Davis

Small Business Regulatory Review Board Meeting

Wednesday, February 20, 2013

9:30 a.m.

No. 1 Capitol District Building

250 South Hotel Street, Honolulu, HI

Conference Room 436

# SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism
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## AGENDA
## Wednesday, February 20, 2013 ★ 9:30 p.m.
## No. 1 Capitol District Building
## 250 South Hotel Street - Conference Room 436

**I. Call to Order**

**II. Discussion and Election of Acting Chair for February 20, 2013**

**III. Approval of the December 10, 2012 Minutes for 9:30 a.m., and 1:00 p.m. meetings**

**IV. New Business**

A. Proposed Amendments to Hawaii Administrative Rules (HAR) Title 11 Chapter 54 Water Quality Standards and HAR Title 11 Chapter 55 Water Pollution Control (Department of Health)
B. Proposed Amendments to HAR Title 18 Chapter 235 Income Tax Law, Adoption of HAR Title 18 Chapter 235-12.5-01T and 235-12.5-06T, Relating to Renewal Energy Technology Income Tax Credit; Citations (Department of Taxation)
C. Proposed Amendments to Title 4 Chapter 143 Coffee (Department of Agriculture)
D. Correspondence from Dora Beck, P.E., Acting Director, County of Hawaii, Department of Environmental Management, dated January 22, 2013, regarding "Small Business Impact Statement Education of Tourists Update," under Ordinance 12-1, Section 1, Article IV, Rules Relating to Plastic Bag Reduction

**V. Legislative Matters**

A. Delegation of Authority to a Board Member and/or Staff to Submit Testimony at the State Legislature on behalf of the Board
B. Governor's Message No. 526, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Anthony Borge, for a term to expire June 30, 2015
C. Governor's Message No. 527, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Barbara Bennett, for a term to expire June 30, 2014
D. Governor's Message No. 528, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Chu Lan Shubert-Kwock, for a term to expire June 30, 2016
E. Governor's Message No. 529, Submitting for Consideration and Confirmatior to the Small Business Regulatory Review Board, Gubernatorial Nominee, Howard Lum, for a term to expire June 30, 2014

F. Governor's Message No. 530, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Kyoko Kimura, for a term to expire June 30, 2016
G. Governor's Message No. 531, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Leslie Mullens, for a term to expire June 30, 2015

**VI. Board Administrative Matters**

A. Correspondence to State agencies requesting information required for Periodic Review; Evaluation Report, pursuant to Section 201M-7, Hawaii Revised Statutes (HRS)
B. Review Board's Brochure for update and outreach purposes
C. Review Board's "Member" Webpage
D. Review of Public Agency and Meetings Records (Sunshine Law), Chapter 92 HRS
E. Leslie Mullens to facilitate discussion on: 1) Meeting etiquette; 2) Guiding principles and values as an advisory board; and 3) Questions to consider in decision-making

**VII. Election of a Board Chair, pursuant to Section 201M-5(c), HRS, and Election of Vice Chair and Second Vice Chair**

**VIII. Adjournment**

**IX. Next Meeting:** Scheduled for Wednesday, March 20, 2013, at 9:30 a.m., Conference Room 436, Capitol District Building, Honolulu, Hawaii

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

III. Approval of December 10, 2012 Meeting Minutes, and December 10, 2012 Regular Meeting Minutes

Approved: _____

# Small Business Regulatory Review Board

**MINUTES OF MEETING - DRAFT**
**December 10, 2012**
**Conference Room 436 - No. 1 Capitol District Building, Honolulu, Hawaii**

I. **CALL TO ORDER:** Ms. Shubert-Kwock called the meeting to order at 9:30 a.m., with a quorum present.

**MEMBERS PRESENT:**
- Chu Lan Shubert-Kwock
- Leslie Mullens
- Howard Lum
- Barbara Bennett
- Kyoko Kimura
- Anthony Borge
- Mary Alice Evans

**ABSENT MEMBERS:**
- None

**STAFF:** DBEDT — Dori Palcovich
Office of the Attorney General — Margaret Ahn

## II. INTRODUCTION OF MEMBERS AND STAFF

Each member provided a brief introduction of themselves. Ms. Chu Lan Shubert-Kwock is the owner of Chu Lan Properties and ABC Mortgage, and has been doing business in Hawaii for 34 years. She is also heavily involved in the community, including the Chinatown Business Association, and has worked for nine years on the City and County of Honolulu Liquor Commission. Mr. Tony Borge is with RMA Sales in Honolulu, Mr. Howard Lum is CEO of Aloha Gourmet Products, a food distributor, and Ms. Kyoko Kimura currently works at the Hotel Wailea in Maui.

Ms. Mary Alice Evans is the deputy director of DBEDT ~~with a background as a planner; she has worked in a variety of different state departments in both staff and line functions~~. Ms. Leslie Mullens is the president of Playbook Consulting Group, which is based on Maui, where she does strategic planning and organizational development for non-profits, small- and medium-sized businesses and government agencies across the state. Ms. Barbara Bennett is the owner and publisher of the monthly Kauai community magazine, *For Kauai*, and has been doing business on the Island of Kauai for sixteen years in print media; she also served on the Board of the Kauai Business Bureau. Ms. Dori Palcovich is an economic development specialist for DBEDT and her role is to review all administrative rules within the State; a large part of her workload also involves working with the Chair of this Board.

Ms. Barbara Bennett made a motion for Ms. Shubert-Kwock to act as the Chair Pro Tem for today's board meetings. Mr. Lum seconded the motion and the Board members unanimously agreed.

## III. DISCUSSION OF THE FOLLOWING BOARD ADMINISTRATIVE MATTERS

**A.** Board's attorney to advise board members of its powers and duties regarding reviewing administrative rules pursuant to Chapter 201M, Hawaii Revised Statutes (HRS); Administrative Directive 09-01; Sunshine Law; Chapter 92, HRS; Code of Ethics, Chapter 84, HRS

Chair Pro Tem Shubert-Kwock introduced Deputy Attorney General Margaret Ahn, who thanked all the members for volunteering on this board. She stated that this board's powers and responsibilities are governed by Chapter 201M, Hawaii Revised Statutes, where board members review administrative rules for small business impact. She explained the difference between a statute and a rule. Statutes are broader laws and more generalized statements of the law; agencies have the authority to adopt administrative rules based on the statutes to provide more detail. In addition to preparing administrative rules, agencies take the rules to public hearing and then adopt the rules; both require the Governor's approval. Before the agencies' request approval from the Governor to go to public hearing, they determine whether there is small business impact; if there is, they must submit a small business impact statement to this board. After public hearing, they submit a small business statement to this board outlining the testimony received at the public hearing; this statement may discuss any small business concerns about the rules that were raised at the hearing.

Under the statute, small business is defined as a for-profit enterprise consisting of fewer than one hundred full-time or part-time employees; therefore, the board does not review rules that impact non-profits or big businesses. Governor's Administrative Directive 09-01 provides instructions to the agencies as to what information the Governor wants to see when administrative rules are submitted for his approval. Specifically, the Directive asks if the rules affect small business, and if so, were the statements submitted to this board. The board does not review federally-mandated or emergency rules.

In regards to the Sunshine Law, its purpose is to protect the people's right to know about what is going on in their government. It requires that all discussions, deliberations and decisions on official board business have to be done at a public meeting. Minutes are taken and an agenda is posted at least six days in advance. The board has to allow the public to testify, but only on agenda items; the testimony may be limited to a specific time allowance, as long as it is consistent with each testifier. It was noted that there are times that individual members may receive emails from the public; if it looks as if it is intended to be testimony, members should send it to staff, who will distribute it accordingly.

When board members take breaks during board meetings, it is important to cease the discussion of board business. Additionally, there should be no telephone discussions, or email communications sent to the members outside of a public meeting. A common mistake is when staff sends an email to the members, and a member replies to all; it is important not to reply to all when the information has to do with official board business. Official board business is defined as matters over which the board has supervision, control, jurisdiction or advisory power that are before the board or reasonably anticipated to come before the board in the foreseeable future. Exceptions to this rule would include purely administrative matters where board members may talk amongst themselves. Also, two members of this board can discuss official board business amongst yourselves as long as

they make no commitment to vote. On the Office of Information Practices' website, there is a link where one can do an online video training. It was noted that willful violations of the Sunshine Law are a misdemeanor; this is something we want to avoid.

Under the Ethics Code, board members are considered State employees. The conflict of interest section pops up most of the time; this section states that no employee shall take any official action directly affecting a business or other undertaking in which they have a substantial financial interest. Official action is not just voting on an item but discussing and voicing one's opinion, and recommending for or against an agenda item. Financial interest is defined as ownership, directorship, officer-ship in a business, a creditor interest, debtor interest, an interest in real or personal property or employment; this also relates to interests of a spouse and dependent children. She noted that when a rule is being reviewed and a member may have a financial interest in the rule, it is incumbent to raise this before a meeting, if possible. This is so that in the event the members need to recuse themselves from deliberating, the board will know whether or not quorum may be lost. A board member may directly contact the Ethics Commission if there is any doubt about a potential conflict. However, if it turns out that a member voted on an item and it was found out later that a conflict existed with that member, the action may be voided.

Deputy Attorney General Ahn also added that during this past legislative session, a bill was passed that allowed participation by board members at board meetings via telephone. However, members of the public must be allowed to attend where those members are located.

**B.** Approval of draft 2012 Annual Report Summary to the Legislature, pursuant to Section 201M-5(f), HRS

Chair Pro Tem Shubert-Kwock stated that it is this board's statutory requirement that an annual report be submitted to the State Legislature. Ms. Palcovich explained the report consists of a compilation of the rules reviewed, and any board activities; the information was extracted from the board meeting minutes from February through June 2012. Chair Pro Tem Shubert-Kwock stated that it is quite impressive that this Board has reviewed a total of 545 administrative rules since its inception, which is a lot of work for a volunteer group.

Ms. Mullens made a motion to accept the 2012 Annual Report Summary as presented, and Ms. Kimura seconded the motion. Ms. Mullens, Ms. Kimura, Ms. Bennett, and Chair Pro Tem Shubert-Kwock voted in favor of the motion, Ms. Evans abstained, and Mr. Lum and Mr. Borge opposed the motion; as a result, the motion failed. The 2012 Annual Report Summary will include a disclaimer that the members declined to approve the report due to their personal unfamiliarity with a majority of the reports' contents.

**C.** Approval of draft Periodic Review; Evaluation Report to the Legislature, pursuant to Section 201M-7, HRS

Ms. Palcovich indicated that this is a report that is required to be submitted to the Legislature every other year. The report outlines a list of existing administrative rules, received from the State agencies, that impact small business with a justification for the

rules' continuation. The information in the report consists only of a compilation of the information received from the State agencies.

Mr. Borge made a motion not to approve the 2012 Period Review: Evaluation Report, but to pass it along to Legislation. Ms. Mullens seconded the motion, and the Board members unanimously agreed. have.

**D.** Schedule of upcoming Board meetings for 2013

After the board members discussed various times and days of the month that will work in their schedules, it was decided that ongoing board meetings will occur on the third Wednesday of each month, beginning at 9:30 a.m. Staff will schedule the meetings in conference room 436, in the Capitol District Building.

**E.** Proposed Budget Request for fiscal years 2014 and 2015

Ms. Evans stated that this board does not have a budget to speak of. She explained that during the economic difficulties experienced in 2009, it caused DBEDT to lose a number of positions as well as a portion of funding. Currently, there is an economic development specialist to handle this board's administrative work and enough funding to cover board member travel expenses, which include airfare, parking at the airports, taxi, and car rental; the funding comes from one of DBEDT's appropriated programs. Any further or additional budget requests to the Governor are now closed.

Although it was stated that this board is not responsible for a budget, Ms. Mullens explained that, as a strategic planner, in order to continue with this discussion she would need to know exactly what the board's budget is and what the board programs are in order to be specific on what it wants to do and what results are expected. She believes that if the members agree that there may be other work this board would like to do, and it can handle that work, then it would make sense to continue with a discussion on the budget. Chair Pro Tem Shubert-Kwock believed that DBEDT is providing the minimum amount of funds to cover this board, and that the outreach of this board may suffer due to the lack of sufficient funding.

**F.** Board Assignments for the State Departments and Counties' Administrative Rule Review

Chair Pro Tem Shubert-Kwock discussed the internal process of receiving proposed new and amended rules by the agencies. Ms. Evans noted that there are eighteen State departments with attached agencies that adopt rules; sixteen fall under the Governor. The members reviewed the distributed list of agencies to determine which agencies they would like to be the discussion leader for. Board member who is assigned specific agencies would share in a discussion of the rules at the board meetings. Upon review, the following assignments were made:

- Chu Lan Shubert-Kwock – Office of the Governor; Office of the Lieutenant Governor; Department of the Attorney General; Back-up for Department of Commerce and Consumer Affairs

- Leslie Mullens - Department of Labor & Industrial Relations; Department of Land and Natural Resources; University of Hawaii
- Barbara Bennett – Department of Agriculture; Department of Defense; Department of Hawaiian Home Lands
- Kyoko Kimura – Department of Commerce & Consumer Affairs; Department of Transportation
- Howard Lum – Department of Business, Economic Development & Tourism
- Tony Borge – Department of Budget & Finance; Public Utility Commission; Department of Education; Department of Health (Environmental)
- Mary Alice Evans – Department of Accounting & General Services; Back-up for Department of Business, Economic Development & Tourism; Department of Human Services

**G.** Board's outreach to business organizations including Hawaii chambers of commerce to discuss Board's role and mission under Chapter 201M, HRS

Ms. Bennett suggested that staff send the Hawaii chambers of commerce an announcement about this Board. Mr. Borge suggested that a public service announcement be made in the *Pacific Business News*, with a paragraph outlining what this Board does, and how it can be reached. Ms. Mullens added that the announcement should point out specifically what information should be sent, such as testimonies, and what information should not be sent.

Ms. Bennett brought to the meeting a previous brochure of this board that she received several years ago at a business meeting in Kauai. It was noted that brochures can be updated in-house, at no cost, in order to sent them to the various chambers for outreach purposes. An updated brochure in draft form will be provided to the members at the next board meeting.

Chair Pro Tem Shubert-Kwock suggested that a committee or task force be created to assist staff with public relations. Deputy Attorney General Ahn noted that if the committee is for either a specific purpose or for one time, an investigative task force can be formed. However, if it is a standing committee to review and make on-going suggestions, that committee will be subject to the Sunshine Law where, among other requirements, agendas would need to be posted.

## IV. DISCUSSION OF THE FOLLOWING LEGISLATIVE MATTERS

A. Proposal of a bill for the upcoming 2013 Legislative session for a clerical assistant for the Small Business Regulatory Review Board

It was explained that a clerical assistant position for this Board was included in the Governor's budget proposal for fiscal years 2014 and 2015, but it did not make the final budget proposal.

B. Proposed amendment to Section 201M-5(b) (4), HRS, to replace "voting" member with "non-voting" member with respect to the director of the Department Business, Economic Development and Tourism or the director's designated representative

Deputy Attorney General Ahn explained that in 2012 the Legislature changed how the members of this board will be appointed in its statute. The Board is required to follow that appointment process, which is why the prior board members were repealed. Chair Pro Tem Shubert-Kwock stated that when the bill was being heard during the legislative session, there was some discussion as to whether or not the DBEDT board member should be a voting member; the concern was that it would potentially dilute the intended independence and spirit of the Board. She also explained that at times there was some difficulty in filling vacancies on this Board, and a few of the members did not get along with some of the agencies.

Deputy Attorney General Ahn explained that although previously the board members were nominated by the existing members, it is very common for State boards to have various department directors as ex officio voting members. Ms. Evans believes that it is a benefit to have a DBEDT ex officio as a board member as another voice and perspective to matters such as the budget and administrative matters; in turn the Board can inform DBEDT as to how certain rules impact small businesses. Pro Chair Tem Shubert-Kwock noted that Ms. Evans already functions to serve this Board, so that she can still provide perspectives to various DBEDT matters whether a board member or not. Ms. Mullens suggested that the members may want to think about having a DBEDT ex officio as a voting member on this board, and if they have any questions, they should provide them to staff.

**V. Election of a Board Chair, pursuant to Section 201M-5(d), HRS, and Election of Vice Chair and Second Vice Chair**

Ms. Evans made a motion that Ms. Mullens become Chair, and Ms. Kimura seconded; Ms. Bennett made a motion that Ms. Shubert-Kwock become Chair, and Mr. Borge seconded. Ms. Bennett, Mr. Lum, Mr. Borge and Chair Pro Tem Shubert-Kwock voted for Ms. Shubert-Kwock, and Ms. Evans, Ms. Kyoko and Ms. Mullens voted for Ms. Mullens. As a result, the motion did not pass.

