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION

PART 1

GENERAL, LEGAL, AND ADMINISTRATIVE PROVISIONS
FOR OCCUPATIONAL SAFETY AND HEALTH

CHAPTER 50

GENERAL PROVISIONS AND DEFINITIONS

§12-50-1

§12-50-1	Application
§12-50-2	Definitions
§12-50-3	Use of existing equipment
§12-50-4	Sufficiency of safeguards
§12-50-5	Minimum standards
§12-50-6	Computation of time
§12-50-7	Repealed
§12-50-8	Repealed
§12-50-9	Repealed
§12-50-10	Personal protective equipment

Historical Note: Chapter 50 of title 12 is based upon chapter 101 of the Hawaii Occupational Safety and Health Standards, Rules and Regulations. [Eff 7/11/74; am 6/7/76; am 12/30/76; am 8/22/77; am 8/11/78; am 8/23/79; R 7/12/82]

§12-50-1 Application. This part contains Occupational Safety and Health Administrative rules, which apply to parts 1 through 8. Part 2 applies to all industries in all work environments, except that audiometric testing in 29 C.F.R. §1910.95 does not apply to construction work unless employees are exposed to an [~~8-hour~~] eight-hour time weighted average of ninety [~~90~~] (90) dBA and above. Part 3 applies only to construction. [Eff 7/12/82; am 8/15/87; am 11/16/96; am 2/14/00; am 5/21/04; am 2/13/12; am and comp] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-50-2 Definitions. As used in parts 1 to 8, chapters 50 through [~~209+~~] 208:

"Accessory structure" means a structure not greater than 3,000 square feet (279m²) in floor area, and not over two stories in height, the use of which

is customarily accessory to and incidental to that of the dwelling(s) and which is located on the same lot.

"Administrator" means the administrator, division of occupational safety and health, department of labor and industrial relations, State of Hawaii.

"Affected employee" means an employee affected by the grant or denial of a variance, and includes any one of the employee's designated representatives.

"Appeals board" means the Hawaii labor [~~and industrial~~] relations [~~appeals~~] board, department of labor and industrial relations.

"Assistant secretary" means, for [~~the purpose of~~] title 12, subtitle 8, parts 1 to 8, the director of the department of labor and industrial relations or the [~~director's~~] director's designee.

"Attorney general" means the attorney general of the State of Hawaii.

"Authorized person" means a person approved or assigned by the employer to perform a specific type of duty or to be at a specific location at the jobsite.

"Citation" means any order of the department of labor and industrial relations to correct a violation of the law, of any standard, rule, or order promulgated pursuant to the law, or of any substantive rule published in [~~these chapters~~] this part.

"Competent person" means one who is capable of identifying existing or predicting development of hazards in the surroundings or working conditions which are unhealthy, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate the hazards.

"Compulsory process" means the institution of any action, including ex parte application for an inspection warrant or its equivalent.

"Construction" or "construction work" means work for construction, alteration, demolition, or repair including painting and decorating, erection of new electric transmission and distribution lines and equipment, and the alteration, conversion, and improvement of the existing transmission and distribution lines and equipment.

"Department" or "DLIR" means the department of labor and industrial relations, State of Hawaii.

"Designated representative" means any individual or organization to whom an employee gives written authorization to exercise that employee's rights under parts 1, 2, 3, and 8. A recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

"Director" means the director of the department of labor and industrial relations or the director's designee.

"Division" [~~or "HIOSH"~~] means the occupational safety and health division, department of labor and industrial relations, State of Hawaii.

"Dwelling" means any building that contains one or two dwelling units used, intended, or designed to be built, used, rented, leased, let or hired out to be occupied, or that are occupied for living purposes.

"Dwelling unit" means a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

"Employee" means every natural person who is required, directed, permitted, or suffered by any employer to engage in any employment, to go to work, or be at any time in any place of employment. The term can mean a former [~~employ~~] employee in the case of potential exposures to toxic materials or harmful physical agents.

"Employee of the State" means officers and employees of the department of labor and industrial relations, and persons acting in behalf of the department in an official capacity, whether temporarily or with or without compensation.

"Employer" means the State and every [~~State~~] state agency; each county and all public and quasi-public corporations and public agencies; every person [~~which~~] that has any natural person in service; the legal representative of any deceased employer; or every person having direction, management, control, or custody of any employment, place of employment, or any

employee. Where potential exposures to toxic materials or harmful physical agents are, may have been present or are likely to be present in the future, the term applies to current employers, former employers, or successor employers.

"Employment" means the carrying on of any trade, business, occupation, or work, including all excavation, demolition, and construction work, or any process or operation in any way related thereto, in which any person is engaged to work for hire except domestic service in or about a private home.

"Establishment" means a single physical location where business is conducted or where services of industrial operations are performed; for example, a factory, mill, store, hotel, restaurant, movie theatre, farm, ranch, bank, sales office, warehouse, or central administrative office.

"First aid" means any one-time treatment, and any follow-up visit for the purpose of observation, of minor scratches, cuts, burns, splinters, and so forth, which do not ordinarily require medical care; one-time treatment and a follow-up visit for the purpose of observation are considered first aid even though provided by a physician or registered professional personnel.

"Gravity of violation" means the basis for calculating the basic penalty for violations. The assessments are made on the severity of the injury or illness which could result from the alleged violation and the probability that an injury or illness could occur [~~as a result~~] because of the alleged violation.

"Hawaii Revised Statutes" or "HRS" means laws enacted by the Hawaii State legislature.

"HIOSH" means the occupational safety and health division, department of labor and industrial relations, State of Hawaii.

"Infeasible" means that it is impossible to perform the work using all available means and methods or that it is technologically impossible to use safety equipment or safe practices.

"Inspection" means any inspection of an employer's factory, plant, establishment, construction

site, or other area, workplace, or environment where work is performed by an employee of an employer; this includes any inspection conducted pursuant to a complaint filed under section 12-51-11(a) and [~~section 12-51-11(e)~~] (c), any reinspection, follow-up inspection, accident investigation, or other inspection conducted under the law.

"Law" means chapter 396, HRS, the Hawaii Occupational Safety and Health Law.

"Lost time case" means a nonfatal traumatic injury that causes any loss of time from work beyond the day or shift it occurred, or a nonfatal [~~nontraumatic~~] non-traumatic [~~illness/disease~~] illness or disease that causes disability at any time.

"Lost workdays" means number of days (consecutive or not) after, but not including, the day of injury or illness during which the employee would have worked but could not do so; that is, could not perform all or any part of the normal assignment during all or any part of the workday or shift, because of the occupational injury or illness.

"Medical treatment" means treatment administered by a physician or by registered professional personnel under the standing orders of a physician but does not include first aid treatment even though provided by a physician or registered professional personnel.

"Nationally recognized testing laboratories" means those laboratories listed by the [~~U.S.~~] U.S. Department of Labor, Occupational Safety and Health Administration.

"Occupational Safety and Health standard" means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

"Order" means a command to perform a mandatory act issued by the department.

"OSHA" means, for [~~the purpose of~~] title 12, subtitle 8, Hawaii occupational safety and health division, department of labor and industrial relations, State of Hawaii.

"OSHA's designee" means, for [~~the purpose of~~] title 12, subtitle 8, the director of the department of labor and industrial relations or the director's designee.

"Party" means a person admitted to participate in a hearing conducted in accordance with subchapter 3 of chapter 12-53; an applicant for relief and any affected employee is entitled to be named parties; the department, represented by the attorney general, is a party without the necessity of being named.

"Person" means an individual, partnership, association, corporation, business trust, legal representative, an organized group of individuals, or an agency, authority, or instrumentality of the State or its political subdivisions.

"Personally identifiable employee medical information" means employee medical information accompanied by either direct identifiers (name, address, social security number, payroll number, etc.) or by information which could reasonably be used in the particular circumstances indirectly to identify specific employees, e.g., exact age, height, weight, race, sex, date of initial employment, job title, etc.

"Place of employment" means any place, and the premises appurtenant thereto, where employment is carried on.

"Qualified" means one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated [~~his~~] the ability to solve or resolve problems relating to the subject matter, the work, or the project.

"Recordable occupational injuries or illnesses" means any occupational injuries or illnesses which result in:

- (1) Fatalities, regardless of the time between the injury and death, or the length of the illness; [~~or~~]
- (2) Lost workday cases, other than fatalities, that result in lost workdays; or
- (3) Nonfatal cases without lost workdays which result in transfer to another job or

termination of employment, medical treatment (other than first aid), loss of consciousness, or restriction of work or motion which includes any diagnosed occupational illnesses reported to the employer but are not classified as fatalities or lost workday cases.

"Residential construction" means construction work on detached one- and two-family dwellings and townhouses not more than three stories above grade plane in height with a separate means of egress and their accessory structures.

"Rule" means each section in the State of Hawaii Occupational Safety and Health rules and standards, adopted under chapter 396, HRS, and includes any "rule" and "occupational safety and health standard".

"Safe and safety" as applied to an employment or place of employment means such freedom from danger to employees as the nature of the employment reasonably permits.

"Safety and health compliance officers" means occupational safety and health officers and environmental health specialists assigned within the department to inspection and enforcement duties.

"Safety device" and "safeguard" means any practicable method of mitigating or preventing a specific danger.

"Severity assessment" means an assessment assigned to a hazard to be cited according to the serious injury or illness [~~which~~] that could reasonably be expected to result from an employee's exposure as follows:

- (1) High severity - death from injury or illness; injuries involving permanent disability; or chronic, irreversible illnesses[-];
- (2) Medium severity - injuries or temporary reversible illnesses resulting in hospitalization or a variable but limited period of disability[-];
- (3) Low severity - injuries or temporary, reversible illnesses not resulting in

hospitalization and requiring only minor supportive treatment[-]; and

- (4) Minimal severity - conditions which have a direct and immediate relationship to the safety and health of employees, the injury or illness most likely to result would probably not cause death or serious physical harm.

"Shall" means mandatory.

"Substantial" means constructed of such strength, material, design, and workmanship that the object referred to will withstand all normal wear, shock, and usage.

"Townhouse" means a single-family dwelling unit constructed in a group of three or more attached units in which each unit extends from foundation to roof and with a yard or public way [~~in a~~] on at least two sides. [Eff 7/12/82; am 8/15/87; am 3/22/91; am 1/26/96; am 7/10/97; am 10/23/97; am 7/6/98; am 3/23/01; am 1/10/03; am 2/13/12; am and comp

] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-50-3 Use of existing equipment. Nothing in these rules shall prevent the use of existing equipment during its lifetime, if it is safeguarded properly, maintained in good condition, and conforms to factors of safety. [Eff 7/12/82; am 8/15/87; comp] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-50-4 Sufficiency of safeguards. The director may require safeguards not required in these standards if a sufficient hazard exists to warrant this action. The final determination of the sufficiency of any safeguard rests with the director. [Eff 7/12/82; am 8/15/87; comp] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-50-5

§12-50-5 Minimum standards. These rules establish minimum standards applying to all employment and places of employment in Hawaii as defined by chapter 396, HRS. [Eff 7/12/82; comp]
(Auth: HRS §396-4) (Imp: HRS §396-4)

§12-50-6 Computation of time. (a) The time in which any act required by these rules is computed by excluding the first day and including the last, except for the computation of the number of days a violation continued unabated. If the last day falls on a Saturday, Sunday, or legal holiday, it is also excluded.

(b) The number of days a violation continues to be unabated shall be computed from the day following the abatement date specified in the citation or the final order. It shall include all calendar days between that date and the date of reinspection, excluding the date of reinspection. [Eff 7/12/82; am 8/15/87; comp] (Auth: HRS §396-4)
(Imp: HRS §396-4)

§12-50-7 REPEALED. [R 3/29/99]

§12-50-8 REPEALED. [R 3/29/99]

§12-50-9 REPEALED. [R 2/13/12]

§12-50-10 ~~[(a)]~~ Personal protective equipment.
(a) Standards in this part requiring the employer to provide personal protective equipment (PPE), including respirators and other types of PPE, because of hazards

to employees impose a separate compliance duty with respect to each employee covered by the requirement. The employer must provide PPE to each employee required to use the PPE, and each failure to provide PPE to an employee may be considered a separate violation.

(b) Training. Standards in this part requiring training on hazards and related matters, such as standards requiring that employees receive training or that the employer train employees, provide training to employees, or institute or implement a training program, impose a separate compliance duty with respect to each employee covered by the requirement. The employer must train each affected employee in the manner required by the standard, and each failure to train an employee may be considered a separate violation." [Eff 7/12/09; am and comp

] (Auth: HRS §396-4) (Imp: HRS §396-4)

2. Chapter 12-52.1, Hawaii Administrative Rules, entitled "Recording and Reporting Occupational Injuries and Illnesses", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 8

HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION

PART 1

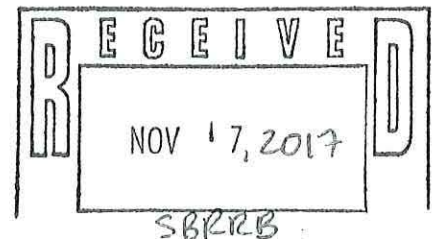
GENERAL, LEGAL, AND ADMINISTRATIVE PROVISIONS
FOR OCCUPATIONAL SAFETY AND HEALTH

CHAPTER 52.1

RECORDING AND REPORTING OCCUPATIONAL INJURIES AND
ILLNESSES

§12-52.1-1 State amendments to 29 C.F.R. §1904
§12-52.1-2 Incorporation of federal standard

Historical Note: Chapter 12-52.1 is based
substantially upon chapter 12-52. [Eff 7/12/82;



§12-52.1-1

am 5/28/83; am 8/15/87; am 9/30/94; am 2/8/97; am 7/10/97; am 7/6/99; R 12/29/01]

§12-52.1-1 State amendments to 29 C.F.R. §1904.

(a) 29 C.F.R. §1904.1(a)(1) is amended to read as follows:

Basic requirement. (1) If your company had ten (10) or fewer employees at all times during the last calendar year, you do not need to keep OSHA injury and illness records unless HIOSH, OSHA, or the Bureau of Labor and Statistics (BLS) informs you in writing that you must keep records under 29 C.F.R. §1904.37, §1904.41, or §1904.42. However, as required by 29 C.F.R. §1904.39 all employers covered by chapter 396, HRS, Hawaii Occupational Safety and Health Law, must report to HIOSH any workplace incident that results in an employee fatality or the inpatient hospitalization of an employee, employee's amputation, employee's loss of an eye, or property damage [~~in excess of~~] greater than \$25,000.

(b) 29 C.F.R. §1904.2(a)(1) is amended to read as follows:

(a) Basic requirement. (1) If your business establishment is classified in a specific low hazard retail, service, finance, insurance, or real estate industry listed in Appendix A, titled "Non-Mandatory Appendix A to Subpart B - Partially Exempt Industries", dated March 17, 2017, which is made part of this [~~chapter~~] section and located at the end of this [~~chapter,~~] section, you do not need to keep OSHA injury and illness records unless the government asks you to keep records under 29 C.F.R. §1904.37, §1904.41, or §1904.42. However, all employers must report to HIOSH any workplace incident that results in an employee fatality or the inpatient hospitalization of an employee, employee's amputation, employee's loss of an eye, or property

damage [~~in excess of~~] greater than \$25,000 (see 29 C.F.R. §1904.39(a)).

(c) 29 C.F.R. §1904.29(b)(2) is amended to read as follows:

(2) What do I need to do to complete an OSHA 301 Incident Report? You must complete an OSHA 301 Incident Report form, or an equivalent form that contains the same information required on the OSHA 301 Incident Report form, for each recordable injury or illness that is required to be entered on the OSHA 300 Log.

(d) 29 C.F.R. §1904.37(c) is added to read as follows:

(c) If you receive an OSHA occupational injury and illness data collection form or any other type of injury and illness survey authorized by HIOSH, you must respond to the survey or request, and return it to the designated recipient within the specified time limit.

(e) 29 C.F.R. §1904.39(a) is amended to read as follows:

(a) Basic requirement. Within eight (8) hours after the death of any employee from a work-related incident, and within twenty-four (24) hours of the inpatient hospitalization of an employee, employee's amputation, employee's loss of an eye as a result of a work-related incident, or property damage in excess of \$25,000 as a result of a work-related incident, you must orally report the fatality, inpatient hospitalization, amputation, loss of an eye, or property damage by telephone, (808) 586-9102, or in person at the HIOSH office in Honolulu.

(f) 29 C.F.R. §1904.39(b)(1) is amended to read as follows:

(b) Implementation. (1) If the HIOSH office is closed, may I report the incident by leaving a message on HIOSH's answering machine, faxing the area office, or sending an e-mail? When the HIOSH office is closed,

§12-52.1-1

the (808) 586-9102 telephone number will allow you to leave a phone message. In order for the message to be considered officially reported, all of the information in [~~1904.39(b)(2)~~] 29 C.F.R. §1904.39(b)(2) must be provided on the answering machine message.

(g) 29 C.F.R. §1904.39(b)(11) is amended to read as follows:

(11) How does HIOSH define "amputation"? An amputation is the traumatic loss of a limb or other external body part. Amputations include a part, such as a limb or appendage, which has been severed, cut off, amputated (either completely or partially); fingertip amputations with or without bone loss; medical amputations resulting from irreparable damage; and amputations of body parts that have since been reattached.

(h) 29 C.F.R. §1904 Non-Mandatory Appendix A to Subpart B - Partially Exempt Industries is amended for the duration of the HIOSH Strategic Plan. The industries with NAICS codes 4812, 4879, and 4885 have been included in the HIOSH Strategic Plan and will continue to be required to maintain the injury and illness log for the duration of HIOSH's Strategic Plan unless the establishment has less than eleven (11) employees. 29 C.F.R. §1904 Non-Mandatory Appendix A to Subpart B - Partially Exempt Industries is amended to read as follows:

Employers are not required to keep OSHA injury and illness records for any establishment classified in the following North American Industry Classification System (NAICS) codes, unless they are asked in writing to do so by OSHA, the Bureau of Labor Statistics (BLS), or a state agency operating under the authority of OSHA or the BLS. All employers, including those partially exempted by [~~reason of~~] company size or industry classification, must report to OSHA any workplace incident that results in a fatality, the inpatient hospitalization, amputation, or loss of an eye of an employee (see 29 C.F.R. §1904.39).

Non-Mandatory Appendix A to Subpart B-

Partially Exempt Industries

March 17, 2017

NAICS CODE	INDUSTRY DESCRIPTION	NAICS CODE	INDUSTRY DESCRIPTION
4431..	Electronics and Appliance Stores	5259..	Other Investment Pools and Funds
4461..	Health and Personal Care Stores	5331..	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works).
4471..	Gasoline Stations	5411..	Legal Services
4481..	Clothing Stores	5412..	Accounting, Tax Preparation, Bookkeeping, and Payroll Services
4482..	Shoe Stores	5413..	Architectural, Engineering, and Related Services
4483..	Jewelry, Luggage, and Leather Goods Stores	5414..	Specialized Design Services
4511..	Sporting Goods, Hobby, and Musical Instrument Stores	5415..	Computer Systems Design and Related Services
4512..	Book, Periodical, and Music Stores	5416..	Management, Scientific, and Technical Consulting Services
4531..	Florists	5417..	Scientific Research and Development Services
4532..	Office Supplies, Stationary, and Gift Stores	5418..	Advertising and Related Services
5121..	Motion Picture and Video Industries	5511..	Advertising and Related Services
5122..	Sound Recording Industries		
5151..	Radio and Television Broadcasting		
5172..	Wireless Telecommunications Carriers (except Satellite).		
5179..	Other Telecommunications		
5182..	Data Processing, Hosting, and Related Services		
5191..	Other Information Services		

5221..	Depository Credit Intermediation	5615..	Management of Companies and Enterprises
5222..	Nondepository Credit Intermediation		Travel
5223..	Activities Related to Credit Intermediation	5616..	Arrangement and Reservation
5231..	Securities and Commodity Contracts Intermediation and Brokerage	6111..	Services Investigation and Security
5232..	Securities and Commodity Exchange	6112..	Services
5239..	Other Financial Investment Activities	6113..	Elementary and Secondary Schools
5241..	Insurance Carriers	6114..	Junior College Colleges, Universities, and
5242..	Agencies, Brokerages, and Other Insurance	6115..	Professional Schools
5251..	Related Activities Insurance and Employee Benefit Funds	6116..	Business Schools and Computer and Management Training
		6117..	Technical and Trade Schools
		6211..	Other Schools and Instruction
		6212..	Educational Support
		6213..	Services
		6214..	Offices of Physicians
		6215..	Offices of Dentists
			Offices of Other Health Practitioners
			Outpatient Care Centers
			Medical and Diagnostic Laboratories

[Eff 12/29/01; am 4/29/02; am 1/10/03; am 2/19/17; am
and comp] (Auth: HRS §396-4) (Imp:
HRS §396-4)

§12-52.1-2 Incorporation of federal standard.

Title 29, Part 1904 of the Code of Federal Regulations,
[2016] 2017 Edition published as of July 1, [2016,
2017, by the U.S. Government Printing Office, U.S.
Superintendent of Documents, Washington, DC 20402-0001,
is made part of this chapter, except as provided in
section 12-52.1-1." [Eff 12/29/01; am 1/10/03; am
5/21/04; am 5/5/05; am 2/13/12; am 2/19/17; am and
comp] (Auth: HRS §396-4) (Imp: HRS
§396-4)

3. Chapter 12-56, Hawaii Administrative Rules, entitled "Program Fees and Library Policies", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 8

HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION

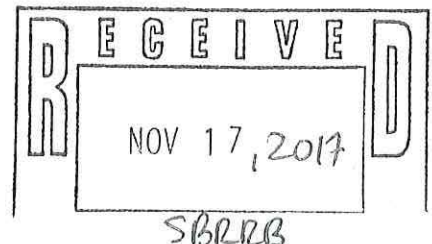
PART 1

GENERAL LEGAL AND ADMINISTRATIVE PROVISIONS
FOR OCCUPATIONAL SAFETY AND HEALTH

CHAPTER 56

PROGRAM FEES AND LIBRARY POLICIES

\$12-56-1	Purpose and scope
\$12-56-2	Safety and health professionals
\$12-56-3	Public notices for variances
\$12-56-4	Explosives
\$12-56-5	Training materials
\$12-56-6	Repealed



§12-56-1

§12-56-1 Purpose and scope. This chapter pertains to the assessment of fees by the director for services not normally considered part of an inspection. This chapter is intended to comply with section 396-5.1, HRS. [Eff 2/8/97; am and comp] (Auth: HRS §396-4) (Imp: HRS §§396-4, 396-5.1)

§12-56-2 Safety and health professionals. (a) Any individual submitting an application to the director to become a certified safety and health professional in accordance with section [~~12-50-7,~~] 12-58-2 shall pay an application fee of [~~\$50,~~] \$75, and upon acceptance, shall pay a certification fee of [~~\$300,~~] \$460. Any certified individual may apply for renewal of the certificate by paying a fee of [~~\$100,~~] \$150.

(b) All fees shall be nonrefundable. [Eff 2/8/97; am and comp] (Auth: HRS §396-4) (Imp: HRS §§396-4, 396-5.1)

§12-56-3 Public notices for variances. Any employer or class of employers who has been granted a variance by the director pursuant to chapter 12-53, shall be responsible for the publication cost of the variance notice for general circulation in the [~~state,~~] State. [Eff 2/8/97; am 12/29/00; am and comp] (Auth: HRS §396-4) (Imp: §§396-4, 396-5.1)

§12-56-4 Explosives. (a) Certificate of fitness.

- (1) Individuals applying for a certificate of fitness shall pay an examination fee of [~~\$150~~] \$225.

§12-56-6

- (2) The renewal fee for a certificate of fitness shall be [~~\$50~~] \$75 and shall be paid at the time of renewal.
- (b) All fees shall be nonrefundable.
[Eff 2/8/97; am 3/29/99; am and comp
] (Auth: HRS §396-4) (Imp:
HRS §§396-4, 396-5.1)

§12-56-5 Training materials. Participants of HIOSH sponsored workshops shall pay a nonrefundable fee of [~~\$5~~] \$10 to cover the cost of the materials provided." [Eff 2/8/97; am and comp]
(Auth: HRS §396-4) (Imp: HRS §396-4, 396-5.1)

§12-56-6 **REPEALED.** R 11/2/12

4. Chapter 12-60, Hawaii Administrative Rules, entitled "General Safety and Health Requirements", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 8

HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION

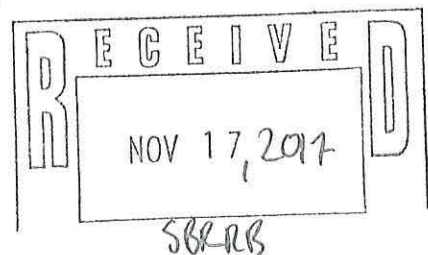
PART 2

GENERAL LEGAL AND ADMINISTRATIVE PROVISIONS
FOR OCCUPATIONAL SAFETY AND HEALTH

CHAPTER 60

GENERAL SAFETY AND HEALTH REQUIREMENTS

\$12-60-1	Application
\$12-60-2	Safety and health programs
\$12-60-3	Employee responsibilities
\$12-60-4	Removal of safety devices
\$12-60-5	Use of intoxicants or drugs
\$12-60-6	Requirements of competence
\$12-60-7	Requirement of quality



§12-60-50

§§12-60-8 to 12-60-49 (Reserved)
§12-60-50 Standards

Historical Note: Chapter 60 of title 12 is based upon chapter 201 of the Hawaii Occupational Safety and Health Standards, Rules and Regulations. [Eff 7/11/74; am 6/7/76; am 12/30/76; am 8/22/77; R 12/6/82]

§12-60-1 Application. The general provisions of [~~these~~] the standards in this chapter shall not [~~be used~~] apply when there are more specific provisions in other sections of the standards[~~-~~] in parts 3 - 11 of title 12, subtitle 8. [Eff 12/6/82; am 8/16/84; am and comp] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-60-2 Safety and health programs. (a) Scope and application. This [~~standard~~] section shall apply to all employers with employees doing business in the State.

- (1) Every employer shall comply with the state laws, standards, and rules regarding a safe place of employment and safe practices, and shall do everything reasonable and necessary to protect the life, safety, and health of the employees.
- (2) Employers involved with construction or related activities shall provide safe and healthful work places and practices that protect the employees and the affected general public as well.
- (3) Every employer shall provide safe work places and practices by elimination or reduction of existing or potential hazards. Elimination of existing or potential hazards

by design, process substitution, or other appropriate methods is preferred because it eliminates the need for further employee protection. When elimination is not feasible, reduction of existing or potential hazards to acceptable levels, using methods such as engineering or administrative controls, isolation, or guarding, shall be promptly used. When these methods are inadequate to reach acceptable levels, personal protective equipment shall be provided and used.

~~[Exception:]~~ Exception: Employers with less than ~~[25]~~ twenty-five (25) employees need not comply with subsection (b)(1) ~~[below]~~.

(b) Employer duties and responsibilities. An employer subject to this standard shall meet the following requirements:

(1) Written safety and health program.

(A) The employer shall institute and maintain an effective safety and health program to identify, evaluate, and control workplace hazards. Employer safety and health programs which were developed prior to the promulgation of this ~~[standard]~~ section may be used to satisfy this requirement so long as they meet the criteria for an acceptable program set forth in subparagraph (B) ~~[below]~~.

(B) The program should:

(i) Set forth policies, procedures, and practices that recognize and protect employees from occupational safety and health hazards.

(ii) Establish and communicate a clear goal for the safety and health program and the mechanisms ~~[which]~~ that will be utilized in meeting this goal.