Ms. Evans made a motion that the election of officers be deferred until the next board meeting, and Ms. Mullens seconded the motion. Ms. Evans, Ms. Mullens, and Ms. Kimura voted in favor, and Chair Pro Tem Shubert-Kwock, Ms. Bennett, Mr. Lum and Mr. Borge voted against. As a result, the motion did not pass.

This item will be placed on the next month's agenda.

**VI. ADJOURNMENT** – Chair Pro Tem Shubert-Kwock made a motion to adjourn the meeting at 12:08 p.m. Ms. Bennett seconded, and the Board members unanimously agreed.

**VII. NEXT MEETING** – Scheduled for Monday, December 10, 2012, at 1:00 p.m., at No. 1 Capitol District Building, 250 South Hotel Street, Conference Room 436, Honolulu, HI

Approved: _____

# Small Business Regulatory Review Board

**MINUTES OF REGULAR MEETING - DRAFT**
**December 10, 2012**
**Conference Room 436 - No. 1 Capitol District Building, Honolulu, Hawaii**

**I. CALL TO ORDER:** Secretary Pro Tem Shubert-Kwock called the meeting to order at 1:05 p.m., with a quorum present.

**MEMBERS PRESENT:**
- Chu Lan Shubert-Kwock
- Leslie Mullens
- Howard Lum
- Barbara Bennett
- Kyoko Kimura
- Howard West
- Mary Alice Evans

**ABSENT MEMBERS:**
- None

**STAFF:** DBEDT — Dori Palcovich
Office of the Attorney General — Margaret Ahn

## II. APPROVAL OF JUNE 20, 2012 MINUTES

Ms. Evans made a motion to accept the June 20, 2012 minutes as presented. Ms. Bennett seconded the motion, and the Board members unanimously agreed.

## III. OLD BUSINESS

**A.** Small Business Statement after Public Hearing for Hawaii Administrative Rule (HAR) Title 16 Chapter 171, Miscellaneous Insurance Rules (Department of Commerce and Consumer Affairs (DCCA))

The Governor signed off on these rules for adoption; as a result, no action was taken.

**B.** Small Business Statement after Public Hearing for HAR Title 16 Chapter 23, Motor Vehicle Insurance Law (DCCA)

Chair Pro Tem Shubert-Kwock stated that DCCA has taken these rule to public hearing, and are requesting that they be adopted. The rules are not expected to have any small business impact as the amendments eliminate the posting of a bond, and streamline the language of the rules to match the national standards.

Ms. Evans made a motion that the proposed amended rules proceed to the Governor for adoption. Ms. Mullens seconded the motion, and the Board members unanimously agreed.

**C.** Small Business Statement After Public Hearing for HAR Title 15 Chapter 32, Hawaii Small Business Innovation Research and Small Business Technology Transfer Grant Program

(High Technology Development Corporation / Department of Business Economic Development and Tourism)

The Governor signed off on these rules for adoption; as a result, no action was taken.

## IV. NEW BUSINESS

**A.** Proposed Amendments to HAR Title 17 Chapter 1722.3 Basic Health Hawaii; Chapter 1725, Assets; Chapter 1727 QUEST; and Chapter 1739.1 Authorization, Payment and Claims in the Fee-for-Service Medical Assistance Program for Non-institutional Services (Department of Human Services (DHS))

Ms. Aileen Befitel, Program Specialist, indicated that the overall purpose of the amendments is to comply with Federal regulations, restore benefits, modify and clarify certain procedures, and make housekeeping measures. Specifically, proposed amendments to Chapter 1722.3 will allow the DHS to be consistent with Federal regulations; amendments to Chapter 1725 will correct the chapter's citations; amendments to Chapter 1727 are intended to bring the benefits package current for availability to eligible individuals. The benefits package includes unlimited inpatient visits, rehabilitation services, optometry services, visual appliances, durable medical equipment and medical supplies.

In addition, amendments to Chapter 1739.1, which is the only chapter that would have any ascertainable small business impact, entail an amended reimbursement methodology to the cost of prescription drugs. Impacted businesses are licensed pharmacies; however, the impact would be minimal as a result of a nominal decrease in revenue stream due to the new methodology of the Medicaid fee-for-service program.

Ms. Mullens made a motion that the proposed amended rules proceed to public hearing. Mr. Lum seconded the motion, and the Board members unanimously agreed.

**B.** Proposed Amendments to HAR Title 16 Chapter 89 Nurses (DCCA)

Ms. Lee Ann Teshima, Executive Officer for the Board of Nursing at DCCA, explained that the most important change to the rules applies to the prescriptive authority of an advanced practice registered nurse. This change aligns the rules with the statute, pursuant to Act 110, SLH 2011, which repealed the requirement for advanced practice registered nurses with prescriptive authority to have an appropriate working relationship with a physician in order to prescribe both controlled and non-controlled substances. Also, as the current requirement for continuing education regarding controlled substances is onerous and unnecessary, it is being deleted from the rules. Overall, the changes are expected to benefit the small businesses due to the updating, clarification, and streamlining of the processes and procedures.

Ms. Kimura made a motion that the proposed amended rules proceed to public hearing. Ms. Evans seconded the motion, and the Board members unanimously agreed.

**C.** Proposed Amendments to HAR Title 16 Chapter 115 Professional Engineers, Architects, Surveyors, and Landscape Architects (DCCA)

Mr. Norman Hong, Chairman of the State's Board of Professional Engineers, Architects, Surveyors and Landscape Architects, explained that the proposed amendments will consolidate the accredited architectural degrees and allow a graduate from accredited architectural programs to take the architectural registration examination while still enrolled in the National Council of Architectural Registration Boards' intern development program. However, graduates of non-accredited programs or persons with no degree shall continue to be required to complete the intern development program and meet the experience requirement prior to being allowed to take the architectural registration examination. He noted that there have been a number of meetings with the State Board of Professional Engineers, Architects, Surveyors and Landscape Architects and the affected organizations and small businesses throughout the rule-making process, where positive support for the proposed amendments has been provided.

Several people testified at the meeting in support of the rule changes. Mr. Philip White, President of the Honolulu Chapter of the American Institute of Architects (AIA) strongly supported the amendments due to the positive impact on small businesses and newly licensed architects. Mr. Chris Palagi, a full-time instructor at the University of Hawaii at Manoa, believes that the proposed amendments will ultimately create a strong architectural practice. Ms. Amy Blagriff, Executive Vice President for the Honolulu Chapter of the AIA, who oversees the affairs of the AIA Hawaii State Counsel, represents all its architect members on all of the islands regarding regulatory and advocacy issues; she stated that all of the members support the proposed changes to the rules.

Mr. Louis Fung is the president of his own firm, Fung Associates, Inc., and is the incoming president of AIA next year. He stated that if these measures are not passed, prospective architects may be inclined to move to other states where it is easier to be licensed. Mr. John Ida, an architect and partner in a small business, supports these changes, and discussed the process of taking the architectural exam. Mr. Dan Chun, an architect at Kauahikaua & Chun Architects, explained that Hawaii operates in a competitive mode, unlike some of the states that compete aggressively within the profession; he believes the rule changes are good.

Ms. Kimura made a motion that the proposed amended rules proceed to public hearing. Mr. Lum seconded the motion, and the Board members unanimously agreed.

**D.** Proposed Amendments to HAR Title 16 Chapter 100, Speech Pathologists and Audiologists (DCCA)

Ms. Candace Ito, Executive Director for the Board of Speech Pathologists and Audiologists, stated that the rule amendments reflect to basic changes. One of the amendments modifies the passing score of the new national exam for audiologists; the other amendment involves adding two different routes for audiologists, one for the doctor of audiology degree and the other is for the Board of Certification in Audiology from the American Board of Audiology. She noted that the changes should be beneficial to small businesses because audiologists work in different settings with some in private practice. Additional changes include adding definitions, modifying requirements and other housekeeping measures. Any small business impact is likely to be positive due to the deletion of outdated provisions and the streamlining of many of the requirements.

Ms. Mullens made a motion that the proposed amended rules proceed to public hearing. Ms. Kimura seconded the motion, and the Board members unanimously agreed.

**E.** Proposed Article IV, Rules Relating to Plastic Bag Reduction (Department of Environmental Management – County of Hawaii)

Mr. Ivan Torigoe, Deputy Corporation Counsel from the County of Hawaii explained that the County's Department of Environmental Management (Department) has joined the other islands, Maui and Kauai, in establishing plastic bag reduction rules as an environmental measure. He explained that several meetings were held during the rule-making process, where the Department has made reasonable efforts to include the small business community to share ideas and concerns of the proposed rules. The rules provide that all retail businesses will be allowed to sell plastic checkout bags for one year. Thereafter, businesses will be allowed to provide paper checkout bags and reusable bags, as well as permissible plastic bags for non-checkout uses. Small businesses may be somewhat impacted because of an inability "to obtain bulk purchasing economies of scale from reusable or paper bag suppliers." However, in discussions with the bag suppliers, they were amenable to working with those businesses.

In response to a question from Ms. Bennett as to how visitors on the Island of Hawaii would be informed of the rules, Mr. Torigoe indicated that he approached the County's Recycling Coordinator who is researching to see if there are specific ways in which awareness can be brought to the visitors regarding these rules. Ms. Bennett noted that in Kauai the plastic bag rules have been very positive as it appears to have eliminated plastic bags along the ocean front and on the side of the roads. However, she believes that Kauai has not done a sufficient job in alerting the visitors of the rules. When visitors shop, for example at the Kauai Walmart, they are either provided no bags, or if they want a bag, they are required to pay twenty-five cents. This has caused some dissention among the visitors, largely because they are not accustomed to paying a fee for shopping bags, albeit small. Overall, she believes that the County of Hawaii has done its due diligence in promulgating the rules by involving the small business community to attend the community meetings, and she supports the proposed rules.

Ms. Evans made a motion that the proposed amended rules proceed to the Mayor of Island of Hawaii to go to public hearing. Ms. Bennett seconded the motion, and the Board members unanimously agreed.

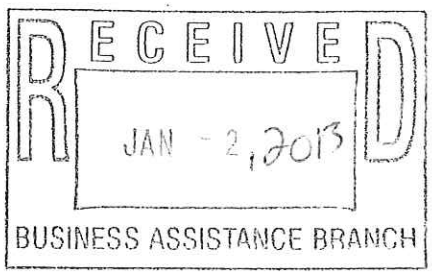
**V.** **NEXT MEETING** – Scheduled for 9:30 a.m., Wednesday, January 23, 2013, Conference Room 436, 250 South Hotel Street, Honolulu, HI

**VI.** **ADJOURNMENT** – Mr. Borge made a motion to adjourn the meeting at 2:33 p.m.; Ms. Mullens seconded and the board members agreed.

IV. New Business

A. Proposed Amendments to HAR Title 11 Chapter 54 Water Quality Standards and HAR Title 11 Chapter 55 Water Pollution Control (Department of Health)

# Changes to HAR 11-54



## Part I: Introduction

The proposed revisions to the Department of Health Administrative Rules, Title 11, Chapter 54 (HAR 11-54) – Water Quality Standards (here after referred to as 11-54) is presented in three independent units. The first component is a compilation and incorporation of grammatical and formatting recommendations provided by the Legislative Reference Bureau. The second component describes content or technical changes to the rule and includes the addition of EPA-required antidegradation language to comply with section 316 of the Clean Water Act. The second component also allows the state to specify the use of a new EPA-developed alternative statistical test method (the Test of Significant Toxicity, TST) for determining toxicity effects of effluents from NPDES permittees. The final component updates the various references cited in 11-54.

Background:

Hawaii's administrative rule for water quality standards (WQS) dates back to January 1968, when Chapter 37-A, Public Health Regulations first became effective. These regulations were authorized under the federal Water Quality Act of 1965. The first amendment to these regulations became effective in May 1974 following the amendments to the Water Quality Act which gave rise to the 1972 Federal Water Pollution Control Act, commonly known as the Clean Water Act. Much of the existing content of Hawaii's WQS rule is based on the 1968 and the 1974 WQS rules. Subsequent amendments to Hawaii's WQS were adopted in 1979 to satisfy the CWA Section 208 Basin Plan requirements. Later amendments incorporated the National Pollutant Discharge Elimination System (NPDES) permit program, the CWA 401 Water Quality Certifications, which in some cases accompany the Department of the Army's CWA 404 permit for constructions in waters of the U.S., and site specific amendments for the Kona (west) coast of the island of Hawaii. Some phrases and terms from the first Federal Water Pollution Control Act of 1948 have been retained in the existing Clean Water Act and existing WQS rule for Hawaii; for example the current designated uses have remained basically unchanged since 1948. The most recent amendment was adopted on October 11, 2012 and incorporated provisions and restrictions for the application of pesticides to State waters.

## Part II: Format Revisions

By direction of the Legislative Reference Bureau (LRB) and pursuant to the procedures established in Hawaii Administrative Rules Drafting Manual (LRB: Second Edition 1994), parts of Chapter 54 have been reformatted. These reformatting changes do not affect the content of the document. Content, or technical changes, are discussed thoroughly in Part III, Content or Technical Changes, of this rationale document.

Format changes include:

- Corrections to the Table of Contents to accurately reflect the titles of the various subparts
- Extending the underlines of section titles to include the period
- Removing unnecessary commas and semicolons or inserting them where appropriate
- Removing unnecessary line breaks so that sentences remain within their respective paragraphs
- Spelling out numeric values where appropriate
- Replaced "percent" with "per cent"

## Part I: Introduction

The proposed revisions to the Department of Health Administrative Rules, Title 11, Chapter 54 (HAR 11-54) – Water Quality Standards (here after referred to as 11-54) is presented in three independent units. The first component is a compilation and incorporation of grammatical and formatting recommendations provided by the Legislative Reference Bureau. The second component describes content or technical changes to the rule and includes the addition of EPA-required antidegradation language to comply with section 316 of the Clean Water Act. The second component also allows the state to specify the use of a new EPA-developed alternative statistical test method (the Test of Significant Toxicity, TST) for determining toxicity effects of effluents from NPDES permittees. The final component updates the various references cited in 11-54.

Background:

Hawaii's administrative rule for water quality standards (WQS) dates back to January 1968, when Chapter 37-A, Public Health Regulations first became effective. These regulations were authorized under the federal Water Quality Act of 1965. The first amendment to these regulations became effective in May 1974 following the amendments to the Water Quality Act which gave rise to the 1972 Federal Water Pollution Control Act, commonly known as the Clean Water Act. Much of the existing content of Hawaii's WQS rule is based on the 1968 and the 1974 WQS rules. Subsequent amendments to Hawaii's WQS were adopted in 1979 to satisfy the CWA Section 208 Basin Plan requirements. Later amendments incorporated the National Pollutant Discharge Elimination System (NPDES) permit program, the CWA 401 Water Quality Certifications, which in some cases accompany the Department of the Army's CWA 404 permit for constructions in waters of the U.S., and site specific amendments for the Kona (west) coast of the island of Hawaii. Some phrases and terms from the first Federal Water Pollution Control Act of 1948 have been retained in the existing Clean Water Act and existing WQS rule for Hawaii; for example the current designated uses have remained basically unchanged since 1948. The most recent amendment was adopted on October 11, 2012 and incorporated provisions and restrictions for the application of pesticides to State waters.

## Part II: Format Revisions

By direction of the Legislative Reference Bureau (LRB) and pursuant to the procedures established in Hawaii Administrative Rules Drafting Manual (LRB: Second Edition 1994), parts of Chapter 54 have been reformatted. These reformatting changes do not affect the content of the document. Content, or technical changes, are discussed thoroughly in Part III, Content or Technical Changes, of this rationale document.

Format changes include:

- Corrections to the Table of Contents to accurately reflect the titles of the various subparts
- Extending the underlines of section titles to include the period
- Removing unnecessary commas and semicolons or inserting them where appropriate
- Removing unnecessary line breaks so that sentences remain within their respective paragraphs
- Spelling out numeric values where appropriate
- Replaced "percent" with "per cent"

- Separating lists into individual, numbered paragraphs
- Removing unnecessary capitalizations
- Indenting or removing unnecessary indentations where appropriate to conform to established formatting guidelines
- Removing letters/numbers preceding definitions
- Correcting spelling and removing unnecessary hyphenations
- Adding spaces and removing unnecessary spaces where appropriate
- Correcting the use of "paragraph," "subparagraph," "section" and "subsection"
- Correcting inconsistencies in numbered lists
- Removed bracketed text that should have been removed in previous amendments

Specific grammatical changes made to numeric standards for toxic pollutants (11-54-4(b)(3):

- "Acenapthene" changed to "Acenaphthene"
- Fish Consumption value for Acenaphthene changed from "Ns" to "ns"
- "Chloroethers- ethy (bis-2)" changed to "Chloroethers-ethyl (bis-2)
- "Chloroethers- isoprophyl" changed to "Chloroethers- isopropyl"
- "ns" added to Acute Freshwater value for Demeton
- "Dichloro- ehenol" changed to "Dichloro- phenol"
- "Pyrrolidine-N" not capitalized and indented to "Nitroso pyrrolidine-N
- "phenol (2,3,5,6)" indented to "Tetrachloro- phenol(2,3,5,6)
- "Vinylchloride" was changed to "Vinyl chloride"

## Part III: Content or Technical Changes

**Antidegradation**
Section 11-54-1.1 General policy of water quality antidegradation.

Original: None

Proposed: (d) In those areas where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with section 316 of the Clean Water Act.

Rationale:
Antidegradation Policy
Antidegradation implementation is an integral component of a comprehensive approach to protecting and enhancing water quality. All state water quality standards must be approved by EPA prior those standards becoming federally enforceable. 40 CFR 131.6 requires that certain minimum elements be included in the state's water quality standards when submitted to EPA for review. One such requirement, as stated in 40 CFR 131.6(d), includes an antidegradation policy.

The Federal antidegradation policy is stated in 40 CFR part 131 (section 131.12). This policy addresses the language and intent of the Federal requirement and was originally based on the spirit, intend and goals of the Clean Water Act (CWA), specifically the clause "...restore and

maintain the chemical, physical and biological integrity of the Nation's waters." Antidegradation was not a part of the original CWA, but was explicitly incorporated into the CWA through a 1987 amendment codified in section 303(d)(4)(B), which requires the satisfaction of antidegradation requirements before certain changes may be made to NPDES permits. States are required to adopt into law antidegradation policies consistent with Federal requirements. These policies are implemented as part of the State's water quality standard.

The Federal antidegradation policy includes provisions for:

1. Assuring a level protection necessary to protect and maintain existing uses.
2. Protecting existing water quality that exceeds current Clean Water Act goals. Waters that exceed the levels necessary to support the propagation of fish, shellfish, and wildlife and recreation in and on the water must be protected and maintained, unless the State finds, after full satisfaction of the State's intergovernmental coordination and public participation provisions, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lowering of the water quality in that area, the State must assure that water quality will be adequate to fully protect existing uses.
3. Protecting and maintaining existing high quality waters of exceptional significance.
4. Implementing an antidegradation policy consistent with section 316 of the Clean Water Act in cases where potential water quality impairment is associated with a thermal discharge.

Antidegradation language first appears in the 1984 revision of Hawaii's water quality standards (HAR 11-54-01.1, General policy of water quality), which states:

> "Waters whose quality are higher than established water quality standards shall not be lowered in quality unless it has been affirmatively demonstrated to the director that the change is justifiable as a result of necessary economic or social development and will not interfere with or become injurious to any assigned uses made of, or presently in, those waters."

The term "antidegradation" first appears in the 1988 revision to 11-54, where the title of section 11-54-01.1 was amended to "General policy of water quality antidegradation" and the word "necessary" is replaced with "important" to be consistent with the antidegradation policy stated in section 131.12 of the November 8, 1983 edition of the Federal Register. The antidegradation component of 11-54 was again amended in 2004 after EPA requested that the Department update the rule to be explicitly consistent with 40 CFR 132.12. The 2004 amendment incorporated language identical to 40 CFR 132.12 into 11-54-1.1 with the following exceptions:

- Paragraph (a) - the word "instream" has been removed from the proposed amendment because the antidegradation requirement applies to all existing uses of surface waters in and bordering the State, whether these waters are fresh, brackish or marine.
- Paragraph (b) - the word "State" has been changed to "director," meaning the Director of the Department of Health.

Section 11-54-1.1 has been unchanged since the 2004 amendment.

On May 10, 2011, EPA Region 9 issued its draft Antidegradation Policy Implementation Review for all states in the region. That review noted that Hawaii's water quality standards lacked the requirement for thermal discharges, and therefore was inconsistent with Section 316 of the Clean

maintain the chemical, physical and biological integrity of the Nation's waters." Antidegradation was not a part of the original CWA, but was explicitly incorporated into the CWA through a 1987 amendment codified in section 303(d)(4)(B), which requires the satisfaction of antidegradation requirements before certain changes may be made to NPDES permits. States are required to adopt into law antidegradation policies consistent with Federal requirements. These policies are implemented as part of the State's water quality standard.

The Federal antidegradation policy includes provisions for:

1. Assuring a level protection necessary to protect and maintain existing uses.
2. Protecting existing water quality that exceeds current Clean Water Act goals. Waters that exceed the levels necessary to support the propagation of fish, shellfish, and wildlife and recreation in and on the water must be protected and maintained, unless the State finds, after full satisfaction of the State's intergovernmental coordination and public participation provisions, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lowering of the water quality in that area, the State must assure that water quality will be adequate to fully protect existing uses.
3. Protecting and maintaining existing high quality waters of exceptional significance.
4. Implementing an antidegradation policy consistent with section 316 of the Clean Water Act in cases where potential water quality impairment is associated with a thermal discharge.

Antidegradation language first appears in the 1984 revision of Hawaii's water quality standards (HAR 11-54-01.1, General policy of water quality), which states:

> "Waters whose quality are higher than established water quality standards shall not be lowered in quality unless it has been affirmatively demonstrated to the director that the change is justifiable as a result of necessary economic or social development and will not interfere with or become injurious to any assigned uses made of, or presently in, those waters."

The term "antidegradation" first appears in the 1988 revision to 11-54, where the title of section 11-54-01.1 was amended to "General policy of water quality antidegradation" and the word "necessary" is replaced with "important" to be consistent with the antidegradation policy stated in section 131.12 of the November 8, 1983 edition of the Federal Register. The antidegradation component of 11-54 was again amended in 2004 after EPA requested that the Department update the rule to be explicitly consistent with 40 CFR 132.12. The 2004 amendment incorporated language identical to 40 CFR 132.12 into 11-54-1.1 with the following exceptions:

- Paragraph (a) - the word "instream" has been removed from the proposed amendment because the antidegradation requirement applies to all existing uses of surface waters in and bordering the State, whether these waters are fresh, brackish or marine.
- Paragraph (b) - the word "State" has been changed to "director," meaning the Director of the Department of Health.

Section 11-54-1.1 has been unchanged since the 2004 amendment.

On May 10, 2011, EPA Region 9 issued its draft Antidegradation Policy Implementation Review for all states in the region. That review noted that Hawaii's water quality standards lacked the requirement for thermal discharges, and therefore was inconsistent with Section 316 of the Clean

Water Act. EPA recommended that Hawaii update its water quality standards to include the requirement for thermal discharges to be consistent with Section 316 of the CWA. The existing antidegradation language for Hawaii, found in 11-54-1.1, General policy of water quality antidegradation, is consistent with, and is based substantially on 40 CFR 131.12 based on the 2004 amendment, with the exception of paragraph (4) of 40 CFR 131.12. The proposed amendment will add the text of paragraph (4) in 40 CFR 131.12 into 11-54-1.1 to comply with Section 316 of the Clean Water Act.

**Test of Significant Toxicity**
Section 11-54-4(b)(1)

Original: None

Proposed: "In-Stream Waste Concentration" (IWC) means the concentration of a toxicant in the receiving water, or for a discharge, the concentration of the effluent after minimum dilution authorized by the department. A discharge of one hundred divided by the minimum dilution is the IWC when the dilution is authorized by the department. A discharge of one hundred per cent effluent is the IWC when dilution is not authorized by the department.

and

"Test of Significant Toxicity" (TST) means the alternative statistical method for analyzing and interpreting valid whole effluent toxicity test data as described in the EPA publications, "National Pollutant Discharge Elimination System Test of Significant Toxicity Implementation Document", EPA 833-R-10-003 (June 2010), and "National Pollutant Discharge Elimination System Test of Significant Toxicity Technical Document", EPA 833-R-10-004 (June 2010).

Section 11-54-4(b)(4)

Original: (A) Continuous discharges through submerged outfalls. The No Observed Effect Concentration (NOEC), expressed as percent effluent, of continuous discharges through submerged outfalls shall not be less than 100 divided by the minimum dilution. In addition, such discharges shall not contain:

(i) Pollutants in twenty–four hour average concentrations greater than the values obtained by multiplying the minimum dilution by the standards in paragraph (3) for the prevention of chronic toxicity.

(ii) Non-carcinogenic pollutants in thirty day average concentrations greater than the values obtained by multiplying the minimum dilution by the standards in paragraph (3) for fish consumption.

(iii) Carcinogenic pollutants in twelve month average concentrations greater than the values obtained by multiplying the average dilution by the standards in paragraph (3) for fish consumption.

(B) Discharges without submerged outfalls. The survival of test organisms in an undiluted acute toxicity test of any discharge shall not be less than 80 per cent. In addition, no such discharge shall contain pollutants in concentrations greater than the standards in paragraph (3) for the prevention of acute toxicity to aquatic life. The director may make a limited allowance for dilution for a discharge in this category if it meets the following criteria: the discharge velocity is greater than 3 meters per second; the discharge enters the receiving water horizontally, and; the receiving water depth at the discharge point is greater than zero.

Proposed:

(A) Continuous discharges through submerged outfalls.

(i) The No Observed Effect Concentration (NOEC), expressed as percent effluent, of continuous discharges through submerged outfalls shall not be less than 100 divided by the minimum dilution; or,

(ii) The Test of Significant Toxicity (TST), as described in EPA 833-R-10-003 (June 2010) and EPA 833-R-10-004 (June 2010), shall be used to demonstrate no unacceptable level of chronic toxicity at the In-stream Waste Concentration (IWC). The chronic toxicity criterion is expressed using a regulatory management decision (b value) of 0.75 for chronic toxicity where, a 0.25 effect level (or more) at the In-stream Waste Concentration (IWC) demonstrates an unacceptable level of chronic toxicity.

(B) Continuous discharges through submerged outfalls shall not contain:

(i) Pollutants in twenty four hour average concentrations greater than the values obtained by multiplying the minimum dilution by the standards in paragraph (3) for the prevention of chronic toxicity.

(ii) Non-carcinogenic pollutants in thirty day average concentrations greater than the values obtained by multiplying the minimum dilution by the standards in paragraph (3) for fish consumption.

(iii) Carcinogenic pollutants in twelve month average concentrations greater than the values obtained by multiplying the average dilution by the standards in paragraph (3) for fish consumption.

C Discharges without submerged outfalls.

(i) The survival of test organisms in an undiluted acute toxicity test of any discharge shall not be less than eighty per cent; or,

(ii) Compliance with the acute toxicity NPDES effluent limit is demonstrated using the Test of Significant Toxicity (TST) as described in EPA 833-R-10-003 (June 2010) and EPA 833-R-10-004 (June 2010). The acute toxicity criterion is expressed using a regulatory management decision (*b* value) of 0.80 for the acute toxicity test methods listed in 11-54-10, where, in an undiluted acute toxicity test, a 0.20 effect level (or more) at the IWC demonstrates an unacceptable level of acute toxicity; or,

(iii) The Test of Significant Toxicity (TST), as described in EPA 833-R-10-003 (June 2010) and EPA 833-R-10-004 (June 2010), shall

(B) Discharges without submerged outfalls. The survival of test organisms in an undiluted acute toxicity test of any discharge shall not be less than 80 per cent. In addition, no such discharge shall contain pollutants in concentrations greater than the standards in paragraph (3) for the prevention of acute toxicity to aquatic life. The director may make a limited allowance for dilution for a discharge in this category if it meets the following criteria: the discharge velocity is greater than 3 meters per second; the discharge enters the receiving water horizontally, and; the receiving water depth at the discharge point is greater than zero.

Proposed:

(A) Continuous discharges through submerged outfalls.

(i) The No Observed Effect Concentration (NOEC), expressed as percent effluent, of continuous discharges through submerged outfalls shall not be less than 100 divided by the minimum dilution; or,

(ii) The Test of Significant Toxicity (TST), as described in EPA 833-R-10-003 (June 2010) and EPA 833-R-10-004 (June 2010), shall be used to demonstrate no unacceptable level of chronic toxicity at the In-stream Waste Concentration (IWC). The chronic toxicity criterion is expressed using a regulatory management decision (b value) of 0.75 for chronic toxicity where, a 0.25 effect level (or more) at the In-stream Waste Concentration (IWC) demonstrates an unacceptable level of chronic toxicity.

(B) Continuous discharges through submerged outfalls shall not contain:

(i) Pollutants in twenty four hour average concentrations greater than the values obtained by multiplying the minimum dilution by the standards in paragraph (3) for the prevention of chronic toxicity.

(ii) Non-carcinogenic pollutants in thirty day average concentrations greater than the values obtained by multiplying the minimum dilution by the standards in paragraph (3) for fish consumption.

(iii) Carcinogenic pollutants in twelve month average concentrations greater than the values obtained by multiplying the average dilution by the standards in paragraph (3) for fish consumption.

C Discharges without submerged outfalls.

(i) The survival of test organisms in an undiluted acute toxicity test of any discharge shall not be less than eighty per cent; or,

(ii) Compliance with the acute toxicity NPDES effluent limit is demonstrated using the Test of Significant Toxicity (TST) as described in EPA 833-R-10-003 (June 2010) and EPA 833-R-10-004 (June 2010). The acute toxicity criterion is expressed using a regulatory management decision (*b* value) of 0.80 for the acute toxicity test methods listed in 11-54-10, where, in an undiluted acute toxicity test, a 0.20 effect level (or more) at the IWC demonstrates an unacceptable level of acute toxicity; or,

(iii) The Test of Significant Toxicity (TST), as described in EPA 833-R-10-003 (June 2010) and EPA 833-R-10-004 (June 2010), shall

be used to demonstrate no unacceptable level of chronic toxicity at the IWC. The chronic toxicity criterion is expressed using a regulatory management decision (b value) or 0.75 for chronic toxicity where, a 0.25 effect level (or more) at the IWC demonstrates an unacceptable of chronic toxicity. Toxicity is considered significant if the mean response in the IWC is greater than 0.75 multiplied by the mean response of the control.

(iv) No discharge shall contain pollutants in concentrations greater than the standards in paragraph (3) for the prevention of acute toxicity to aquatic life.

(v) The director may make a limited allowance for dilution for a discharge in this category if it meets the following criteria: the discharge velocity is greater than 3 meters per second; the discharge enters the receiving water horizontally, and; the receiving water depth at the discharge point is greater than zero.

Rationale:
Note: amendments to this section include both formatting and content changes.

Section 402 of the Clean Water Act establishes the National Pollutant Discharge Elimination System (NPDES) program which is designed to control toxic discharges, implement water quality standards and to facilitate the Clean Water Act objective of "*restoring the chemical, physical and biological integrity of the Nation's waters.*" Under this program, point sources that discharge pollutants must do so under the terms and conditions of an NPDES permit, which in Hawaii, is issued by the Clean Water Branch. One approach to controlling toxic pollutants in the effluent is by monitoring whole effluent toxicity (WET) that is, measuring the combined effect of all pollutants in an effluent. WET testing is an aquatic toxicity testing method which directly measures the aggregate toxic effect of all pollutants in an aqueous sample (usually comprised of effluent and receiving water) and is used by the NPDES permitting authority to determine whether a facility's permit will meet WET requirements. WET test measurements are laboratory based experiments that measure the biological effect (e.g. growth, survival, and reproduction) of effluents and/or receiving waters on living aquatic organisms. In these tests, organisms of a particular species (defined by the NPDES permits) are held in test chambers and are exposed to varying concentrations of aqueous samples (e.g. reference toxicant, effluent or receiving water) and observations made at predetermined exposure periods. At the end of the test, the responses of the test organisms are used to evaluate the effects of the toxicant or effluent. WET testing methods, including calculations and interpretive guidelines, are specified by EPA in various guidance documents.

EPA recommends an integrated strategy for the protection of aquatic life, which includes a chemical specific approach, the WET control approach and the biological criteria/bioassement/bioassay approach. The primary advantage of using WET testing approach over individual, chemical specific testing is that WET testing integrates the effects of all chemical(s) in the aqueous sample. Individual chemical specific testing analyzes a sample for a single chemical or group of chemicals and does not take into consideration the combined effects of the chemical(s) and other constituents present in the effluent or receiving water. Since WET

testing is based on the combined effects of all pollutants in an effluent, EPA believes that this method, combined with the chemical specific and biological approach provides a comprehensive snapshot of the quality of the effluent being discharged.

In the test of significant toxicity (TST), the WET testing procedure does not change, i.e. the test will still measure the test organism's ability to survive, grow and reproduce in the aqueous sample and will still measure the aggregate effects of all pollutants in the effluent. The TST is a new statistical method developed by EPA for analyzing the test organism's response when exposed to the test sample. This method utilizes peer-reviewed hypothesis testing techniques which examines whether an effluent, at the critical concentration differ by an unacceptable amount, i.e. an amount that would have a measured detrimental effect on the ability of aquatic organisms to thrive and survive. The TST approach specifically incorporates statistical testing power, which provides the ability to correctly classify the effluent as acceptable (i.e. non-toxic) under the NPDES WET program. Once the WET test has been conducted (using existing test protocols), the TST approach can be used to analyze valid WET test results to assess whether the effluent discharge is toxic.