- (iii) Provide for visible top management leadership in implementing the program and ensure that all workers at the site, including contract workers, are provided equally high quality safety and health protection, so that all workers will understand that management's commitment is serious.
- (iv) Provide for and encourage employee involvement in the structure and operation of the program and in decisions that affect their safety and health, so that they will commit their insight and energy to achieving the safety and health program's goal and objectives. Involvement shall be accomplished through employee collective bargaining units, where appropriate.
- (v) Assign and communicate responsibilities for all aspects of the safety and loss prevention program to managers, supervisors, and employees so that they all know and understand what is expected of them in the implementation of the program.
- (vi) Provide a system to hold managers, supervisors, and employees accountable for their responsibilities under the safety and health program.
- (vii) Provide a reliable system for employees to notify management personnel or safety and health committee members of conditions that appear hazardous or of [~~non-~~noncompliance] noncompliance with the terms of the safety and health

- program without fear of reprisal and provide a mechanism to ensure timely and appropriate responses to correct these conditions.
- (viii) Provide a mechanism to investigate accidents and "near miss" incidents, so that the root cause and means for preventing a recurrence are identified. For the purposes of this [~~rule,~~] section, the term "accident" means any unexpected happening that interrupts the work sequence or process and that may result in injury, illness, or property damage.
 - (ix) Provide a means to review injury and illness trends over time, so that patterns with common causes [~~can be~~] are identified and eliminated.
 - (x) Establish a mechanism for the employer to conduct ongoing, periodic in-house safety and health inspections so that new or previously missed hazards or failures in controls are identified. Inspections shall be conducted with a frequency necessary to be effective.
 - (xi) Address the impact of emergency situations and develop written plans and procedures to insure employee safety during emergencies. For the purpose of this [~~standard,~~] section, the term "emergency situation" means an unforeseen single event or combination of events that calls for immediate action to prevent, control or contain injury or

- illness to person or damage to property.
 - (xii) Establish procedures for transmitting and enforcing safe work practices in the workplace through training, positive reinforcement, as a reward system, public recognition, etc., correction of unsafe performance, and, if necessary, reinforcement of work practices through a clearly defined and communicated disciplinary system.
 - (C) The program shall be made available to the employees or their collective bargaining agent or both, upon request.
- (2) Safe work practices.
- (A) The employer shall eliminate or control all existing and potential hazards within the workplace in a timely manner, using one or more of the following:
 - (i) Engineering and work practice controls designed to control employee exposures to safety and health hazards by modifying the source to reduce exposure.
 - (ii) Administrative controls designed to control employee exposure to safety and health hazards.
 - (iii) Requirements for the distribution and proper use of personal protective equipment.
 - (iv) A program of medical examinations or evaluations conducted by a qualified physician or health practitioner when required by a standard.
 - (B) The employer shall ensure that practices are understood by all employees and are underscored through training, positive reinforcement,

- correction of unsafe performance, and, if necessary, through a clearly defined and communicated disciplinary system.
- (3) Periodic inspections. The employer shall conduct periodic in-house safety and health inspections so that new or previously missed hazards or failures in engineering, work practice, and administrative controls are identified. The in-house inspections will be conducted by individuals who are trained to recognize hazardous conditions, as members of the safety and health committee or a person designated and trained by the employer for the facility's safety and health program.
 - (4) Safety and health training.
 - (A) The employer shall develop and institute a safety and health training program for all employees so they have an understanding of the hazards to which they may be exposed, and the procedures or practices needed to protect them from these hazards.
 - (B) In addition, supervisors and managers shall be trained in the elements of the employer's safety and health program and in the specific responsibilities assigned to them under the program.
 - (C) The employer shall ensure that the supervisors and managers understand their responsibilities under the safety and health program and their importance to the safety and health of the workplace. In particular, the training for managers and supervisors shall enable them to:
 - (i) Recognize potential hazards;
 - (ii) Maintain safety and health protection in the work area; and
 - (iii) Reinforce employee training on the nature of the potential hazards and required protective measures.

§12-60-50

(c) The use of any machinery, tool, material, or equipment which is not in compliance with any applicable requirement of these standards is prohibited. The machine, tool, material, or equipment shall either be identified as unsafe by tagging or locking the controls to render them inoperable or shall be physically removed from its place of operation.

(d) The employer shall permit only those employees qualified by training or experience to operate equipment and machinery.

(e) For procedures in reporting accidents, consult [~~section 12-52-8-~~] chapter 12-52.1. ;

(f) All safety devices and safeguards in use shall be kept sound and operable.

(g) Any employee having knowledge of the existence of any unsafe device, practice, operation, safeguard, equipment, or condition shall promptly inform the supervisor or person in charge. A supervisor or person in charge to whose attention the existence of any unsafe device, practice, operation, safeguard, equipment, or condition is called shall take immediate steps to correct the unsafe condition or practice. [Eff 12/6/82; am 8/16/84; am 9/21/96; am and comp] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-60-3 Employee responsibilities. The employee shall not knowingly perform work in an unsafe manner or in an unsafe environment without the safeguards provided for in these standards. The employee shall not tamper with or render ineffective any safety device or safeguard and shall use the safety devices provided for personal protection. [Eff 12/6/82; comp] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-60-4 Removal of safety devices. No person shall remove, displace, damage, destroy, or carry off any safety device, safeguard, notice, or warning furnished for use in any employment or place of employment. [Eff 12/6/82; comp]
(Auth: HRS §396-4) (Imp: HRS §396-4)

§12-60-5 Use of intoxicants or drugs. The use of intoxicants or harmful drugs while on duty is prohibited. No person shall be permitted to work under the influence of liquor or drugs and shall be removed from the work premises if found under the influence of liquor or drugs. [Eff 12/6/82; comp]
(Auth: HRS §396-4) (Imp: HRS §396-4)

§12-60-6 Requirements of competence. When work is to be performed by or under the supervision of a designated person, that person shall have the degree of competence necessary to perform or direct the work in a safe manner. [Eff 12/6/82; comp]
(Auth: HRS §396-4) (Imp: HRS §396-4)

§12-60-7 Requirement of quality. Materials, devices, structures, and methods and procedures of operation which are required by these standards, and which are described by general descriptive terms such as adequate, proper, sufficient, and the like, shall be of such kind and quality as a reasonable and prudent person experienced in the work would require in order to effect a safe operation. [Eff 12/6/82; am and comp] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-60-50

~~§12-60-8 thru~~ §§12-60-8 to 12-60-49 RESERVED.

§12-60-50 Standards. (a) Incorporation of federal standard. Title 29, Part 1910 of the Code of Federal Regulations, [2012] 2017 Edition published as of July 1, [2012] 2017, by the U.S. Government Printing Office, U.S. Superintendent of Documents, Washington, DC 20402-0001, is made a part of this chapter except as provided in ~~subsection~~ subsections (b) through (d).

(b) State specific definitions. The following definitions are in addition to those found in section 12-50-2 and subsection (a). Where a definition exists in both subsection (a) and this subsection, the definition contained in this subsection supersedes the definition in subsection (a). This State's adoption of ~~[29 CFR Part 1910.2]~~ 29 C.F.R. §1910.2, Definitions, is amended by adding the following definitions:

"Access" means the right and opportunity to examine and copy.

"Analysis using exposure or medical records" means any compilation of data, or any research, or statistical or other studies based at least in part on information collected from individual employee exposure or medical records or information collected from health insurance claims records, ~~[provided that]~~ if either the analysis has been reported to the employer or no further work is currently being done by the person responsible for preparing the analysis.

"ANSI Z9.2" means ANSI Z9.2-1979, Fundamentals Governing the Design and Operation of Local Exhaust Systems.

"ANSI Z88.2" means ANSI Z88.2-1984, Practices for Respiratory Protection.

"Coal tar pitch volatiles" ~~[mean,~~ means, as used in Exhibit A, entitled "Limits for Air Contaminants", and dated July 1, 2017, which is made part of this chapter and located at the end of this chapter, the

fused polycyclic hydrocarbons which volatilize from the distillation residues of coal, petroleum (excluding asphalt, CAS 8052-42-4 and CAS 64742-93-4), wood, and other organic matter.

"Designated [~~representative,~~] representative" means any individual or organization to whom an employee gives written authorization to exercise a right of access. For [~~the purpose of~~] access to employee exposure records and analyses using exposure or medical records, a recognized or certified collective-bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

"Employee exposure record" means a record containing any of the following kinds of information:

- (1) Environmental (workplace) monitoring or measuring of a toxic substance or a harmful physical agent, including personal, area, grab, or wipe sampling, or any other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretation of the results obtained;
- (2) Biological monitoring results which directly assess the absorption of a substance or agent by body systems (e.g., the level of a chemical in the blood, urine, breath, hair, fingernails, etc.) but not including results which assess the biological effect of a substance or agent or which assess an employee's use of alcohol or drugs;
- (3) Material safety-data sheets; and
- (4) A chemical inventory or any other record which reveals where and when used and the identity (e.g., chemical, common, or trade name) of a toxic substance or harmful physical agent.

"Employee medical record" means a record concerning the health status of an employee, which is made or maintained by a physician or nurse, or any other health care personnel or technician, including:

- (1) Medical and employment questionnaires or histories (including job description and occupational exposures);
- (2) The results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including chest and other X-ray examinations taken for the purposes of establishing a ~~[base-line]~~ baseline or detecting occupational illness, and all biological monitoring not defined as an "employee exposure record");
- (3) Medical opinions, diagnoses, progress notes, and recommendations;
- (4) Descriptions of treatments and prescriptions;
- (5) First-aid records; and
- (6) Employee medical complaints; but does not include medical information in the form of:
 - (A) Physical specimens (e.g., blood or urine samples) ~~[which]~~ that are routinely discarded as a part of normal medical practice; ~~[or]~~
 - (B) Records concerning health insurance claims if maintained separately from the employer's medical program and its records, and not accessible to the employer by employee name or other direct personal identifier (e.g., social security number, payroll number, etc.); ~~[or]~~
 - (C) Records created solely in preparation for litigation which are privileged from discovery under the applicable rules of procedure or evidence; or
 - (D) Records concerning voluntary employee assistance programs (alcohol, drug abuse, or personal counseling programs) if maintained separately from the employer's medical program and its records.

"Excursion factor" means the magnitude of the permissible excursion above the PEL-TWA for those substances not preceded by a "C" in Exhibit A entitled

"Limits for Air Contaminants", and dated July 1, 2017, which is made part of this chapter and located at the end of this chapter, and not found in Exhibit B entitled "More Limits for Air Contaminants", and dated July 1, 2017, which is made part of this chapter and located at the end of this chapter.

"Exposure" or "exposed" means that an employee is subjected to a toxic material or harmful physical agent [~~in the course of~~] during employment through any route of entry, such as inhalation, ingestion, skin contact, or absorption, and includes past exposure and potential exposure.

"Health professional" means a physician, occupational health nurse, industrial hygienist, toxicologist, or epidemiologist, providing medical or other occupational health services to exposed employees.

"Permissible Exposure Limit (PEL)" means the airborne concentrations of substances to which it is believed that nearly all workers may be exposed with no adverse effect.

"Permissible Exposure Limit-Ceiling (PEL-C)" means the concentration that shall not be exceeded even instantaneously. The PEL-C is the employee's exposure, which shall not be exceeded during any part of the workday. If instantaneous monitoring is not feasible, then the ceiling shall be assessed as a 15-minute time weighted average exposure, which shall not be exceeded at any time over a working day.

"Permissible Exposure Limit-Short Term Exposure Level (PEL-STEL)" means the employee's [~~15-minute~~] fifteen (15) minute time weighted average exposure, which shall not be exceeded at any time during a workday unless another time limit is specified in a parenthetical notation below the limit. If another [~~time~~] period is specified, the time weighted average exposure over that time limit shall not be exceeded at any time during the workday.

"Permissible Exposure Limit-Time Weighted Average (PEL-TWA)" means the employee's average airborne exposure, which shall not be exceeded in any [~~7-~~]

seven (7) to ~~[8-hour]~~ eight (8) hour work shift of a
~~[40-hour]~~ forty (40) hour workweek.

"Record" means any item, collection, or grouping of information regardless of the form or process by which it is maintained (e.g., paper document, microfiche, microfilm, X-ray film, or automated data processing).

"Specific chemical identity" means the chemical name, Chemical Abstracts Service (CAS) Registry Number, or any other information that reveals the precise chemical designation of the substance.

"Specific written consent" means a written authorization containing:

- (1) The name and signature of the employee authorizing the release of medical information;
- (2) The date of the written authorization;
- (3) The name of the individual or organization that is authorized to release the medical information;
- (4) The name of the designated representative (individual or organization) that is authorized to receive the released information;
- (5) A general description of the medical information that is authorized to be released;
- (6) A general description of the purpose for the release of the medical information; and
- (7) A date or condition upon which the written authorization will expire (if less than one year); but [A] a written authorization does not authorize the release of medical information not in existence on the date of written authorization, unless the release of future information is expressly authorized, and does not operate for more than one year from the date of written authorization. A written authorization may be revoked in writing prospectively at any time.

"Toxic material or harmful physical agent" means any chemical substance, biological agent (bacteria,

virus, fungus, etc.), or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and non-ionizing radiation, hypo- or hyperbaric pressure, etc.) which:

- (1) Is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS); ~~[or]~~
- (2) Has yielded positive evidence of an acute or chronic health hazard in testing conducted by, or known to, the employer; or
- (3) Is the subject of a material safety-data sheet kept by or known to the employer indicating that the material may pose a hazard to human health.

"Trade secret" means any confidential formula, pattern, process, device, or information or compilation of information that is used in an employer's business and that gives the employer an opportunity to obtain an advantage over competitors who do not know or use it.

(c) State specific standards for Occupational Noise Exposure. The following standards are in effect in addition to those adopted ~~[by]~~ in subsection (a). Where standards on ~~[a particular]~~ an item exist in both subsection (a) and this subsection, the standards contained in this subsection supersede the standards in subsection (a).

- (1) 29 ~~[CFR 1910.95]~~ C.F.R. §1910.95 Table G-16 is amended to read as follows:

(2)

~~[a]~~ **TABLE G-16-PERMISSIBLE NOISE EXPOSURES¹**

Duration per day, hours	Sound level dBA slow response
-------------------------	----------------------------------

8.....	90
6.....	92
4.....	95
3.....	97
2.....	100

1-1/2.....	102
1.....	105
1/2.....	110
1/4 or less.....	115

¹When the daily noise exposure is composed of two or more periods of noise exposure of different levels, their combined effect shall be considered, rather than the individual effect of each. If the sum of the following fractions: $C1/T1+C2/T2Cn/Tn$ exceeds unity, then~~[7]~~ the mixed exposure shall be considered to exceed the limit value. Cn indicates the total time of exposure at a specific noise level, ~~[an]~~ a Tn indicates the total time of exposure permitted at that level. Exposure to impulsive or impact noise shall not exceed 140 dB peak sound pressure level.~~[4]~~

(3) ~~[29 CFR 1910.95(c)(1)]~~ 29 C.F.R.

§1910.95(c)(1) is amended to read as follows:

~~[-A)]~~ The employer shall administer a continuing, effective hearing conservation program, as described in paragraphs (c) through (o) of this section, whenever employee noise exposures equal or exceed an ~~[8-hour]~~ eight (8) hour time-weighted average sound level (TWA) of ~~[85]~~ eighty-five (85) decibels measured on the A scale (slow response) or a dose of 50 percent. For purposes of the hearing conservation program, employee noise exposures shall be computed in accordance with appendix (a) and table G-16a, and without regard to any attenuation provided by ~~[the use of]~~ using personal protective equipment.

(d) State specific standards for Toxic and Hazardous Substances. The following standards are in effect in addition to those adopted ~~[by]~~ in subsection (a). Where standards on ~~[a particular]~~ an item exist in both subsection (a) and this subsection, the standards contained in this subsection supersede the standards in subsection (a).

- (1) [~~29 CFR 1910.1000~~] 29 C.F.R. §1910.1000 is amended by adding the following:
- (A) All employers shall measure, monitor, and record employee exposure to toxic materials or harmful physical agents. The measurement shall determine if any employee may be exposed to concentrations of the toxic materials or harmful physical agents at or above the permissible exposure limit. The determination shall be made each time there is a change in production, process, or control measures which could result in an increase in concentrations of these materials or agents. A written record of the determination shall be made and shall contain at least:
- (i) Any information, observations, or calculations that may indicate employee exposure to toxic or potentially toxic materials or harmful physical agents;
 - (ii) Any measurements taken;
 - (iii) Any employee complaints of symptoms that may be attributable to exposure to toxic or potentially toxic materials or harmful physical agents;
 - (iv) Date of determination, work being performed at the time, location within work site, name, and social security number of each employee considered; and
 - (v) Any other information that may be relevant to employee exposure.
- (B) When medical examinations are appropriate for adequate employee protection, the employer shall, at the employer's cost, provide examinations to best determine the effect of toxic

material or harmful physical agents on the health of employees.

(2) [~~29 CFR 1910.1000(a)~~] 29 C.F.R.

§1910.1000(a) is amended to read as follows:

- (A) Air Contaminants Limits Column. An employee's exposure to any substance listed in Exhibit A, entitled "Limits for Air Contaminants", and dated July 1, 2017, which is made part of this chapter and located at the end of this chapter, shall not exceed the PEL-TWA, PEL-STEL and PEL-Ceiling specified for that substance shown in Exhibit A.
- (i) Because many industrial exposures are not continuous, but instead are short-term, or intermittent, to which the PEL-TWAs cannot be applied, PEL-STELs for selected air contaminants are listed in Exhibit A, entitled "Limits for Air Contaminants", and dated July 1, 2017, which is made part of this chapter and located at the end of this chapter.
- (ii) The PEL-STELs listed in Exhibit A, entitled "Limits for Air Contaminants", and dated July 1, 2017, which is made part of this chapter and located at the end of this chapter, are [~~15-minute~~] fifteen (15) minute time-weighted average (TWA) exposures that shall not be exceeded at any time during a workday.
- (iii) Exposures at the PEL-STEL shall not be longer than [~~15-minutes~~] fifteen (15) minutes and shall not be repeated more than four times per day. There shall be at least [~~60~~] sixty (60) minutes between

successive exposures at the PEL-
STEL.

- (B) Skin Designation. To prevent or reduce skin absorption, an employee's skin exposure to substances listed in Exhibit A, entitled "Limits for Air Contaminants", and dated July 1, 2017, which is made part of this chapter and located at the end of this chapter, with an "X" in the Skin Designation columns shall be prevented or reduced to the extent necessary in the circumstances through the use of gloves, coveralls, goggles, or other appropriate personal protective equipment, engineering controls, or work practices.
- (3) [~~29 CFR 1910.1000(b)~~] 29 C.F.R. §1910.1000(b) is amended to read as follows:

~~[(A) Exhibit B.]~~

~~[(i)]~~ (A) PEL-TWA. An employee's exposure to any material listed in Exhibit A, entitled "Limits for Air Contaminants", and dated July 1, 2017, which is made part of this chapter and located at the end of this chapter, in any ~~[7 to 8 hour]~~ seven (7) to eight (8) hour work shift of a ~~[40-hour]~~ forty (40) hour workweek, shall not exceed the PEL-TWA given for that material in Exhibit B, Exhibit B entitled "More Limits for Air Contaminants", and dated July 1, 2017, which is made part of this chapter and located at the end of this chapter.

~~[(ii)]~~ (B) Acceptable ceiling concentration. An employee's exposure to a material listed in Exhibit B, entitled "More Limits for Air Contaminants", and dated July 1, 2017, which is made part of this chapter and

§12-60-50

located at the end of this chapter,
shall not exceed at any time during a
~~[7 to 8 hour]~~ seven (7) to eight (8)
hour work shift the acceptable ceiling
concentration given for that material
in the table."

- ~~[(4) The incorporation of Exhibit A at the end of section 12-60-50 entitled ["] Limits for Air Contaminants " dated July 1, 2011, is made a part of this chapter.~~
- ~~(5) The incorporation of Exhibit B at the end of section 12-60-50 entitled " More Limits for Air Contaminants" dated July 1, 2011, is made a part of this chapter.] [Eff 2/13/12; am 11/2/12; am and comp]~~
(Auth: HRS: §396-4) (Imp: HRS §396-4)

Historical Note: §12-60-50 is based substantially upon Part 2. [Eff 6/8/82; 7/24/94; am 9/30/94; am 8/10/95; am 1/16/96; am 2/8/97; am 10/23/97; am 7/6/98; am 3/29/99; am 7/6/99; am 2/14/00; am 12/29/00; am 12/29/01; am 5/21/04; am 5/5/05; am 9/1/05; am 3/31/06; am 12/21/06; am 4/19/07; am 8/29/07; am 5/2/08; am 7/27/09; R 2/13/12 and Part 8 [Eff 7/12/82; am 5/28/83; am 6/16/84; am 8/5/88; am 3/22/91; am 6/8/92; am 2/26/93; am 7/25/94; am 8/10/95; am 1/26/96; am 9/21/96; am 11/16/96; am 2/8/97; am 5/2/97; am 7/10/97; am 4/11/98; am 7/6/98; am 3/29/99; am 12/29/00; am 8/9/01; am 12/29/01; am 5/21/04; am 3/31/06; am 12/21/06; 4/19/07; am 7/27/09; R 2/13/12]

Exhibit A (July 1, 2017)
Limits for Air Contaminants¹

Substance	CAS No. ^b	Air Contaminant Limits**						Skin Designation
		PEL-TWA*		PEL-STEL ^a		PEL-CEILING		
		ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	
Acetaldehyde	75-07-0	100	180	150	270	-	-	-
Acetic acid	64-19-7	10	25	15	37	-	-	-
Acetic anhydride	108-24-7	-	-	-	-	5	20	-
Acetone	67-64-1	750	1,780	1,000	2,375	-	-	-
Acetonitrile	75-05-8	40	70	60	105	-	-	X
2-Acetylaminofluorene	53-96-3	See §1910.1003						
Acetylene dichloride		See 1,2-Dichloroethylene						
Acetylene tetrabromide	79-27-6	1	14	1.5	20	-	-	-
Acetylsalicylic acid (Aspirin)	50-78-2	-	5	-	-	-	-	-
Acrolein	107-02-8	0.1	0.25	0.3	0.8	-	-	-
Acrylamide	79-06-1	-	0.03	-	-	-	-	X
Acrylic acid	79-10-7	2	6	-	-	-	-	X
Acrylonitrile	107-13-1	See §1910.1045						
Aldrin	309-00-2	-	0.25	-	0.75	-	-	X
Allyl alcohol	107-18-6	2	5	4	10	-	-	X
Allyl chloride	107-05-1	1	3	2	6	-	-	-
Allyl glycidyl ether (AGE)	106-92-3	5	22	10	44	-	-	X
Allyl propyl disulfide	2179-59-1	2	12	3	18	-	-	-
Alumina	1344-28-1							
Total dust		-	10	-	20	-	-	-
Respirable fraction		-	5	-	-	-	-	-
Aluminum (as Al) Metal & oxide	7429-90-5							
Total dust		-	10	-	20	-	-	-
Respirable fraction		-	5	-	-	-	-	-
Pyro powders		-	5	-	-	-	-	-
Welding fumes		-	5	-	-	-	-	-
Soluble salts		-	2	-	-	-	-	-
Alkyls		-	2	-	-	-	-	-
4-Aminodiphenyl	92-67-1	See §1910.1003						
2-Aminoethanol		See Ethanolamine						
2-Aminopyridine	504-29-0	0.5	2	2	4	-	-	-
Amitrole	61-82-5	-	0.2	-	-	-	-	-
Ammonia	7664-41-7	25	18	35	27	-	-	-
Ammonium chloride Fume	12125-02-9	-	10	-	20	-	-	-
Ammonium sulfamate	7773-06-0							
Total dust		-	10	-	20	-	-	-
Respirable fraction		-	5	-	-	-	-	-
n-Amyl acetate	628-63-7	100	525	150	800	-	-	-
sec-Amyl acetate	626-38-0	125	650	150	800	-	-	-
Aniline and homologs	62-53-3	2	8	5	20	-	-	X

Limits for Air Contaminants¹ (Continued)

Substance	CAS No. ^b	Air Contaminant Limits**						Skin Designation
		PEL-TWA*		PEL-STEL ^a		PEL-CEILING		
		ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	
Anisidine (o-, p-isomers)	29191-52-4	0.1	0.5	-	-	-	-	X
Antimony and compounds (as Sb)	7440-36-0	-	0.5	-	-	-	-	-
Antimony trioxide	1309-64-4	-	0.5	-	-	-	-	-
Handling and use, as Sb		-	0.5	-	-	-	-	-
ANTU (Alpha Naphthylthiourea)	86-88-4	-	0.3	-	0.9	-	-	-
Arsenic, organic compounds (as As)	7440-38-2	-	0.2	-	-	-	-	-
Arsenic, inorganic compounds, (as As)	7440-38-2	See §1910.1018						-
Arsine	7784-42-1	0.05	0.2	-	-	-	-	-
Asbestos	Varies	See §1910.1001 and 1926.1101						-
Asphalt (petroleum) fumes	8052-42-4	-	5	-	10	-	-	-
Atrazine	1912-24-9	-	5	-	-	-	-	-
Azinphos-methyl	86-50-0	-	0.2	-	0.6	-	-	X
Barium, soluble compounds (as Ba)	7440-39-3	-	0.5	-	-	-	-	-
Barium sulfate	7727-43-7	-	-	-	-	-	-	-
Total dust		-	10	-	-	-	-	-
Respirable fraction		-	5	-	-	-	-	-
Benomyl	17804-35-2	-	-	-	-	-	-	-
Total dust		0.8	10	1.3	15	-	-	-
Respirable fraction		-	5	-	-	-	-	-
Benzene; see §1910.1028	71-43-2	See Exhibit B for operations excluded						-
Benzidine	92-87-5	See §1910.1003						-
p-Benzoquinone		See Quinone						-
Benzo(a)pyrene		See Coal tar pitch volatiles						-
Benzoyl peroxide	94-36-0	-	5	-	-	-	-	-
Benzyl chloride	100-44-7	1	5	-	-	-	-	-
Beryllium and beryllium compounds (as Be)	7440-41-7	0.0002	-	0.002	-	0.005	-	-
		(see Exhibit B)						-
Biphenyl		See Diphenyl						-
Bismuth telluride, Undoped	1304-82-1	-	-	-	-	-	-	-
Total dust		-	10	-	20	-	-	-
Respirable fraction		-	5	-	-	-	-	-
Bismuth telluride, Se-doped		-	5	-	10	-	-	-
Borates, tetra, sodium salts		-	-	-	-	-	-	-

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THE ECONOMIC RESEARCH ORGANIZATION
AT THE UNIVERSITY OF HAWAII

ELECTRIC UTILITY REGULATION UNDER
ENHANCED RENEWABLE ENERGY INTEGRATION
AND DISTRIBUTED GENERATION

BY
NORI TARUI

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THE INDIVIDUAL AUTHORS.

Electric utility regulation under enhanced renewable energy integration
and distributed generation

March 2017

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Abstract

The economic environment for electric utilities is changing in the United States given increased penetration of distributed generation and limited rooms for sales growth. This paper reviews the recent development of relevant policies in the United States and their economic impacts. This review indicates both challenges and opportunities in improving the policies to enhance distributed generation, and in finding the directions in which electric utility regulation should be reformed.

Keywords: renewable energy, renewable portfolio standard, clean energy tax credit, net energy metering, utility regulation

JEL classification: H23, H24, L51, Q48

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Limits for Air Contaminants¹ (Continued)

Substance	CAS No. ^b	Air Contaminant Limits**						Skin Designation
		PEL-TWA*		PEL-STELA ^a		PEL-CEILING		
		ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	
Anhydrous	1330-43-4	-	1	-	-	-	-	-
Decahydrate	1303-96-4	-	5	-	-	-	-	-
Pentahydrate	12179-04-3	-	1	-	-	-	-	-
Boron oxide	1303-86-2	-	-	-	-	-	-	-
total dust		-	10	-	20	-	-	-
Respirable fraction		-	-	-	-	-	-	-
Boron tribromide	10294-33-4	-	-	-	-	1	10	-
Boron trifluoride	7637-07-2	-	-	-	-	1	3	-
Bromacil	314-40-9	1	10	2	20	-	-	-
Bromine	7726-95-6	0.1	0.7	0.3	2	-	-	-
Bromine pentafluoride	7789-30-2	0.1	0.7	0.3	2	-	-	-
Bromoform	75-25-2	0.5	5	-	-	-	-	X
Butadiene (1,3-Butadiene)	106-99-0	See §1910.1051						
Butane	106-97-8	800	1,900	-	-	-	-	-
Butanethiol		See Butyl mercaptan						
2-Butanone (Methyl ethyl ketone) (MEK)	78-93-3	200	590	300	885	-	-	-
2-Butoxyethanol	111-76-2	25	120	75	360	-	-	X
n-Butyl-acetate	123-86-4	150	710	200	950	-	-	-
sec-Butyl acetate	105-46-4	200	950	250	1,190	-	-	-
tert-Butyl acetate	540-88-5	200	950	250	1,190	-	-	-
Butyl acrylate	141-32-2	10	55	-	-	-	-	-
n-Butyl alcohol	71-36-3	-	-	-	-	50	150	X
sec-Butyl alcohol	78-92-2	100	305	150	455	-	-	-
tert-Butyl alcohol	75-65-0	100	300	150	450	-	-	-
Butylamine	109-73-9	-	-	-	-	5	15	X
tert-Butyl chromate (as CrO ₃)	1189-85-1	-	-	-	-	-	-	X
n-Butyl glycidyl ether (BGE)	2426-08-6	25	135	-	-	-	-	-
n-Butyl lactate	138-22-7	5	25	-	-	-	-	-
Butyl mercaptan	109-79-5	0.5	1.5	-	-	-	-	-
o-sec Butylphenol	89-72-5	5	30	-	-	-	-	X
p-tert-Butyltoluene	98-51-1	10	60	20	120	-	-	-
Cadmium fume (as Cd)	7440-43-9	-	-	-	-	-	0.05	-
Cadmium dust (as Cd)	7440-43-9	-	0.05	-	-	-	0.2	-
Calcium carbonate	1317-65-3	-	-	-	-	-	-	-
Total dust		-	10	-	20	-	-	-
Respirable fraction		-	5	-	-	-	-	-
Calcium cyanamide	156-62-7	-	0.5	-	1	-	-	-
Calcium hydroxide	1305-62-0	-	5	-	-	-	-	-
Calcium oxide	1305-78-8	-	2	-	-	-	-	-
Calcium silicate	1344-95-2	-	-	-	-	-	-	-
Total dust		-	10	-	-	-	-	-

Limits for Air Contaminants¹ (Continued)

Substance	CAS No. ^b	Air Contaminant Limits**						Skin Designation
		PEL-TWA*		PEL-STEL ^a		PEL-CEILING		
		ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	
Respirable fraction		-	5	-	-	-	-	-
Calcium sulfate	7778-18-9							
Total dust		-	10	-	-	-	-	-
Respirable fraction		-	5	-	-	-	-	-
Camphor, synthetic	76-22-2	0.3	2	-	-	-	-	-
Caprolactam	105-60-2							
Dust		-	1	-	3	-	-	-
Vapor & Aerosol		5	20	-	40	-	-	-
Captafol (DifolatanR)	2425-06-1	-	0.1	-	-	-	-	-
Captan	133-06-2	-	5	-	15	-	-	-
Carbaryl (Sevin ^R)	63-25-2	-	5	-	10	-	-	-
Carbofuran (Furadan ^R)	1563-66-2	-	0.1	-	-	-	-	-
Carbon black	1333-86-4	-	3.5	-	7	-	-	-
Carbon dioxide	124-38-9	5,000	9,000	15,000	27,000	-	-	-
Carbon disulfide	75-15-0	4	12	12	36	-	-	X
Carbon monoxide	630-08-0	35	40			200	229	-
Carbon tetrabromide	558-13-4	0.1	1.4	0.3	4	-	-	X
Carbon tetrachloride	56-23-5	2	12.6	-	-	-	-	-
Carbonyl fluoride	353-50-4	2	5	5	15	-	-	-
Catechol (Pyrocatechol)	120-80-9	5	20	-	-	-	-	X
Cellulose	9004-34-6							
Total dust		-	10	-	20	-	-	-
Respirable fraction		-	5	-	-	-	-	-
Cesium hydroxide	21351-79-1	-	2	-	-	-	-	-
Chlordane	57-74-9	-	0.5	-	2	-	-	X
Chlorinated camphene	8001-35-2	-	0.5	-	1	-	-	X
Chlorinated diphenyl Oxide	55720-99-5	-	0.5	-	2	-	-	-
Chlorine	7782-50-5	0.5	1.5	1	3	-	-	-
Chlorine dioxide	10049-04-4	0.1	0.3	0.3	0.9	-	-	-
Chlorine trifluoride	7790-91-2	-	-	-	-	0.1	0.4	-
Chloroacetaldehyde	107-20-0	-	-	-	-	1	3	-
Chloroacetone	78-95-5	-	-	-	-	1	4	X
α-Chloroacetophenone (Phenacyl chloride)	532-27-4	0.05	0.3	-	-	-	-	-
Chloroacetyl chloride	79-04-9	0.05	0.2	-	-	-	-	-
Chlorobenzene	108-90-7	75	350	-	-	-	-	-
o-Chlorobenzylidene malononitrile	2698-41-1	-	-	-	-	0.05	0.4	X
Chlorobromomethane	74-97-5	200	1,050	250	1,300	-	-	-
2-Chloro-1,3-Butadiene		see β-Chloroprene						
Chlorodifluoromethane	75-45-6	1,000	3,500	1,250	4,375	-	-	-

Limits for Air Contaminants¹ (Continued)

Substance	CAS No. ^b	Air Contaminant Limits**						Skin Designation
		PEL-TWA*		PEL-STEL ^a		PEL-CEILING		
		ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	
Chlorodiphenyl (42% chlorine) (PCB)	53469-21-9	-	1	-	2	-	-	X
Chlorodiphenyl (54% Chlorine) (PCB)	11097-69-1	-	0.5	-	1	-	-	X
1-Chloro, 2,3-epoxypropane		See Epichlorohydrin						
2-Chloroethanol		See Ethylene chlorohydrin						
Chloroethylene		See Vinyl chloride						
Chloroform (Trichloromethane)	67-66-3	2	9.78	-	-	-	-	-
bis(Chloromethyl) ether	542-88-1	see §1910.1003						
Chloromethyl methyl ether	107-30-2	see §1910.1003						
1-Chloro-1-nitropropane	600-25-9	2	10	-	-	-	-	-
Chloropentafluoroethane	76-15-3	1,000	6,320	-	-	-	-	-
Chloropicrin	76-06-2	0.1	0.7	0.3	2	-	-	-
β-Chloroprene	126-99-8	10	35	-	-	-	-	X
o-Chlorostyrene	2039-87-4	50	285	75	428	-	-	-
o-Chlorotoluene	95-49-8	50	250	75	375	-	-	X
2-Chloro-6-(trichloromethyl) pyridine	1929-82-4							
Total dust		-	10	-	20	-	-	-
Respirable fraction		-	5	-	-	-	-	-
Chlorpyrifos	2921-88-2	-	0.2	-	0.6	-	-	X
Chromic acid and chromates (as CrO ₃)	Varies with compound	-	-	-	-	-	0.1	-
Chromite ore processing (Chromate), (as Cr)		-	0.05	-	-	-	-	-
Chromium (II)	7440-47-3	-	0.5	-	-	-	-	-
Chromium (III) compounds (as Cr)	7440-47-3	-	0.5	-	-	-	-	-
Chromium (VI) Water soluble & insoluble		See §1910.1026 and §1926.1126						-
Chromium metal (as Cr)	7440-47-3	-	0.5	-	-	-	-	-
Chromyl chloride	14977-61-8	0.025	0.15	-	-	-	-	-
Chrysene		See Coal tar pitch volatiles						
Clopidol	2971-90-6							
Total dust		-	10	-	20	-	-	-
Respirable fraction		-	5	-	-	-	-	-

Limits for Air Contaminants¹ (Continued)

Substance	CAS No. ^b	Air Contaminant Limits**						Skin Designation
		PEL-TWA*		PEL-STEL ^a		PEL-CEILING		
		ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	
Coal dust (less than 5% SiO ₂), Respirable fraction		-	2	-	-	-	-	-
Coal dust (greater than or equal to 5% SiO ₂), Respirable quartz fraction		-	0.1	-	-	-	-	-
Coal tar pitch volatiles (benzene soluble fraction), anthracene, BaP, phenanthrene, acridine, chrysene, pyrene	65966-93-2	-	0.2f	-	-	-	-	-
Cobalt metal, dust, and fume (as Co)	7440-48-4	-	0.05	-	-	-	-	-
Cobalt carbonyl (as Co)	10210-68-1	-	0.1	-	-	-	-	-
Cobalt hydrocarbonyl (as Co)	16842-03-8	-	0.1	-	-	-	-	-
Coke oven emissions								
Copper	7440-50-8							
Fume (as Cu)		-	0.1	-	-	-	-	-
Dusts and mists (as Cu)		-	1	-	2	-	-	-
Cotton dust (raw)			See §1910.1043					
Crag herbicide (Sesone) (Sodium 2,4-dichlorophenoxyethyl sulfate)	136-78-7							
Total dust		-	10	-	20	-	-	-
Respirable fraction		-	5	-	-	-	-	-
Cresol, all isomers	1319-77-3	5	22	-	-	-	-	X
Crotonaldehyde	123-73-9 4170-30-3	2	6	6	18	-	-	-
Crufomate	299-86-5	-	5	-	20	-	-	-
Cumene	98-82-8	50	245	75	365	-	-	X
Cyanamide	420-04-2	-	2	-	-	-	-	-
Cyanides (as CN)	Varies with compound	-	5	-	-	-	-	X
Cyanogen	460-19-5	10	20	-	-	-	-	-
Cyanogen chloride	506-77-4	-	-	-	-	0.3	0.6	-
Cyclohexane	110-82-7	300	1,050	375	1,300	-	-	-
Cyclohexanol	108-93-0	50	200	-	-	-	-	X
Cyclohexanone	108-94-1	25	100	100	400	-	-	X
Cyclohexene	110-83-8	300	1,015	-	-	-	-	-

Limits for Air Contaminants¹ (Continued)

Substance	CAS No. ^b	Air Contaminant Limits**						Skin Designation
		PEL-TWA*		PEL-STEL ^a		PEL-CEILING		
		ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	
Cyclohexylamine	108-91-8	10	40	-	-	-	-	-
Cyclonite	121-82-4	-	1.5	-	3	-	-	X
Cyclopentadiene	542-92-7	75	200	75	200	-	-	-
Cyclopentane	287-92-3	600	1,720	900	2,580	-	-	-
Cyhexatin	13121-70-5	-	5	-	10	-	-	-
2,4-D (Dichloryl- phenoxyacetic acid)	94-75-7	-	10	-	20	-	-	-
DDT (Dichlorodiphenyl- trichloroethane)	50-29-3	-	1	-	3	-	-	X
Decaborane	17702-41-9	0.05	0.3	0.15	0.9	-	-	X
Demeton (Systox ^R)	8065-48-3	-	0.1	0.03	0.3	-	-	X
Diacetone alcohol (4-hydroxy-4-methyl- 2-pentanone)	123-42-2	50	240	75	360	-	-	-
1,2-Diaminoethane		See Ethylenediamine						
Diazinon	333-41-5	-	0.1	-	0.3	-	-	X
Diazomethane	334-88-3	0.2	0.4	-	-	-	-	-
Diborane	19287-45-7	0.1	0.1	-	-	-	-	-
1,2-Dibromo- 3-chloropropane	96-12-8	See §1910.1044						
2-N-Dibutylamino- ethanol	102-81-8	2	14	4	28	-	-	X
Dibutyl phosphate	107-66-4	1	5	2	10	-	-	-
Dibutyl phthalate	84-74-2	-	5	-	10	-	-	-
Dichloroacetylene	7572-29-4	-	-	-	-	0.1	0.4	-
o-Dichlorobenzene	95-50-1	-	-	-	-	50	300	-
p-Dichlorobenzene	106-46-7	75	450	110	675	-	-	-
3,3'-Dichlorobenzidine	91-94-1	See §1910.1003						
Dichlorodifluoromethane	75-71-8	1,000	4,950	1,250	6,200	-	-	-
1,3-Dichloro-5,5- dimethyl hydantoin	118-52-5	-	0.2	-	0.4	-	-	-
1,1-Dichloroethane	75-34-3	100	400	250	1,010	-	-	-
1,2-Dichloroethylene	540-59-0	200	790	250	1,000	-	-	-
Dichloroethyl ether	111-44-4	5	30	10	60	-	-	X
Dichloromethane		See Methylene chloride						
Dichloromonofluoro- methane	75-43-4	10	40	-	-	-	-	-
1,1-Dichloro-1-nitro- ethane	594-72-9	2	10	10	60	-	-	-
1,2-Dichloropropane		See Propylene dichloride						
1,3-Dichloropropene	542-75-6	1	5	-	-	-	-	X
2,2-Dichloropropionic acid	75-99-0	1	6	-	-	-	-	-

Limits for Air Contaminants¹ (Continued)

		Air Contaminant Limits**						Skin Designation
Substance	CAS No. ^b	PEL-TWA*		PEL-STEL ^a		PEL-CEILING		
		ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	
Dichlorotetrafluoroethane	76-14-2	1,000	7,000	1,250	8,750	-	-	-
Dichlorvos (DDVP)	62-73-7	0.1	1	0.3	3	-	-	X
Dicrotophos	141-66-2	-	0.25	-	-	-	-	X
Dicyclopentadiene	77-73-6	5	30	-	-	-	-	-
Dicyclopentadienyl iron	102-54-5	-	-	-	-	-	-	-
Total dust		-	10	-	20	-	-	-
Respirable fraction		-	5	-	-	-	-	-
Dieldrin	60-57-1	-	0.25	-	0.75	-	-	X
Diethanolamine	111-42-2	3	15	-	-	-	-	-
Diethylamine	109-89-7	10	30	25	75	-	-	-
2-Diethylaminoethanol	100-37-8	10	50	-	-	-	-	X
Diethylene triamine	111-40-0	1	4	-	-	-	-	-
Diethyl ether		See Ethyl ether						
Diethyl ketone	96-22-0	200	705	-	-	-	-	-
Diethyl phthalate	84-66-2	-	5	-	10	-	-	-
Difluorodibromomethane	75-61-6	100	860	150	1,290	-	-	-
Diglycidyl ether (DGE)	2238-07-5	0.1	0.5	-	-	-	-	-
Dihydroxybenzene		See Hydroquinone						
Diisobutyl ketone	108-83-8	25	150	-	-	-	-	-
Diisopropylamine	108-18-9	5	20	-	-	-	-	X
4-Dimethylaminoazobenzene	60-11-7	See §1910.1003						
Dimethoxymethane	109-87-5							
Dimethyl acetamide	127-19-5	10	35	15	50	-	-	X
Dimethylamine	124-40-3	10	18	10	50	-	-	-
Dimethylaminobenzene		See Xylidine						
Dimethylaniline (N-Dimethylaniline)	121-69-7	5	25	10	50	-	-	X
Dimethylbenzene		See Xylene						
Dimethyl-1, 2-dibromo-2,2-dichloroethyl phosphate	300-76-5	-	3	-	-	-	-	X
Dimethylformamide	68-12-2	10	30	20	60	-	-	X
2,6-Dimethyl-4-heptanone		See Diisobutyl ketone						
1,1-Dimethylhydrazine	57-14-7	0.5	1	1	2	-	-	X
Dimethylphthalate	131-11-3	-	5	-	10	-	-	-
Dimethyl sulfate	77-78-1	0.1	0.5	-	-	-	-	X
Dinitolmide (3,5-Dinitro-o-toluamide)	148-01-6	-	5	-	10	-	-	-

Limits for Air Contaminants¹ (Continued)

Substance	CAS No. ^b	Air Contaminant Limits**						Skin Designation
		PEL-TWA*		PEL-STEL ^a		PEL-CEILING		
		ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	
Dinitrobenzene (all isomers)	528-29-0	0.15	1	0.5	1	-	-	X
(alpha-)	99-65-0							
(meta-)	100-25-4							
(para-)								
Dinitro-o-cresol	534-52-1	-	0.2	-	0.6	-	-	X
Dinitrotoluene	25321-14-6	-	1.5	-	5	-	-	X
Dioxane (Diethylene dioxide)	123-91-1	25	90	-	-	-	-	X
Dioxathion (Delnav)	78-34-2	-	0.2	-	-	-	-	X
Diphenyl (Biphenyl)	92-52-4	0.2	1.5	0.6	4	-	-	-
Diphenylamine	122-39-4	-	10	-	20	-	-	-
Diphenylmethane diisocyanate		See Methylene bisphenyl isocyanate						
Dipropylene glycol methyl ether	34590-94-8	100	600	150	900	-	-	X
Dipropyl ketone	123-19-3	50	235	-	-	-	-	-
Diquat	85-00-7	-	0.5	-	1	-	-	-
Di-sec-octyl phthalate (Di-2-ethylhexyl-phthalate)	117-81-7	-	5	-	10	-	-	-
Disulfiram	97-77-8	-	2	-	5	-	-	-
Disulfoton	298-04-4	-	0.1	-	0.3	-	-	X
2,6-Di-tert-butyl-p-cresol	128-37-0	-	10	-	20	-	-	-
Diuron	330-54-1	-	10	-	-	-	-	-
Divinyl benzene	1321-74-0	10	50	-	-	-	-	-
Emery	112-62-9							
Total dust		-	10	-	-	-	-	-
Respirable fraction		-	5	-	-	-	-	-
Endosulfan	115-29-7	-	0.1	-	0.3	-	-	X
Endrin	72-20-8	-	0.1	-	0.3	-	-	X
Epichlorohydrin	106-89-8	2	8	-	-	-	-	X
EPN	2104-64-5	-	0.5	-	2	-	-	X
1,2-Epoxypropane		See Propylene oxide						
2,3-Epoxy-1-propanol		See Glycidol						
Ethanethiol		See Ethyl mercaptan						
Ethanolamine	141-43-5	3	8	6	15	-	-	-
Ethion	563-12-2	-	0.4	-	-	-	-	X
2-Ethoxyethanol	110-80-5	5	19	-	-	-	-	X
2-Ethoxyethyl acetate (Cellosolve acetate)	111-15-9	5	27	-	-	-	-	X
Ethyl acetate	141-78-6	400	1,400	-	-	-	-	-
Ethyl acrylate	140-88-5	5	20	25	100	-	-	X
Ethyl alcohol (Ethanol)	64-17-5	1,000	1,900	-	-	-	-	-

Limits for Air Contaminants¹ (Continued)

Substance	CAS No. ^b	Air Contaminant Limits**						Skin Designation
		PEL-TWA*		PEL-STEL ^a		PEL-CEILING		
		ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	
Ethylamine	75-04-7	10	18	-	-	-	-	-
Ethyl amyl ketone (5-Methyl-3-heptanone)	541-85-5	25	130	-	-	-	-	-
Ethyl benzene	100-41-4	100	435	125	545	-	-	-
Ethyl bromide	74-96-4	200	890	250	1,110	-	-	-
Ethyl butyl ketone (3-Heptanone)	106-35-4	50	230	75	345	-	-	-
Ethyl chloride	75-00-3	1,000	2,600	1,250	3,250	-	-	-
Ethyl ether	60-29-7	400	1,200	500	1,500	-	-	-
Ethyl formate	109-94-4	100	300	-	-	-	-	-
Ethyl mercaptan	75-08-1	0.5	1	-	-	-	-	-
Ethyl silicate	78-10-4	10	85	-	-	-	-	-
Ethylene chlorohydrin	107-07-3	-	-	-	-	1	3	X
Ethylenediamine	107-15-3	10	25	-	-	-	-	-
Ethylene dibromide	106-93-4	20	-	-	-	30	-	X
		See Exhibit B for operations excluded						
Ethylene dichloride	107-06-2	1	4	2	8	-	-	-
Ethylene glycol, vapor	107-21-1	-	-	-	-	50	125	-
Ethylene glycol dinitrate (EGDN) ¹	628-96-6	0.05	0.3	-	0.1	-	-	X
Ethylene glycol methyl acetate		See Methyl cellosolve acetate						
Ethylene imine	151-56-4	See §1910.1003						
Ethylene oxide	75-21-8	See §1910.1047						
Ethylidene chloride		See 1,1-Dichloroethane						
Ethylidene norbornene	16219-75-3	-	-	-	-	5	25	-
N-Ethylmorpholine	100-74-3	5	23	-	-	-	-	X
Fenamiphos	22224-92-6	-	0.1	-	-	-	-	X
Fensulfothion (Dasanit)	115-90-2	-	0.1	-	-	-	-	-
Fenthion	55-38-9	-	0.2	-	-	-	-	X
Ferbam	14484-64-1	-	-	-	-	-	-	-
Total dust		-	10	-	20	-	-	-
Respirable fraction		-	-	-	-	-	-	-
Ferrovandium dust	12604-58-9	-	1	-	3	-	-	-
Fibrous glass dust		-	10 ^h	-	-	-	-	-
Fluorides (as F)	Varies with compound	-	2.5	-	-	-	-	-
Fluorine	7782-41-4	0.1	0.2	-	-	-	-	-
Fluorotrichloromethane (Trichlorofluoromethane)	75-69-4	-	-	-	-	1,000	5,600	-
Fonofos	944-22-9	-	0.1	-	-	-	-	X
Formaldehyde	50-00-0	See §1910.1048						

Limits for Air Contaminants¹ (Continued)

Substance	CAS No. ^b	Air Contaminant Limits**						Skin Designation
		PEL-TWA*		PEL-STEL ^a		PEL-CEILING		
		ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	
Formamide	75-12-7	10	15	-	-	-	-	-
Formic acid	64-18-6	5	9	10	18	-	-	-
Furfural	98-01-1	2	8	-	-	-	-	X
Furfuryl alcohol	98-00-0	10	40	15	60	-	-	X
Gasoline	8006-61-9	300	900	-	-	-	-	-
Germanium tetrahydride	7782-65-2	0.2	0.6	0.6	1.8	-	-	-
Glutaraldehyde	111-30-8	-	-	-	-	0.2	0.7	-
Glycerin (mist)	56-81-5	-	-	-	-	-	-	-
Total dust		-	10	-	-	-	-	-
Respirable fraction	-	5	-	-	-	-	-	-
Glycidol	556-52-5	25	75	-	-	-	-	-
Glycol monoethyl ether		See 2-Ethoxyethanol						
Grain dust (oat, wheat, barley)	-	-	10	-	-	-	-	-
Graphite, natural respirable dust	7782-42-5	-	2.5	-	-	-	-	-
Graphite, synthetic	-	-	-	-	-	-	-	-
Total dust		-	10	-	-	-	-	-
Respirable fraction		-	5	-	-	-	-	-
GuthionR		See Azinphos methyl						
Gypsum	13397-24-5	-	-	-	-	-	-	-
Total dust		-	10	-	20	-	-	-
Respirable fraction	-	5	-	-	-	-	-	-
Hafnium	7440-58-6	-	-	0.5	-	1.5	-	-
Heptachlor	76-44-8	-	0.5	-	2	-	-	X
Heptane (n-Heptane)	142-82-5	400	1,600	500	2,000	-	-	-
Hexachlorobutadiene	87-68-3	0.02	0.24	-	-	-	-	-
Hexachlorocyclopentadiene	77-47-4	0.01	0.1	0.03	0.3	-	-	-
Hexachloroethane	67-72-1	1	10	-	-	-	-	X
Hexachloronaphthalene	1335-87-1	-	0.2	-	0.6	-	-	X
Hexafluoroacetone	684-16-2	0.1	0.7	0.3	2	-	-	X
n-Hexane	110-54-3	50	180	-	-	-	-	-
Hexane isomers	Varies with compound	500	1,800	-	-	-	-	-
2-Hexanone (Methyl n-butyl ketone)	591-78-6	5	20	-	-	-	-	-
Hexone (Methyl isobutyl ketone)	108-10-1	50	205	75	300	-	-	-
sec-Hexyl acetate	108-84-9	50	300	-	-	-	-	-
Hexylene glycol	107-41-5	-	-	-	-	25	125	-
Hydrazine	302-01-2	0.1	0.1	-	-	-	-	X
Hydrogenated Terphenyls	61788-32-7	0.5	5	-	-	-	-	-
Hydrogen bromide	10035-10-6	-	-	-	-	3	10	-

Limits for Air Contaminants¹ (Continued)

Substance	CAS No. ^b	Air Contaminant Limits**						Skin Designation
		PEL-TWA*		PEL-STEL ^a		PEL-CEILING		
		ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	
Hydrogen chloride	7647-01-0	-	-	-	-	5	7	-
Hydrogen cyanide	74-90-8	-	-	4.7	5	-	-	X
Hydrogen fluoride (as F)	7664-39-3	3	-	6	-	-	-	-
Hydrogen peroxide	7722-84-1	1	1.4	2	3	-	-	-
Hydrogen selenide (as Se)	7783-07-5	0.05	0.2	-	-	-	-	-
Hydrogen sulfide	7783-06-4	10	14	15	21	-	-	-
Hydroquinone	123-31-9	-	2	-	4	-	-	-
2-Hydroxypropyl acrylate	999-61-1	0.5	3	-	-	-	-	X
Indene	95-13-6	10	45	15	70	-	-	-
Indium and compounds (as In)	7440-74-6	-	0.1	-	0.3	-	-	-
Iodine	7553-56-2	-	-	-	-	0.1	1	-
Iodoform	75-47-8	0.6	10	1	20	-	-	-
Iron oxide dust and fume (as Fe)	1309-37-1	-	-	-	-	-	-	-
Total particulate		-	5	-	10	-	-	-
Iron pentacarbonyl (as Fe)	13463-40-6	0.1	0.8	0.2	1.6	-	-	-
Iron salts (soluble) (as Fe)Varies with compound		-	1	-	2	-	-	-
Isoamyl acetate	123-92-2	100	525	125	655	-	-	-
Isoamyl alcohol (primary and secondary)	123-51-3	100	360	125	450	-	-	-
Isobutyl acetate	110-19-0	150	700	187	888	-	-	-
Isobutyl alcohol	78-83-1	50	150	75	225	-	-	-
Isooctyl alcohol	26952-21-6	50	270	-	-	-	-	X
Isophorone	78-59-1	4	23	-	-	5	28	-
Isophorone diiso- cyanate	4098-71-9	0.005	0.045	0.02	-	-	-	X
2-Isopropoxyethanol	109-59-1	25	105	75	320	-	-	-
Isopropyl acetate	108-21-4	250	950	310	1,185	-	-	-
Isopropyl alcohol	67-63-0	400	980	500	1,225	-	-	-
Isopropylamine	75-31-0	5	12	10	24	-	-	-
N-Isopropylaniline	768-52-5	2	10	-	-	-	-	X
Isopropyl ether	108-20-3	250	1,050	310	1,320	-	-	-
Isopropyl glycidyl ether (IGE)	4016-14-2	50	240	75	360	-	-	-
Kaolin	-	-	-	-	-	-	-	-
Total dust		-	10	-	20	-	-	-
Respirable fraction		-	5	-	-	-	-	-

Limits for Air Contaminants¹ (Continued)

Substance	CAS No. ^b	Air Contaminant Limits**						Skin Designation
		PEL-TWA*		PEL-STEL ^a		PEL-CEILING		
		ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	
Ketene	463-51-4	0.5	0.9	1.5	3	-	-	-
Lead chromate, as Cr	7758-97-6	-	0.05	-	-	-	-	-
Lead inorganic (as Pb)	7439-92-1	See §1910.1025 and 1926.62						-
Limestone	1317-65-3							
Total dust		-	10	-	20	-	-	-
Respirable fraction		-	5	-	-	-	-	-
Lindane	58-89-9	-	0.5	-	1.5	-	-	X
Lithium hydride	7580-67-8	-	0.025	-	-	-	-	-
L.P.G. (Liquefied petroleum gas)	68476-85-7	1,000	1,800	1,250	2,250	-	-	-
Magnesite	546-93-0							
Total dust		-	10	-	20	-	-	-
Respirable fraction		-	5	-	-	-	-	-
Magnesium oxide fume	1309-48-4							
Total particulate		-	10	-	-	-	-	-
Malathion	121-75-5							
Total dust		-	10	-	-	-	-	X
Maleic anhydride	108-31-6	0.25	1	-	-	-	-	-
Manganese compounds (as Mn)	7439-96-5	-	-	-	-	-	5	-
Manganese fume (as Mn)	7439-96-5	-	1	-	3	-	-	-
Manganese cyclopentadienyl tricarbonyl (as Mn)	12079-65-1	-	0.1	-	0.3	-	-	X
Manganese tetroxide (as Mn)	1317-35-7	-	1	-	-	-	-	-
Marble (Calcium carbonate)	1317-65-3							
Total dust		-	10	-	20	-	-	-
Respirable fraction		-	5	-	-	-	-	-
Mercury (aryl and inorganic) (as Hg)	7439-97-6	-	-	-	-	-	0.1	X
Mercury (organo) alkyl compounds (as Hg)	7439-97-6	-	0.01	-	0.03	-	-	X
Mercury (vapor) (as Hg)	7439-97-6	-	0.05	-	-	-	-	X
Mesityl oxide	141-79-7	15	60	25	100	-	-	-
Methacrylic acid	79-41-4	20	70	-	-	-	-	X
Methanethiol		See Methyl mercaptan						-
Methomyl (Lannate)	16752-77-5	-	2.5	-	-	-	-	-
Methoxychlor	72-43-5							
Total dust		-	10	-	-	-	-	-

Limits for Air Contaminants¹ (Continued)

Substance	CAS No. ^b	Air Contaminant Limits**						Skin Designation
		PEL-TWA*		PEL-STEL ^a		PEL-CEILING		
		ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	
2-Methoxyethanol	150-76-5	See Methyl cellosolve						
4-Methoxyphenol								
Methyl acetate	79-20-9	200	610	250	760	-	-	-
Methyl acetylene (Propyne)	74-99-7	1,000	1,650	1,250	2,040	-	-	-
Methyl acetylene- propadiene mixture (MAPP)	-	1,000	1,800	1,250	2,250	-	-	-
Methyl acrylate	96-33-3	10	35	-	-	-	-	X
Methylacrylonitrile	126-98-7	1	3	2	6	-	-	X
Methylal (Dimethoxy- methane)	109-87-5	1,000	3,100	1,250	3,875	-	-	-
Methyl alcohol (methanol)	67-56-1	200	260	250	325	-	-	X
Methylamine	74-89-5	10	12	-	-	-	-	-
Methyl amyl alcohol		See Methyl isobutyl carbinol						
Methyl n-amyl ketone	110-43-0	50	235	-	-	-	-	-
N-Methyl aniline	100-61-8	0.5	2	1	5	-	-	X
Methyl bromide	74-83-9	5	20	15	60	-	-	X
Methyl n-butyl ketone		See 2-Hexanone						
Methyl cellosolve (2-Methoxyethanol)	109-86-4	5	16	-	-	-	-	X
Methyl cellosolve acetate (2-Methoxyethyl acetate)	110-49-6	5	24	-	-	-	-	X
Methyl chloride	74-87-3	50	105	106	205	200	-	-
Methyl chloroform (1,1,1-Trichloro- ethane)	71-55-6	350	1,900	450	2,450	-	-	-
Methyl 2-cyanoacrylate	137-05-3	2	8	4	16	-	-	-
Methylcyclohexane	108-87-2	400	1,600	500	2,000	-	-	-
Methylcyclohexanol	25639-42-3	50	235	75	350	-	-	-
o-Methylcyclohexanone	538-60-8	50	230	75	345	-	-	X
2-Methylcyclo- pentadienyl manganese tricarbonyl (as Mn)	12108-13-3	-	0.2	-	0.6	-	-	X
Methyl demeton	8022-00-2	-	0.5	-	1.5	-	-	X
4,4'-Methylene bis (2-chloroaniline) (MBOCA)	101-14-4	0.02	0.22	-	-	-	-	X
Methylene bis (4- cyclohexyliso- cyanate)	5124-30-1	-	-	-	-	0.01	0.11	-