Existing methods to determine whether an effluent is declared toxic relative to a permitted WET limit is based on a hypothesis testing approach which seeks to answer the question "Is the mean response of the organism the same or worse in the control than in the in-stream waste concentration (IWC[1])?" This hypothesis testing approach yields four possible outcomes:

1. The IWC is truly toxic and is declared toxic
2. The IWC is truly non-toxic and is declared non-toxic
3. The IWC is truly toxic, but is declared non-toxic
4. The IWC is truly non-toxic, but is declared toxic.

The latter two outcomes represent decision errors that can occur with any hypothesis testing approach. In the NPDES WET program, these errors may occur when test control replication is poor (i.e. the within-test variability is high) so even large differences in organism response between the test sample and control are incorrectly determined to be non-toxic. This results in a determination that the IWC is truly toxic, but is declared to be non-toxic, (outcome 3). Errors may also occur when the test control replication is very good (i.e. the within-test variability is low), and very small difference between the test sample and control could be determined to be toxic, when in fact it is non-toxic (outcome 4).

[1]The In-stream Waste Concentration (IWC) is defined as the concentration of a toxicant in the receiving water, or for a discharge, the concentration of the effluent after minimum dilution authorized by the Department. A discharge of 100 divided by the minimum dilution is the IWC when dilution is authorized by the Department. A discharge of 100% effluent is the IWC when dilution is not authorized by the Department.

The TST approach re-phrases the null hypothesis to answer the question "*Is the mean response in the effluent less than a defined biological amount?*" The derivation of the biological amount for the different organisms used in the test is discussed in the EPA guidance documents *National Pollutant Discharge Elimination System Test of Significant Toxicity Implementation Document,* EPA 833-R-10-003, June 2010 and *National Pollutant Discharge Elimination System Test of*

testing is based on the combined effects of all pollutants in an effluent, EPA believes that this method, combined with the chemical specific and biological approach provides a comprehensive snapshot of the quality of the effluent being discharged.

In the test of significant toxicity (TST), the WET testing procedure does not change, i.e. the test will still measure the test organism's ability to survive, grow and reproduce in the aqueous sample and will still measure the aggregate effects of all pollutants in the effluent. The TST is a new statistical method developed by EPA for analyzing the test organism's response when exposed to the test sample. This method utilizes peer-reviewed hypothesis testing techniques which examines whether an effluent, at the critical concentration differ by an unacceptable amount, i.e. an amount that would have a measured detrimental effect on the ability of aquatic organisms to thrive and survive. The TST approach specifically incorporates statistical testing power, which provides the ability to correctly classify the effluent as acceptable (i.e. non-toxic) under the NPDES WET program. Once the WET test has been conducted (using existing test protocols), the TST approach can be used to analyze valid WET test results to assess whether the effluent discharge is toxic.

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The latter two outcomes represent decision errors that can occur with any hypothesis testing approach. In the NPDES WET program, these errors may occur when test control replication is poor (i.e. the within-test variability is high) so even large differences in organism response between the test sample and control are incorrectly determined to be non-toxic. This results in a determination that the IWC is truly toxic, but is declared to be non-toxic, (outcome 3). Errors may also occur when the test control replication is very good (i.e. the within-test variability is low), and very small difference between the test sample and control could be determined to be toxic, when in fact it is non-toxic (outcome 4).

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The TST approach re-phrases the null hypothesis to answer the question "*Is the mean response in the effluent less than a defined biological amount?*" The derivation of the biological amount for the different organisms used in the test is discussed in the EPA guidance documents *National Pollutant Discharge Elimination System Test of Significant Toxicity Implementation Document,* EPA 833-R-10-003, June 2010 and *National Pollutant Discharge Elimination System Test of*

*Significant Toxicity Technical Document,* EPA 833-R-10-004, June 2010. These documents also specify the calculation and data analysis methods to be used as well as provide interpretive guidelines.

The TST also requires that certain decisions and assumptions be made prior to testing. These are referred to as "Regulatory Management Decisions" (RMDs) and are discussed in the documents referenced above. Prior to the issuance of permits requiring the TST approach to WET testing, Hawaii-specific RMDs are based on these documents as well as with consultation with EPA. The RMD or b value expressed in the null hypothesis for chronic and acute toxicity has been determined to be 0.75 and 0.80 respectively. As used in the NPDES WET program, rejection of the null hypothesis would indicate that the effluent is considered non-toxic and accepting the null hypothesis indicates that the effluent is toxic.

The TST method is believed to provide a simpler method for analyzing WET testing results while reducing false negative (Type II or beta) rate that the existing method is prone to. By establishing a defined beta error rate, the power of the test may be determined (i.e. the probability of correctly detecting an actual toxic effect using the traditional hypothesis testing approach (i.e. declaring an effluent toxic when, in fact, it is toxic). By establishing an appropriate beta error rate and test power in the NPDES WET program, there will be an incentive for the permittee to generate more precise data using the TST as opposed to the traditional method. The TST is designed to provide a simple yes or no answer using rigorous peer-reviewed statistical methods. Unlike the existing method, this statistical approach ignores biologically trivial effects on an effluent and does not declare a sample to be toxic when such effects are encountered. Likewise, unacceptable effluent toxicity should be identified most of the time. This may or may not be true using the existing method.

**Updated definition of "water quality certification"**
Section 11-54-9.1

Original: "Water quality certification" or "certification" means a statement which asserts that a proposed discharge resulting from an activity will not violate applicable water quality standards. A water quality certification is required by section 401 of the Act from any applicant for a federal license or permit to conduct any activity, including the construction or operation of facilities which may result in any discharge into navigable waters.

Proposed: "Water quality certification" or "certification" means a statement which asserts that a proposed discharge resulting from an activity will not violate applicable water quality standards <u>and the applicable provisions of sections 301, 302, 303, 306 and 307 of the Act</u>. A water quality certification is required by [Section]<u>section</u> 401 of the Act from any applicant for a federal license or permit to conduct any activity, including the construction or operation of facilities which may result in any discharge into navigable waters.

Rational: The proposed revision is to ensure the State's section 401 water quality certification program is consistent with paragraph 401(a)(1) of the Act which states that: "(a)(1) Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that any such discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of this Act..."

**Part IV: Updates to references cited**

Section 11-54-7(e)(3)

Original: Specific criteria to be applied to all reef flats and reef communities: No action shall be undertaken which would substantially risk damage, impairment, or alteration of the biological characteristics of the areas named herein. When a determination of substantial risk is made by the director, the action shall be declared to be contrary to the public interest and no other permits shall be issued pursuant to chapter 342, HRS.

Proposed: Specific criteria to be applied to all reef flats and reef communities: No action shall be undertaken which would substantially risk damage, impairment, or alteration of the biological characteristics of the areas named herein. When a determination of substantial risk is made by the director, the action shall be declared to be contrary to the public interest and no other permits shall be issued pursuant to chapter 342D, HRS.

Rationale:
Hawaii Revised Statutes, Chapter 342 was repealed in 1989 and was replaced with Chapter 342D. This revision proposes to update this reference.

Section 11-54-9.1

Original: "33 CFR" means the Code of Federal Regulations, Title 33, Corps of Engineers, Department of the Army, Department of Defense, revised as of July 1, 1998, unless otherwise specified.

Proposed: "33 CFR" means the Code of Federal Regulations, Title 33, Corps of Engineers, Department of the Army, Department of Defense, revised as of July 1, [1998] 2011, unless otherwise specified.

Rationale:
This reference has been updated by EPA

Rational: The proposed revision is to ensure the State's section 401 water quality certification program is consistent with paragraph 401(a)(1) of the Act which states that: "(a)(1) Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that any such discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of this Act..."

**Part IV: Updates to references cited**

Section 11-54-7(e)(3)

Original: Specific criteria to be applied to all reef flats and reef communities: No action shall be undertaken which would substantially risk damage, impairment, or alteration of the biological characteristics of the areas named herein. When a determination of substantial risk is made by the director, the action shall be declared to be contrary to the public interest and no other permits shall be issued pursuant to chapter 342, HRS.

Proposed: Specific criteria to be applied to all reef flats and reef communities: No action shall be undertaken which would substantially risk damage, impairment, or alteration of the biological characteristics of the areas named herein. When a determination of substantial risk is made by the director, the action shall be declared to be contrary to the public interest and no other permits shall be issued pursuant to chapter 342D, HRS.

Rationale:
Hawaii Revised Statutes, Chapter 342 was repealed in 1989 and was replaced with Chapter 342D. This revision proposes to update this reference.

Section 11-54-9.1

Original: "33 CFR" means the Code of Federal Regulations, Title 33, Corps of Engineers, Department of the Army, Department of Defense, revised as of July 1, 1998, unless otherwise specified.

Proposed: "33 CFR" means the Code of Federal Regulations, Title 33, Corps of Engineers, Department of the Army, Department of Defense, revised as of July 1, [1998] 2011, unless otherwise specified.

Rationale:
This reference has been updated by EPA

Original: "40 CFR" means the Code of Federal Regulations, Title 40, Protection of the Environment, revised as of July 1, [1998] 2001, unless otherwise specified.

Proposed: "40 CFR" means the Code of Federal Regulations, Title 40, Protection of the Environment, revised as of July 1, [1998][2001] 2011, unless otherwise specified.

Rationale:
The 2004 revision to 11-54 failed to remove the Ramseyer notation used in the drafting process. As a result, the bracketed date "1998" was not deleted and "2001" remained underlined in the final 2004 version (both dates appear in 11-54). The final 2004 version of the rule should have shown the date to be "July 1, 2001". This reference (July 1, 2001) has since been updated by EPA and the current revision of 11-54 proposes to amend the date to "July 1, 2011".

Section 11-54-10
Original:

| Parameter | Reference |
|---|---|
| Sample Collection (Phytoplankton and other Bioassays) | Standard Methods for the Examination of Water and Waste Water, twentieth edition, APHA |
| Sample Preservation and Holding Time, Bacteriological and Chemical Methodology | "Guidelines Establishing Test Procedures for Analysis of Pollutants," Federal Register, July 1, 1998 (40 CFR 136) and "Technical Amendments,"[Federal Register, July 1, 1998 (40 CFR 136).] 40 CFR 136, revised as of July 1, 2001. |

Proposed:

| Parameter | Reference |
|---|---|
| Sample Collection (Phytoplankton and other Bioassays) | Standard Methods for the Examination of Water and Waste Water, [twentieth]twenty first edition, APHA |

| | |
|---|---|
| Sample Preservation and Holding Time, Bacteriological and Chemical Methodology | "Guidelines Establishing Test Procedures for the Analysis of Pollutants," Federal Register, July 1, [1998] 2011 (40 CFR 136). [and "Technical Amendments,"[Federal Register, July 1, 1998 (40 CFR 136).] 40 CFR 136, revised as of July 1, [2001].] |

Rationale:
These references have been updated by EPA. This section was last revised in 2004. The 2004 revision to 11-54 failed to remove the Ramseyer notation used in the drafting process. As a result, the bracketed reference "Federal Register, July 1, 1998 (40 CFR 136)" was not deleted and "40 CFR 136, revised as of July 1, 2001" remained underlined. The final 2004 version of the rule should have shown the reference to be "40 CFR 136, revised as of July 1, 2001". The reference has since been updated by EPA and the "Technical Amendments" to 40 CFR 136 has since been incorporated into revised versions of the regulation. This revision proposes to amend the reference to reflect the most current version of the regulation, "Federal Register, July 1, 2011 (40 CFR 136)" and remove reference to the Technical Amendments.

Original:

| | |
|---|---|
| Toxicity Test | EPA/600/4-91/002, Short-Term Methods For Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms, July 1994,<br><br>or:<br><br>EPA/600/4-90-027F, Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms. Cincinnati, Ohio, EMSL, August 1995<br><br>or:<br><br>EPA-600/4-91/003, Short-Term methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms. ORD, Cincinnati, Ohio, July 1994 |

| | |
|---|---|
| Sample Preservation and Holding Time, Bacteriological and Chemical Methodology | "Guidelines Establishing Test Procedures for the Analysis of Pollutants," Federal Register, July 1, [1998] 2011 (40 CFR 136). [and "Technical Amendments,"[Federal Register, July 1, 1998 (40 CFR 136).] 40 CFR 136, revised as of July 1, [2001].] |

Rationale:
These references have been updated by EPA. This section was last revised in 2004. The 2004 revision to 11-54 failed to remove the Ramseyer notation used in the drafting process. As a result, the bracketed reference "Federal Register, July 1, 1998 (40 CFR 136)" was not deleted and "40 CFR 136, revised as of July 1, 2001" remained underlined. The final 2004 version of the rule should have shown the reference to be "40 CFR 136, revised as of July 1, 2001". The reference has since been updated by EPA and the "Technical Amendments" to 40 CFR 136 has since been incorporated into revised versions of the regulation. This revision proposes to amend the reference to reflect the most current version of the regulation, "Federal Register, July 1, 2011 (40 CFR 136)" and remove reference to the Technical Amendments.

| | |
|---|---|
| Original:<br>Toxicity Test | EPA/600/4-91/002, Short-Term Methods For Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms, July 1994,<br><br>or:<br><br>EPA/600/4-90-027F, Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms. Cincinnati, Ohio, EMSL, August 1995<br><br>or:<br><br>EPA-600/4-91/003, Short-Term methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms. ORD, Cincinnati, Ohio, July 1994 |

Proposed:
Toxicity Test

EPA[/600/4-91/002]821-R-02-031, Short-Term Methods For Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms,4th edition, October 2002 [July 1994],

or:

EPA[/600/4-90-027F]821-R-02-012, Methods for Measuring the Acute Toxicity of Effluents and receiving waters to Freshwater and Marine Organisms, 5th edition,[. Cincinnati, Ohio, EMSL, August 1995]October 2002.

or:

EPA[-600/4-91/003]821-R-02-014, Short-Term methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms, 3rd edition,[. ORD, Cincinnati, Ohio, July 1994]October 2002.

or:

EPA 833-R-10-003, National Pollutant Discharge Elimination System Test of Significant Toxicity Implementation Document, June 2010.

or:

EPA 833-R-10-004, National Pollutant Discharge Elimination System Test of Significant Toxicity Technical Document, June 2010.

or:

EPA/600/R-12/022, Tropical Collector Urchin, *Tripneustes gratilla*,

Fertilization Test Method, April 2012.

Rationale:
These references have been updated by EPA. New references have been added to address the newly proposed Test of Significant Toxicity in 11-54-4(b)(4).

Original:

| | |
|---|---|
| Kona Coast Area Specific Standards | Rationale for the Development of Area-Specific Water Quality Criteria for the West Coast of The Island of Hawaii and Procedures for Their Use. Hawaii State Department of Health. March 1997.<br><br>or:<br><br>As otherwise previously specified or approved by the director. |

Proposed:

| | |
|---|---|
| Kona Coast Area Specific Standards | Rationale for the Development of Area-Specific Water Quality Criteria for the West Coast of The Island of Hawaii and Procedures for Their Use. Hawaii State Department of Health. March 1997.<br><br>[or:<br><br>As otherwise previously specified or approved by the director.] |

or as otherwise previously specified or approved by the director.

Rationale:
This is a correction to a formatting error. The intent of the provision allowing the Director to specify or approve analysis to determine compliance with these rules applies to all parameters listed in section 10 and not just to the Kona Coast Area Specific Standards.

Fertilization Test Method, April 2012.

Rationale:
These references have been updated by EPA. New references have been added to address the newly proposed Test of Significant Toxicity in 11-54-4(b)(4).

| | |
|---|---|
| Original:<br>Kona Coast Area Specific Standards | Rationale for the Development of Area-Specific Water Quality Criteria for the West Coast of The Island of Hawaii and Procedures for Their Use. Hawaii State Department of Health. March 1997.<br><br>or:<br><br>As otherwise previously specified or approved by the director. |
| Proposed:<br>Kona Coast Area Specific Standards | Rationale for the Development of Area-Specific Water Quality Criteria for the West Coast of The Island of Hawaii and Procedures for Their Use. Hawaii State Department of Health. March 1997.<br><br>[or:<br><br>As otherwise previously specified or approved by the director.] |

or as otherwise previously specified or approved by the director.

Rationale:
This is a correction to a formatting error. The intent of the provision allowing the Director to specify or approve analysis to determine compliance with these rules applies to all parameters listed in section 10 and not just to the Kona Coast Area Specific Standards.