Limits for Air Contaminants¹ (Continued)

Substance	CAS No. ^b	Air Contaminant Limits**						Skin Designation
		PEL-TWA*		PEL-STEL ^a		PEL-CEILING		
		ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	
Methylene chloride	75-09-2	See §1910.1052						
4,4'-Methylene dianiline;	101-77-9	See §1910.1050 and 1926.60						
Methyl ethyl ketone (MEK)		See 2-Butanone						
Methyl ethyl ketone peroxide (MEKP)	1338-23-4	-	-	-	-	0.2	1.5	-
Methyl formate	107-31-3	100	250	150	375	-	-	-
Methyl hydrazine (Mono-methyl hydrazine)	60-34-4	-	-	-	-	0.2	0.35	X
Methyl iodide	74-88-4	2	10	-	-	-	-	X
Methyl isoamyl ketone	110-12-3	50	240	-	-	-	-	-
Methyl isobutyl carbinol	108-11-2	25	100	-	-	-	-	X
Methyl isobutyl ketone		See Hexone						
Methyl isocyanate	624-83-9	0.02	0.05	-	-	-	-	X
Methyl isopropyl Ketone	563-80-4	200	705	-	-	-	-	-
Methyl mercaptan	74-93-1	0.5	1	-	-	-	-	-
Methyl methacrylate	80-62-6	100	410	-	-	-	-	-
Methyl parathion	298-00-0	-	0.2	-	0.6	-	-	X
Methyl propyl ketone		See 2-Pentanone						
Methyl silicate	681-84-5	1	6	-	-	-	-	-
α-Methyl styrene	98-83-9	50	240	100	485	-	-	-
Methylal	109-87-5							
Methylene bisphenyl isocyanate (MDI)	101-68-8	-	-	-	-	0.02	0.2	-
Metribuzin	21087-64-9	-	5	-	-	-	-	-
Mevinphos ^R		See Phosdrin						
Mica		See Silicates						
Molybdenum (as Mo)	7439-98-7							
Soluble compounds		-	5	-	10	-	-	-
Insoluble compounds								
Total dust		-	10	-	20	-	-	-
Monocrotophos (Azodrin ^R)	6923-22-4	-	0.25	-	-	-	-	-
Monomethyl aniline (N-Methylaniline)	100-61-8	0.5	2	-	-	-	-	X
Morpholine	110-91-8	20	70	30	105	-	-	X
Naled	300-76-5		-	3	-	6	-	X
Naphtha (Coal tar)	8030-30-6	100	400	-	-	-	-	-
Naphthalene	91-20-3	10	50	15	75	-	-	-
α-Naphthylamine	134-32-7	See §1910.1003						

Limits for Air Contaminants¹ (Continued)

Substance	CAS No. ^b	Air Contaminant Limits**						Skin Designation
		PEL-TWA*		PEL-STEL ^a		PEL-CEILING		
		ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	
β-naphthylamine	91-59-8	See §1910.1003						
Nickel carbonyl (as Ni)	13463-39-3	0.001	0.007	-	-	-	-	-
Nickel, metal and insoluble compounds (as Ni)	7440-02-0	-	1	-	-	-	-	-
Nickel, soluble compounds (as Ni)	7440-02-0	-	0.1	-	0.3	-	-	-
Nickel sulfide roasting, fume & dust, (as Ni)	-	-	1	-	-	-	-	-
Nicotine	54-11-5	-	0.5	-	1.5	-	-	X
Nitrapyrin	1929-82-4	-	10	-	20	-	-	-
Nitric acid	7697-37-2	2	5	4	10	-	-	-
Nitric oxide	10102-43-9	25	30	35	45	-	-	-
p-Nitroaniline	100-01-6	-	3	-	-	-	-	X
Nitrobenzene	98-95-3	1	5	2	10	-	-	X
p-Nitrochlorobenzene	100-00-5	0.1	0.6	-	-	-	-	X
4-Nitrodiphenyl	92-93-3	See §1910.1003						
Nitroethane	79-24-3	100	310	150	465	-	-	-
Nitrogen dioxide	10102-44-0	3	6	5	9.4	-	-	-
Nitrogen trifluoride	7783-54-2	10	29	15	45	-	-	-
Nitroglycerin (NG) ¹	55-63-0	-	-	-	0.1	-	-	X
Nitromethane	75-52-5	100	250	150	375	-	-	-
1-Nitropropane	108-03-2	25	90	35	135	-	-	-
2-Nitropropane	79-46-9	10	35	-	-	-	-	-
N-Nitrosodi- methylamine	62-75-9	See §1910.1003						
Nitrotoluene								
o-isomer	88-72-2;	2	11	-	-	-	-	X
m-isomer	99-08-1;	2	11	-	-	-	-	X
p-isomer	99-99-0	2	11	-	-	-	-	X
Nitrotrichloromethane		See Chloropicrin						
Nitrous oxide	10024-97-2	50	91	-	-	-	-	-
Nonane	111-84-2	200	1,050	250	1,300	-	-	-
Octachloronaphthalene	2234-13-1	-	0.1	-	0.3	-	-	X
Octane	111-65-9	300	1,450	375	1,800	-	-	-
Oil mist, mineral	8012-95-1-	5 ¹	-	10 ¹	-	-	-	-
Osmium tetroxide (as Os)	20816-12-0	0.0002		0.002	0.0006	0.006	-	-
Oxalic acid	144-62-7	-	1	-	2	-	-	-
Oxygen difluoride	7783-41-7	-	-	-	-	0.05	0.11	-
Ozone	10028-15-6	0.1	0.2	0.3	0.6	-	-	-
Paraffin wax fume	8002-74-2	-	2	-	6	-	-	-

Limits for Air Contaminants¹ (Continued)

Substance	CAS No. ^b	Air Contaminant Limits**						Skin Designation
		PEL-TWA*		PEL-STEL ^a		PEL-CEILING		
		ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	
Paraquat, respirable dust	1910-42-5 2074-50-2 4685-14-7	- - -	0.1 0.1 0.1	- - -	- - -	- - -	- - -	X X X
Parathion	56-38-2	-	0.1	-	0.3	-	-	X
Particulates not otherwise regulated	-	-	-	-	-	-	-	-
Total dust	-	-	10	-	-	-	-	-
Respirable fraction	-	-	5	-	-	-	-	-
Pentaborane	19624-22-7	0.005	0.01	0.015	0.03	-	-	-
Pentachloronaphthalene	1321-64-8	-	0.5	-	2	-	-	X
Pentachlorophenol	87-86-5	-	0.5	-	1.5	-	-	X
Pentaerythritol	115-77-5	-	-	-	-	-	-	-
Total dust	-	-	10	-	20	-	-	-
Respirable fraction	-	-	5	-	-	-	-	-
Pentane	109-66-0	600	1,800	750	2,250	-	-	-
2-Pentanone (Methyl propyl ketone)	107-87-9	200	700	250	875	-	-	-
Perchloroethylene (Tetrachloroethylene)	127-18-4	25	170	200	1,340	-	-	-
Perchloromethyl mercaptan	594-42-3	0.1	0.8	-	-	-	-	-
Perchloryl fluoride	7616-94-6	3	14	6	28	-	-	-
Perlite	-	-	-	-	-	-	-	-
Total dust	-	-	10	-	-	-	-	-
Respirable fraction	-	-	5	-	-	-	-	-
Petroleum distillates (Naphtha)	8002-05-9	400	1,600	-	-	-	-	-
Phenol	108-95-2	5	19	10	38	-	-	X
Phenothiazine	92-84-2	-	5	-	10	-	-	X
p-Phenylene diamine	106-50-3	-	0.1	-	-	-	-	X
Phenyl ether, vapor	101-84-8	1	7	2	14	-	-	-
Phenyl ether-biphenyl mixture, vapor	-	1	7	-	-	-	-	-
Phenylethylene	-	See Styrene		-	-	-	-	-
Phenyl glycidyl ether (PGE)	122-60-1	1	6	-	-	-	-	-
Phenylhydrazine	100-63-0	5	20	10	45	-	-	X
Phenyl mercaptan	108-98-5	0.5	2	-	-	-	-	-
Phenylphosphine	638-21-1	-	-	-	-	0.05	0.25	-
Phorate	298-02-2	-	0.05	-	0.2	-	-	X
Phosdrin (Mevinphos ^R)	7786-34-7	0.01	0.1	0.03	0.3	-	-	X

Limits for Air Contaminants¹ (Continued)

Substance	CAS No. ^b	Air Contaminant Limits**						Skin Designation
		PEL-TWA*		PEL-STEL ^a		PEL-CEILING		
		ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	
Phosgene (Carbonyl chloride)	75-44-5	0.1	0.4	-	-	-	-	-
Phosphine	7803-51-2	0.3	0.4	1	1.4	-	-	-
Phosphoric acid	7664-38-2	-	1	-	3	-	-	-
Phosphorus (yellow)	7723-14-0	-	0.1	-	0.3	-	-	-
Phosphorus oxychloride	10025-87-3	0.1	0.6	0.5	3	-	-	-
Phosphorus penta-Chloride	10026-13-8	-	1	-	3	-	-	-
Phosphorus penta-Sulfide	1314-80-3	-	1	-	3	-	-	-
Phosphorus trichloride	7719-12-2	0.2	1.5	0.5	3	-	-	-
Phthalic anhydride	85-44-9	1	6	-	-	-	-	-
m-Phthalodinitrile	626-17-5	-	5	-	-	-	-	-
Picloram	1918-02-1	-	-	-	-	-	-	-
Total dust		-	10	-	20	-	-	-
Respirable fraction		-	5	-	-	-	-	-
Picric acid	88-89-1	-	0.1	-	0.3	-	-	X
Pindone (2-Pivalyl-1,3-indandione)	83-26-1	-	0.1	-	0.3	-	-	-
Piperazine dihydrochloride	142-64-3	-	5	-	-	-	-	-
Plaster of Paris	26499-65-0	-	-	-	-	-	-	-
Total dust		-	10	-	-	-	-	-
Respirable fraction		-	5	-	-	-	-	-
Platinum (as Pt)	7440-06-4	-	-	-	-	-	-	-
Metal		-	1	-	-	-	-	-
Soluble salts		-	0.002	-	-	-	-	-
Portland cement	65997-15-1	-	-	-	-	-	-	-
Total dust		-	10	-	-	-	-	-
Respirable fraction		-	5	-	-	-	-	-
Potassium hydroxide	1310-58-3	-	-	-	-	-	2	-
Propane	74-98-6	1,000	1,800	-	-	-	-	-
Propargyl alcohol	107-19-7	1	2	3	6	-	-	X
β-Propiolactone	57-57-8	See §1910.1003						-
Propionic acid	79-09-4	10	30	15	45	-	-	-
Propoxur (Baygon)	114-26-1	-	0.5	-	2	-	-	-
n-Propyl acetate	109-60-4	200	840	250	1,050	-	-	-
n-Propyl alcohol	71-23-8	200	500	250	625	-	-	X
n-Propyl Nitrate	627-13-4	25	105	40	170	-	-	-
Propylene dichloride	78-87-5	75	350	110	510	-	-	-
Propylene glycol dinitrate (PGDN)	6423-43-4	0.05	0.3	0.1	0.6	-	-	X
Propylene glycol mono-methyl ether	107-98-2	100	360	150	540	-	-	-
Propylene imine	75-55-8	2	5	-	-	-	-	X

Limits for Air Contaminants¹ (Continued)

Substance	CAS No. ^b	Air Contaminant Limits**						Skin Designation
		PEL-TWA*		PEL-STEL ^a		PEL-CEILING		
		ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	
Propylene oxide	75-56-9	20	50	-	-	-	-	-
n-Propyl nitrate	627-13-4	25	105	40	170	-	-	-
Propyne		See Methyl acetylene						
Pyrethrum	8003-34-7	-	5	-	10	-	-	-
Pyridine	110-86-1	5	15	10	30	-	-	-
Quinone	106-51-4	0.1	0.4	0.3	1	-	-	-
Resorcinol	108-46-3	10	45	20	90	-	-	-
Rhodium (as Rh), metal fume and insoluble compounds	7440-16-6	-	0.1	-	-	-	-	-
Rhodium (as Rh), soluble compounds	7440-16-6	-	0.001	-	-	-	-	-
Ronnel	299-84-3	-	10	-	-	-	-	-
Rosin core solder pyrolysis products, as formaldehyde	-	-	0.1	-	0.3	-	-	-
Rotenone (commercial)	83-79-4	-	5	-	10	-	-	-
Rouge	-	-	-	-	-	-	-	-
Total dust		-	10	-	20	-	-	-
Respirable fraction		-	5	-	-	-	-	-
Rubber solvent (Naphtha)	-	400	1,600	-	-	-	-	-
Selenium compounds (as Se)	7782-49-2	0.2	-	-	-	-	-	-
Selenium hexafluoride (as Se)	7783-79-1	0.05	0.2	-	-	-	-	-
Sesone (Sodium 2,4- dichloro-phenoxy- ethyl sulfate)		See Crag herbicide						
Silane		See Silicone tetrahydride						
Silica, amorphous, precipitated and gel	-	-	6	-	-	-	-	-
Silica, amorphous, diatomaceous earth containing less than 1% crystalline silica	61790-53-2	6	-	-	-	-	-	-
Silica, crystalline cristobalite (as quartz), respirable dust	14464-46-1	See §1910.1053						
Silica, crystalline quartz (as quartz), respirable dust	14808-60-7	See §1910.1053						

Limits for Air Contaminants¹ (Continued)

Substance	CAS No. ^b	Air Contaminant Limits**						Skin Designation
		PEL-TWA*		PEL-STEL ^a		PEL-CEILING		
		ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	
Silica, crystalline tripoli (as quartz), respirable dust	1317-95-9	See §1910.1053						
Silica, crystalline tridymite (as quartz), respirable dust	15468-32-3	See §1910.1053						
Silica, fused, respirable dust	60676-86-0	-	0.1	-	-	-	-	-
Silicates (less than 1% crystalline silica)								
Mica (respirable dust)	12001-26-2	See Table Z-3						
Soapstone, total dust	-	See Table Z-3						
Soapstone, respirable dust	-	See Table Z-3						
Talc (containing asbestos): use asbestos limit	-	See §1910.1001						
Talc (containing no asbestos), respirable dust	14807-96-6	See Table Z-3						
Tremolite		See §1910.1001						
Silicon	7440-21-3							
Total dust		-	10	-	20	-	-	-
Respirable fraction		-	5	-	-	-	-	-
Silicon carbide	409-21-2							
Total dust		-	10	-	20	-	-	-
Respirable fraction		-	5	-	-	-	-	-
Silicon tetrahydride (Silane)	7803-62-5	5	7	-	-	-	-	-
Silver, metal and soluble compounds (as Ag)	7440-22-4	-	0.01	-	-	-	-	-
Soapstone		See Silicates						
Sodium azide (as HN ₃)	26628-22-8	-	-	-	-	0.1	-	X
(as NaN ₃)		-	-	-	-	-	0.3	X
Sodium bisulfite	7631-90-5	-	5	-	-	-	-	-
Sodium 2,4-dichlorophenoxyethyl sulfate		See Crag herbicide (see Sesone)						
Sodium fluoroacetate	62-74-8	-	0.05	-	0.15	-	-	X

Limits for Air Contaminants¹ (Continued)

Substance	CAS No. ^b	Air Contaminant Limits**						Skin Designation
		PEL-TWA*		PEL-STEL ^a		PEL-CEILING		
		ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	
Sodium hydroxide	1310-73-2	-	-	-	-	-	2	-
Sodium metabisulfite	7681-57-4	-	5	-	-	-	-	-
Starch	9005-25-8	-	-	-	-	-	-	-
Total dust		-	10	-	20	-	-	-
Respirable fraction		-	5	-	-	-	-	-
Stibine	7803-52-3	0.1	0.5	0.3	1.5	-	-	-
Stoddard solvent	8052-41-3	100	525	-	-	-	-	-
Strychnine	57-24-9	-	0.15	-	0.45	-	-	-
Styrene, monomer	100-42-5	50	215	100	425	-	-	-
Subtilisins (Proteolytic enzymes)	9014-01-1	-	-	-	0.00006 (60 min) ^d	-	-	-
Sucrose	57-50-1	-	-	-	-	-	-	-
Total dust		-	10	-	20	-	-	-
Respirable fraction		-	5	-	-	-	-	-
Sulfotep;		See TEDP						
Sulfur dioxide	7446-09-5	2	5	5	10	-	-	-
Sulfur hexafluoride	2551-62-4	1,000	6,000	1,250	7,500	-	-	-
Sulfuric acid	7664-93-9	-	1	-	3	-	-	-
Sulfur monochloride	10025-67-9	-	-	3	18	1	6	-
Sulfur pentafluoride	5714-22-7	-	-	0.075	0.75	0.01	0.1	-
Sulfur tetrafluoride	7783-60-0	-	-	0.3	1	0.1	0.4	-
Sulfuryl fluoride	2699-79-8	5	20	10	40	-	-	-
Sulprofos	35400-43-2	-	1	-	-	-	-	-
Systox ^R		See Demeton 2,4,5-T						
Talc		See Silicates						
Tantalum, metal and oxide dust	7440-25-7	-	5	-	10	-	-	-
TEDP (Sulfotep)	3689-24-5	-	0.2	-	0.6	-	-	X
Tellurium and compounds (as Te)	13494-80-9	-	0.1	-	-	-	-	-
Tellurium hexafluoride (as Te)	7783-80-4	0.02	0.2	-	-	-	-	-
Temephos	3383-96-8	-	-	-	-	-	-	-
Total dust		-	10	-	20	-	-	-
Respirable fraction		-	5	-	-	-	-	-
TEPP	107-49-3	0.004	0.05	0.01	0.2	-	-	X
Terphenyl	26140-60-3	-	-	-	-	0.5	5	-
1,1,1,2-Tetrachloro- 2,2-difluoroethane	76-11-9	500	4,170	625	5,210	-	-	-
1,1,2,2-Tetrachloro- 1,2-difluoroethane	76-12-0	500	4,170	625	5,210	-	-	-
1,1,2,2-Tetrachloro- ethane	79-34-5	1	7	-	-	-	-	X
Tetrachloroethylene		See Perchloroethylene						

Limits for Air Contaminants¹ (Continued)

Substance	CAS No. ^b	Air Contaminant Limits**						Skin Designation
		PEL-TWA*		PEL-STEL ^a		PEL-CEILING		
		ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	
Tetrachloromethane		See Carbon tetrachloride						
Tetrachloronaphthalene	1335-88-2	-	2	-	4	-	-	X
Tetraethyl lead (as Pb)	78-00-2	-	0.075k	-	0.3k	-	-	X
Tetrahydrofuran	109-99-9	200	590	250	735	-	-	-
Tetramethyl lead, (as Pb)	75-74-1	-	0.075k	-	0.5k	-	-	X
Tetramethyl succino- nitrile	3333-52-6	0.5	3	2	9	-	-	X
Tetranitromethane	509-14-8	1	8	-	-	-	-	-
Tetrasodium pyro- phosphate	7722-88-5	-	5	-	-	-	-	-
Tetryl (2,4,6- Trinitrophenyl- methyl-nitramine)	479-45-8	-	1.5	-	-	-	-	X
Thallium, soluble compounds (as Tl)	7440-28-0	-	0.1	-	-	-	-	X
4,4'-Thiobis (6-tert, butyl-m-cresol)	96-69-5							
Total dust		-	10	-	20	-	-	-
Respirable fraction		-	5	-	-	-	-	-
Thioglycolic acid	68-11-1	1	4	-	-	-	-	X
Thionyl chloride	7719-09-7	-	-	-	-	1	5	-
Thiram	137-26-8	-	1	-	-	-	-	-
Tin, inorganic compounds (except oxides) (as Sn)	7440-31-5	-	2	-	4	-	-	-
Tin, organic compounds (as Sn)	7440-31-5	-	0.1	-	0.2	-	-	X
Tin oxide (as Sn)	21651-19-4	-	2	-	4	-	-	-
Titanium dioxide	13463-67-7							
Total dust		-	10	-	20	-	-	-
Toluene (Toluol)	108-88-3	100	375	150	560	-	-	X
Toluene di- isocyanate (TDI)	584-84-9	0.005	0.04	0.02	0.15	-	-	-
m-Toluidine	108-44-1	2	9	-	-	-	-	X
o-Toluidine	95-53-4	5	22	-	-	-	-	X
p-Toluidine	106-49-0	2	9	-	-	-	-	X
Toxaphene		See Chlorinated camphene						
Tremolite		See Silicates						
Tributyl phosphate	126-73-8	0.2	2.5	0.4	5	-	-	-
Trichloroacetic acid	76-03-9	1	5	-	-	-	-	-
1,2,4-Trichlorobenzene	120-82-1	-	-	-	-	5	40	-
1,1,1-Trichloroethane		See Methyl chloroform						

Limits for Air Contaminants¹ (Continued)

Air Contaminant Limits**								
Substance	CAS No. ^b	PEL-TWA*		PEL-STEL ^a		PEL-CEILING		Skin Designation
		ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	
1,1,2-Trichloroethane	79-00-5	10	45	20	90	-	-	X
Trichloroethylene	79-01-6	50	270	200	1,080	-	-	-
Trichloromethane		See Chloroform						
Trichloronaphthalene	1321-65-9	-	5	-	10	-	-	X
1,2,3-Trichloropropane	96-18-4	10	60	75	450	-	-	X
1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1	1,000	7,600	1,250	9,500	-	-	-
Triethylamine	121-44-8	10	40	15	60	-	-	-
Trifluorobromomethane	75-63-8	1,000	6,100	1,200	7,300	-	-	-
Trimellitic anhydride	552-30-7	0.005	0.04	-	-	-	-	-
Trimethylamine	75-50-3	10	24	15	36	-	-	-
Trimethyl benzene	25551-13-7	25	125	35	170	-	-	-
Trimethyl phosphite	121-45-9	2	10	5	25	-	-	-
2,4,6-Trinitrophenyl		See Picric acid						
2,4,6-Trinitrophenylmethyl nitramine		See Tetryl						
2,4,6-Trinitrotoluene (TNT)	118-96-7	-	0.5	-	-	-	-	X
Triorthocresyl phosphate	78-30-8	-	0.1	-	-	-	-	X
Triphenyl amine	603-34-9	-	5	-	-	-	-	-
Triphenyl phosphate	115-86-6	-	3	-	6	-	-	X
Tungsten (as W)	7440-33-7	-	-	-	-	-	-	-
Insoluble compounds		-	5	-	10	-	-	-
Soluble compounds		-	1	-	3	-	-	-
Turpentine	8006-64-2	100	560	150	840	-	-	-
Uranium (as U)	7440-61-1	-	-	-	-	-	-	-
Soluble compounds		-	0.05	-	-	-	-	-
Insoluble compounds		-	0.2	-	0.6	-	-	-
n-Valeraldehyde	110-62-3	50	175	-	-	-	-	-
Vanadium	1314-62-1	-	-	-	-	-	-	-
Respirable dust (as V ₂ O ₅)		0.05	-	-	-	-	-	-
Fume (as V ₂ O ₅)		0.05	-	-	-	-	-	-
Vegetable oil mist	-	-	-	-	-	-	-	-
Total dust		10	-	-	-	-	-	-
Respirable fraction		5	-	-	-	-	-	-
Vinyl acetate	108-05-4	10	30	20	60	-	-	-
Vinyl benzene		See Styrene						
Vinyl bromide	593-60-2	5	20	-	-	-	-	-
Vinyl chloride	75-01-4	See §1910.1017						
Vinylcyanide		See Acrylonitrile						
Vinyl cyclohexene dioxide	106-87-6	10	60	-	-	-	-	X

Limits for Air Contaminants¹ (Continued)

Substance	CAS No. ^b	Air Contaminant Limits**						Skin Designation
		PEL-TWA*		PEL-STEL ^a		PEL-CEILING		
		ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	ppm ^c	mg/m ^{3d}	
Vinylidene chloride (1,1-Dichloro-ethylene)	75-35-4	1	4	-	-	-	-	-
Vinyl toluene	25013-15-4	50	240	100	485	-	-	-
VM & P Naphtha	8032-32-4	300	1,350	400	1,800	-	-	-
Warfarin	81-81-2	-	0.1	-	0.3	-	-	-
Welding fumes (total particulate)	-	-	5	-	-	-	-	-
Wood dust:								
Certain hardwoods as beech & oak	-	-	1	-	-	-	-	-
All soft woods, (except Western red cedar)	-	-	5	-	10	-	-	-
Wood dust, Western red cedar	-	-	2.5	-	-	-	-	-
Xylenes (o-, m-, p-isomers)	1330-20-7	100	435	150	655	-	-	X
m-Xylene α , α' -diamine	1477-55-0	-	-	-	-	-	0.1	X
Xylidine	1300-73-8	0.5	2.5	-	-	-	-	X
Yttrium	7440-65-5	-	1	-	3	-	-	-
Zinc chloride fume	7646-85-7	-	1	-	2	-	-	-
Zinc chromate (as CrO ₃)	Varies with Compound	-	0.01	-	-	-	0.1	-
Zinc oxide fume	1314-13-2	-	5	-	10	-	-	-
Zinc oxide	1314-13-2							
Total dust		-	10	-	-	-	-	-
Respirable fraction		-	5	-	-	-	-	-
Zinc stearate	557-05-1							
Total dust		-	10	-	20	-	-	-
Respirable fraction		-	5	-	-	-	-	-
Zirconium compounds (as Zr)	7440-67-2	-	5	-	10	-	-	-

Footnotes to Exhibit A:

Air Contaminant Rule Limits are the most restrictive of the federal limits, ACGIH limits and existing HIOSH limits.

* The PEL-TWA's are 7- to 8-hour TWA's, unless otherwise noted.

** Unless otherwise noted, employers in General Industry (i.e., those covered by Part 2 of the HIOSH standards) may use any combination of controls to achieve these limits, until December 31, 1992.

a. STEL duration is for 15 minutes, unless otherwise noted.

b. The CAS number is for information only. Enforcement is based on the substance name. For an entry covering more than one metal compound measured as the metal, the CAS number for the metal is given--not the CAS numbers for the individual compounds.

- c. Ppm are in parts of vapor or gas per million parts of contaminated air by volume at 25°C and 760 torr.
- d. Mg/m^3 are approximate milligrams of substance per cubic meter of air.
- e. The final benzene standard in section 1910.1028 applies to all occupational exposures to benzene except some sub segments of industry where exposures are consistently under the action level (e.g., distribution and sale of fuels, sealed containers and pipelines, coke production, oil and gas drilling and production, natural gas processing, and the percentage exclusion for liquid mixtures); for the excepted sub segments, the benzene limits in Exhibit B apply.
- f. Coal tar pitch volatiles mean the fused polycyclic hydrocarbons that volatilize from the distillation residues of coal, petroleum, (excluding asphalt, CAS 8052-42-4 and CAS 64742-93-4), wood, and other organic matter.
- g. Cotton dust refers to lint-free dust as measured by the vertical elutriator, cotton-dust sampler described in the Transactions of the National Conference on Dust, p. 33 by J.R. Lynch, (May 2, 1970). The PEL-TWA in the exhibit applies to respirable dust as measured by a vertical elutriator cotton dust sampler or equivalent instrument. The time-weighted average applies to the cotton waste processing operations of waste cycling (sorting, blending, cleaning, and willowing) and garreting. See also section 1910.1043.
- h. Fibrous glass dust means particles $<7\mu\text{m}$ in diameter.
- i. Oil mist as sampled by a method that does not collect vapor.
- j. Compliance with the Subtilisins PEL-TWA is assessed by sampling with a high volume sampler (600-800 liters per minute) for at least 60 minutes.
- k. For control of tetraethyl lead and tetramethyl lead in general room air, biologic monitoring is essential for personnel monitoring.
- l. Most Occupational exposures to EGDN actually involve mixtures of EGDN and nitroglycerin (NG). This EGDN:NG mixture has a PEL-STEL of 0.1 mg/m^3 .
- m. See Exhibit B from the exposure limits for any operations or sectors where the exposure limits in 29 C.F.R. §1910.1026 are stayed or otherwise not in effect.
- n. If the exposure limit in 29 C.F.R. §1910.1026 is stayed or is otherwise not in effect, the exposure limit is ceiling of 0.1 mg/m^3 .

EXHIBIT B (July 1, 2017)
MORE LIMITS FOR AIR CONTAMINANTS

Material	Industry Segments	Skin Designation	8-hour time-weighted average	Ceiling concentration
Benzene	(Z37.40-1969) ¹	-	10 ppm	25 ppm
Beryllium and Beryllium Compounds	(Z37.29-1970)	-	0.002 ppm	0.005 ppm
Chromic acid and Chromates (as CrO ₃) ²	(Z37.7-1971)			1mg/10m ³
Ethylene Dibromide	(Z37.31-1970)	X	20 ppm	30 ppm
Methyl chloride	(Z37.18-1969)	-	100 ppm	200 ppm

¹This standard applies to the industry segments exempt from the 1 ppm 8-hour TWA and 5 ppm STEL of the benzene standard at 29 C.F.R §1910.1028 This standard also applies to any industry for which 29 C.F.R §1910.1028 is stayed or otherwise not in effect.

²This standard applies to any operations or sectors for which the Hexavalent Chromium standard, 29 C.F.R §1910.1026 is stayed or otherwise is not in effect."