DEPARTMENT OF HEALTH

Amendment and Compilation of Chapter 11-54
Hawaii Administrative Rules

(insert adoption date)

1. Chapter 54 of Title 11, Hawaii Administrative Rules, titled "Water Quality Standards," is amended and compiled to read as follows:

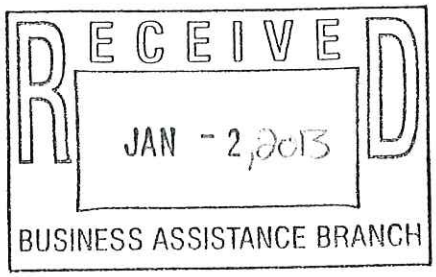
"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 54

WATER QUALITY STANDARDS



§11-54-1 Definitions. As used in this chapter:

"Ambient conditions" means the water quality conditions that would occur in the receiving waters if these waters were not influenced by the proposed new human activity.

"Amphidromous" means aquatic life that migrate to and from the sea, but not specifically for reproductive purposes. Amphidromous aquatic life in [Hawai'ian] Hawaiian streams are confined to fresh waters as adults, but their larval stages are partially or entirely spent in the ocean as part of the zooplankton.

"Anchialine pools" means coastal bodies of standing waters that have no surface connections to the ocean but display both tidal fluctuations and

salinity ranges characteristic of fresh and brackish waters, indicating the presence of subsurface connections to the watertable and ocean. Anchialine pools are located in porous substrata (recent lava or limestone) and often contain a distinctive assemblage of native aquatic life. Deeper anchialine pools may display salinity stratification, and some shallow pools may contain standing water only on the highest tides.

"Aquatic life" means "any type or species of mammal, fish, amphibian, reptile, mollusk, crustacean, arthropod, invertebrate, coral, or other animal that inhabits the freshwater or marine environment and includes any part, product, egg, or offspring thereof; or freshwater or marine plants, including, seeds, roots, products, and other parts thereof" (section 187A-1, HRS).

"Best degree of treatment or control" means that treatment or control which is required by applicable statutes and regulations of the State of Hawai'i and the Federal Water Pollution Control Act, as amended, (33 [USC] U.S.C. §1251, et seq.) or which is otherwise specified by the director considering technology or management practices currently available in relation to the public interest.

"Brackish waters" means waters with dissolved inorganic ion concentrations (salinity) greater than 0.5 parts per thousand, but less than thirty-two parts per thousand.

"Coastal waters[,]" means "all waters surrounding the islands of the State from the coast of any island to a point three miles seaward from the coast, and, in the case of streams, rivers, and drainage ditches, to a point three miles seaward from their point of discharge into the sea and includes those brackish waters, fresh waters and salt waters that are subject to the ebb and flow of the tide" (section 342D-1, HRS).

"Coastal wetlands" means natural or man-made ponds and marshes having variable salinity, basin limits, and permanence. These wetlands usually adjoin

the coastline and may be subject to tidal, seasonal, or perennial flooding. Coastal wetlands are generally maintained by surface and subterranean sources of fresh and salt water. Many natural coastal wetlands have been modified significantly by man and are characterized by introduced aquatic life. Coastal wetlands include, but are not limited to, salt marshes, open ponds, mudflats, man-made or natural waterbird refuges, isolated seasonal lakes and mangrove flats.

"Department" means department of health, State of Hawai'i.

"Developed estuaries" means volumes of brackish coastal waters in well-defined basins constructed by man or otherwise highly modified from their natural state. Developed estuaries include, but are not limited to, dredged and revetted stream termini.

"Director" means the director of health, State of Hawai'i, or the director's duly authorized agent.

"Ditches and flumes" means fresh waters flowing continuously in artificial channels. They are used mainly for the purpose of irrigation and usually receive water from stream diversions. Ditches and flumes may be inflowing (carry water to reservoirs or user areas) or outflowing (drain water from reservoirs or user areas).

"Drainage basin" or "watershed" means the region or area drained by a stream or river system.

"Elevated wetlands" means natural freshwater wetlands located above 100 m (330 ft) elevation. They are generally found in undisturbed areas, mainly in remote uplands and forest reserves with high rainfall. Elevated wetlands include upland bogs, marshes, swamps, and associated ponds and pools.

"Estuaries" means characteristically brackish coastal waters in well-defined basins with a continuous or seasonal surface connection to the ocean that allows entry of marine fauna. Estuaries may be either natural or developed.

"Existing uses" means those uses actually attained in the water body on or after November 28,

1975 whether or not they are included in the water quality standards.

"Flowing springs and seeps" means perennial, relatively constant fresh water flows not in distinct channels, in which the water emanates from elevated aquifers as wet films or trickles over rock surfaces. They are found typically as natural occurrences along rock faces or banks of deeply incised streams, and artificially along road cuts.

"Flowing waters" means fresh waters flowing unidirectionally down altitudinal gradients. These waters may or may not be confined in distinct channels. Flowing waters include streams, flowing springs and seeps and ditches and flumes.

"Fresh waters" means all waters with a dissolved inorganic ion concentration of less than 0.5 parts per thousand.

"Hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded and develops conditions that favor the growth and regeneration of hydrophytic vegetation.

"Hydrophytic vegetation" or "hydrophytes" means plants adapted to growing in seasonally or permanently flooded conditions.

"Intermittent streams" means fresh waters flowing in definite natural channels only during part of the year or season. Intermittent streams include many tributaries of perennial streams.

"Introduced aquatic life" means those species of aquatic organisms that are not native to a given area or water body and whose populations were established (deliberately or accidentally) by human activity. "Introduced" organisms are also referred to as "alien" or "exotic".

"Low wetlands" means freshwater wetlands located below 100 m (330 ft) elevation that may be natural or artificial in origin and are usually found near coasts or in valley termini. Low wetlands are maintained by either stream, well, or ditch influent water, or by exposure of the natural water table. Low wetlands include, but are not limited to, natural lowland

marshes, riparian wetlands, littoral zones of standing waters (including lakes, reservoirs, ponds and fishponds) and agricultural wetlands such as taro lo'i.

"Native aquatic life" means those species or higher taxa of aquatic organisms that occur naturally in a given area or water body and whose populations were not established as a result of human activity.

"Natural estuaries" means volumes of brackish coastal waters in well-defined basins of natural origin, found mainly at the mouths of streams or rivers. Natural estuaries can be either stream-fed (drowned stream mouths fed by perennial stream runoff) or spring-fed (nearshore basins with subterranean fresh water sources). Stream-fed estuaries serve as important migratory pathways for larval and juvenile amphidromous stream fauna.

"Natural freshwater lakes" means standing water that is always fresh, in well-defined natural basins, with a surface area usually greater than 0.1 ha (0.25 acres), and in which rooted emergent hydrophytes, if present, occupy no more than [30%] thirty per cent of the surface area. Natural freshwater lakes in Hawai'i occur at high, intermediate, and low elevations. Lowland freshwater lakes characteristically lack a natural oceanic connection (surface or subsurface) of a magnitude sufficient to cause demonstrable tidal fluctuations.

"Perennial streams" means fresh waters flowing year-round in all or part of natural channels, portions of which may be modified by humans. Flow in perennial streams may vary seasonally. Perennial streams may be subdivided into longitudinal zones, based on elevation and gradient: [(1)Headwater zone (elevation above 800 m [2600 ft] or gradient above 30 per cent or both); (2)Mid-zone (elevation between 50 800 m [165-2600 ft], or gradient between 5 and 30 per cent or both); and (3)Terminal zone (elevation below 50 m [165 ft] or gradient below 5 per cent or both).]

(1) Headwater zone (elevation above 800 m [2600 ft] or gradient above 30 per cent or both);

(2) Mid-zone (elevation between 50-800 m [165-2600 ft], or gradient between 5 and 30 per cent or both); and

(3) Terminal zone (elevation below 50 m [165 ft] or gradient below 5 per cent or both).

Perennial streams may be either continuous or interrupted. Continuous perennial streams discharge continuously to the ocean in their natural state, and contain water in the entire length of the stream channel year-round. Interrupted perennial streams usually flow perennially in their upper reaches but only seasonally in parts of their middle or lower reaches, due to either downward seepage of surface flow (naturally interrupted) or to man-made water diversions (artificially interrupted).

"Reservoirs" means standing water that is always fresh, in well-defined artificially created impoundments.

"Saline or salt waters" means waters with dissolved inorganic ion concentrations greater than thirty-two parts per thousand.

"Saline lakes" means standing waters of salinities ranging from brackish to hypersaline, located in well-defined natural basins, and lacking a natural surface connection to the ocean. Saline lakes may be present as high-island shoreline or near-shoreline features (e.g. Lake Nomilu, Kauai; Salt Lake, Oahu; Lake Kauhako, Molokai) or as low-island closed lagoons (Lake Laysan, Laysan). They are usually, but not always, fed by seawater seepage and may be diluted by rainwater, overland runoff, or ground water, or concentrated by evaporation.

"Springs and seeps" means small, perennial, relatively constant freshwater flow not in distinct channels, such as wet films or trickles over rock surfaces, in which the water emanates from elevated aquifers. Springs and seeps may be either stream associated, occurring in deeply cut valleys and contributing to stream flow; or coastal, occurring on coastal cliffs and usually flowing into the ocean.

"Standing waters" refers to waters of variable size, depth, and salinity, that have little or no flow and that are usually contained in well-defined basins. Standing water bodies include natural freshwater lakes, reservoirs or impoundments, saline lakes, and anchialine pools.

"State waters", as defined by section 342D-1, HRS, means all waters, fresh, brackish, or salt around and within the State, including, but not limited to, coastal waters, streams, rivers, drainage ditches, ponds, reservoirs, canals, ground waters, and lakes; provided that drainage ditches, ponds, and reservoirs required as part of a water pollution control system are excluded. This chapter applies to all state waters, including wetlands, subject to the following exceptions: [(1)This chapter does not apply to groundwater. (2)This chapter does not apply to ditches, flumes, ponds and reservoirs that are required as part of a water pollution control system. (3) This chapter does not apply to ditches, flumes, ponds, and reservoirs that are used solely for irrigation and do not overflow into any other state waters, unless such ditches, flumes, ponds, and reservoirs are waters of the United States as defined at 40 C.F.R. 122.2. The State of Hawai'i has those boundaries stated in Hawai'i Constitution, art. XV, §1.]

(1) This chapter does not apply to groundwater.

(2) This chapter does not apply to ditches, flumes, ponds and reservoirs that are required as part of a water pollution control system.

(3) This chapter does not apply to ditches, flumes, ponds, and reservoirs that are used solely for irrigation and do not overflow into any other state waters, unless such ditches, flumes, ponds, and reservoirs are waters of the United States as defined in 40 C.F.R. 122.2. The State of Hawai'i has those boundaries stated in Hawai'i Constitution, art. XV, §1.

"Streams" means seasonal or continuous water flowing unidirectionally down altitudinal gradients in all or

part of natural or modified channels as a result of either surface water runoff or ground water influx, or both. Streams may be either perennial or intermittent and include all natural or modified watercourses.

"Stream channel" means a natural or modified watercourse with a definite bed and banks which periodically or continuously contains flowing water.

"Stream system[,]" means the aggregate of water features comprising or associated with a stream, including the stream itself and its tributaries, headwaters, ponds, wetlands, and estuary. A stream system is geographically delimited by the boundaries of its drainage basin or watershed.

"Surface water" means both contained surface water (that is, water upon the surface of the earth in well-defined basins created naturally or artificially including, but not limited to, streams, other watercourses, lakes, and reservoirs) and diffused surface water (that is, water occurring upon the surface of the ground other than in contained basins). Water from natural springs and seeps is surface water when it exits from the spring onto the earth's surface.

"Wetlands" means land that is transitional between terrestrial and aquatic ecosystems where the water table is usually at or near the surface or the land is covered by shallow water. A wetland shall have one or more of the following attributes: [1) at least periodically the land supports predominantly hydrophytic vegetation; 2) the substratum is predominantly undrained hydric soil; or 3) the substratum is nonsoil (gravel or rocks) and is at least periodically saturated with water or covered by shallow water.]

(1) At least periodically the land supports predominantly hydrophytic vegetation;

(2) The substratum is predominantly undrained hydric soil; or

(3) The substratum is non-soil (gravel or rocks) and is at least periodically saturated with water or covered by shallow water.

Wetlands may be fresh, brackish, or saline and generally include swamps, marshes, bogs, and associated ponds and pools, mud flats, isolated seasonal ponds, littoral zones of standing water bodies, and alluvial floodplains. For the purpose of applying for water quality certifications under Clean Water Act Section 401, and for National Pollutant Discharge Elimination System (NPDES) permit purposes, the identification and delineation of wetland boundaries shall be done following the procedures described in the U.S. Army Corps of Engineers' Wetlands Delineation Manual (USACE 1987). [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/02/04; comp 06/15/09; comp 10/21/12; comp ] (Auth: HRS §187A-1, §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5; 40 C.F.R. §§ 122.2, 130.2, 131.3, 131.12; 22 U.S.C. §1362(14)))

§11-54-1.1 General policy of water quality antidegradation.

(a) Existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

(b) Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the director finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the state's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the director shall assure water quality adequate to protect existing uses fully. Further, the director shall assure that there shall be achieved the highest statutory and regulatory requirements for all

new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

(c) Where existing high quality waters constitute an outstanding resource, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

(d) In those areas where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with section 316 of the Clean Water Act. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp [o]04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12 comp ] (Auth: HRS §§342D-1, 342D-4, 342D-5; 40 C.F.R. 131.12) (Imp: HRS §§342D-4, 342D-5)

§11-54-2 Classification of state waters. (a) State waters are classified as either inland waters or marine waters.

(b) Inland waters may be fresh, brackish, or saline.

(1) All inland fresh waters are classified as follows, based on their ecological characteristics and other natural criteria:

(A) Flowing waters.

(i) Streams (perennial and intermittent);

(ii) Flowing springs and seeps; and

(iii) Ditches and flumes that discharge into any other waters of the [State]state;

(B) Standing waters.

(i) Natural freshwater lakes; and

(ii) Reservoirs (impoundments);

(C) Wetlands.

(i) Elevated wetlands (bogs, marshes, swamps, and associated ponds); and
(ii) Low wetlands (marshes, swamps, and associated ponds).

(2) All inland brackish or saline waters are classified as follows, based on their ecological characteristics and other natural criteria:
(A) Standing waters.
(i) Anchialine pools; and
(ii) Saline lakes.
(B) Wetlands.
(i) Coastal wetlands (marshes, swamps, and associated ponds).
(C) Estuaries.
(i) Natural estuaries (stream-fed estuaries and spring-fed estuaries); and
(ii) Developed estuaries.

(c) Marine waters.
(1) All marine waters are either embayments, open coastal, or oceanic waters;
(2) All marine waters which are embayments or open coastal waters are also classified according to the following bottom subtypes:
(A) Sand beaches;
(B) Lava rock shorelines and solution benches;
(C) Marine pools and protected coves;
(D) Artificial basins;
(E) Reef flats; and
(F) Soft bottoms.[Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp ] (Auth: HRS §§342D-1, 342D-4, 342D-5)(Imp: HRS §§342D-4, 342D-5)

§11-54-3 Classification of water uses. (a) The following use categories classify inland and marine waters for purposes of applying the standards set forth in this chapter, and for the selection or definition of appropriate quality parameters and uses to be protected in these waters. Storm water discharge into State waters shall be allowed provided it meets the requirements specified in this section and the basic water quality criteria specified in section 11-54-4.

(b) Inland waters.

(1) Class 1.

It is the objective of class 1 waters that these waters remain in their natural state as nearly as possible with an absolute minimum of pollution from any human-caused source. To the extent possible, the wilderness character of these areas shall be protected. Waste discharge into these waters is prohibited, except as provided in section 11-54-4(e). Any conduct which results in a demonstrable increase in levels of point or nonpoint source contamination in class 1 waters is prohibited.

(A) Class 1.a.

The uses to be protected in class 1.a waters are scientific and educational purposes, protection of native breeding stock, baseline references from which human-caused changes can be measured, compatible recreation, aesthetic enjoyment, and other nondegrading uses which are compatible with the protection of the ecosystems associated with waters of this class;

(B) Class 1.b.

The uses to be protected in class 1.b waters are domestic water supplies, food processing, protection of native breeding stock, the support and propagation of aquatic life, baseline

references from which human-caused changes can be measured, scientific and educational purposes, compatible recreation, and aesthetic enjoyment. Public access to these waters may be restricted to protect drinking water supplies;

(2) Class 2.