5. Chapter 12-110, Hawaii Administrative Rules, entitled "General Safety and Health Requirements", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 8

HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION

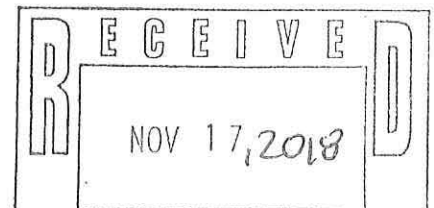
PART 3

CONSTRUCTION STANDARDS

CHAPTER 110

GENERAL SAFETY AND HEALTH REQUIREMENTS

\$12-110-1	Application
\$12-110-2	Safety and health programs
\$12-110-3	Safety and health inspections
\$12-110-4	Employee responsibilities
\$12-110-5	Removal of safety devices
\$12-110-6	Use of intoxicants or drugs
\$12-110-7	Requirements of competence
\$12-110-8	Requirement of quality



§12-110-1

§§12-110-9 to 12-110-49 (Reserved)
§12-110-50 Standards

Historical Note: Chapter 110 of title 12 is based upon chapter 201 of the Hawaii Occupational Safety and Health Standards, Rules and Regulations. [Eff 7/11/74; am 6/7/76; am 12/30/76]

§12-110-1 Application. The general requirements of any chapter in part 3 shall not be used when there are more specific requirements in any other chapter in part 3. For the purposes of this part, construction work means work for construction, alteration, demolition, or repair including painting and decorating, erection of new electric transmission and distribution lines and equipment, and the alteration, conversion, and improvement of the existing transmission and distribution lines and equipment. [Eff 7/12/82; am 8/5/88; am 11/2/12; comp] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-110-2 Safety and health programs. (a) Scope and application. This [~~standard~~] section shall apply to all employers with employees doing business in the State.

- (1) Every employer shall comply with the [~~State~~] state laws and standards regarding a safe place of employment and safe practices, and shall do everything reasonable and necessary to protect the life, safety, and health of the employees.
- (2) Employers involved with construction or related activities shall provide safe and healthful work places and practices that

protect the employees and the affected general public as well.

- (3) Every employer shall effect safe work places and practices by eliminating, mitigating, or protecting against existing or potential hazards. Elimination by design, process substitution, or other appropriate methods is preferred because it obviates the need for further employee protection.

Modification, using such methods as engineering or administrative controls, isolation, and guarding, shall be used to reduce existing hazards. When this mitigation is feasible, it shall be effected expeditiously, with personal protective equipment required until an acceptable reduction of the hazard in the situation or condition is reached. Whenever it is not feasible to eliminate or reduce hazards to acceptable levels or where hazards continue to exist, personal protective equipment shall be provided and used.

~~[Exception:]~~ Exception: Employers with less than ~~[25]~~ twenty-five (25) employees and not doing contract work with the State ~~[of Hawaii]~~ worth in excess of \$100,000 need not comply with subsection (b)(1) ~~[below]~~.

(b) Employer duties and responsibilities. An employer subject to this ~~[standard]~~ chapter shall meet the following requirements:

- (1) Written safety and health program.

(A) The employer shall institute and maintain an effective safety and health program to identify, evaluate and control workplace hazards. Employer safety and health programs that were developed prior to the promulgation of this standard may be used to satisfy this requirement so long as they meet the criteria for an acceptable program set forth in subparagraph (B) ~~[below]~~.

(B) The program shall at a minimum:

- (i) Set forth policies, procedures, and practices that recognize and protect employees from Occupational Safety and Health hazards.
- (ii) Establish and communicate a clear goal for the safety and health program and the mechanisms which will be utilized in meeting this goal.
- (iii) Provide for visible top management leadership in implementing the program and ensure that all workers at the site, including contract workers, are provided equally high quality safety and health protection, so that all will understand that management's commitment is serious.
- (iv) Provide for and encourage employee involvement in the structure and operation of the program and in decisions that affect their safety and health, so that they will commit their insight and energy to achieving the safety and health program's goal and objectives. Involvement shall be accomplished through employee collective bargaining units, where appropriate.
- (v) Assign and communicate responsibilities for all aspects of the safety and loss prevention program to managers, supervisors, and employees so that they all know and understand what is expected of them in the implementation of the program.
- (vi) Provide a system to hold managers, supervisors, and employees accountable for their

- (vii) responsibilities under the safety and health program.
- (viii) Provide a reliable system for employees to notify management personnel or safety and health committee members of conditions that appear hazardous or of [~~non-compliance~~] noncompliance with the terms of the safety and health program without fear of reprisal and provide a mechanism to ensure timely and appropriate responses to correct these conditions.
- (ix) Provide a mechanism to investigate accidents and "near miss" incidents, so that the root cause and means for preventing a recurrence are identified. For the purposes of this [~~rule,~~] chapter, the term "accident" means any unexpected happening that interrupts the work sequence or process and that may result in injury, illness, or property damage.
- (x) Provide a means to review injury and illness trends over time, so that patterns with common causes can be identified and eliminated.
- (xi) Establish a mechanism for the employer to conduct ongoing, periodic in-house safety and health inspections so that new or previously missed hazards or failures in controls are identified. Inspections shall be conducted with a frequency necessary to be effective but in no event with less frequency than that established in section 12-110-3.

- (xii) Address the impact of emergency situations and develop written plans and procedures to insure employee safety during emergencies. For the purpose of this standard, the term "emergency situation" means an unforeseen single event or combination of events that calls for immediate action to prevent, control, or contain injury or illness to person or damage to property.
 - (xiii) Establish procedures for transmitting and enforcing safe work practices in the workplace through training, positive reinforcement, such as a reward system, public recognition, etc., correction of unsafe performance, and, if necessary, reinforcement of work practices through a clearly defined and communicated disciplinary system.
- (C) The program shall be made available to the employees or their collective bargaining agent or both, upon request.
- (2) Safe work practices.
- (A) The employer shall eliminate or control all existing and potential hazards within the workplace in a timely manner, using one or more of the following:
 - (i) Engineering and work practice controls designed to control employee exposures to safety and health hazards by modifying the source to reduce exposure.
 - (ii) Administrative controls designed to control employee exposure to safety and health hazards.

- (iii) Requirements for the distribution and proper use of personal protective equipment.
 - (iv) A program of medical examinations or evaluations conducted by a qualified physician or health practitioner when required by a standard.
- (B) The employer shall ensure that practices are understood by all employees and are underscored through training, positive reinforcement, correction of unsafe performance, and, if necessary, through a clearly defined and communicated disciplinary system.
- (3) Periodic inspections. The employer shall conduct periodic in-house safety and health inspections so that new or previously missed hazards or failures in engineering, work practice, and administrative controls are identified. The in-house inspections will be conducted by individuals who are trained to recognize hazardous conditions, as members of the safety and health committee or a person designated and trained by the employer for the facility's safety and health program.
- (4) Safety and health training.
- (A) The employer shall develop and institute a safety and health-training program for all employees so they have an understanding of the hazards to which they may be exposed, and the procedures or practices needed to protect them from these hazards.
 - (B) In addition, supervisors and managers shall be trained in the elements of the employer's safety and health program and in the specific responsibilities assigned to them under the program.
 - (C) The employer shall ensure that the supervisors and managers understand

their responsibilities under the safety and health program and their importance to the safety and health of the workplace. In particular, the training for managers and supervisors shall enable them to:

- (i) Recognize potential hazards;
- (ii) Maintain safety and health protection in the work area; and
- (iii) Reinforce employee training on the nature of the potential hazards and required protective measures.

(c) The use of any machinery, tool, material, or equipment that is not in compliance with any applicable requirement of the standards of part 3 of this [~~title~~] subtitle is prohibited. The machine, tool, material, or equipment shall either be:

- (1) Identified as unsafe by tagging or locking the controls to render it inoperable; or
- (2) Removed from its place of operation.

(d) The employer shall permit only those employees qualified by training or experience to operate equipment and machinery.

(e) Accidents shall be reported in accordance with [~~§12-52-8.~~] chapter 12-52.1.

(f) Prime contractor and [~~sub-contractor~~] subcontractor responsibilities.

- (1) By contracting for full performance of a contract, the prime contractor assumes all obligations prescribed as employer responsibilities under the law, whether or not any part of the work is subcontracted.
 - (A) Where one contractor is selected to execute the work of a project, that contractor shall ensure compliance with the requirements of the standards of part 3 of this [~~title~~] subtitle from the contractor's own employees as well as from all [~~sub-contractor~~] subcontractor employees on the project.
 - (B) Where the owner-builder, acting as the general contractor, selects another

person or persons to perform the work of a project, the owner-builder shall be responsible, or shall designate one ~~[particular]~~ person to be responsible, for providing the general safeguarding as well as gaining compliance with the requirements of the standards of part 3 of this ~~[title]~~ subtitle from all other persons engaged in the operation of the project.

- (2) Independent of any prime contractor's responsibilities, the ~~[sub-contractor]~~ subcontractor has responsibility for occupational safety and health for the ~~[sub-contractor's]~~ subcontractor's operation. That is, the ~~[sub-contractor]~~ subcontractor accepts responsibility for the ~~[sub-contractor's]~~ subcontractor's portion of the work while the prime contractor assumes the entire responsibility for the project.
- (3) Where joint responsibility exists, both the prime and ~~[sub-contractors]~~ subcontractors are subject to the enforcement provisions of the law; therefore, because of possible overlapping responsibilities, both may be cited for violations.

(g) All safety devices and safeguards in use shall be kept sound and operable.

(h) Any employee having knowledge of the existence of any unsafe device, practice, operation, safeguard, equipment, or condition shall promptly report it to the supervisor or person in charge. A supervisor or person in charge to whose attention the existence of any unsafe device, practice, operation, safeguard, equipment, or condition is called shall take immediate steps to correct the unsafe condition or practice. [Eff 7/12/82; am 9/27/84; am 8/5/88; am 9/21/96; am and comp] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-110-3 Safety and health inspections. (a)

The general contractor of every construction or demolition project on which employees are engaged shall arrange to have inspections made during the period of the project for the purpose of assuring compliance with the Hawaii Occupational Safety and Health Law. Where there is no general contractor, the owner shall be responsible or shall designate one particular contractor to be responsible to perform the necessary safety inspections.

(b) Inspections shall be conducted with sufficient quality, frequency, and scope to identify recognized hazards and ensure their correction in order to prevent workplace injuries, illnesses and fatalities. At minimum, inspections shall be in accordance with this schedule:

- (1) Projects employing [~~1~~] one (1) to [~~99~~] ninety-nine (99) persons, at any single moment in the work day, shall have an employee assigned to make at least one inspection each workday;
- (2) Projects employing [~~100~~] one hundred (100) to [~~199~~] one hundred ninety-nine (199) persons shall have two employees assigned, each to make at least one inspection each work day; and
- (3) Projects employing [~~200~~] two hundred (200) or more persons shall have one additional designated employee for each [~~300~~] three hundred (300) persons above [~~199~~] one hundred ninety-nine (199) each to make at least one inspection each workday.

(c) Written records of the daily safety and health inspections shall be kept on the project site for review by the director for the duration of the project. Inspection records shall include, at minimum, the following:

- (1) The date and start time of the inspection;
- (2) The name of the employee conducting the inspection;
- (3) The scope (project areas) of the inspection, including the names of all contractors and

- subcontractors covered by the scope of the inspection;
- (4) A brief description of all potential and actual hazards noted during the inspection;
 - (5) Name and title of the person responsible for correcting the identified hazards noted during the inspection;
 - (6) Information regarding how the hazard was eliminated, corrected, or abated including the inspector's recommendations for preventing the recurrence of the hazards.
- (d) Warning signs shall be posted prohibiting unauthorized persons from operating potentially hazardous machines or equipment. [Eff 7/12/82; am 9/27/84; am 11/2/12; am and comp]
(Auth: HRS §396-4) (Imp: HRS §396-4)

§12-110-4 Employee responsibilities. The employee shall not knowingly perform work in an unsafe manner or in an unsafe environment without the safeguards prescribed by the standards in part 3 of this [~~title.~~] subtitle. The employee shall not tamper with or render ineffective any safety device or safeguard and shall use the safety devices provided for personal protection. [Eff 7/12/82; am 9/27/84; am and comp] (Auth: HRS §396-4)
(Imp: HRS §396-4)

§12-110-5 Removal of safety devices. No person shall remove, displace, damage, destroy, or carry off any safety device, safeguard, notice, or warning furnished for use in any employment or place of employment. [Eff 7/12/82; am 9/27/84; comp] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-110-6

§12-110-6 Use of intoxicants or drugs. No person shall be permitted to work under the influence of intoxicants or drugs and shall be removed from the work premises if found under the influence of intoxicants or drugs. [Eff 7/12/82; am 9/27/84; comp] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-110-7 Requirements of competence. When work is to be performed by or under the supervision of a designated person, that person shall have the degree of competence necessary to perform or direct the work in a safe manner. [Eff 7/12/82; comp] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-110-8 Requirement of quality. Materials, devices, structures, and methods and procedures of operation which are required in part 3 of this ~~[title]~~ subtitle and which are described by general descriptive terms such as adequate, proper, and sufficient, shall be of such kind and quality as a reasonable and prudent person experienced in the work, as appropriate, would require in order to effect a safe operation. [Eff 7/12/82; am 9/27/84; am and comp] (Auth: HRS §396-4) (Imp: HRS §396-4)

~~§12-110-9~~ §§12-110-9 to 12-110-49 Reserved.

§12-110-50 Standards. (a) Incorporation of federal standard. Title 29, Part 1926 of the Code of Federal Regulations, ~~[2012]~~ 2017 Edition published as of July 1, ~~[2012,~~ 2017, by the U.S. Government

Printing Office, U.S. Superintendent of Documents, Washington, DC 20402-0001, is made a part of this chapter except as provided in ~~[subsection]~~ subsections (b) through (e).

(b) State specific standards. The following standards are in effect in addition to subsection (a). Where standards on a particular item exist for both subsection (a) and this subsection, the standards contained in this subsection supersede the standards in subsection (a).

- (1) ~~[29 C.F.R. 1926.32]~~ 29 C.F.R. §1926.32 is amended by adding the following definitions:

"Barricades" means an obstruction to deter the passage of persons or vehicles.

"Dwelling" means any building that contains one or two dwelling units used, intended, or designed to be built, used, rented, leased, let or hired out to be occupied, or that are occupied for living purposes.

"Dwelling unit" means a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

"Infeasible" means that it is impossible to perform the work using all available means and methods or that it is technologically impossible to use safety equipment or safe practices.

"Residential construction" means construction work on detached one- and two-family dwellings and townhouses not more than three stories above grade plane in height.

~~["Signs" are the warnings of hazard, temporarily or permanently affixed or placed, at locations where hazards exist.]~~

"Signals" are moving signs, provided by workers, such as flaggers, or by devices, such as flashing lights, to warn of possible or existing hazards.

"Signs" are the warnings of hazard, temporarily or permanently affixed or placed, at locations where hazards exist.

"Tags" are temporary signs, usually attached to a piece of equipment or part of a structure, to warn of existing or immediate hazards.

"Townhouse" means a single-family dwelling unit constructed in a group of three or more attached units in which each unit extends from foundation to roof.

- (2) [~~29 CFR 1926.200(g)(2)~~] 29 C.F.R. §1926.200(g)(2) is amended to read as follows:

~~[(A)]~~ All traffic control signs or devices used for protection of construction workers shall conform to Part VI of the Manual of Uniform Traffic Control Devices (AMUTCD), Part VI of the Manual on Uniform Traffic Control Devices, Millennium Edition, December 2000, FHWA, which is incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and [~~1 CFR part 51.~~] 1 C.F.R. part 51. You may obtain a copy of the Millennium Edition from the following organizations: American Traffic Safety Services Association, 15 Riverside Parkway, Suite 100, Fredericksburg, VA 22406-1022; Telephone: 1-800-231-3475; FAX: (540) 368-1722; www.atssa.com; Institute of Transportation Engineers, 1099 14th Street, NW., Suite 300 West, Washington, DC 20005-3438; FAX: (202) 289-7722; www.ite.org; and American Association of State Highway and Transportation Officials; www.aashto.org; Telephone: 1-800-231-3475; FAX: 1-800-525-5562. Electronic copies of the MUTCD 2000 are available for downloading at <http://mutcd.fhwa.dot.gov/knomillennium>. The document is available for inspection at the OSHA Docket Office, Room N2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or at the Office of the Federal Register, 800 North

Capitol Street, NW., Suite 700, Washington, DC.

- (3) The following requirements [~~have been~~] are added to [~~29 CFR,~~] 29 C.F.R., Part 1926, Subpart R:
- (A) Personnel employed in steel erection shall always wear hard hats [~~at all times~~] while on the job site.
 - (B) Protective footwear as defined in ANSI Z41-1999, shall always be worn [~~at all times~~] while on the job site.
 - (C) Gloves, special protective clothing, respirators, and any other personal protective equipment shall be worn as necessary.
 - (D) There shall be maintained at the site a record of the identity of the Structural Engineer of Record (SER), all qualified persons and their area of expertise, and all competent persons for the steel erection activity.
 - (E) All approvals, certifications, authorizations, drawings, and plans required by this chapter shall be maintained onsite until all steel erection activity is completed.
- (4) The following definitions in [~~29 CFR 1926.751~~] 29 C.F.R. §1926.751 [~~have been~~] are amended to read as follows:

"Hole" means a gap or void more than [~~2~~] two (2) inches (5.1 cm) in its least dimension in a floor, roof, or other walking/working surface. Pre-engineered holes in cellular decking (for wires, cables, etc.) are not included in this definition. "Opening" means a gap or void [~~5~~] five (5) inches (12.7 cm) or more in its least dimension in a floor, roof, or other walking/working surface. For the purposes of this subpart, skylights and smoke domes that do not meet

the strength requirements of [~~section 1926.754(e)(3)~~] 29 C.F.R. §1926.754(e)(3) shall be regarded as openings.

- (5) [~~29 CFR 1926.752(a)~~] 29 C.F.R. §1926.752(a) is amended to read as follows:

Approval to begin steel erection. Before authorizing the commencement of steel erection, the controlling contractor shall ensure that there are steel erection drawings that are structure specific and a site-specific erection plan as required. In addition, the steel erector is to be provided with the following written notifications, including the documentation supporting the determinations:

- (A) The concrete in the footings, piers, and walls and the mortar in the masonry piers and walls has attained, on the basis of an appropriate ASTM standard test method of field-cured samples, either [~~75 percent~~] seventy-five (75) per cent of the intended minimum compressive design strength or sufficient strength to support the loads imposed during steel erection.
- (B) Any repairs, replacements, and modifications to the anchor bolts were conducted in accordance with [~~section 1926.755(b)~~] 29 C.F.R. §1926.755(b).

- (6) [~~29 CFR 1926.752(b)~~] 29 C.F.R. §1926.752(b) is amended to read as follows:

Commencement of steel erection. A steel erection contractor shall not erect steel unless it has received written notification and documentation supporting the determination that the concrete in the footings, piers, and walls or the mortar in the masonry piers and walls has attained, [~~on the basis of~~] based on an appropriate ASTM standard test method of field-cured

samples, either ~~[75]~~ seventy-five (75) percent of the intended minimum compressive design strength or sufficient strength to support the loads imposed during steel erection.

- (7) ~~[29 CFR 1926.752(d)]~~ 29 C.F.R. §1926.752(d) is amended to read as follows:

Pre-planning of overhead hoisting operations. All hoisting operations in steel erection shall be pre-planned by the controlling contractor to ensure that the requirements of ~~[section 1926.753(d)]~~ 29 C.F.R. §1926.753(d) are met.

- (8) ~~[29 CFR 1926.752(e)]~~ 29 C.F.R. §1926.752(e) is amended to read as follows:

~~[Site specific]~~ Site specific erection plan. Where employers elect, due to conditions specific to the site, to develop alternate means and methods that provide employee protection in accordance with ~~[sections]~~ [1926.753(c) (5), 1926.754(b) (1) & (2), 1926.756(a) (1), 1926.756(b), 1926.757(a) (2), 1926.757(a) (4), 1926.757(e) (4), or 12-110-50(c),] 29 C.F.R. §1926.753(c) (5), §1926.754(b) (1) and (2), §1926.756(a) (1), §1926.756(b), §1926.757(a) (2), §1926.757(a) (4), §1926.757(e) (4), or 12-110-50(c), a ~~[site specific]~~ site specific erection plan ~~[which]~~ that includes structure specific erection plans and drawings where applicable shall be developed by a qualified person and be available at the work site until all steel erection activity is completed. Guidelines for establishing a ~~[site specific]~~ site specific erection plan are contained in 29 C.F.R. 1926 Subpart R Appendix A ~~[to this section.]~~.

- (9) [~~29 CFR 1926.753(e)(1)(i)~~] 29 C.F.R. §1926.753(c)(1)(i) is amended to read as follows:

Cranes being used in steel erection activities shall be visually inspected prior to each shift by a competent person; the inspection shall include observation for potential deficiencies that may occur during operation. At a minimum this inspection shall include the following:

- (A) All control mechanisms for maladjustments;
- (B) Control and drive mechanism for excessive wear of components and contamination by lubricants, water, or other foreign matter;
- (C) Safety devices, including but not limited to boom angle indicators, boom stops, boom kick out devices, anti-two block devices, and load moment indicators where required;
- (D) Air, hydraulic, and other pressurized lines for deterioration or leakage, particularly those [~~which~~] that flex in normal operation;
- (E) Hooks and latches for deformation, chemical damage, cracks, or wear;
- (F) Wire rope reeving for compliance with hoisting equipment manufacturer's specifications;
- (G) Electrical apparatus for malfunctioning, signs of excessive deterioration, dirt, or moisture accumulation;
- (H) Hydraulic system for proper fluid level;
- (I) Tires for proper inflation and condition;
- (J) Ground conditions around the hoisting equipment for proper support, including ground settling under and around

outriggers, ground water accumulation, or similar conditions;

(K) The hoisting equipment for level position; and

(L) The hoisting equipment for level position after each move and setup.

- (10) [~~29 CFR 1926.753(c)(1)(iv)~~] 29 C.F.R. §1926.753(c)(1)(iv) is amended to read as follows:

The operator shall be responsible for those operations under the operator's direct control. Whenever there is any doubt as to safety, the operator shall have the authority to stop and refuse to handle loads, in accordance with section 12-57-7(b), until safety has been assured.

- (11) [~~29 CFR 1926.753(c)(5)(i)~~] 29 C.F.R. §1926.753(c)(5)(i) is amended to read as follows:

During the hoisting and placing of purlins and single joists when the rigger, who shall be a qualified rigger, has determined that safety latched on hooks are a greater hazard, or

- (12) [~~29 CFR 1926.753(d)(1)~~] 29 C.F.R. §1926.753(d)(1) is amended to read as follows:

Routes for suspended loads shall be pre-planned by the controlling contractor to ensure that no employee is required to work directly below a suspended load except for:

- (A) Employees engaged in the initial connection of the steel; or
- (B) Employees necessary for the hooking or unhooking of the load.

- (13) [~~29 CFR 1926.753(e)(2)~~] 29 C.F.R. §1926.753(e)(2) is amended to read as follows:

Components of the multiple lift rigging assembly shall be specifically designed and assembled with a maximum capacity for total assembly and for each individual attachment point. This capacity, certified by the manufacturer or a qualified rigger, shall be based on the manufacturer's specifications with a [~~5 to 1~~] five (5) to one (1) safety factor for all components. The written certification of the components of the multiple rigging assembly by the manufacturer or qualified rigger along with the documentation supporting the certification shall be made available at the site.

- (14) [~~29 CFR 1926.753(e)(4)(i)~~] 29 C.F.R. §1926.753(e)(4)(i) is amended to read as follows:

The multiple lift rigging assembly shall be rigged with members:
Attached at their center of gravity and maintained level such as by the use of tag lines[~~7~~].

- (15) [~~29 CFR 1926.754(b)~~] 29 C.F.R. §1926.754(b) is amended to read as follows:

The following additional requirements shall apply for [~~multi-story~~] multistory structures:

- (A) The permanent floors shall be installed as the erection of structural members progresses, and there shall be not more than eight stories between the erection floor and the upper-most permanent floor, except where the structural integrity is maintained as a result of the design and is included in the site-specific erection plan.
- (B) At no time shall there be more than four (4) floors or [~~48~~] forty-eight (48) feet (14.6 m), whichever is less,

of unfinished bolting or welding above the foundation or uppermost permanently secured floor, except where the structural integrity is maintained as a result of the design and is included in the site-specific erection plan.

- (C) A fully planked or decked floor or nets shall be maintained within two stories or ~~[30]~~ thirty (30) feet (9.1 m), whichever is less, directly under any erection work being performed.
- (16) ~~[29 CFR 1926.756(a)-(1)]~~ 29 C.F.R. §1926.756(a)(1) is amended to read as follows:

During the final placing of solid web structural members, the load shall not be released from the hoisting line until the members are secured with at least two (2) bolts per connection, of the same size and strength as shown in the erection drawings, drawn up wrench-tight or the equivalent as specified by the project structural engineer of record and contained in the ~~[site-specific]~~ site specific erection plan, except as specified in 29 C.F.R. §1926.756(b).

- (17) ~~[29 CFR 1926.756(b)]~~ 29 C.F.R. §1926.756(b) is amended to read as follows:

Diagonal bracing. Solid web structural members used as diagonal bracing shall be secured by at least one (1) bolt per connection drawn up wrench-tight or the equivalent as specified by the project structural engineer of record and contained in the ~~[site-specific]~~ site specific erection plan.

- (18) The following requirement ~~[has been]~~ is added to ~~[29 CFR 1926.756(c)]~~ 29 C.F.R. §1926.756(c):

If a seat or equivalent device is used, its use and the connection method shall be specified in the site-specific erection plan.

- (19) [~~29 CFR 1926.757(a)(2)(i)(D)~~] 29 C.F.R. §1926.757(a)(2)(i)(D) is amended to read as follows:

Be included in the structure specific erection drawings and site-specific erection plans.

- (20) [~~29 CFR 1926.757(a)(7)~~] 29 C.F.R. §1926.757(a)(7) is amended to read as follows:

No modification that affects the strength of a steel joist or steel joist girder shall be made without the written approval of the project structural engineer of record.

- (21) [~~29 CFR 1926.757(d)(6)(i)~~] 29 C.F.R. §1926.757(d)(6)(i) is amended to read as follows:

The bridging shall be indicated on the structure specific erection drawing;

- (22) [~~29 CFR 1926.760~~] 29 C.F.R. §1926.760 is amended to read as follows:

(A) General requirements.

- (i) Each employee including connectors, engaged in a steel erection activity who is on a walking/working surface with an unprotected side or edge [~~10~~] ten (10) feet (3.1 m) or more above a lower level shall be protected from fall hazards by guardrail systems, safety net systems, personal fall arrest systems, positioning device systems or fall restraint systems.
- (ii) Perimeter safety cables. On

multi-story structures, perimeter safety cables shall be installed at the final interior and exterior perimeters of the floors as soon as the metal decking has been installed. Perimeter safety cables shall meet the criteria for guardrail systems in 29 C.F.R. 1926 Subpart R Appendix G.

- (iii) Employees performing leading edge work in controlled decking zones shall be protected from fall hazards as provided in subparagraph (B).
- (B) Controlled Decking Zone (CDZ). A controlled decking zone may be established where fall protection systems as described in subparagraph ~~[(A)-(1)]~~ (A) (i) have been determined to be infeasible. The burden of proving infeasibility is that of the employer. For each CDZ, the following shall apply:
 - (i) Leading edge work is being performed at heights of ~~[10]~~ ten (10) feet (3.1 m) or more and up to ~~[30]~~ thirty (30) feet (9 m) above the next lower level.
 - (ii) The boundaries of a CDZ shall be designated and clearly marked by control lines or the equivalent.
 - (iii) Control lines provide a visible, tangible reference and constant reminder to employees working in a CDZ.
 - (iv) A control line for a CDZ shall be erected not less than ~~[6]~~ six (6) feet (1.8 m) nor more than ~~[90]~~ ninety (90) feet (27.4 m) from the leading edge.
 - (v) A control line for a CDZ shall not be more than ~~[90]~~ ninety (90) feet

- (37.4 m) wide.
- (vi) Control lines shall extend along the entire length on the unprotected or leading edge and are approximately parallel to the unprotected or leading edge.
 - (vii) Control lines consist of ropes, wires, tapes, or equivalent materials, and supporting structures such as guardrail system, wall, stanchion, or other suitable anchorage.
 - (viii) Each line shall have a minimum breaking strength of [~~200~~] two hundred (200) pounds [(90.0 kg)] ninety (90).
 - (ix) Each line shall be rigged and supported in such a way that its lowest point (including sag) is not less than [~~39~~] thirty-nine (39) inches (1.0 m) from the walking/working surface and its highest point is not more than [~~45~~] forty-five (45) inches (1.3 m) from the walking/working surface.
 - (x) A painted line on the walking/working surface is not equivalent to control lines and may not be used to demonstrate, define, or mark the boundary of a CDZ.
 - (xi) A sign or other warning indicator positioned at the entrance to a CDZ is not an equivalent to control lines and may not be used in lieu of control lines or its equivalent.
 - (xii) Each employee working in a CDZ shall have completed CDZ training in accordance with [~~section 1926.761~~] 29 C.F.R. §1926.761.