The objective of class 2 waters is to protect their use for recreational purposes, the support and propagation of aquatic life, agricultural and industrial water supplies, shipping, and navigation. The uses to be protected in this class of waters are all uses compatible with the protection and propagation of fish, shellfish, and wildlife, and with recreation in and on these waters. These waters shall not act as receiving waters for any discharge which has not received the best degree of treatment or control compatible with the criteria established for this class. No new treated sewage discharges shall be permitted within estuaries. No new industrial discharges shall be permitted within estuaries, with the exception of:

(A) Acceptable non-contact thermal and drydock or marine railway discharges within Pearl Harbor, Oahu;

(B) Stormwater discharges associated with industrial activities (defined in 40 C.F.R. [Section]section 122.26(b)(14) and(b)(15), except (b)(15)(i)(A) and (b)(15)(i)(B)) which meet, at the minimum, the basic water quality criteria applicable to all waters as specified in section 11-54-4(a), and all applicable requirements specified in chapter 11-55, titled "Water Pollution Control"; and

(C) Discharges covered by a National Pollutant Discharge Elimination System general permit, approved by the U.S. Environmental Protection Agency and issued by the Department in accordance with 40 C.F.R. [Section]section 122.28 and all applicable requirements specified in chapter 11-55, titled "Water Pollution Control[.]".

(c) Marine waters.

(1) Class AA.

It is the objective of class AA waters that these waters remain in their natural pristine state as nearly as possible with an absolute minimum of pollution or alteration of water quality from any human-caused source or actions. To the extent practicable, the wilderness character of these areas shall be protected. No zones of mixing shall be permitted in this class:

(A) Within a defined reef area, in waters of a depth less than 18 meters (ten fathoms); or

(B) In waters up to a distance of 300 meters (one thousand feet) off shore if there is no defined reef area and if the depth is greater than 18 meters (ten fathoms).

The uses to be protected in this class of waters are oceanographic research, the support and propagation of shellfish and other marine life, conservation of coral reefs and wilderness areas, compatible recreation, and aesthetic enjoyment. The classification of any water area as Class AA shall not preclude other uses of the waters compatible with these objectives and in conformance with the criteria applicable to them;

(2) Class A.

It is the objective of class A waters that their use for recreational purposes and aesthetic enjoyment be protected. Any other use shall be permitted as long as it is compatible with the protection and propagation of fish, shellfish, and wildlife, and with recreation in and on these waters. These waters shall not act as receiving waters for any discharge which has not received the best degree of treatment or control compatible with the criteria established for this class. No new sewage discharges will be permitted within embayments. No new industrial discharges shall be permitted within embayments, with the exception of:

(A) Acceptable non-contact thermal and drydock or marine railway discharges, in the following water bodies:
  (i) Honolulu Harbor, Oahu;
  (ii) Barbers Point Harbor, Oahu;
  (iii) Keehi Lagoon Marina Area, Oahu;
  (iv) Ala Wai Boat Harbor, Oahu; and
  (v) Kahului Harbor, Maui.

(B) Storm water discharges associated with industrial activities (defined in 40 C.F.R. Section 122.26(b)(14) and (b)(15), except (b)(15)(i)(A) and (b)(15)(i)(B)) which meet, at the minimum, the basic water quality criteria applicable to all waters as specified in section 11-54-4, and all applicable requirements specified in the chapter 11-55, titled "Water Pollution Control[;]"; and

(C) Discharges covered by a National Pollutant Discharge Elimination System general permit, approved by the U.S. Environmental Protection Agency and issued by the Department in accordance with 40 C.F.R. Section 122.28 and all

applicable requirements specified in chapter 11-55, titled "Water Pollution Control[.]".

(d) Marine bottom ecosystems.

(1) Class I.

It is the objective of class I marine bottom ecosystems that they remain as nearly as possible in their natural pristine state with an absolute minimum of pollution from any human-induced source. Uses of marine bottom ecosystems in this class are passive human uses without intervention or alteration, allowing the perpetuation and preservation of the marine bottom in a most natural state, such as for nonconsumptive scientific research (demonstration, observation or monitoring only), nonconsumptive education, aesthetic enjoyment, passive activities, and preservation;

(2) Class II.

It is the objective of class II marine bottom ecosystems that their use for protection including propagation of fish, shellfish, and wildlife, and for recreational purposes not be limited in any way. The uses to be protected in this class of marine bottom ecosystems are all uses compatible with the protection and propagation of fish, shellfish, and wildlife, and with recreation. Any action which may permanently or completely modify, alter, consume, or degrade marine bottoms, such as structural flood control channelization[,] (dams); landfill and reclamation; navigational structures (harbors, ramps); structural shore protection (seawalls, revetments); and wastewater effluent outfall structures may be allowed upon securing approval in writing from the director, considering the

environmental impact and the public interest pursuant to sections 342D-4, 342D-5, 342D-6, and 342D-50, HRS in accordance with the applicable provisions of chapter 91, HRS.[Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; am and comp 10/21/12; comp ](Auth: HRS §174C, §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

§11-54-4 Basic water quality criteria applicable to all waters. (a) All waters shall be free of substances attributable to domestic, industrial, or other controllable sources of pollutants, including:

(1) Materials that will settle to form objectionable sludge or bottom deposits;
(2) Floating debris, oil, grease, scum, or other floating materials;
(3) Substances in amounts sufficient to produce taste in the water or detectable off-flavor in the flesh of fish, or in amounts sufficient to produce objectionable color, turbidity or other conditions in the receiving waters;
(4) High or low temperatures[;], biocides[;], pathogenic organisms[;], toxic[;], radioactive, corrosive, or other deleterious substances at levels or in combinations sufficient to be toxic or harmful to human, animal, plant, or aquatic life, or in amounts sufficient to interfere with any beneficial use of the water;
(5) Substances or conditions or combinations thereof in concentrations which produce undesirable aquatic life; and
(6) Soil particles resulting from erosion on land involved in earthwork, such as the construction of public works; highways;

subdivisions; recreational, commercial, or industrial developments; or the cultivation and management of agricultural lands.

(b) To ensure compliance with paragraph (a)(4), all state waters are subject to monitoring and to the following standards for acute and chronic toxicity and the protection of human health.

(1) As used in this section:

[(A)]"Acute Toxicity" means the degree to which a pollutant, discharge, or water sample causes a rapid adverse impact to aquatic organisms. The acute toxicity of a discharge or receiving water is measured using the methods in section 11-54-10, unless other methods are specified by the director.

[(B)]"Chronic Toxicity" means the degree to which a pollutant, discharge, or water sample causes a long-term adverse impact to aquatic organisms, such as a reduction in growth or reproduction. The chronic toxicity of a discharge or receiving water is measured using the methods in section 11-54-10, unless other methods are specified by the director.

[(C)]"Dilution" means, for discharges through submerged outfalls, the average and minimum values calculated using the models in the EPA publication, Initial Mixing Characteristics of Municipal Ocean Discharges (EPA/600/3-85/073, November, 1985), or in the EPA publication, Expert System for Hydrodynamic Mixing Zone Analysis of Conventional and Toxic Submerged Single Port Discharges (Cormix 1) (EPA/600/3-90/[073]012), February, 1990.

"In-Stream Waste Concentration" (IWC) means the concentration of a toxicant in the receiving water, or for a discharge, the concentration of the effluent after minimum dilution authorized by the department. A discharge of one hundred divided by the minimum dilution is the IWC when the dilution is authorized by the department. A discharge of one hundred per cent effluent is the

IWC when dilution is not authorized by the department.

[(D)]"No Observed Effect Concentration [Observed Effect Concentration]" (NOEC), means the highest per cent concentration of a discharge or water sample, in dilution water, which causes no observable adverse effect in a chronic toxicity test. For example, an NOEC of 100 percent indicates that an undiluted discharge or water sample causes no observable adverse effect to the organisms in a chronic toxicity test.

"Test of Significant Toxicity" (TST) means the alternative statistical method for analyzing and interpreting valid whole effluent toxicity test data as described in the EPA publications, "National Pollutant Discharge Elimination System Test of Significant Toxicity Implementation Document", EPA 833-R-10-003 (June 2010), and "National Pollutant Discharge Elimination System Test of Significant Toxicity Technical Document", EPA 833-R-10-004 (June 2010).

(2) Narrative toxicity and human health standards.

(A) Acute Toxicity Standards: All state waters shall be free from pollutants in concentrations which exceed the acute standards listed in paragraph (3). All state waters shall also be free from acute toxicity as measured using the toxicity tests listed in section 11-54-10, or other methods specified by the director.

(B) Chronic Toxicity Standards: All state waters shall be free from pollutants in concentrations which on average during any twenty-four hour period exceed the chronic standards listed in paragraph (3). All state waters shall also be free from chronic toxicity as measured using the toxicity tests listed in section 11-54-10, or other methods specified by the director.

(C) Human Health Standards: All state waters shall be free from pollutants in

concentrations which, on average during any thirty day period, exceed the "fish consumption" standards for non-carcinogens in paragraph (3). All state waters shall also be free from pollutants in concentrations, which on average during any 12 month period, exceed the "fish consumption" standards for pollutants identified as carcinogens in paragraph (3).

(3) Numeric standards for toxic pollutants applicable to all waters. The freshwater standards apply where the dissolved inorganic ion concentration is less than 0.5 parts per thousand; saltwater standards apply above 0.5 parts per thousand. Values for metals refer to the dissolved fraction. All values are expressed in micrograms per liter.

| Pollutant | Freshwater | | Saltwater | | Fish |
|---|---|---|---|---|---|
| | Acute | Chronic | Acute | Chronic | Consumption |
| [Acenapthene] Acenaphthene | 570 | ns | 320 | ns | [N]ns |
| Acrolein | 23 | ns | 18 | ns | 250 |
| Acrylonitrile* | 2,500 | ns | ns | ns | 0.21 |
| Aldrin* | 3.0 | ns | 1.3 | ns | 0.000026 |
| Aluminum | 750 | 260 | ns | ns | ns |
| Antimony | 3,000 | ns | ns | ns | 15,000 |
| Arsenic | 360 | 190 | 69 | 36 | ns |
| Benzene* | 1,800 | ns | 1,700 | ns | 13 |
| Benzidine* | 800 | ns | ns | ns | 0.00017 |
| Beryllium* | 43 | ns | ns | ns | 0.038 |
| Cadmium | 3+ | 3+ | 43 | 9.3 | ns |
| Carbon tetra-chloride* | 12,000 | ns | 16,000 | ns | 2.3 |

| Pollutant | Freshwater | | Saltwater | | Fish Consumption |
|---|---|---|---|---|---|
| | Acute | Chronic | Acute | Chronic | |
| Chlordane* | 2.4 | 0.0043 | 0.09 | 0.004 | 0.00016 |
| Chlorine | 19 | 11 | 13 | 7.5 | ns |
| Chloroethers- | | | | | |
| [ethy]ethyl(bis-2)* | ns | ns | ns | ns | 0.44 |
| [isoprophyl]isopropyl | ns | ns | ns | ns | 1,400 |
| methyl(bis)* | ns | ns | ns | ns | 0.00060 |
| Chloroform* | 9,600 | ns | ns | ns | 5.1 |
| Chlorophenol(2) | 1,400 | ns | ns | ns | ns |
| Chlorpyrifos | 0.083 | 0.041 | 0.011 | 0.0056 | ns |
| Chromium (VI) | 16 | 11 | 1,100 | 50 | ns |
| Copper | 6+ | 6+ | 2.9 | 2.9 | ns |
| Cyanide | 22 | 5.2 | 1 | 1 | ns |
| DDT* | 1.1 | 0.001 | 0.013 | 0.001 | 0.000008 |
| metabolite TDE* | 0.03 | ns | 1.2 | ns | ns |
| Demeton | ns | 0.1 | ns | 0.1 | ns |
| Dichloro- | | | | | |
| benzenes* | 370 | ns | 660 | ns | 850 |
| benzidine* | ns | ns | ns | ns | 0.007 |
| ethane(1,2)* | 39,000 | ns | 38,000 | ns | 79 |
| [ehenol]phenol(2,4) | 670 | ns | ns | ns | ns |
| propanes | 7,700 | ns | 3,400 | ns | ns |
| propene(1,3) | 2,000 | ns | 260 | ns | 4.6 |
| Dieldrin* | 2.5 | 0.0019 | 0.71 | 0.0019 | 0.000025 |
| Dinitro | | | | | |

| Pollutant | Freshwater | | Saltwater | | Fish Consumption |
|---|---|---|---|---|---|
| | Acute | Chronic | Acute | Chronic | |
| o-cresol(2,4) | ns | ns | ns | ns | 250 |
| toluenes* | 110 | ns | 200 | ns | 3.0 |
| Dioxin* | 0.003 | ns | ns | ns | $5.0 \times 10^{-9}$ |
| Diphenyl-hydrazine(1,2) | ns | ns | ns | ns | 0.018 |
| Endosulfan | 0.22 | 0.056 | 0.034 | 0.0087 | 52 |
| Endrin | 0.18 | 0.0023 | 0.037 | 0.0023 | ns |
| Ethylbenzene | 11,000 | ns | 140 | ns | 1,070 |
| Fluoranthene | 1,300 | ns | 13 | ns | 18 |
| Guthion | ns | 0.01 | ns | 0.01 | ns |
| Heptachlor* | 0.52 | 0.0038 | 0.053 | 0.0036 | 0.00009 |
| Hexachloro-benzene* | ns | ns | ns | ns | 0.00024 |
| butadiene* | 30 | ns | 11 | ns | 16 |
| cyclohexane- | | | | | |
| alpha* | ns | ns | ns | ns | 0.010 |
| beta* | ns | ns | ns | ns | 0.018 |
| technical* | ns | ns | ns | ns | 0.014 |
| cyclopentadiene | 2 | ns | 2 | ns | ns |
| ethane* | 330 | ns | 310 | ns | 2.9 |
| Isophorone | 39,000 | ns | 4,300 | ns | 170,000 |
| Lead | 29+ | 29+ | 140 | 5.6 | ns |
| Lindane* | 2.0 | 0.08 | 0.16 | ns | 0.020 |
| Malathion | ns | 0.1 | ns | 0.1 | ns |

| Pollutant | Freshwater | | Saltwater | | Fish |
|---|---|---|---|---|---|
| | Acute | Chronic | Acute | Chronic | Consumption |
| Mercury | 2.4 | 0.55 | 2.1 | 0.025 | 0.047 |
| Methoxychlor | ns | 0.03 | ns | 0.03 | ns |
| Mirex | ns | 0.001 | ns | 0.001 | ns |
| Naphthalene | 770 | ns | 780 | ns | ns |
| Nickel | 5+ | 5+ | 75 | 8.3 | 33 |
| Nitrobenzene | 9,000 | ns | 2,200 | ns | ns |
| Nitrophenols* | 77 | ns | 1,600 | ns | ns |
| Nitrosamines* | 1,950 | ns | ns | ns | 0.41 |
| Nitroso | | | | | |
| dibutylamine-N* | ns | ns | ns | ns | 0.19 |
| diethylamine-N* | ns | ns | ns | ns | 0.41 |
| dimethylamine-N* | ns | ns | ns | ns | 5.3 |
| diphenylamine-N* | ns | ns | ns | ns | 5.3 |
| pyrrolidine-N* | ns | ns | ns | ns | 30 |
| Parathion | 0.065 | 0.013 | ns | ns | ns |
| Pentachloro- | | | | | |
| ethanes | 2,400 | ns | 130 | ns | ns |
| benzene | ns | ns | ns | ns | 28 |
| phenol | 20 | 13 | 13 | ns | ns |
| Phenol | 3,400 | ns | 170 | ns | ns |
| 2,4-dimethyl | 700 | ns | ns | ns | ns |
| Phthalate esters | | | | | |
| dibutyl | ns | ns | ns | ns | 50,000 |
| diethyl | ns | ns | ns | ns | 590,000 |
| di-2-ethylhexyl | ns | ns | ns | ns | 16,000 |

| Pollutant | Freshwater | | Saltwater | | Fish |
|---|---|---|---|---|---|
| | Acute | Chronic | Acute | Chronic | Consumption |
| dimethyl | ns | ns | ns | ns | 950,000 |
| Polychlorinated biphenyls* | 2.0 | 0.014 | 10 | 0.03 | 0.000079 |
| Polynuclear aromatic hydrocarbons* | ns | ns | ns | ns | 0.01 |
| Selenium | 20 | 5 | 300 | 71 | ns |
| Silver | 1+ | 1+ | 2.3 | ns | ns |
| Tetrachloro-ethanes | 3,100 | ns | ns | ns | ns |
| benzene(1,2,4,5) | ns | ns | ns | ns | 16 |
| ethane(1,1,2,2)* | ns | ns | 3,000 | ns | 3.5 |
| ethylene* | 1,800 | ns | 3,400 | 145 | 2.9 |
| phenol(2,3,5,6) | ns | ns | ns | 440 | ns |
| Thallium | 470 | ns | 710 | ns | 16 |
| Toluene | 5,800 | ns | 2,100 | ns | 140,000 |
| Toxaphene* | 0.73 | 0.0002 | 0.21 | 0.0002 | 0.00024 |
| Tributyltin | ns | 0.026 | ns | 0.01 | ns |
| Trichloro-ethane(1,1,1) | 6,000 | ns | 10,400 | ns | 340,000 |
| ethane(1,1,2)* | 6,000 | ns | ns | ns | 14 |
| ethylene* | 15,000 | ns | 700 | ns | 26 |
| phenol(2,4,6)* | ns | ns | ns | ns | 1.2 |
| Vinyl chloride* | ns | ns | ns | ns | 170 |
| Zinc | 22+ | 22+ | 95 | 86 | ns |

ns - No standard has been developed.
* - Carcinogen.