- (xiii) Each employee working in a CDZ shall have completed CDZ training in accordance with [~~section 1926.761~~] 29 C.F.R. §1926.761.
 - (xiv) Unsecured decking in a CDZ shall not exceed 3,000 square feet (914.4 m²).
 - (xv) Safety deck attachments (see definitions) shall be performed in the CDZ from the leading edge back to the control line and shall have at least two attachments for each metal decking panel.
 - (xvi) Final deck attachments and installation of shear connectors shall not be performed in the CDZ.
 - (xvii) A current and accurate list of employees who are authorized to work in the CDZ shall be maintained at the site. Authorized employees shall further be separately identified such that non-authorized access to the CDZ can be immediately noted and promptly addressed. Employees not authorized to work in the CDZ shall not be permitted to enter the CDZ.
- (C) Criteria for fall protection equipment.
- (i) Guardrail systems, safety net systems, personal fall arrest systems, positioning device systems, and their components shall conform to the criteria in 29 C.F.R. §1926.502 (see 29 C.F.R. 1926 Subpart R Appendix G [~~to this chapter~~]).
 - (ii) Fall arrest system components shall be used in fall restraint systems and shall conform to the criteria in 29 C.F.R. §1926.502

- (see 29 C.F.R. 1926 Subpart R Appendix G [~~to this chapter~~]), except that the anchorages for a fall restraint system shall be capable of supporting at least 3,000 lbs (4.5 kN) per employee attached. Either body belts or body harnesses shall be used in fall restraint systems.
- (iii) Perimeter safety cables shall meet the criteria for guardrail systems in 29 C.F.R. §1926.502 (see 29 C.F.R. 1926 Subpart R Appendix G [~~to this chapter~~]).
- (D) Custody of fall protection. Fall protection and fall protection components provided by the steel erector shall not remain in the area where steel erection activity has been completed, unless responsibility has been assumed by the controlling contractor or its authorized representative:
- (i) Has directed the steel erector to leave the fall protection in place; and
- (ii) Has inspected and accepted control and responsibility of the fall protection prior to authorizing persons other than steel erectors to work in the area.
- (23) [~~29 CFR 1926.761~~] 29 C.F.R. §1926.761 is amended to read as follows:

The following provisions are supplemental to the requirements regarding the hazards addressed in this chapter.

- (A) Training personnel. Training required by this section shall be provided by a qualified person(s).
- (B) Fall hazard training. The employer shall train each employee exposed to a

fall hazard in accordance with the requirements of this section. The employer shall institute a training program and ensure employee participation in the program.

- (i) The recognition and identification of fall hazards in the work area;
 - (ii) The use and operation of the fall protection systems to be used by the employer and in the systems that may be encountered on the jobsite; e.g., guardrail systems (including perimeter safety cable systems), personal fall arrest systems, positioning device systems, fall restraint systems, safety net systems, and other protection to be used;
 - (iii) The correct procedures for erecting, maintaining, disassembling, and inspecting the fall protection systems to be used;
 - (iv) The procedures to be followed to prevent falls to lower levels and through or into holes and openings in walking/working surfaces and walls; and
 - (v) The fall protection requirements of this chapter.
- (C) Falling object or [~~falling/flying~~ falling or flying load hazard training. The employer shall provide a training program for all employees exposed to falling object [~~and/or~~] or [~~falling/flying~~] falling or flying load hazards[-] or both. The program shall include training and instruction in the following areas:
- (i) How to recognize falling/flying objects hazards in the work area;
 - (ii) The consequences, including the

- likely injuries, from being hit or struck by falling/flying objects or loads;
- (iii) What means, methods, [~~and/or~~] or protective systems or combination will be used to provide protection from falling/flying objects or loads;
 - (iv) The employees' specific responsibilities with respect to identifying hazards, identifying when protective systems have been compromised, and what actions to take to assist in their own and other employees' safety.
- (D) Reliance on a third party provider of training. The employer may not rely on a third party or former employer of current employees unless the employer has determined through testing and evaluation of employees that the past training has met the requirements of this chapter. Generic training must be supplemented with site-specific information and an opportunity to practice using the equipment that is specific to the jobsite.
- (E) Retraining. When the employer has reason to believe that any affected employee has already been trained does not have the understanding and skill required by this chapter, the employer shall retrain or provide [~~re-training~~] retraining or additional training. Circumstances where retraining or additional training is required include, but [~~is~~] are not limited to, situations where:
- (i) Changes in the workplace render previous training obsolete; [~~or~~]
 - (ii) Changes in the types of fall protection systems or equipment

- to be used render previous training obsolete; or
- (iii) Inadequacies in an affected employees knowledge or use of fall protection systems, hazard controls, or equipment to be used indicate that the employee had not retained the requisite understanding or skill.
- (F) Special training programs. In addition to the training required in paragraphs (1) and (2), the employer shall provide special training to employees engaged in the following activities.
- (i) Multiple lift rigging procedure. The employer shall ensure that each employee who performs multiple lift rigging has been provided training in the ~~following areas:~~
 - ~~(a) The nature of the hazards associated with multiple lifts; and~~
 - ~~(b) The proper procedures and equipment to perform multiple lifts required by section 1926.753(e).]~~

nature of the hazards associated with multiple lifts, and the proper procedures and equipment to perform multiple lifts required by 29 C.F.R. §1926.753(c).
 - (ii) Connector procedures. The employer shall ensure that each connector has been provided training in the ~~following areas:~~
 - ~~(a) The nature of the hazards associated with connecting; and~~
 - ~~(b) The establishment, access, proper connecting techniques and work~~

- ~~practices required by sections 1926.756(c) and 12-110-50(p).]~~
nature of hazards associated with connecting as well as the establishment, access, proper connecting techniques, and work practices required by 29 C.F.R. §1926.756(c) and 12-110-50(p).
- (iii) Controlled Decking Zone Procedures. Where CDZs are being used, the employer shall assure that each employee has been provided training in the ~~following areas:~~
- (a) ~~The nature of the hazards associated with work within a controlled decking zone; and~~
- (b) ~~The establishment, access, proper installation techniques, and work practices required by sections 1926.760 and 1926.754(e).]~~
nature of the hazards of working within a controlled decking zone as well as the establishment, access, proper installation techniques, and work practices required by 29 C.F.R. §1926.754(c) and §1926.760.
- (G) Certification of training.
- [1] (i) The employer shall certify that each affected employee has been trained or evaluated and determined to be trained as required by this section.
- [2] (ii) The written certification record shall contain the name or other unique identity of the employee trained, the date(s) of the training or the evaluation of prior training, and the signature of the person who conducted the

training or the signature of the employer.

[3] (iii) The latest training certification shall be maintained and made readily available to employees, employee representatives and the director. [“]

(24) [~~29 CFR 1926.7~~] 29 C.F.R. §1926, Subpart R Appendix A, subsection (a) is amended to read as follows:

[~~(A)~~] General. This appendix serves as a guideline to assist employers who elect to develop a [~~site specific~~] site specific erection plan in accordance with [~~section 1926.752(e)~~] 29 C.F.R. §1926.752(c) with alternate means and methods to provide employee protection in accordance with [~~CFR sections 1926.752(e), 1926.753(e)(5), 1926.754(b)(1)&(2), 1926.756(a)(1), 1926.756(b), 12-110-50(b)(16),~~] 1926.757(a)(2), 1926.757(a)(4), [~~and~~] 1926.757(e)(4) 29 C.F.R. §1926.752(e), §1926.753(c)(5), §1926.754(b)(1)&(2), §1926.756(a)(1), §1926.756(b), §1926.757(a)(2), §1926.757(a)(4), §1926.757(e)(4) and 12-110-50(b)(16).

(25) [~~29 CFR 1926.1427(a)(4)~~] 29 C.F.R. §1926.1427(a)(4) is amended to read as follows:

[~~(A)~~] Whenever operator qualification or certification is required under 29 C.F.R. §1926.1427, the employer must provide the qualification or certification at no cost to operators who are employed by the employer on November 8, 2011.

(26) [~~29 CFR 1926.1427~~] 29 C.F.R. §1926.1427 is amended by the deletion of paragraphs (b), (c), and (d). Operators in Hawaii are required to be certified under the

requirements of chapter 12-48, Hawaii Administrative Rules.

- (27) [~~29 CFR 1926.1427(f)~~] 29 C.F.R. §1926.1427(f) is amended to read as follows with [~~29 CFR 1926.1427(f)(4)(i), (ii), and (iii)~~] 29 C.F.R. §1926.1427(f)(4)(i), (ii), and (iii) deleted:

[~~(A)~~] Continuous monitoring. The operator-in-training must be monitored by the operator's trainer at all times.

- (28) [~~29 CFR 1926.1427(k)(1)~~] 29 C.F.R. §1926.1427(k)(1) is amended to read as follows:

[~~(A)~~] The provisions of this section are applicable November 8, 2011. [~~operators~~] Operators who were not required to be certified under [~~Chapter 45~~] chapter 48, Hawaii Administrative Rules, as of May 18, 2011 must comply with [~~paragraph~~] subsection (f) beginning November 9, 2012.

- (29) [~~29 CFR 1926.1427(k)~~] 29 C.F.R. §1926.1427(k) is amended by the deletion of subparagraph (k)(2).

- (30) [~~29 CFR 1926.1430 (c)(2)~~] 29 C.F.R. §1926.1430 (c)(2) is amended to read as follows:

[~~(A)~~] Transitional Period. During the [~~one-year phase-in~~] one year phase in period for operator certification or qualification, as provided in 29 C.F.R. §1926.1427(k), employers must train each operator which has not yet been certified or qualified in the areas addressed in 29 C.F.R. §1926.1427(j)." [Eff 2/13/12; am 11/2/12; am and comp) (Auth HRS §396-4) (Imp: HRS §396-4)

Historical Note: Section §12-110-50 is based substantially upon Part 3. [Eff 2/26/93, am 11/5/93,

§12-110-50

am 7/25/94, am 8/10/95, am 1/26/96, am 9/21/96, am
11/16/96, am 2/8/97, am 10/23/97, am 7/6/98, am
3/29/99, am 12/29/00, am 1/10/03, am 5/21/04, am
5/5/05, am 9/1/05, am 3/31/06, am 12/21/06, am
4/19/07, am 8/26/07, am 5/2/08, am 7/27/09; R 2/13/12]

6. Chapter 12-170, Hawaii Administrative Rules, entitled "Shipyards", is amended and compiled to read as follows:

"HAWAII ADMINSTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 8

HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION

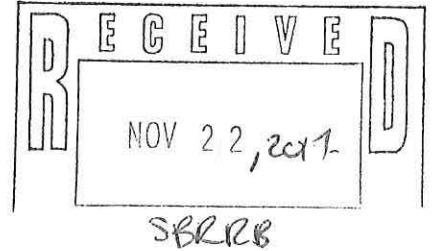
PART 5

OCCUPATIONAL SAFETY AND HEALTH STANDARDS
FOR SHIPYARD EMPLOYMENT

CHAPTER 170

SHIPYARDS

§12-170-1 Incorporation by reference [of federal standard]



§12-170-1 Incorporation of federal standard. Title 29, Part 1915 of the Code of Federal Regulations, [2012] 2017 Edition published as of July 1, [2012] 2017, by the U.S. Government Printing Office, U.S. Superintendent of Documents, Washington, DC 20402-0001, is made a part of this chapter." [Eff 3/23/01; am 1/10/03; am 9/01/05; am 3/31/06; am 12/21/06; am 4/19/07; am 8/26/07; am 5/02/08; am 7/27/09; am 2/13/12; am 11/2/12; am and Comp] (Auth: HRS §396-4) (Imp: HRS §396-4)

7. Chapter 12-180, Hawaii Administrative Rules, entitled "Marine Terminals", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 8

HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION

PART 6

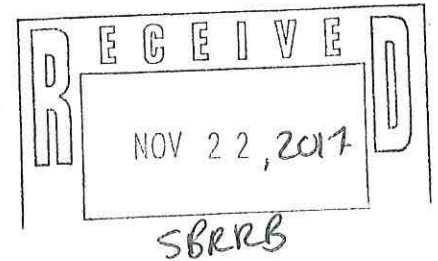
MARINE TERMINALS

CHAPTER 180

MARINE TERMINALS

§12-180-1 ~~Incorporation by reference~~ [of federal standard]

§12-180-1 Incorporation of federal standard.
Title 29, Part 1917 of the Code of Federal



Regulations, [~~2012~~] 2017 Edition published as of July
1, [~~2012~~] 2017, by the U.S. Government Printing
Office, U.S. Superintendent of Documents, Washington,
DC 20402-0001, is made a part of this chapter." [Eff
3/23/01; am 12/21/06; am 5/02/08; am 7/27/09; am
2/13/12; am 11/2/12; am and comp]
(Auth: HRS §396-4) (Imp: HRS §396-4)

8. Chapter 12-190, Hawaii Administrative Rules, entitled "Safety and Health Regulations for Longshoring", is amended and compiled to read as follows:

"HAWAII ADMINSTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 8

HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION

PART 7

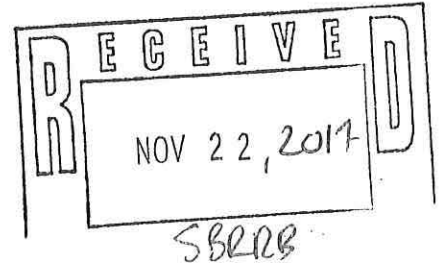
SAFETY AND HEALTH REGULATIONS FOR LONGSHORING

CHAPTER 190

LONGSHORING

§12-190-1 Incorporation by reference [of federal standard]

§12-190-1 Incorporation of federal standard.
Title 29, Part 1917 of the Code of Federal Regulations, [~~2012~~] 2017 Edition published as of July



§12-190-1

1, [~~2012,~~] 2017, by the U.S. Government Printing Office, U.S. Superintendent of Documents, Washington, DC 20402-0001, is made a part of this chapter." [Eff 3/23/01; am 12/21/06; am 5/02/08; am 7/27/09; am 2/13/12; am 11/2/12; am and comp]
(Auth: HRS §396-4) (Imp: HRS §396-4)

9. Chapter 12-208, Hawaii Administrative Rules, entitled "Other Safety and Health Standards", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 8

HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION

PART 8

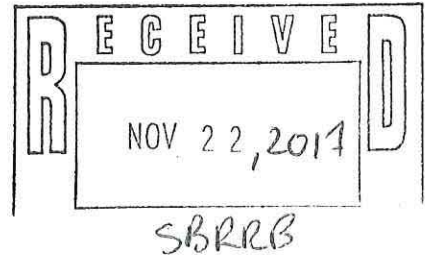
OTHER SAFETY AND HEALTH STANDARDS

CHAPTER 208

OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR AGRICULTURE

§12-208-1 Incorporation of federal standard

Historical note: Chapter 12-208 is based substantially upon section 12-67.2-1 [Eff 12/29/01; R 2/13/12], section 12-73.1-1 [Eff 12/29/01; am 4/29/02; am 12/21/06; am 4/19/07; R 2/13/12], and section 12-80.1-1 [Eff 12/29/01; R 2/13/12]



§12-208-1

§12-208-1 Incorporation of federal standard.

Title 29, Part 1928 of the Code of Federal Regulations, [~~2011~~] 2017 Edition published as of July 1, [~~2011,~~] 2017, by the U.S. Government Printing Office, U.S. Superintendent of Documents, Washington, DC 20402-0001, is made a part of this chapter." [Eff 2/13/12; am and comp] (Auth: HRS §396-4) (Imp: HRS §396-4)

10. Material, except source notes, to be repealed is bracketed and stricken. New material is underscored.

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

12. These amendments to and compilation of chapters 12-50, 12-52.1, 12-56, 12-60, 12-110, 12-170, 12-180, and 12-190, 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.

LINDA CHU TAKAYAMA
Director of Labor and
Industrial Relations

APPROVED AS TO FORM:

Deputy Attorney General

IV. New Business

B. Discussion and Action on Proposed Amendments to the Department of Transportation's HAR Chapter 20.1, Commercial Services at Public Airport, and HAR Chapter 38.1, On-Demand Taxi Service At Public Airports, submitted by Ms. Dale Evans, CEO, Charley's Taxi and Limousine

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

APPROVED:

Benjamin J. Cayetano

BENJAMIN J. CAYETANO
Governor
State of Hawaii

Date: 4/24/02

APPROVED AS TO FORM:

James B. Smith

Deputy Attorney General

Filed: APR 24 2002

2 45 5

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.

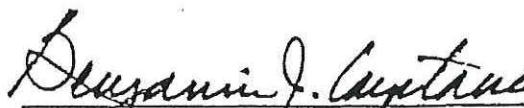
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OFFICE

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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

V. Legislative Matters

- A. Discussion and Action on the Delegation of Authority to Board Member(s) and/or Staff to Submit Testimony and/or Testify on behalf of the Board during the 2018 Hawaii State Legislative Session

No Handouts

V. Legislative Matters

- A. Discussion and Action on the Delegation of Authority to Board Member(s) and/or Staff to Submit Testimony and/or Testify on behalf of the Board during the 2018 Hawaii State Legislative Session

No Handouts

VI. Administrative Matters

A. Discussion and Action on the Board's Draft 2017 Annual Report Summary for Submission to the Hawaii State Legislature pursuant to Section 201M-5(f), HRS



**HAWAII SMALL BUSINESS
REGULATORY REVIEW
BOARD
ANNUAL REPORT SUMMARY**

Results for Calendar Year 2017 - DRAFT

**Recommendations and Review of Administrative
Rules, Legislation**

and

**Requests from Small Business Owners for Review
of Any Rule Adopted by a State Agency**

In Compliance with

Chapter 201M, Hawaii Revised Statutes

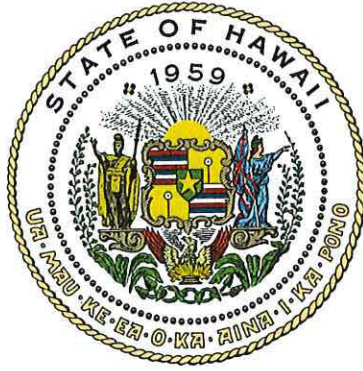
HAWAII SMALL BUSINESS REGULATORY REVIEW BOARD

ANNUAL REPORT SUMMARY 2017

Table of Contents

Table of Contents	1
SECTION I	2
Message from the Director	3
Message from the Chair	4
Overview.....	5
Annual Summary.....	6
Small Business Regulatory Flexibility Act.....	6
Administrative Rule Review.....	7-13
Legislative Activity.....	13
Small Business Impact Statement <i>and</i> Governor’s Administrative Directive No. 09-01.....	13-14
Chairperson / Board Members	14-16
Activities and Projects	16-20
Requests from Small Business For Review of Any Rule Adopted by a State Agency	21-23
SECTION II	24
Legislative Review.....	25-28
Appendix.....	29
Chapter 201M, Hawaii Revised Statutes – Appendix 1.	30-40
Administrative Rule Review Matrix – Appendix 2	41-42
Administrative Directive No. 09-01 – Appendix 3	43-47

SECTION I



MESSAGE FROM THE DIRECTOR



On behalf of the Department of Business, Economic Development & Tourism, I continue to support each and every member of the Small Business Regulatory Review Board as I believe in this Board's mission.

Thank you, members, for your hard work and dedication to Hawaii's small business community.

Luis P. Salaveria
Director

SMALL BUSINESS REGULATORY REVIEW



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Members

Anthony Borge
Chair
Oahu

Robert Cundiff
Vice Chair
Oahu

Garth Yamanaka
2nd Vice Chair
Hawaii County

Harris Nakamoto
Oahu

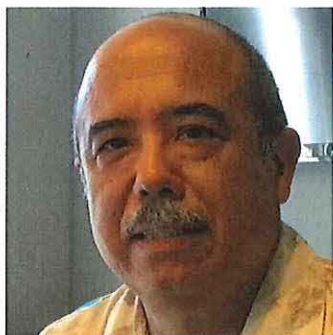
Nancy Atmospera-Walch
Oahu

Kyoko Kimura
Maui

Reg Baker
Oahu

Director, DBEDT
Voting Ex Officio

MESSAGE FROM THE CHAIR



Anthony Borge, Chair, 2017

This year, we continue to be blessed with an outstanding team of volunteer board members who persevere toward our mission of enabling a regulatory environment that encourages and supports the vitality of small business in Hawaii.

I would like to recognize and thank each of our dedicated board members who have continued to donate unselfish hours and time away from their families and businesses, sharing their invaluable business knowledge to improve and enhance the growth and success of small businesses throughout the State.

This year, we welcomed one new member, Mr. Reg Baker, whom we are very happy to have on our team. The Board consistently meets every month to address, collaborate, and provide timely responses to the Governor, State and County agencies, and small businesses.

On behalf of all the Small Business Regulatory Review Board members, I once again, would like to extend a big Mahalo to Governor David Ige, Director Luis Salaveria for his steadfast support, the State Legislature, and all those State and County Agencies that come before this Board to discuss proposed and amended regulations that have a potential to negatively impact small business.

OVERVIEW

The Small Business Regulatory Review Board is pleased to provide the Annual Report Summary for the period covering January 2017 through December 2017.

Pursuant to the Hawaii Small Business Regulatory Flexibility Act, Chapter 201M, Hawaii Revised Statutes, the annual summary is based on the following:

[201M-5] Small business regulatory review board; powers

(f) The board shall submit an annual report to the legislature twenty days prior to each regular session detailing any requests from small business owners for review of any rule adopted by a state agency, and any recommendations made by the board to an agency or the legislature regarding the need for a rule change or legislation. The report shall also contain a summary of the comments made by the board to agencies or the legislature regarding its review of any proposed new or amended rules.

ANNUAL SUMMARY

SMALL BUSINESS REGULATORY FLEXIBILITY ACT

The Small Business Regulatory Review Board was established on July 1, 1998, with the passage of the Small Business Regulatory Flexibility Act, pursuant to Act 168. Subsequently, the role of the Board has been codified in Chapter 201M, Hawaii Revised Statutes (HRS), as amended. (Appendix 1)

Statutorily, the Board is comprised of eleven members, ten current or former owners or officers of businesses from across the State and the Director of Business, Economic Development, and Tourism (DBEDT) or the Director's designated representative who serves as an "ex officio" voting member. The Board is administratively attached to DBEDT and has responsibility for providing recommendations to State agencies on new and amended administrative rules that directly impact small business. The Board is also charged with reviewing existing rules upon the request from small business owners or at the Board's initiative. For requests regarding County ordinances, the Board may make recommendations to County Council or the Mayors for appropriate action.

In addition to reviewing rules and regulations, members volunteer their time performing outreach activities to small business organizations such as the local Chambers of Commerce, and testifying on legislation. The Board also has the power to solicit testimony from the public regarding any reports submitted by State departments.

As an effective and efficient means of review, each member is assigned to one or more State department as a "discussion leader" and is responsible for the initial review of the administrative rules of that department prior to consideration by the full Board. As of December 2017, the Board was operating with eight members.

ADMINISTRATIVE RULE REVIEW

During 2017, the Board reviewed and made recommendations on **XX** new and amended rules to State and County Agencies, both pre- and post-public hearing.

Since its inception, the Board reviewed a total of **XX** sets of proposed new and amended administrative rules. (Appendix 2)

Department / County	Chapter / Section Number	Title	Proceed to Public Hearing (Pre- Public Hearing)	Proceed to Adoption (Post Public Hearing)	Other Recommendation(s)
<i>Department of Accounting & General Services – Title 3</i>	181.1	International Energy Conservation Code, 2015 Edition		X	
	182.1	State Electrical Code		X	
	44.1	Testing, Certifying, and Credentialing Individuals Who Perform Maintenance and Testing of Portable Fire Extinguishers, Fire Protection Systems, and Fire Alarm Systems		X	
<i>Department of Agriculture – Title 4</i>	143	Standards of Coffee	X		
	161	Hawaii-Grown Industrial Hemp	X	X	
<i>Department of Business, Economic Development & Tourism – Title 15</i>	210	Rules, Regulations, Charges and Fees for Public Parks		X	
	37	Solar Water Heater Variance	X		
	218	Kakaako Reserved & Workforce Housing Rules		X	
<i>Department of Health – Title 11</i>	50	Food Safety Code		X	
	103	Licensure and Certification Fees for Health Care Facilities and Agencies	X		
	55	Water Pollution Control	X		The SBRRB members commended DOH's Clean Water Branch for its

	157	Examination and Immunization	X		pro-active streamlining of the rule amendments.
Department of Labor & Industrial Relations – Title 12	Subtitle 7, Chapter 41	Hawaii Labor Relations Board – Rules of Practice and Procedure		NA (Twice heard after public hearing)	1) After the public hearing, the Board sent a memo to the Governor with a copy to the rule-drafting agency requesting that the adoption of the proposed amendments be delayed until the next Board’s meeting scheduled for March 15, 2017, for the following reasons: 1) the amendments may have a significant, negative impact on small businesses; 2) copies of the testimonies from the stakeholders at the public hearing were not received by this Board; and 3) stakeholders were not available for questioning at the Board’s meeting. 2) After reviewing the amendments at a second meeting, the Board opposed the amendments due to the proposal’s significant, negative impact on small business and because the reasoning for the amendments is unclear to the Board.
	Chapter 15 Section 90	Workers’ Compensation Medical Fee Schedule and Exhibit A	X	X	
	Subtitle 8, Hawaii Occupational Safety and Health Division	Part 1, General Legal and Administrative Provisions for Occupational Safety and Health Chapter 50, General Provisions and Definitions Chapter 52.1, Recording and Reporting Occupational Injuries and Illnesses Chapter 56, Program Fees and Library Policies, General Safety and Health Requirements Part 2, General Legal and Administrative Provisions for Occupational Safety and Health Chapter 60, General Safety and Health Requirements Part 3, Construction Standards Chapter 110, General Safety and Health Requirements			

		Part 5, Occupational Safety and Health Standards for Shipyard Employment Chapter 180, Shipyards Part 6, Marine Terminals Chapter 180, Marine Terminals Part 7, Safety and Health Regulations for Longshoring Chapter 190, Longshoring Part 8, Other Safety and Health Standards Chapter 208, Other Safety and Health Standards			
Department of Land & Natural Resources – Title 13	Sub-Title, 167	Rules of Practice and Procedure for the Commission on Water Resource Management	X		
	Subtitle 168	Water Use, Wells, and Stream Diversion Works	X		
	Subtitle 169	Protection of Instream Uses of Water	X		
	Chapter 16	Relating to Conveyances			
	Subtitle 11, Ocean Recreation and Coastal areas, Part I, Small Boat Harbors and Other Boating Facilities	Chapter 230, 231, 232, 233, 235	X	X	
	Subtitle 11, Part II, Boating	Chapter 240, 242, 243, 244, 245	X	X	
	Subtitle 11, Part III, Ocean Waters, Navigable Streams & Beaches	Chapter 250, 251, 253, 254, 255, 256	X	X	
	74	License & Permit Provisions and Fees for Fishing, Fish, and Fish Products			
Department of Public Safety – Title 23	Chapter 200	Regulations of Controlled Substances		X	
	Chapter 201	Regulated Chemicals for the Manufacture of Controlled Substances		X	

Department of Taxation – Title 18	Chapter 231, Administration of Taxes Section 3-14.17	Amendments to Revocation of Licenses Because of Abandonment	X	X	The Board recommended that in order for DoTax to obtain more feedback, commentary, and participation from small business taxpayers that it consider sending out email broadcasts to those licensed businesses in DoTax’s database and also to involve Hawaii chambers of commerce and trade associations so these organizations can disseminate the solicited commentary to their members.
	New Section 3-14.26	Registration of Representatives	X	X	
	Section 9.9-03	Amendments to Taxpayers Subject to EFT Program	X	X	
	Section 8.6	Amendments to County Surcharge	X		
	New Section 29.53	Exported Services	X		
	Chapter 231, Administration of Taxes, Section 25.5-02(f)	Cost Recovery Fees for Collection Actions	X		
	Chapter 237, General Excise Tax Law, Section 34-13	Persons with a Material Interest in a Tax Return	X		
	Chapter 237D, Transient Accommodations Tax, Section 4-01	Certificate of Registration	X		
	Section 4-02	Display of the Registration Certificate	X		
	Repeal of Sections 4-03 to 4-07		X		
Proposed New Sections 4-08 to 4-34		X			
Department of Transportation – Title 19	Chapter 44	Rules Relating to Service Procedures, Charges, Tools and Fees	X		The Board recommended that DOT-Harbors Division make an effort to engage Hawaii small businesses that will be impacted by the proposed fee increases through the outreach of business organizations and trade associates, such as the Chamber of Commerce of Hawaii.
City and County of Honolulu / Liquor Commission	Chapter 81, Liquor Commissions, Section 17.51	License Fees	X	X	After the public hearing, the SBRRB recommended to send the proposed amended rules to the City Council and the Mayor for adoption; it was also recommended that the Liquor Commission review the projected cost of the new computer system in order to minimize and lower the
Chapter 81, Section 17.58	Trade Name; Change; Fee	X	X		

	Chapter 82, Licenses and Permits, General Provisions, Section 33.1	Applications for Individual Permits to Receive Shipments of Liquor	X	X	projected license fees as soon as it may be deemed necessary.
	Chapter 82, Section 33.6	Direct Shipment of Wine by Wineries	X	X	
	Chapter 83, Procedure for Obtaining License, Section 54.1	Filing Fees	X	X	
County of Kauai		Rules of Practice and Procedure of the Kauai Historic Preservation Review Commission:			
	I.	1) General Provisions	X		
	II.	Organization & Parliamentary Rules	X		
	III.	Public Records, Inspection and Availability	X		
		Rule Adoption, Amendment, or Repeal Procedures	X		
	Chapter 8, 9, 10	Kauai County Code (1987) Enforcement of KPAR 8-19, Chapter 8, Article 17, Relating to Transient Vacation Rentals of the Kauai County Code	X		
	Title 1, Rules of Practice and Procedure of the Kauai County Planning Commission (Modified 2014)	Chapter 9, Appeals from Actions of the Planning Director	X		
		Chapter 6, Agency Hearing Procedures	X		
County of Maui					
	Title 8, Subtitle 1, Liquor Commission, Chapter 101, Rules governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui				
	Section 22(j)	Licenses, classes; Class 10. Special License	X		
	Section 69(a)		X		

	Title 8, Subtitle 1 Chapter 101	Practice to promote excessive consumption of liquor; prohibited Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui	X	X	After the second review of the small business statement after public hearing, the Board recommended that the rules move to the Mayor for adoption.
	Title 8, Subtitle 1 Chapter 101	Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui		X	A memo to the Maui Department of Liquor Control stated that this Board does not see an impact on small business based on the information received; however, the Board was not opposed to the amendments going back to public hearing for both the general public and the small business community to vet and voice concerns. Further, the Board requested that, in the future, a "small business statement after public hearing" is submitted prior to the Mayor signing off on the proposed rules.
	Subtitle 1 Chapter 102	Rules Governing Administrative Practices and Procedures of the Liquor Commission and Liquor Control Adjudication Board of the County of Maui	X		The Board, once again, recommended that the rules proceed to public hearing in order to thoroughly address and vet the concerned issues brought forth by the small business stakeholders and the community, and suggested changing some of the rules that were previously approved, particularly the requirement of non-profit members disclosing information of past fines.
	Title 8, Subtitle 1 Chapter 101	Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui	X		
	A Bill for an Ordinance	Relating to the Operating Budget for the County of Maui for the Fiscal Year July 1, 2017 to June 30, 2018 – to estimated revenues for the operating and capital improvement budget including the Schedule of Fees, Rates, Assessments, and Taxes.	X		With guidance of the Board's deputy attorney general, the members requested that Maui Parks & Recreation and the County Council engage the CORA stakeholders and others, to provide input regarding the negative financial/economic impact of the proposed fees in a collaboration that is both beneficial and acceptable to the County and respective small businesses.
	8, 9, 10, of the Kauai County Code (1987)	Interpretative Administrative Zoning Rules and Regulations (2014) of the Kauai Planning Commission, Enforcement of KPAR 8-19, Article 17, Relating to Transient Vacation	X		

	Title 1, Rules of Practice and Procedure of the Kauai County Planning Commission	Rentals of the Kauai County Code Chapter 9, Appeals from Actions of the Planning Director	X		
	Title 1, Rules of Practice and Procedure of the Kauai County Planning Commission	Chapter 6, Agency Hearing Procedures	X		

LEGISLATIVE ACTIVITY

Since its inception, the Board has supported legislation by submitting testimony on bills of interest to small business. See “Legislative Review” at the end of this report for specific legislation the Board followed during the 2017 session.

SMALL BUSINESS IMPACT STATEMENT *and*

GOVERNOR’S ADMINISTRATIVE DIRECTIVE NO. 09-01

Under Section 201M-2, HRS, State agencies that want to adopt new or modified administrative rules that have an impact on small business are required to submit to the Board a small business impact statement showing the economic impact on those businesses. As a result, the Board reviews the small business impact statements and the Governor’s Administrative Directive (AD), while working with the rule-drafting agencies on behalf of the small business community.

In 2009, AD 09-01 was issued to update the policy and procedures by which State departments and agencies request Governor’s approval for a public hearing of any proposed adoption, amendment, or repeal of administrative rules developed under Chapter 91, HRS. (Appendix 3).

This year, the Board has requested the Governor's assistance in amending AD 09-01 to reflect and include changes to Chapter 201-M, HRS, as follows:

1. Definition of "small business" in accordance with Act 174, SLH 2017, to show:
 - "For purposes of this Directive, a proposal will affect small business if the proposal will impact a for-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that: (1) Is domiciled and authorized to do business in Hawaii; (2) Is independently owned and operated; and (3) Employs fewer than 100 full-time or part-time employees in Hawaii and will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business."
2. Include how small business was involved in the development of the administrative rules pursuant to §201M-2(b), HRS, as follows:
 - c. Whether it has prepared a "Small Business Impact Statement" that has been submitted to the Small Business Regulatory Review Board for consideration under HRS Chapter 201M. "If yes, how it has involved small business in the development of the rules."

CHAIRPERSON / BOARD MEMBERS

Under Section 201M-5 (c), "a majority of the board shall elect the chairperson. The chairperson shall serve a term of not more than one year, unless removed earlier by a two-thirds vote of all members to which the board is entitled." At the May 2017 board meeting, Mr. Anthony Borge was re-elected Chair, Mr. Robert Cundiff elected Vice Chair, and Mr. Garth Yamanaka was elected Second Vice Chair.

Effective July 1, 2017, pursuant to Act 174, SLH 2017, the board member nomination process, under Section 201M-5, HRS, provides “the Board shall consist of eleven members, who shall be appointed by the governor pursuant to section 26-34; provided that: (1) Three members shall be appointed from a list of nominees submitted by the president of the senate; (2) Three members shall be appointed from a list of nominees submitted by the speaker of the house of representatives; (3) Two members shall be appointed from a list of nominees submitted by the board; (4) Two members shall be appointed by the governor; (5) The director of business, economic development, and tourism, or the director’s designated representative, shall serve as an ex officio voting member of the board; (6) The appointments shall reflect representation of a variety of businesses in the State; (7) No more than two members shall be representatives from the same type of business; and (8) There shall be at least one representative from each county.”

In addition, “nominations shall be solicited from small business organizations, state and county chambers of commerce, and other interested business organizations. Except for the ex officio member, all members of the board shall be either a current or former owner or officer of a business and shall not be an officer or employee of the federal, state, or county government.”

At the end of December 2017, the Board was comprised of the following eight members:

- 1) Nancy Atmospera-Walch, Advantage Health Care Provider, Inc., and AIM Health Institute, representing the City and County of Honolulu
- 2) Reg Baker, Reg Baker, CPA, representing the City and County of Honolulu
- 3) Anthony Borge, RMA Sales, representing the City and County of Honolulu
- 4) Robert Cundiff, representing the City and County of Honolulu
- 5) Harris Nakamoto, Kaiser Permanente, representing the City and County of Honolulu

- 6) Kyoko Y. Kimura, Aqua-Aston Hospitality, representing Maui County
- 7) Garth Yamanaka, Yamanaka Enterprises, Inc., representing Hawaii County
- 8) DBEDT Director, Voting Ex Officio Member

ACTIVITIES AND PROJECTS

The following activities and projects were performed in 2017:

▪ **Wisconsin Small Business Regulatory Review Board** – At the April board meeting, Ms. Nancy Mistele, Director of Wisconsin’s Office of Business was inter-conferenced to discuss the power point presentation she presents to Wisconsin businesses to help with outreach efforts in spreading the word about the Wisconsin Small Business Regulatory Review Board. The board members thanked her for her insightful information, comments and suggestions, and it was hoped that a connection of the Hawaii and Wisconsin Small Business Regulatory Review Boards will continue.

▪ **Hawaii Business with Reg Baker** – In June, Anthony Borge and Kyoko Kimura participated in a 30-minute live-stream taping on Thinktechhawaii.com show, “Hawaii Business with Reg Baker.” In addition to recently becoming a member of this board, Mr. Baker is also a member of the Small Business Administration’s National Board for Fairness, which reviews federal regulations impacting small business. The link to the show can be found at:

https://www.youtube.com/watch?v=0ohwKW_ku5Y&feature=youtu.be&t=30

▪ **Collaborative Effort with U.S. Small Business Administration (SBA) Regulatory Fairness Board** – In collaboration with the United States Small Business Administration (SBA) Regulatory Fairness Board for Region 9, and as a result of Mr. Reg Baker attending this Board’s meeting while reviewing proposed amendments of the City and County of Honolulu’s Liquor

Commission, the Federal Fairness Board addressed IRS tax clearances and the bottleneck of liquor license renewal and applications in Hawaii.

▪ **Regulation Review Card** – Since 2016, the Board launched and created the “Regulation Review Card,” a template form connected to the Board’s website for small business owners to alert the Board of rules and regulations that impact their small businesses. Go to:

<http://dbedt.hawaii.gov/sbrrb/regulation-review-card>.

▪ **e-Newsletter** – The Board continues to send out a monthly e-Newsletter to small business organizations, chambers of commerce and State Legislators.

▪ **Facebook and Twitter** – The Board regularly sends out notices on Facebook and Twitter to enhance its outreach efforts.

▪ **Hawaii Small Business Conference** – In May, the SBRRB was an Exhibitor at the Maui Arts & Cultural Center’s first small business conference. The theme of the conference was “Design, Protest, Engage: Small Business Strategies for Success.”

▪ **Press Releases and Articles** – During 2017, the following articles and press announcements were released:

- On January 20, 2017, *Pacific Business News* publicized the Chamber of Commerce Hawaii – Voice of Business, which included the article, “Chamber Introduces 2017 Legislative Package.” Under this article, this Board was mentioned, as follows, “Small Business Regulatory Review Board that allows for input by small business into rules and regulations.”
- In February, Hawaii Small Business Development Center sent out its newest eNewsletter, highlighting “The Small Business Regulatory Review Board.”

- In April, Retail Merchants of Hawaii e-Newsletter, the Board and the newly created Regulatory Review Card was highlighted.
- In May, DBEDT released a press announcement naming the newly elected Board officers, Anthony Borge as Chair, Robert Cundiff as Vice Chair and Garth Yamanaka as Second Vice Chair.
- On May 25, 2017, *Pacific Business News* (bizjournals.com) announced the election of Anthony Borge's chairmanship to the Board, under "People on the Move."
- On May 25, 2017, *Pacific Business News* (bizjournals.com) announced the confirmation of Robert Cundiff as a member of the Board with a term to June 30, 2020, and the election of Mr. Cundiff as Vice Chair to the Board, under "People on the Move."
- On May 25, 2017, *Pacific Business News* (bizjournals.com) announced the election of Garth Yamanaka as Second Vice Chair to the Board, under "People on the Move."
- On July 26, 2017, the Hawaii Chamber of Commerce had the following post on Facebook – "the Small Business Regulatory Review Board is in need of 4 new Board members; one specifically from the County of Kauai. If you or anyone you know may be interested in becoming a board member, the #SBRRB would like to hear from you! Or, you can simply register on the Governor's Boards and Commissions website. #hawaiiibusiness State of Hawaii Department of Business, Economic Development, and Tourism.
- On September 24, 2017, *Civil Beat*, published an article by Mr. Tom Yamachika, President of Tax Foundation Hawaii, entitled, *Harbors Soak Taxpayers – Again and Again.* " The article referenced minutes from the Board's August 16, 2017 meeting

that discussed harbor fees in regards to the DOT's HAR Title 19, Chapter 44, "Rules Relating to Service and Procedures, Charges, Tools and Fees."

- On October 30, 2017, the afternoon edition of *e-Pacific Business News* published "Regulatory Review Board Member Wants More Engagement from Hawaii's Small Business Community."
- On October 30, 2017, e-Pacific Business News reported "Regulatory review board member wants more engagement from Hawaii's small business community." In this article, Mr. Baker stated that his big mission as a member of this board is to be able to create a higher level of awareness the Board as there are opportunities for small business owners to get engaged in the process and have their voices heard.
- Mr. Reg Baker announced his new role as a member of this Board on his weekly show "Hawaii Business with Reg Baker," and encouraged small businesses to attend the monthly SBRRB meetings and to contact him with any regulatory issues. See:
<https://youtu.be/2u1MZqLc0XU?t=24>
- On November 3, 2017, A. Kam Napier, Editor-in-Chief of *Pacific Business News*, wrote "A Way to Speak Up," and announced Reg Baker's recent appointment to the Hawaii Small Business Regulatory Review Board.

▪ **eGovernment Services** – On July 19, 2017, Ms. Rosemary Warfield, eGovernment Services & Customer Services Manager, met with the members and discussed how to improve the Board's website by creating a more meaningful and user-friendly site for the end-users, small business owners and the State and County Agencies. During 2017, the Board has created an investigative committee/taskforce consisting of two board members and DBEDT staff to assist in crafting the development and redesign of the Board's existing website.

- **Website** – The Board’s current website is regularly updated throughout the year. See:

<http://dbedt.hawaii.gov/sbrb>

- **Investigative Taskforce** – In November, the Board created an investigative taskforce, consisting of Mr. Cundiff and DBEDT staff, to assist in crafting the development and redesign of the Board’s existing website; in order to accomplish this, the Board submitted a request of \$18,000 from the State Legislature for 2018. **In December, in accordance with Section 92-2.5(b) (1), Hawaii Revised Statutes, the taskforce approached the Board with its findings and recommendations.**

**REQUESTS FROM SMALL BUSINESS FOR REVIEW OF ANY
RULE ADOPTED BY A STATE AGENCY**

During 2017, while there were no requests from small business for review of any rule adopted by a state agency, the following outlines requests from small businesses for review of proposed new and amended Hawaii Administrative Rules.

1. Ms. Mahina Martin asked the Board to provide support in the reconsideration and repeal of proposed amendments to the Rules of the Liquor Commission, County of Maui, Title 8, Chapter 101, “Governing the Manufacture and Sale of Intoxicating Liquor in the County of Maui.” Ms. Martin stated that the Maui Liquor Commission “failed to demonstrate a good faith effort to engage the community in substantial changes that could predictably impact the community’s safety and quality of life.”

Action: A letter was sent to the Maui Department of Liquor Control explaining that the Board would not be opposed to the proposed amendments going back to the public hearing review of the general public and the small business community in order to vet and voice any concerns.

Subsequently, Ms. Martin petitioned the Liquor Commission to amend the following sections of Chapter 101, pursuant to Section 91-6, HRS.

- a. Section 08-101-22(f)(2)(D) – to restrict the issuance of a Class 5, Category D liquor license to twelve (12);
- b. Section 08-101-25(a) – to decrease the ours during which licensed premises may be open for the transaction of business for various classes of liquor license;
- c. Section 08-101-28(d) – delete the delivery of liquor to residences and businesses by Class 4, Retail dealer licensee.

Result: The Board re-reviewed amendments prior to the second public hearing. A letter was sent to the Maui Liquor Commission recommending the amendments proceed to public hearing in order to thoroughly address and vet the concerned issues brought forth by the small business stakeholders and the community. The Board also recommended that Maui Liquor Commission change some of the rules that were previously approved, particularly the requirement of non-profit board members disclosing information of past fines.

2. Representatives from CORA (Commercial Ocean Recreational Activities) approached the Board for assistance in opposing Maui County's Parks & Recreation Department's proposed 400% plus increase in permit fees.

Action: A letter was sent to the Honorable Alan M. Arakawa, Mayor of Maui; Maui County Chair, Mike White, Council Members and Director Kaala Buenconsejo, Maui Parks & Recreation Department requesting they engage in conversation with CORA stakeholders to provide input regarding the negative financial/economic impact of the proposed fees in a collaboration that is both beneficial and acceptable to the County and the respective small businesses.

Result: Maui County Council voted 6 to 3 to reset the amount of the permit fee to \$1,000 for the first two permits and \$500 for any additional permits.

3. Mr. Rick Gaffney, President of Hawaii Fishing & Boating Association, provided testimony on concerns with the proposed amendments to Title 13, Subtitle 11, Ocean Recreation and Coastal Areas, Parts I, II, III, Hawaii Administrative Rules, Sections: 230, 231, 232, 233, 240, 242, 243, 244, 245, 250, 251, 253, 255, 256.

Action: Correspondence was sent to Mr. Gaffney indicating that DOBOR was requested by this Board to continue in its due diligence with regards to amending the Hawaii Administrative Rules and that DOBOR review Mr. Gaffney's testimony so that the proposed rule definitions are reasonable and in compliance with international law and federal standards. In addition, the Board requested that DOBOR create an avenue of accessibility and open communication with all those businesses affected by the rule amendments.

Result: In October, DOBOR presented "final" proposed rules to the Board; the Board recommended the proposal, as presented, be forwarded to the Governor for adoption.

4. Mr. Bryan Marks from Advanced Fire Protection, LLC provided the Board with testimony on DLIR's Hawaii State Fire Council's Proposed New HAR Title 12, Chapter 44.1, "Testing, Certifying, and Credentialing Individuals Who Perform Maintenance and Testing of Portable Fire Extinguishers, Fire Protection Systems, and Fire Alarm Systems. Among other reasons, Mr. Marks stated that the proposed changes would not benefit individuals who perform the maintenance and testing, will increase the certification process to four or five licenses plus the secondary certifications by an outside private party, and force neighbor island residents to fly to Oahu or wait for a class or test to be available - ultimately hurting small business by costing jobs and/or forcing small business to close its doors.

Action: In December, the Board discussed Mr. Marks' concerns with representatives from the Hawaii State Fire Council.

SECTION II

LEGISLATIVE REVIEW

The Board submitted testimony on the following measures during the 2017 legislative session.

1. **Senate Bill 762, HD1, SD1 – Relating to the Small Business Regulatory Review Board**

Background: This measure, companion to House Bill 587, HD1, SD1, appropriates funds to DBEDT to provide additional resources for the small business regulatory review board.

Recommendation: The Board supported this measure.

Result: The measure did not cross-over; companion bill, House Bill 587 HD1 continued throughout the session (see HB587 below).

2. **Senate Bill 908 SD2, HD1, CD1 – Relating to the Small Business Regulatory Flexibility Act**

Background: This measure, companion to House Bill 1042, HD1, adopts a more explicit definition of “small business,” clarifies the powers of the Small Business Regulatory Review Board, increases the number of board members from nine to eleven, and clarifies when reporting by the agencies is required for submission to the board and for submission by the board to the legislature.

Recommendation: The Board supported this measure.

Result: This measure became law under Act 174, SLH 2017.

3. **Senate Bill 1059, SD1, HD1 – Relating to Small Business**

Background: This measure establishes and defines a three-year small business assistance initiative within the state procurement office to develop an effective

small business state contracting program. It also establishes a small business assistance coordinator position, small business office, and small business advisory group as part of the initiative and appropriates funds for the administration and operation of the initiative.

Recommendation: The Board monitored this measure.

Result: This measure did not cross-over. Companion bill, House Bill 1382 SD1, HD1 continued throughout the Legislative session (see HB 1382, SD1, HD1 below).

4. **House Bill 75, HD1 – Relating to the Small Business Regulatory**

Flexibility Act

Background: This measure extends the time given to an agency to submit a small business impact statement to the departmental advisory committee on small business and the Small Business Regulatory Review Board.

Recommendation: The Board opposed this measure.

Result: The measure was indefinitely deferred.

5. **House Bill 587 HD1, SD1 – Relating to Small Business**

Background: This measure appropriates funds to DBEDT to provide additional resources for the small business regulatory review board.

Recommendation: The Board supported this measure.

Result: This measure was deferred as \$28,000 was appropriated into the State's budget to DBEDT for an office assistant for this Board.

6. **Senate Bill 1042, HD1 – Relating to the Small Business Regulatory**

Flexibility Act

Background: This measure, companion to SB 908, SD1, HD2, CD1, adopts a more explicit definition of “small business,” clarifies the powers of the Small Business Regulatory Review Board, increases the number of board members from nine to eleven, and clarifies when reporting by the agencies is required for submission to the board and for submission by the board to the Legislature.

Recommendation: The Board supported this measure.

Result: This measure did not cross-over; Senate Bill 908, SD1, HD2, CD1, continued throughout the Legislative session (see SB 908, SD1 above).

7. House Bill 1382 SD1, HD2, CD1 – Relating to Procurement

Background: This measure assists small business in the state procurement process by establishing a temporary small business assistance initiative, small business advisory council, small business office, and small business procurement coordinator position within the state procurement office, and appropriates funds.

Recommendation: The Board supported this measure.

Result: This measure became law under Act 42, SLH 2017.

8. Governor’s Message No. 535 - Submission for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Robert Cundiff, for a term to expire June 30, 2020.

Background: The Board supported this measure.

Recommendation and Result: In April, the recommendation by the Senate Committee on Economic Development, Environment and Technology to Advise and Consent to Mr. Cundiff’s nomination was confirmed. On October 17, 2017,

Mr. Cundiff was confirmed as a member of this Board in a commissioning ceremony held at the Hawaii State Art Museum in October.

Appendix

1. Chapter 201M, Hawaii Revised Statutes
2. Administrative Rules Reviewed Matrix
3. Administrative Directive No. 09-01

1. Chapter 201M, Hawaii Revised Statutes

CHAPTER 201M

SMALL BUSINESS REGULATORY FLEXIBILITY ACT

Section

- 201M-1 Definitions
- 201M-2 Determination of small business impact;
small business impact statement
- 201M-3 Small business statement after public hearing
- 201M-4 Advisory committee on small business;
consultation process for proposed rules
- 201M-5 Small business regulatory review board; powers
- 201M-6 Petition for regulatory review
- 201M-7 Periodic review; evaluation report
- 201M-8 Waiver or reduction of penalties
- 201M-9 Executive order

§201M-1 Definitions. As used in this chapter, unless the context clearly requires otherwise:

"Advisory committee" means an advisory committee on small business as established in section 201M-4.

"Affected small businesses" or "affects small business" means any potential or actual requirement imposed upon a small business through an agency's proposed or adopted rule that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business.

"Agency" means each state or county board, commission, department, or officer authorized by law to make rules, except those in the legislative or judicial branches.

"Board" means the small business regulatory review board.

"Rule" shall have the same meaning as in section 91-1.

"Small business" means a for-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that:

- (1) Is domiciled and authorized to do business in Hawaii;
- (2) Is independently owned and operated; and
- (3) Employs fewer than one hundred full-time or part-time employees in Hawaii. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §§2, 5; am L 2007, c 217, §2]

§201M-2 Determination of small business impact; small business impact statement. (a) Prior to submitting proposed rules for adoption, amendment, or repeal under section 91-3, the agency shall determine whether the proposed rules affect small

business, and if so, the availability and practicability of less restrictive alternatives that could be implemented. This section shall not apply to emergency rulemaking.

(b) If the proposed rules affect small business, the agency shall consider creative, innovative, or flexible methods of compliance for small businesses and prepare a small business impact statement to be submitted with the proposed rules to the departmental advisory committee on small business and the board when the rules are essentially complete and before the rules are submitted to the governor for approval for public hearing. The statement shall provide a reasonable determination of the following:

- (1) The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules;
- (2) Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected;
- (3) In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance;
- (4) The probable monetary costs and benefits to the implementing agency and other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used;
- (5) The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or any other mitigating techniques;
- (6) How the agency involved small business in the development of the proposed rules; and
- (7) Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

(c) When a proposed rule includes provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, the agency shall, in

addition to the information required by subsection (b), include in the small business impact statement information comparing the costs and benefits of the standard set by the proposed rule to the costs and benefits of the standard under the comparable or related federal, state or county law. The agency shall also include an explanation of its decision to impose the higher standard. The agency's comparison and justification shall include:

- (1) A description of the public purposes to be served by imposing the standard under the proposed rule;
- (2) The text of the related federal, state, or county law, including information about the purposes and applicability of the law;
- (3) A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes and of the standards and their application and administration;
- (4) A comparison of the monetary costs and benefits to the implementing agency and other agencies directly affected, of imposing the proposed standard, with the costs and benefits of imposing or deferring to the related federal, state or county standard, as well as a description of the manner in which any additional fees derived from imposition of the proposed standard are to be used; and
- (5) A comparison of the adverse effects on small businesses of the standard imposed by the proposed rule, with the adverse effects on small business of the related federal, state, or county standard.

(d) This chapter shall not apply to proposed rules adopted by an agency to implement a statute or ordinance that does not require an agency to interpret or describe the requirements of the statute or ordinance, such as federally-mandated regulations that afford the agency no discretion to consider less restrictive alternatives. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2007, c 217, §3; am L 2008, c230, §3]

[§201M-3] Small business statement after public hearing. (a) For any proposed rule that affects small business, the agency shall also submit a small business statement to the small business regulatory review board and the departmental advisory committee on small business after the public hearing is held. This section shall not apply to emergency rules. The small business statement required by this section shall provide the following information:

- (1) A description of how opinions or comments from affected small business were solicited, a summary of

the public and small business comments, and a summary of the agency's response to those comments;

- (2) The number of persons who:
 - (A) Attended the public hearing;
 - (B) Testified at the hearing; and
 - (C) Submitted written comments; and
- (3) If there was a request to change the proposed rule at the hearing in a way that affected small business, a statement of the reasons for adopting the proposed rule, the reason why a requested change was not made, and the problems or negative result the change would provide if adopted.

(b) If the small business regulatory review board finds that a statement provided pursuant to subsection (a) (3):

- (1) Indicates inconsistency with any of the agency's determinations under section 201M-2(b); or
- (2) Does not address the concerns of public input, the board with good cause may request a written response from the agency explaining the rationale used to deny the public concerns within ten working days of receipt of the small business statement after public hearing. The agency shall respond in writing to the board's concerns within ten working days.

(c) The written response from an agency required in subsection (b), at a minimum, shall:

- (1) Specifically address each issue and concern raised in the board's request for a written response; and
- (2) Affirmatively state that the agency has considered all written and oral testimony received at the agency's public hearing and has addressed all issues or concerns raised in the written or oral testimony. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2012, c 241, §2]

[§201M-4] Advisory committee on small business; consultation process for proposed rules. (a) There may be established within and administratively attached to every department of the State or county whose rules affect small business activities, an advisory committee on small business. The advisory committee shall consist of three or more odd number of members appointed by the department and may advise more than one department. The department shall have the authority to appoint members to the advisory committee and to fill any vacancies. The members shall serve on a volunteer basis and have experience or knowledge of the effect of regulation by those departments on the formation, operation, or expansion of a small business. No person shall serve on the small business regulatory review board and an advisory committee

on small business concurrently. The advisory committees shall not be subject to the requirements of chapter 91.

(b) When the agency is proposing rules that affect small business, the agency may consult with the administratively attached departmental advisory committee on small business regarding any matter related to the proposed rules prior to complying with the rulemaking requirements provided in chapter 91. Each agency shall develop its own internal management procedures for soliciting comments during the drafting of proposed rules from affected small businesses. The agency may develop creative procedures for the solicitation of comments from affected small businesses during the drafting or development of proposed rules.

(c) If necessary, any group or members of affected small businesses may also be consulted by the agency to formulate the relevant language, develop criteria, and provide any other expertise to ensure that the proposed rules will be drafted in a manner that will protect the public health, welfare, and safety without placing an undue and significant burden upon small business. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5]

§201M-5 Small business regulatory review board; powers. (a) There shall be established within the department of business, economic development, and tourism, for administrative purposes, a small business regulatory review board to review any proposed new or amended rule. If the board determines that a proposed rule will not have a significant economic impact on a substantial number of small businesses, the board shall submit a statement to that effect to the agency that sets forth the reason for the board's decision. If the board determines that the proposed rule will have a significant economic impact on a substantial number of small businesses, the board may submit to the agency suggested changes in the proposed rule to minimize the economic impact of the proposed rule, or may recommend the withdrawal of the proposed rule. The board may also consider any request from small business owners for review of any rule adopted by a state agency and to make recommendations to the agency or the legislature regarding the need for a rule change or legislation. For requests regarding county ordinances, the board may make recommendations to the county council or the mayor for appropriate action.

(b) The board shall consist of eleven members, who shall be appointed by the governor pursuant to section 26-34; provided that:

- (1) Three members shall be appointed from a list of nominees submitted by the president of the senate;

- (2) Three members shall be appointed from a list of nominees submitted by the speaker of the house of representatives;
- (3) Two members shall be appointed from a list of nominees submitted by the board;
- (4) Two members shall be appointed by the governor;
- (5) The director of business, economic development, and tourism, or the director's designated representative, shall serve as an ex officio voting members of the board;
- (6) The appointments shall reflect representation of a variety of businesses in the State;
- (6) No more than two members shall be representative from the same type of business; and
- (8) There shall be at least one representative from each county. For purposes of paragraphs (1) and (2), nominations shall be solicited from small business organizations, state and county chambers of commerce, and other interested business organizations.

(c) **Except for the ex officio member**, all members of the board shall be either a current or former owner or officer of a business and shall not be an officer or employee of the federal, state, or county government. A majority of the board shall elect the chairperson. The chairperson shall serve a term of not more than one year, unless removed earlier by a two-thirds vote of all members to which the board is entitled.

(d) A majority of all the members to which the board is entitled shall constitute a quorum to do business, and the concurrence of a majority of all the members to which the board is entitled shall be necessary to make any action of the board valid.

(e) In addition to any other powers provided by this chapter, the board may:

- (1) Adopt any rules necessary to implement this chapter;
- (2) Organize and hold conferences on problems affecting small business; and
- (3) Do any and all things necessary to effectuate the purposes of this chapter.