+ - The value listed is the minimum standard. Depending upon the receiving water $CaCO_3$ hardness, higher standards may be calculated using the respective formula in the U. S. Environmental Protection Agency publication Quality Criteria for Water (EPA 440/5-86-001, Revised May 1, 1987).

Note - Compounds listed in the plural in the "Pollutant" column represent complex mixtures of isomers. Numbers listed to the right of these compounds refer to the total allowable concentration of any combination of isomers of the compound, not only to concentrations of individual isomers.

(4) The following are basic requirements applicable to discharges to state waters. These standards shall be enforced through effluent limitations or other conditions in discharge permits. The director may apply more stringent discharge requirements to any discharge if necessary to ensure compliance with all standards in paragraph (2).

(A) Continuous discharges through submerged outfalls. [The No Observed Effect Concentration (NOEC), expressed as percent effluent, of continuous discharges through submerged outfalls shall not be less than 100 divided by the minimum dilution. In addition, such discharges shall not contain:

(i) Pollutants in twenty-four hour average concentrations greater than the values obtained by multiplying the minimum dilution by the standards in paragraph (3), for the prevention of chronic toxicity.

(ii) Non-carcinogenic pollutants in thirty day average concentrations greater than the values obtained by multiplying the minimum dilution by the standards in paragraph (3) for fish consumption.

(iii) Carcinogenic pollutants in twelve month average concentrations greater than the values obtained by multiplying the average dilution by the standards in paragraph (3) for fish consumption.]

(i) The No Observed Effect Concentration (NOEC), expressed as percent effluent, of continuous discharges through submerged outfalls shall not be less than 100 divided by the minimum dilution; or,

(ii) The Test of Significant Toxicity (TST), as described in EPA 833-R-10-003 (June 2010) and EPA 833-R-10-004 (June 2010), shall be used to demonstrate no unacceptable level of chronic toxicity at the In-stream Waste Concentration (IWC). The chronic toxicity criterion is expressed using a regulatory management decision (b value) of 0.75 for chronic toxicity where, a 0.25 effect level (or more) at the IWC demonstrates an unacceptable level of chronic toxicity.

(B) Continuous discharges through submerged outfalls shall not contain:

(i) Pollutants in twenty four hour average concentrations greater than the values obtained by multiplying the minimum dilution by the standards in paragraph (3) for the prevention of chronic toxicity.

(ii) Non-carcinogenic pollutants in thirty day average concentrations greater than the values obtained by multiplying the

minimum dilution by the standards in paragraph (3) for fish consumption.

(iii) Carcinogenic pollutants in twelve month average concentrations greater than the values obtained by multiplying the average dilution by the standards in paragraph (3) for fish consumption.

[(B)]C Discharges without submerged outfalls. [The survival of test organisms in an undiluted acute toxicity test of any discharge shall not be less than 80 per cent. In addition, no such discharge shall contain pollutants in concentrations greater than the standards in paragraph (3) for the prevention of acute toxicity to aquatic life. The director may make a limited allowance for dilution for a discharge in this category if it meets the following criteria: the discharge velocity is greater than 3 meters per second; the discharge enters the receiving water horizontally, and; the receiving water depth at the discharge point is greater than zero.]

(i) The survival of test organisms in an undiluted acute toxicity test of any discharge shall not be less than eighty per cent; or,

(ii) Compliance with the acute toxicity NPDES effluent limit is demonstrated using the Test of Significant Toxicity (TST) as described in EPA 833-R-10-003 (June 2010) and EPA 833-R-10-004 (June 2010). The acute toxicity criterion is expressed using a regulatory management decision (*b* value) of 0.80 for the acute toxicity test methods listed in 11-54-

10, where, in an undiluted acute toxicity test, a 0.20 effect level (or more) at the IWC demonstrates an unacceptable level of acute toxicity; or,

(iii) The Test of Significant Toxicity (TST), as described in EPA 833-R-10-003 (June 2010) and EPA 833-R-10-004 (June 2010), shall be used to demonstrate no unacceptable level of chronic toxicity at the IWC. The chronic toxicity criterion is expressed using a regulatory management decision (b value) or 0.75 for chronic toxicity where, a 0.25 effect level (or more) at the IWC demonstrates an unacceptable of chronic toxicity. Toxicity is considered significant if the mean response in the IWC is greater than 0.75 multiplied by the mean response of the control.

(iv) No discharge shall contain pollutants in concentrations greater than the standards in paragraph (3) for the prevention of acute toxicity to aquatic life.

(v) The director may make a limited allowance for dilution for a discharge in this category if it meets the following criteria: the discharge velocity is greater than 3 meters per second; the discharge enters the receiving water horizontally, and; the receiving water depth at the discharge point is greater than zero.

(c) The requirements of paragraph (a)(6) shall be deemed met upon a showing that the land on which the erosion occurred or is occurring is being managed in accordance with soil conservation practices acceptable to the applicable soil and water conservation district and the director, and that a comprehensive conservation program is being actively pursued, or that the discharge has received the best degree of treatment or control, and that the severity of impact of the residual soil reaching the receiving body of water is deemed to be acceptable.

(d) In order to reduce a risk to public health or safety arising out of any violation or probable violation of this chapter, the director may post or order posted any state waters. Posting is the placement, erection, or use of a sign or signs warning people to stay out of, avoid drinking, avoid contact with, or avoid using the water. This posting authority shall not limit the director's authority to post or order posting in any other appropriate case or to take any enforcement action.

(e) Pesticide Application.

(1) As used in this section:

"Declared pest emergency situation" means an event defined by a public declaration by the President of the United States, state governor or, with the concurrence of the director, county mayor of a pest problem determined to require control through application of a pesticide beginning less than ten days after identification of the need for pest control.

"Pest" means

(A) Any insect, rodent, nematode, fungus, weed, or

(B) Any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under 7 U.S.C. §136w(c)(1).

"Pesticide" means

(A) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest;

(B) Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and

(C) Any nitrogen stabilizer, except that the term "pesticide" shall not include any article that is a "new animal drug" within the meaning of 21 U.S.C. 321(w), that has been determined by the Secretary of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article, or that is an animal feed within the meaning of 21 U.S.C. 321(x) bearing or containing a new animal drug.

The term "pesticide" does not include liquid chemical sterilant products (including any sterilant or subordinate disinfectant claims on such products) for use on a critical or semi-critical device, as defined in section 201 of 21 U.S.C. §321. For purposes of the preceding sentence, the term "critical device" includes any device which is introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body and the term "semi-critical device" includes any device which contacts intact mucous membranes but which does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body. The term "pesticide" applies to insecticides, herbicides, fungicides, rodenticides, and various other substances used to control pests. The definition encompasses all uses of pesticides authorized under FIFRA including uses authorized under sections 3 (registration), 5 (experimental use permits), 18 (emergency exemptions), 24(c) (special local needs registrations), and 25(b) (exemptions from FIFRA).

Note: drugs used to control diseases of humans or animals (such as livestock, fishstock and pets) are not considered pesticides; such drugs are regulated by the Food and Drug Administration. Fertilizers, nutrients, and other substances used to promote plant survival and health are not considered plant growth regulators and thus are not pesticides. Biological control agents, except for certain microorganisms, are exempted from regulation under FIFRA. (Biological control agents include beneficial predators such as birds or ladybugs that eat insect pests, parasitic wasps, fish, etc).

(2) Pesticide applications may be made to State waters if the pesticide applications are:

(A) Registered by the U.S. Environmental Protection Agency and licensed by the state department of agriculture or other state agency regulating pesticides;

(B) Used for the purpose of controlling mosquito and other flying insect pests; controlling weed and algae pests; controlling animal pests; controlling forest canopy pests; or protecting public health or the environment in a declared pest emergency situation or as determined by the director;

(C) Applied in a manner consistent with the labeling of the pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act;

(D) Applied under permits issued pursuant to HRS chapter 342D, if the Director requires such permits under HRS Chapter 342D;

(E) Applied in a manner so applicable narrative and numeric state water quality criteria as required in chapter 11-54 are met. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am

and comp 10/2/04; am and comp 06/15/09; am and comp 10/21/12; am and comp ] (Auth: HRS §§342D-1,342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

§11-54-5 Uses and specific criteria applicable to inland waters. Inland water areas to be protected are described in section 11-54-5.1, corresponding specific criteria are set forth in section 11-54-5.2; water body types are defined in section 11-54-1. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp ] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

§11-54-5.1 Inland water areas to be protected.

(a) Freshwaters.

(1) Flowing waters: perennial streams and rivers, intermittent streams, springs and seeps, and man-made ditches and flumes that discharge into any other waters of the State.

(A) Class 1.a.

(i) All flowing waters within the natural reserves, preserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195, HRS, or similar reserves for the protection of aquatic life established under chapter 195, HRS.

(ii) All flowing waters in national and state parks.

(iii) All flowing waters in state or federal fish and wildlife refuges.

(iv) All flowing waters which have been identified as a unique or

critical habitat for threatened or endangered species by the U.S. Fish and Wildlife Service.

(v) All flowing waters in [Wai-manu] Waimanu National Estuarine Research Reserve (Hawai'i).

(B) Class 1.b. All flowing waters in protective subzones designated under chapter 13-5 [of] by the state [board] department of land and natural resources.

(C) Class 2. All flowing waters in areas not otherwise classified.

All flowing waters in classes 1 and 2 in which water quality exceeds the standards specified in this chapter shall not be lowered in quality unless it has been affirmatively demonstrated to the director that the change is justifiable as a result of important economic or social development and will not interfere with or become injurious to any assigned uses made of, or presently in, those waters. This statement of antidegradation policy does not limit the applicability of the policy in §11-54[.]-1.1 to the whole chapter.

(2) Standing waters (natural freshwater lakes and reservoirs):

(A) Class 1.a.

(i) All standing waters within the natural reserves, preserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195, HRS, or similar reserves for the protection of aquatic life established under chapter 195, HRS.

(ii) All standing waters in national and state parks.

(iii) All standing waters in state or federal fish and wildlife refuges.

(iv) All standing waters which have been identified as a unique or critical habitat for threatened or endangered species by the U.S. Fish and Wildlife Service.

(v) All standing waters in [Wai-manu] Waimanu National Estuarine Research Reserve (Hawai'i).

(B) Class 1.b. All standing waters in protective subzones designated under chapter 13-5 [of] by the state [board] department of land and natural resources.

(C) Class 2. All standing waters in areas not otherwise classified.

(3) Elevated wetlands and low wetlands:

(A) Class 1.a.

(i) All elevated and low wetlands within the natural reserves, preserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195, HRS, or similar reserves for the protection of aquatic life established under chapter 195, HRS.

(ii) All elevated and low wetlands in national and state parks.

(iii) All elevated and low wetlands in state or federal fish and wildlife refuges.

(iv) All elevated and low wetlands which have been identified as a unique or critical habitat for threatened or endangered species by the U.S. Fish and Wildlife Service.

(v) All elevated and low wetlands in [Wai-manu] Waimanu National Estuarine Research Reserve (Hawai'i).

(B) Class 1.b. All elevated and low wetlands in protective subzones designated under chapter 13-5 [of]by the state [board]department of land and natural resources.

(C) Class 2. All elevated and low wetlands not otherwise classified.

(b) Brackish or saline waters (anchialine pools, saline lakes, coastal wetlands, and estuaries).

(1) Class 1.a.

(A) All inland brackish or saline waters within natural reserves, preserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195, HRS, or similar reserves for the protection of aquatic life established under chapter 195, HRS.

(B) All inland brackish or saline waters in national and state parks.

(C) All inland brackish or saline waters in state or federal fish and wildlife refuges.

(D) All inland brackish or saline waters which have been identified as a unique or critical habitat for threatened or endangered species by the U.S. Fish and Wildlife Service.

(E) All inland brackish and saline waters in [Wai-manu] Waimanu National Estuarine Research Reserve (Hawai'i).

(F) The following natural estuaries: Lumaha'i and [Ki-lau-ea] Kilauea estuaries (Kaua'i).

(2) Class 1.b. All inland brackish or saline waters in protective subzones designated

under chapter 13-5 [of] by the state [board] department of land and natural resources.

(3) Class 2. All inland brackish and saline waters not otherwise classified. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp ](Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4,342D-5)

§11-54-5.2 Inland water criteria. (a) Criteria for springs and seeps, ditches and flumes, natural freshwater lakes, reservoirs, low wetlands, coastal wetlands, saline lakes, and anchialine pools. Only the basic criteria set forth in section 11-54-4 apply to springs and seeps, ditches and flumes, natural freshwater lakes, reservoirs, low wetlands, coastal wetlands, saline lakes, and anchialine pools. Natural freshwater lakes, saline lakes, and anchialine pools will be maintained in the natural state through Hawai'i's "no discharge" policy for these waters. Waste discharge into these waters is prohibited, except as provided in section 11-54-4(e)(see [paragraph] section 11-54-3(b)(1)).

(b) Specific criteria for streams. Water column criteria for streams shall be as provided in the following table:

| Parameter | Geometric mean not to exceed the given value | Not to exceed the given value more than ten per cent of the time | Not to Exceed the given value more than two per cent of the time |
|---|---|---|---|
| Total Nitrogen (ug N/L) | 250.0*<br>180.0** | 520.0*<br>380.0** | 800.0*<br>600.0** |
| Nitrate + Nitrite Nitrogen (ug $[NO_3+NO_2]$-N/L) | 70.0*<br>30.0** | 180.0*<br>90.0** | 300.0*<br>170.0** |

| Parameter | Geometric mean not to exceed the given value | Not to exceed the given value more than ten per cent of the time | Not to Exceed the given value more than two per cent of the time |
|---|---|---|---|
| Total Phosphorus (ug P/L) | 50.0*<br>30.0** | 100.0*<br>60.0** | 150.0*<br>80.0** |
| Total Suspended Solids (mg/L) | 20.0*<br>10.0** | 50.0*<br>30.0** | 80.0*<br>55.0** |
| Turbidity (N.T.U.) | 5.0*<br>2.0** | 15.0*<br>5.5** | 25.0*<br>10.0** |

* Wet season - November 1 through April 30.
** Dry season - May 1 through October 31.
L = liter
N.T.U. = Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.
ug = microgram or 0.000001 grams
pH Units - shall not deviate more than 0.5 units from ambient conditions and shall not be lower than 5.5 nor higher than 8.0
Dissolved Oxygen - Not less than eighty per cent saturation, determined as a function of ambient water temperature.
Temperature - Shall not vary more than one degree Celsius from ambient conditions.
Specific Conductance - Not more than three hundred micromhos/centimeter.

(2) Bottom criteria for streams:

(A) Episodic deposits of flood-borne soil sediment shall not occur in quantities exceeding an equivalent thickness of five millimeters (0.20 inches) over hard bottoms twenty-four hours after a heavy rainstorm.

(B) Episodic deposits of flood-borne soil sediment shall not occur in quantities exceeding an equivalent thickness of ten millimeters (0.40 inches) over soft bottoms twenty-four hours after a heavy rainstorm.

(C) In soft bottom material in pool sections of streams, oxidation-reduction potential (EH) in the top ten centimeters (four inches) shall not be less than +100 millivolts.

(D) In soft bottom material in pool sections of streams, no more than fifty per cent of the grain size distribution of sediment shall be smaller than 0.125 millimeters (0.005 inches) in diameter.

(E) The director shall prescribe the appropriate parameters, measures, and criteria for monitoring stream bottom biological communities including their habitat, which may be affected by proposed actions. Permanent benchmark stations may be required where necessary for monitoring purposes. The water quality criteria for this subsection shall be deemed to be met if time series surveys of benchmark stations indicate no relative changes in the relevant biological communities, as noted by biological community indicators or by indicator organisms which may be applicable to the specific site.

(c) Specific criteria for elevated wetlands: pH units shall not deviate more than 0.5 units from ambient conditions and shall not be lower than 4.5 nor higher than 7.0.

(d) Specific criteria for estuaries.