(f) The board shall submit an annual report to the legislature twenty days prior to each regular session detailing any requests from small business owners for review of any rule adopted by a state agency, and any recommendations made by the board to an agency or the legislature regarding the need for a rule change or legislation. The report shall also contain a summary of the comments made by the board to agencies regarding its review of proposed new or amended rules. [L 1998, c 168, pt

of §2, §5; am L 2002, c 202, §§3, 5; am L 2007, c 217, §4; am L 2012, c 241, §3]

§201M-6 Petition for regulatory review. (a) In addition to the basis for filing a petition provided in section 91-6, any affected small business may file a written petition with the agency that has adopted the rules objecting to all or part of any rule affecting small business on any of the following grounds:

- (1) The actual effect on small business was not reflected in, or significantly exceeded, the small business impact statement submitted prior to the adoption of the rules;
- (2) The small business impact statement did not consider new or significant economic information that reveals an undue impact on small business;
- (3) These impacts were not previously considered at the public hearing on the rules;
- (4) The rules create an undue barrier to the formation, operation, and expansion of small businesses in a manner that significantly outweighs its benefit to the public;
- (5) The rules duplicate, overlap, or conflict with rules adopted by another agency or violate the substantive authority under which the rules were adopted; or
- (6) The technology, economic conditions, or other relevant factors justifying the purpose for the rules have changed or no longer exist.

(b) Upon submission of the petition, the agency shall forward a copy of the petition to the board, as notification of a petition filed under this chapter. The agency shall promptly consider the petition and may seek advice and counsel regarding the petition from the appropriate departmental advisory committee on small business. Within sixty days after the submission of the petition, the agency shall determine whether the impact statement or the public hearing addressed the actual and significant impact on small business. The agency shall submit a written response of the agency's determination to the small business review board within sixty days after receipt of the petition. If the agency determines that the petition merits the adoption, amendment, or repeal of a rule, it may initiate proceedings in accordance with section 91-3.

(c) If the agency determines that the petition does not merit the adoption, amendment, or repeal of any rule, any affected small business may seek a review of the decision by the board. The board shall promptly convene a meeting pursuant to chapter 92 for the purpose of soliciting testimony that will

assist in its determination whether to recommend that the agency initiate proceedings in accordance with section 91-3. The board may base its recommendation on any of the following reasons:

- (1) The actual effect on small business was not reflected in, or significantly exceeded, the impact statement submitted prior to the adoption of the rules;
- (2) The impact statement did not consider new or significant economic information that reveals an undue impact on small business;
- (3) These impacts were not previously considered at the public hearing on the rules;
- (4) The rules create an undue barrier to the formation, operation, and expansion of small businesses in the State in a manner that significantly outweighs its benefit to the public;
- (5) The rules duplicate, overlap, or conflict with rules adopted by another agency or violate the substantive authority under which the rules were adopted; or
- (6) The technology, economic conditions, or other relevant factors justifying the purpose for the rules have changed or no longer exist.

(d) If the board recommends that an agency initiate rulemaking proceedings for any reason provided in subsection (c), it shall submit to the legislature an evaluation report and the agency's response as provided in subsection (b). The legislature may subsequently take any action in response to the evaluation report and the agency's response as it finds appropriate.

(e) If the board does not recommend that an agency initiate rulemaking proceedings, the board shall notify the small business of its decision and inform the small business that the small business may submit a complaint to the ombudsman pursuant to chapter 96 regarding the decision of the agency or board.

(f) Nothing in this section shall entitle an affected small business to a contested case hearing under chapter 91. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2007, c 217, §5]

§201M-7 Periodic review; evaluation report. (a) Each agency having rules that affect small business shall submit to the board by June 30 of each odd-numbered year, a list of those rules and a report describing the specific public purpose or interest for adopting the respective rules that affect small business and any other reasons to justify continue implementation of the rules; provided that, by June 30 of each year, each agency shall submit to the board a list of any rules

to be amended or repealed, based upon any new, amended, or repealed statute that impacts small business.

(b) The board shall provide to the head of each agency a list of any rules adopted by the agency that affect small business and have generated complaints or concerns, including any rules that the board determines may duplicate, overlap, or conflict with other rules, or exceed statutory authority. Within forty-five days after being notified by the board of the list, the agency shall submit a written report to the board in response to the complaints or concerns. The agency shall also state whether the agency has considered the continued need for the rules and the degree to which technology, economic conditions, and other relevant factors may have diminished or eliminated the need for maintaining the rules.

(c) The board may solicit testimony from the public regarding any report submitted by the agency under this section at a public meeting held pursuant to chapter 92. Upon consideration of any report submitted by an agency under this section and any public testimony, the board shall submit an evaluation report to the legislature each even-numbered year. The evaluation report shall include an assessment as to whether the public interest significantly outweighs a rule's effect on small business and any legislative proposal to eliminate or reduce the effect on small business. The legislature may take any action in response to the report as it finds appropriate. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2007, c 217, §6; am L 2012, c 241, §4]

§201M-8 Waiver or reduction of penalties. (a) Except where a penalty or fine is assessed pursuant to a program approved, authorized, or delegated under a federal law, any agency authorized to assess civil penalties or fines upon a small business shall waive or reduce any penalty or fine as allowed by federal or state law for a violation of any statute, ordinance, or rules by a small business under the following conditions:

- (1) The small business corrects the violation within a minimum of thirty days after receipt of a notice of violation or citation; and
- (2) The violation was unintentional or the result of excusable neglect; or
- (3) The violation was the result of an excusable misunderstanding of an agency's interpretation of a rule.

(b) Subsection (a) shall not apply:

- (1) When a small business fails to exercise good faith in complying with the statute or rules;

- (2) When a violation involves willful or criminal conduct;
 - (3) When a violation results in serious health and safety impacts;
 - (4) To violations of chapters 6E, 180, 180C, 181, 182, 183, 183C, 183D, 186, 187A, 188, 188F, 189, 190, 190D, 195, 195D, 195F, 205, 205A, 340A, 340E, 341, 342B, 342C, 342D, 342E, 342F, 342G, 342H, 342I, 342J, 342L, and 342P;
 - (5) To violations of sections 200-9(b) and (c), 200-24(4), 200-37, and 200-38; or
 - (6) To violations of administrative rules promulgated pursuant to section 200-4(6); except for rules pertaining to matters listed in section 200-4(6)(A), (B), (C), and (D).
- (c) An agency may adopt rules to implement the requirements of this section. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2004, c 206, §1]

[\$201M-9] Executive order. The governor may execute any executive order, memorandum, or directive necessary to implement any provision of this chapter. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5]

2. Administrative Rule Review Matrix

2017 Administrative Rule Review Matrix

	Month/Year	Support	Oppose	No Comment/ No Action	Support W/ Rec. & Comments	Support w/ Reservations	Support/ Oppose	Pending/ Deferred
FY 2000 to FY 2016		549	13	67	35	17	9	0
FY 2017	Jul-16	6						
	Aug-16	4						
	Sep-16	7					1	
	Oct-16	1						
	Nov-16	3						
	Dec-16	1						
	Jan-17	8				1		
	Feb-17	2						
	Mar-17	2					1	
	Apr-17	2			1			
	May-17	0						
	Jun-17	7			1			
FY 2018	Jul-17	5						
	Aug-17	2			1			
	Sep-17	1						
	Oct-17	12			1			
	Nov-17	4						
	Dec-17							
	Total	571	13	67	35	17	9	0

3. Administrative Directive 09-01

DRAFT



EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

October 29, 2009

ADMINISTRATIVE DIRECTIVE NO. 09-01

To: All Agency Heads

Subject: Policy and Procedure for the Adoption, Amendment, or Repeal of Administrative Rules

This administrative directive updates the policy and procedure by which departments or agencies shall request executive approval of any proposed adoption, amendment, or repeal of administrative rules. It rescinds Administrative Directive No. 99-02, Policy and Procedure for the Adoption, Amendment, or Repeal of Administrative Rules, dated August 2, 1999.

Legal Reference:

Section 91-3(c), Hawaii Revised Statutes, provides that, "the adoption, amendment, or repeal of any rule by any state agency shall be subject to the approval of the governor."

Hawaii Revised Statutes Chapter 201M, the "Hawaii Small Business Regulatory Flexibility Act," requires that if a proposed rule "affects small business," the department or agency shall submit a "small business impact statement" and a "small business statement" to the Small Business Regulatory Review Board. Chapter 201M does not apply to emergency rulemaking or rules adopted to comply with a federal requirement.

Policy:

Whenever any department or agency requests executive approval for the proposed adoption, amendment, or repeal of a rule, the director of the department or agency shall ensure that the proposed changes conform to existing legal provisions, including Chapter 91, Hawaii Revised Statutes. In requesting the adoption, amendment, or repeal of any rule, the director will explain or submit the following:

1. Explain the exact changes to be made and the purpose, reasons for the changes, and justification for the change. If applicable, cite the present rule and quote the proposed rule change in full without paraphrasing.

2. Describe the manner in which the proposal would affect the agency's internal and external responsibilities, programs, functions, operations, activities, and inter-relationships.
3. Identify the final result expected by instituting the proposal (e.g. a program improvement/clarification of statute).
4. Identify any program and financial impacts on the State that will arise upon the implementation of the proposal to include:
 - a. Long- and short-range program impacts, and
 - b. Anticipated program funding required for the present biennium, including a statement as to whether funds are currently budgeted to permit the implementation and enforcement of the proposed adoption, amendment, or repeal of the rule, and estimates for anticipated savings or funding shortfalls projected over the subsequent four-year planning period, and the assumptions used to arrive at the estimates.
5. Describe long- and short-term impacts to the public or the economy of the State.
6. Identify the alternatives explored in lieu of implementing the proposal.
7. Provide an explanation of whether the proposal will affect small business. For purposes of this Directive, a proposal will affect small business if the proposal will impact a for-profit enterprise consisting of fewer than 100 full-time or part-time employees and will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business.

If a proposal affects small business, the department or agency will describe:

- a. Whether it has considered the availability and practicability of less restrictive alternatives that could be implemented in lieu of adopting the proposal;
- b. Whether it has considered creative, innovative, or flexible methods of compliance for small business in lieu of adopting the proposed rule; and
- c. Whether it has prepared a "Small Business Impact Statement" that has been submitted to the Small Business Regulatory Review Board for consideration under HRS Chapter 201M.

Procedure:

1. Approval of the Governor is required prior to any rule change proceeding to a public hearing.

Prior to formal publication of notice of public hearing on the proposed adoption, amendment, or repeal of any rule, departments and agencies will:

- a. Obtain the Attorney General's approval "as to form" prior to submitting the rule to me for approval for public hearing; provided that as to rules proposed for adoption, amendment, or repeal that are submitted by the Board of Regents of the University of Hawaii, such rules shall be first reviewed and approved as to form by the University's Office of General Counsel prior to submission to the Attorney General. The Department of the Attorney General will complete its pre-hearing review on an expeditious basis;
- b. Provide the Governor's office with a copy of the proposed rule, including the information requested in "Policy" items 1 through 7 above; and
- c. At the time the rules are submitted to the Governor's Office, concurrently provide copies to the Director of Budget and Finance (B&F) and to the Director of Business, Economic Development and Tourism (DBEDT) for their prompt review. B&F and DBEDT comments will be forwarded directly to the Governor.

2. Notice of Public Hearings.

If any proposed rule affects small business, the notice of public hearing will summarize any business impact described in the "Small Business Impact Statement," and will state any new fee or compliance burdens that will be placed on small business.

3. Final Approval After Public Hearing.

Departments and agencies will obtain the Governor's final approval for the adoption, amendment, or repeal of any rule after the required public hearing has been held. In seeking final approval, the director of the department or agency concerned shall:

- a. Indicate whether any revision is being recommended to the proposed rule, amendment, or repeal based on facts and circumstances brought out in the public hearing;
- b. If a revision or change is recommended, provide a copy of the proposed rule with revisions and changes to the Attorney General for approval "as to form" prior to resubmitting the rule to the Governor for final approval; provided that as to rules proposed for adoption, amendment or repeal that are submitted by the Board of Regents of the University of Hawaii, such rules shall be first reviewed and approved as to form by the University's Office of General Counsel prior to submission to the Attorney General.

The Attorney General's office will approve the form within two weeks of receipt if the changes are not substantive. If the changes are determined to be substantial or material by the Attorney General, an additional public hearing will be held.

If a re-hearing of a proposed rule is sought, the procedures required for approval to proceed to public hearing will again be followed;

- c. Indicate whether the proposal affects small business, and, if so, whether a "Small Business Statement," which provides the information described in HRS Chapter 201M, has been submitted to the Small Business Regulatory Review Board; and
 - d. Submit three copies of the proposal in standard format and in accordance with Chapter 91, HRS, for the Governor's final approval. The original and a copy of the rules adopted by the department or agency will be signed by the director of the department, by the chairperson of a board or commission of a principal department, or by the chairperson of a board or commission if the rule has been adopted by a board or commission which is assigned to a department for administrative purposes. The third copy may use a facsimile of the required signatures.
4. Distribution of Approved Adopted Rules.
- a. A complete set consisting of three copies approved by the Governor will be filed at the Office of the Lieutenant Governor.
 - b. The Office of the Lieutenant Governor will provide one copy to the agency adopting, amending, or repealing the rule.
 - c. Each department or agency adopting, amending, or repealing the rule will provide one file-stamped and certified copy of the rule in the Ramseyer and standard formats to the Legislative Reference Bureau.

LINDA LINGLE

APPROVED AS TO FORM:



Attorney General

***No. 1 Capitol District Building
250 South Hotel Street
Honolulu, Hawaii 96813***

Telephone: (808) 586-2594

Website: <http://dbedt.hawaii.gov/sbrrb>

Email: DBEDT.sbrrb.info@hawaii.gov

VI. Administrative Matters

B. Findings and Recommendations by the Board's Investigative Task Force Regarding the Development and Redesign of the Board's Website including Content, Features and Short- and Long-Term Goals, in accordance with Section 92-2.5 (b) (1), HRS

1. Goals - What are you hoping to accomplish with a redesign?

- What are the primary action(s) you want visitors to take (fill out regulation review card, get updates, etc.)?
 - **User-friendly Website**
 - **Communication Tool – More Interaction with public and more outreach to public**
 - **Less “government” feel – change the overall look**
 - **Educate / Inform:**
 - a. **Purpose**
 - b. **Current Events & Activities**
 - c. **Upcoming Rule Changes**
 - d. **Passed Rule Changes**
 - **Facilitate a convenient user-friendly interaction between small business & State and County Agencies**
 - **Pictures/Photos to make it more aesthetically pleasing**
- What are your short term goals for this site? How would you complete this sentence? "The site will be successful 6 months after launch if..."

Substantially more small businesses would be familiar with the SBRRB's mission and be aware where the Website as to where they can submit concerns and testimony about a rule.

- What are your long term goals for this site? How would you complete this sentence? "The site will be successful 2 years after launch if..."

For the SBRRB to become a household term where a substantial number of Hawaii small businesses know if there is a concern with a regulatory issue they can come to this Board.

2. Content / Features - What's missing from your site that you don't have now?

- Tip: If you aren't sure, just think about what problems you are trying to solve or relate it back to what the goals are. Ex: Is your biggest issue that you get 40+ calls a day asking where to find meeting minutes and you think this could be solved by making that section more clear?

Creation of a “sign-up” link for:

- **Monthly Agendas – Automatic**
- **Link to Rules – Agency Specific - Request for Rules from Specific Agencies / Counties**
- **Link for submission of testimony**

- You always have interesting speakers at your meetings that touch on high profile and current events. Can you highlight/editorialize on any hot button issues? (Marijuana, Styrofoam/bag ban, agriculture, rail, etc.)

Case by case basis. Depends on the rules brought forth in front of the Board.

- For the calendar – what features are missing from your current solution? Do you need users to be able to filter or search by island? Or is the current solution working fine for your needs?

**Add to the Calendar – Public Hearing Notices
Dates for Rule Changes
Small Business Activities / DBEDT Activities**

Distinguish between State and County rules being heard – link county websites (potential legal question).

- Do you have any content created but not yet on the site? (Annual reports, forms, etc.)

All reports, agendas, minutes, current forms are on currently on the site. But, need to reduce “older” agendas and minutes and place in separate an “archive page.”

- Do you need a way for folks to apply to serve on the board?

Yes. Recruiting element for new members. Add link to Boards & Commissions Website.

- Do you need to start an email list so you can communicate with your user base? Or do you already have one?

Manage email lists - There is an existing email list for Agendas and Newsletters.

Add – Specific Agency Rule Changes / Public Hearing / Current Events

An “email sign-up” can collect additional information including what government departments are most interested in so the SBRRB can target email distribution lists by subject area, e.g., those just wanting notification of DLNR rule changes, etc.

- Do you need to get more speakers to attend your meetings?

It is expected that more speakers/testifiers will attend meetings once the website is up and running due to an increase in exposure through an increase in outreach - articles, social media, trade show and organization meetings, etc.

- Do you want to highlight activities and successes of the board via regular news/blog style posts?

Yes. On a case-by-case basis.

No Blog. Regular post for monthly eNewsletter

- Is there any other content put out by DBEDT / SBA / etc. of helpful videos or with interesting content that you could use?

Links to DBEDT

Links to Specific Organizations / SBA / Chambers of Commerce / Others

- Do you want to do a spotlight on key bills being watched in the legislature?

Yes. Include spotlighting new Bills / Legislation that will impact Small Business.

- Do you have any testimonials or success stories?

There is currently one testimonial on the website from several years ago. The SBRRB typically does not ask for testimonials from small businesses or from Agencies.

3. Create a sitemap

- Below is a sample to get you started for how the site might be structured and what pages will live on it? What other pages need to be captured here?

a. About the Board

Mission, History & Governance
 About the SBRRB
 Board Meetings
 Board Meeting Minutes – **Past two (2) years**
 Meet the Board Members – **With Photos / Short Bio**

- b. Regulation Review Card – Recommend Name Change – Yes. And, recommend making this a form to submit testimony on a specific rule change and to submit more general comments on other regulations.**

c. News

- d. How Rules are Made – Flow Chart – Pictures – How process works – What You Can Do as a Small Business – Links to Submission of Testimonies – How Rules are Made – Link to Legislative Page**

e. Contact Us

Add links to: Specific Organizations / SBA / Chambers of Commerce / Others?

- f. Legislature – Spotlight new bills – legislation that will impact small business**

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

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

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

- 10/18/17 (A) The scope of the investigation and the scope of each member's authority are defined at a meeting of the board;
- 12/13/17 (B) All resulting findings and recommendations are presented to the board at a meeting of the board; and
- (C) Deliberation and decisionmaking on the matter investigated, if any, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings and recommendations of the investigation were presented to the board; or

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

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

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

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

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

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

- (A) Provide copies of the testimony and presentations received at the canceled meeting to all members of the board; and

(B) Receive a report by the members who were present at the canceled or terminated meeting about the testimony and presentations received.

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

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

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

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

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

Law Journals and Reviews

Hawai`i's Sunshine Law Compliance Criteria. 26 UH L. Rev. 21.

Case Notes

Even assuming that written memoranda circulated by council members, in which the council members presented proposed actions, included justifications for the proposals, and sought "favorable consideration" of the proposals constituted a permitted interaction under subsection (a), the memoranda violated the mandate under subsection (b) that no permitted interaction be used to circumvent the spirit or requirements of the sunshine law to make a decision or to deliberate toward a decision upon board business. The "express premise" of the sunshine law is that opening up the government process to public scrutiny is the only viable and reasonable way to protect the public. 130 H. 228, 307 P.3d 1174 (2013).

Written memoranda circulated by council members, in which the council members presented proposed actions, included justifications for the proposals, and sought "favorable consideration" of the proposals did not fall within the permitted interaction described in subsection (a) because the memoranda: (1) were distributed among all of the members of the Maui county council rather than among only two members of the board; and (2) sought a commitment to vote by asking for "favorable consideration" of the proposals contained within them and thus, violated the sunshine law. 130 H. 228, 307 P.3d 1174 (2013).

Although subsection (a) does not expressly preclude city counsel members from engaging in serial one-on-one conversations, when council members engaged in a series of one-on-one conversations relating to a particular item of council business, under §92-5(b), the spirit of the open meeting requirement was circumvented and the strong policy of having public bodies deliberate and decide its business in view of the public was thwarted and frustrated. 117 H. 1 (App.), 175 P.3d 111.

[Previous](#)

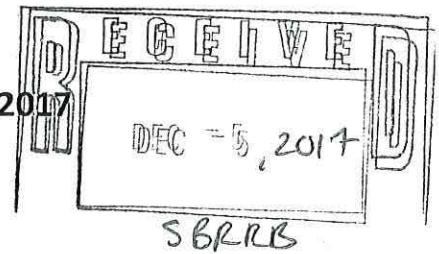
[Vol02 Ch0046-0115](#)

[Next](#)

VI. Administrative Matters

C. Discussion and Action on the Board's
Nomination(s) of Proposed Board Members for
Submission to the Governor, including Mr. Stu
Burley and Mr. Will Lydgate in accordance with
Section 201M-5(b)(3), HRS

STU BURLEY BIO BULLETS as of 4 December 2017



- Born in Binghamton, New York
- Graduated from Frankfurt American High School, Germany
- Frankfurt High School Basketball Hall of Fame
- Attended University of Maryland in Munich, Germany
- College basketball scholarship in Cameron College, Lawton, Oklahoma, near Ft Sill
- Became restless and joined US Navy on 25 August 1955
- Qualified for NavCad officer pilot in San Diego, but elected to stay enlisted
- One year Guided Missile (Regulus) School in Dam Neck, Virginia
- Helped open PMRF as a US Navy Guided Missileman on 4 January 1957
- Obtained over 100 flight hours in backseat of F-9 Cougar in Hawaiian airspace
- Contractor work from 1961-1968 running radar system, telemetry engineer and Ops Coordinator
- Joined Naval Civil Service on 25 March 1968 as Range Scheduling Officer
- Became Program Manager in 1969: Submarine Operations, Mk-48 Torpedo sales to Australia
- Program Manager for first RimPac exercise in the Pacific
- Attended UH Kauai Community College for six years and obtained Associate of Science degrees in Liberal Arts, Marketing, and Hotel Management
- Marketed DARPA to bring Mountaintop program to PMRF which developed into MDA AEGIS
- Supervisor of 12-15 GS-12/13 Program Managers which included three Navy pilots
- Took a collateral duty as Marketing Director
- Exhibited in Nova Scotia, Canada, Japan, South Korea, Singapore, England and Australia
- Past President of ITEA with oversight of Hawaii and Australia and brought two worldwide workshops to Sheraton Kauai Poipu and two largest record breaking international symposiums to Kauai Marriott
- Retired from PMRF on 3 January 2004
- Started consulting business: STU, LLC (Strategic Theories Unlimited, LLC) for high tech companies support in 2005
- President of US Navy League – Kauai Chapter
- Past president of Hawaii Marine Technology Society
- Past Kauai AARP President (presently Vice President and Treasurer)
- Mentor underwater robotics and rocketry in three high schools
- Associate Director of Hawaii Space Flight Lab helping to launch CueeSat satellites out of PMRF to establish first satellite launches out of the State of Hawaii

- Member of Governor's Hawaii Aerospace Advisory Committee, Kauai Chamber of Commerce, Kauai Economic Development Board, Friends of KCC, Kauai Hospice, NARFE, LBA, Friends of King Kaumualii, Kauai Historical Society, Kauai Veterans Council, Koloa Lions (VP)
- Commander of Kauai Veterans Council
- Former Bishop in Kalaheo Ward of LDS Church
- Voted in as Kauai's 2010 Outstanding Older American
- Holds Top Secret Clearance in Department of Defence
- Married Kuuipo Gail Kaiwa (passed in 2012) from Kekaha, Kauai and has 3 children, 8 grandchildren and 4 great grandchildren. Family home hub is in Lawai Valley Estates

Stewart Burley Interest

In the SBRRB

4 Dec 2017

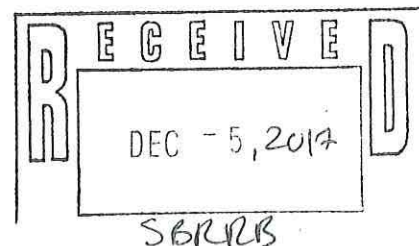
The Small Business arena has interested me ever since I retired from PMRF in January 2003. I have watched so many small businesses start up on a shoe string with hopes of success, then fade away in a year or two.

As we discuss problem areas, monthly at the Kauai Chamber Small Business Committee, we struggle with ideas on how to help the small businesses on Kauai.

They need help, so with a position on the SBRRB, I may find some solutions for Kauai and for the State of Hawaii.

Respectfully,

Stu Burley



Will Lydgate Bio
12/6/2017

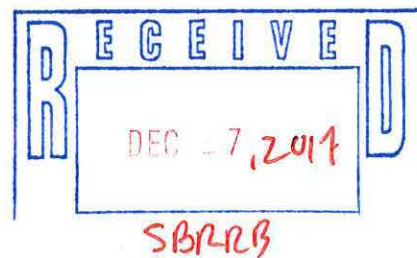
About Will Lydgate

Will Lydgate is a leader in the new Hawaiian specialty chocolate industry. A chocolate educator, Ag-Tourism pioneer, and farmer of chocolate that has been rated among the best in the world by the Cocoa of Excellence Awards, Will speaks on topics that hold the key to transforming our cultural relationship with chocolate and revitalizing agriculture in HI.

Fresh from his Tedx talk titled *Changing the way we think about Chocolate*, Will's mission is to spread the much-needed message that dark chocolate is not only delicious---one of the most powerful health foods known to man, it also holds an important key to the future prosperity of the Hawaiian islands.

Will is from the island of Kauai, HI where his family first emigrated in 1867, making him the fifth-generation of Hawai'i Lydgates. Will hosts popular chocolate farm tours and tastings five days per week at his Steelgrass Farm in Wailua. In addition to chocolate, his farm raises award-winning honey, vanilla, and tropical fruits.

Will is a founding member of the Hawaii Chocolate and Cacao Association and additionally is an accomplished instrumental performer, music producer, and educator.



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P (808) 652.1912
wade@wlordco.com

December 6, 2017

Re: Small Business Regulatory Review Board

To Whom It May Concern:

I am writing this letter of recommendation on behalf of Will Lydgate. I have known Will for nearly fifteen years. I've had the opportunity to watch him develop into the dynamic and skilled leader he is today. I feel uniquely qualified to convey my perspective of Will to assist you in your evaluation of his potential appointment as a member of the Small Business Regulatory Review Board.

Will is a product of Kauai, instilled with the values of honesty, integrity, industry, and humility. Will is accomplished as a musician, owner and operator of an agricultural/retail enterprise, and as a public speaker. One of Will's strengths is his skill at critical thinking. He is his own uniquely gifted individual grounded in the Hawaiian values of ohana, community, and righteousness.

As a small business owner himself, he'll be an excellent representative on your Board. His understanding of the issues faced by businesses will serve him well in his capacity. Will can deal with several operating, and other issues simultaneously. I was involved with Will as a Rotarian, and Will is committed to serve the community both through his actions and deeds.

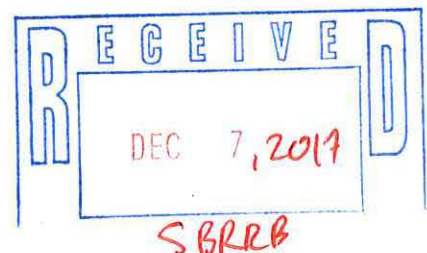
Will has a positive style of leadership that is highly effective and purposeful. It's his effectiveness that is most compelling. With your selection, he'll accomplish much and be a valuable representative of the Small Business Regulatory Review Board.

With all his professional achievements, Will has maintained a grounded sense of self, true to his Kauai heritage. He is a compassionate person and that compassion combined with his business sense will make him an excellent choice for your Board. I look forward to watching Will do great things in the future. Thank you for considering him for this important role. Please do not hesitate to contact me should you wish to ask any follow up questions. I can be reached at the numbers in my signature block.

Sincerely,



Wade L. Lord



for KAUAI
perpetuating the culture of the island

Barbara Bennett
For Kauai Newspaper & Magazine
PO Box 956
Waimea, Hi 96796

To whom it May Concern

I recommend Will Lydgate of SteelGrass Farms to be accepted as a member of the 2018 SBRRB of Directors representing Kauai.

I have known Will and his company for over 10 years. We've worked together on small business projects as volunteers and his organizational skills and leadership qualities are outstanding.

His company would represent the farm industry. He is very connected to the island with his years in the family business for over 3 generations.

He is young, energetic, knowledgeable and a perfect candidate to be accepted to represent Kauai and continue his leadership with SBRRB. Respectfully submitted by Ms. Bennett, 5-year member of SBRRB and owner & publisher of For Kauai.

Mahalo and aloha
Barbara Bennett
808-652-2802

For Kauai's Award Winning Monthly Newspaper
and For Kaua'i Cultural Glossy Annual Magazine

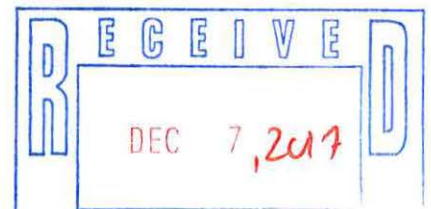
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SBRRB

VI. Administrative Matters

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

No Handouts