(1) The following table is applicable to all estuaries except Pearl Harbor:

| Parameter | Geometric mean not to exceed the given value | Not to exceed the given value more than ten per cent of the time | Not to Exceed the given value more than two per cent of the time |
|---|---|---|---|
| Total Nitrogen (ug N/L) | 200.00 | 350.00 | 500.00 |
| Ammonia Nitrogen (ug $NH_4$-N/L) | 6.00 | 10.00 | 20.00 |
| Nitrate + Nitrite Nitrogen (ug [$NO_3$+$NO_2$]-N/L) | 8.00 | 25.00 | 35.00 |
| Total Phosphorus (ug P/L) | 25.00 | 50.00 | 75.00 |
| Chlorophyll a (ug/L) | 2.00 | 5.00 | 10.00 |
| Turbidity (N.T.U.) | 1.5 | 3.00 | 5.00 |

L = liter
N.T.U. = Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard
reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.
ug = microgram or 0.000001 grams
pH Units - shall not deviate more than 0.5 units from ambient conditions and shall not be lower than 7.0 nor higher than 8.6.
Dissolved Oxygen - Not less than seventy-five per cent saturation, determined as a function of ambient water temperature and salinity.
Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from ambient conditions.
Oxidation - reduction potential (EH) - Shall not be less than -100 millivolts in the uppermost ten centimeters (four inches) of sediment.

(2) The following table is applicable only to Pearl Harbor Estuary.

| Parameter | Geometric mean not to exceed the given value | Not to exceed the given value more than ten per cent of the time | Not to exceed the given value more than two per cent of the time |
|---|---|---|---|
| Total Nitrogen (ug N/L) | 300.00 | 550.00 | 750.00 |
| Ammonia Nitrogen (ug $NH_4$-N/L) | 10.00 | 20.00 | 30.00 |
| Nitrate + Nitrite Nitrogen (ug [$NO_3$+$NO_2$]-N/L) | 15.00 | 40.00 | 70.00 |
| Total Phosphorus (ug P/L) | 60.00 | 130.00 | 200.00 |
| Chlorophyll a (ug/L) | 3.50 | 10.00 | 20.00 |
| Turbidity (N.T.U.) | 4.00 | 8.00 | 15.00 |

L = liter
N.T.U. = Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.
ug = microgram or 0.000001 grams.

pH Units - shall not deviate more than 0.5 units from ambient conditions and shall not be lower than 6.8 nor higher than 8.8.
Dissolved Oxygen - Not less than sixty per cent saturation, determined as a function of ambient water temperature and salinity.
Temperature - Shall not vary more than one degree Celsius from ambient conditions.
Salinity - Shall not vary more than ten per cent from ambient conditions.
Oxidation - Reduction potential (EH) - Shall not be less than -100 millivolts in the uppermost ten centimeters (four inches) of sediment. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; am and comp 10/21/12; comp ] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

§11-54-6 Uses and specific criteria applicable to marine waters. (a) Embayments.

(1) As used in this subsection:
"Embayments" means land-confined and physically-protected marine waters with restricted openings to open coastal waters, defined by the ratio of total bay volume to the cross-sectional entrance area of seven hundred to one or greater.
"Total bay volume" is measured in cubic meters and "cross-sectional entrance area" is measured in square meters, and both are determined at mean lower low water.

(2) Water areas to be protected.

(A) Class AA.

(i) Hawaii
Puako Bay
Waiulua Bay
Anaehoomalu Bay
Kiholo Bay
Kailua Harbor

Kealakekua Bay
Honaunau Bay

Oahu
Waialua Bay
Kahana Bay
Kaneohe Bay
Hanauma Bay

Kauai
Hanalei Bay

(ii) All embayments in preserves, reserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195 or chapter 190, HRS, or similar reserves for the protection of marine life established under chapter 190, HRS.

(iii) All waters in state or federal fish and wildlife refuges and marine sanctuaries.

(iv) All waters which have been officially identified as a unique or critical habitat for threatened or endangered species by the U.S. Fish and Wildlife Service.

(B) Class A.

Hawaii
Hilo Bay (inside breakwater)
Kawaihae Boat Harbor
Honokohau Boat Harbor
Keauhou Bay

Maui
Kahului Bay
Lahaina Boat Harbor
Maalaea Boat Harbor

Lanai
Manele Boat Harbor
Kaumalapau Harbor

Molokai
Hale o Lono Harbor
Kaunakakai Harbor
Kaunakakai Boat Harbor

Oahu
Kaiaka Bay
Paiko Peninsula to Koko Head
Ala Wai Boat Harbor
Kewalo Basin
Honolulu Harbor
Keehi Lagoon
Barbers Point Harbor
Pokai Bay
Heeia Kea Boat Harbor
Waianae Boat Harbor
Haleiwa Boat Harbor
Ko Olina

Kauai
Hanamaulu Bay
Nawiliwili Bay
Kukuiula Bay
Wahiawa Bay
Hanapepe Bay (inside breakwater)
Kikiaola Boat Harbor
Port Allen Boat Harbor

(3) The following criteria are specific for all embayments excluding those described in [section 11-54-06(d)]subsection (d). (Note that criteria for embayments differ based on fresh water inflow.)

| Parameter | Geometric mean not to exceed the given value | Not to exceed the given value more than ten per cent of the time | Not to Exceed the given value more than Two per cent of The time |
|---|---|---|---|
| Total Nitrogen (ug N/L) | 200.00*<br>150.00** | 350.00*<br>250.00** | 500.00*<br>350.00** |
| Ammonia Nitrogen (ug $NH_4$-N/L) | 6.00*<br>3.50** | 13.00*<br>8.50** | 20.00*<br>15.00** |
| Nitrate + Nitrite Nitrogen (ug [$NO_3$+$NO_2$]-N/L) | 8.00*<br>5.00** | 20.00*<br>14.00** | 35.00*<br>25.00** |
| Total Phosphorus (ug P/L) | 25.00*<br>20.00** | 50.00*<br>40.00* | 75.00*<br>60.00** |
| Chlorophyll a ug/L) | 1.50*<br>0.50** | 4.50**<br>1.50** | 8.50*<br>3.00** |
| Turbidity (N.T.U.) | 1.5*<br>0.40** | 3.00*<br>1.00** | 5.00*<br>1.50** |

* "Wet" criteria apply when the average fresh water inflow from the land equals or exceeds one per cent of the embayment volume per day.

** "Dry" criteria apply when the average fresh water inflow from the land is less than one per cent of the embayment volume per day.

Applicable to both "wet" and "dry" conditions:

pH Units - shall not deviate more than 0.5 units from a value of 8.1, except at coastal locations where and when freshwater from stream, stormdrain or groundwater discharge may depress the pH to a minimum level of 7.0.

Dissolved Oxygen - Not less than seventy-five per cent saturation, determined as a function of ambient water temperature and salinity.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from natural or seasonal changes considering hydrologic input and oceanographic factors.
L = liter
N.T.U. = Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.
ug = microgram or 0.000001 grams

(b) Open coastal waters.

(1) As used in this subsection:
"Open coastal waters" means marine waters bounded by the 183 meter or 600 foot (100 fathom) depth contour and the shoreline, excluding bays named in subsection (a)[;].

(2) Water areas to be protected (measured in a clockwise direction from the first-named to the second-named location, where applicable):

(A) Class AA.

(i) Hawaii - The open coastal waters from Leleiwi Point to Waiulaula Point[;].

(ii) Maui - The open coastal waters between Nakalele Point and Waihee Point and between Huelo Point and Puu Olai[;].

(iii) Kahoolawe - All open coastal water surrounding the island[;].

(iv) Lanai - All open coastal waters surrounding the island[;].

(v) Molokai - The open coastal waters between the westerly boundary of Hale o Lono Harbor to Lamaloa Head. Also, the open coastal waters from Cape Halawa to the easterly boundary of Kaunakakai Harbor[;].

(vi) Oahu - Waimanalo Bay from the southerly boundary of Kaiona Beach Park, and including the waters surrounding Manana and Kaohikaipu Islands, to Makapuu Point. Also, Waialua Bay from Kaiaka Point to Puaena Point, and the open coastal waters along Kaena Point between a distance of 5.6 kilometers (3.5 miles) from Kaena Point towards Makua and 5.6 kilometers (3.5 miles) from Kaena Point toward Mokuleia[;].

(vii) Kauai - The open coastal waters between Hikimoe Valley and Makahoa Point. Also, the open coastal waters between Makahuena Point and the westerly boundary of Hoai Bay[;].

(viii) Niihau - All open coastal waters surrounding the island[;].

(ix) All other islands of the state - All open coastal waters surrounding the islands not classified in this section[;].

(x) All open waters in preserves, reserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195 or chapter 190, HRS or similar reserves for the protection of marine life established under chapter 190, HRS, as amended; or in the refuges or sanctuaries established by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service[;].

(B) Class A - All other open coastal waters not otherwise specified.

(3) The following criteria are specific for all open coastal waters, excluding those described in [section 11-54-6(d)]subsection (d). (Note that criteria for open coastal waters differ, based on fresh water discharge.)

| Parameter | Geometric mean not to exceed the given value | Not to exceed the given value more than ten per cent of the time | Not to exceed the given value more than two per cent of the time |
|---|---|---|---|
| Total Nitrogen (ug N/L) | 150.00*<br>110.00** | 250.00*<br>180.00** | 350.00*<br>250.00** |
| Ammonia Nitrogen (ug $NH_4$-N/L) | 3.50*<br>2.00** | 8.50*<br>5.00** | 15.00*<br>9.00** |
| Nitrate + Nitrite Nitrogen (ug [$NO_3$+$NO_2$]-N/L) | 5.00*<br>3.50** | 14.00*<br>10.00** | 25.00*<br>20.00** |
| Total Phosphorus (ug P/L) | 20.00*<br>16.00** | 40.00*<br>30.00** | 60.00*<br>45.00** |
| Light Extinction Coefficient (k units) | 0.20*<br>0.10** | 0.50*<br>0.30** | 0.85*<br>0.55** |
| Chlorophyll a ug/L) | 0.30*<br>0.15** | 0.90*<br>0.50** | 1.75*<br>1.00** |
| Turbidity (N.T.U.) | 0.50*<br>0.20** | 1.25*<br>0.50** | 2.00*<br>1.00** |

* "Wet" criteria apply when the open coastal waters receive more than three million gallons per day of fresh water discharge per shoreline mile.
** "Dry" criteria apply when the open coastal waters receive less than three million gallons per day of fresh water discharge per shoreline mile.
Applicable to both "wet" and "dry" conditions:
pH Units - shall not deviate more than 0.5 units from a value of 8.1, except at coastal locations where and

when freshwater from stream, stormdrain or groundwater discharge may depress the pH to a minimum level of 7.0.
Dissolved Oxygen - Not less than seventy-five per cent saturation, determined as a function of ambient water temperature and salinity.
Temperature - Shall not vary more than one degree Celsius from ambient conditions.
Salinity - Shall not vary more than ten per cent from natural or seasonal changes considering hydrologic input and oceanographic factors.
k units = the ratio of light measured at the water's surface to light measured at a particular depth.
L = liter
Light Extinction Coefficient is only required for dischargers who have obtained a waiver pursuant to Section 301(h) of the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251), as amended, and are required by EPA to monitor it.
N.T.U. = Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.
ug = microgram or 0.000001 grams

(c) Oceanic waters.

(1) [Definition -]As used in this section: "Oceanic waters" means all other marine waters outside of the 183 meter (600 feet or 100 fathom) depth contour[;].

(2) Water areas to be protected [-]: Class A - All oceanic waters[;].

(3) The following criteria are specific for oceanic waters:

| Parameter | Geometric mean not to exceed the given value | Not to exceed The given value more than ten per cent of the time | Not to exceed the given value more than two per cent of the time |
|---|---|---|---|
| Total Nitrogen (ug N/L) | 50.00 | 80.00 | 100.00 |
| Ammonia Nitrogen (ug $NH_4$-N/L) | 1.00 | 1.75 | 2.50 |
| Nitrate + Nitrite Nitrogen (ug $[NO_3+NO_2]$-N/L) | 1.50 | 2.50 | 3.50 |
| Total Phosphorus (ug P/L) | 10.00 | 18.00 | 25.00 |
| Chlorophyll a (ug/L) | 0.06 | 0.12 | 0.20 |
| Turbidity (N.T.U.) | 0.03 | 0.10 | 0.20 |

L = liter
N.T.U. = Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.
ug = microgram or 0.000001 grams
pH Units - shall not deviate more than 0.5 units from a value of 8.1.
Dissolved Oxygen - Not less than seventy-five per cent saturation, determined as a function of ambient water temperature and salinity.
Temperature - shall not vary more than one degree Celsius from ambient conditions.
Salinity - Shall not vary more than ten per cent from natural or seasonal changes considering hydrologic input and oceanographic factors.

(d) Area-specific criteria for the Kona (west) coast of the island of Hawaii.

(1) For all marine waters of [Hawaii Island]the island of Hawaii from Loa Point, South Kona District, clockwise to Malae Point, North Kona District, excluding Kawaihae Harbor and Honokohau Harbor, and for all areas from the shoreline at mean lower low water to a distance 1000 m seaward:

[(i)](A) [in]In areas where nearshore marine water salinity is greater than 32.00 parts per thousand the following specific criteria apply:

| Parameter | Geometric mean not to exceed the given single value |
|---|---|
| Total Dissolved Nitrogen (ug N/L) | 100.00 |
| Nitrate + Nitrite Nitrogen (ug $[NO_3+NO_2]$-N/L) | 4.50 |
| Total Dissolved Phosphorus (ug P/L) | 12.50 |
| Phosphate (ug $PO_4$ - P/L) | 5.00 |
| Ammonia Nitrogen (ug $NH_4$ - N/L) | 2.50 |
| Chlorophyll a (ug/L) | 0.30 |
| Turbidity (N.T.U.) | 0.10 |

* Specific criteria for Class A embayments apply to Honokohau Harbor and Kawaihae Harbor, see section 11-54-6(a)(3).

[(ii)](B) [if]If nearshore marine water salinity is less than or equal to 32.00 parts per thousand the following parameters shall be related to salinity on the basis of a linear least squares regression equation:

$$Y = MX + B$$

where:
Y = parameter concentration(in ug/L)
X = salinity (in ppt)
M = regression coefficient (or "slope")
B = constant (or "Y intercept").
The absolute value of the upper 95 per cent confidence limit for the calculated sample regression coefficient (M) shall not exceed the absolute value of the following values:

| Parameter | M |
|---|---|
| Nitrate and Nitrite Nitrogen (ug [NO3 + NO2]-N/L) | -31.92 |
| Total Dissolved Nitrogen (ug N/L) | -40.35 |
| Phosphate (ug PO4 - P/L) | -3.22 |
| Total Dissolved Phosphorus (ug P/L) | -2.86 |

The specific criteria for ammonia nitrogen, chlorophyll a, and turbidity given in[(i) above]subparagraph (A), also apply.

[(iii)](C) Parameter concentrations shall be determined along a horizontal transect extending seaward from a shoreline

sample location using the following method: water samples shall be obtained at distances of 1, 10, 50, 100, and 500 meters from the shoreline sampling location. Samples shall be collected within one meter of the water surface and below the air-water interface. Dissolved nutrient samples shall be filtered through media with particle size retention of 0.7 um. This sampling protocol shall be replicated not less than three times on different days over a period not to exceed fourteen days during dry weather conditions. The geometric means of sample measurements for corresponding offshore distances shall be used for regression calculations.

pH Units - shall not deviate more than 0.5 units from a value of 8.1, except at coastal locations where and when freshwater from stream, stormdrain or groundwater discharge may depress the pH to a minimum level of 7.0.

Dissolved Oxygen - Not less than seventy-five per cent saturation, determined as a function of ambient water temperature and salinity.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from natural or seasonal changes considering hydrologic input and oceanographic factors.

L - liter

N.T.U. - Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.

ug - microgram or 0.000001 grams. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp

01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp ] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

§11-54-7 Uses and specific criteria applicable to marine bottom types. (a) Sand beaches.

(1) As used in this subsection:
"Sand beaches" means shoreline composed of the weathered calcareous remains of marine algae and animals (white sand), the weathered remains of volcanic tuff (olivine), or the weathered remains of lava (black sand). Associated animals are largely burrowers and are related to particle grain size, slope, and color of the beach[;].

(2) Water areas to be protected:
(A) Class I - All beaches on the Northwestern Hawaiian Islands. These islands comprise that portion of the Hawaiian archipelago which lies northwest of the island of Kauai and is part of the State of Hawaii; including Nihoa Island, Necker Island, French Frigate Shoals, Brooks Banks, Gardiner Pinnacles, Dowsett and Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Atoll, Gambia Shoal, and Kure Atoll[;].
(B) Class II - All beaches not in Class I[;].

(3) The following criteria are specific to sand beaches:
(A) Episodic deposits of flood-borne sediment shall not occur in quantities exceeding an equivalent thickness of ten millimeters (0.40 inches) twenty-four hours after a heavy rainstorm[;].

(B) Oxidation - reduction potential (EH) in the uppermost ten centimeters (four inches) of sediment shall not be less than +100 millivolts;

(C) No more than fifty per cent of the grain size distribution of sediment shall be smaller than 0.125 millimeters in diameter.

(b) Lava rock shoreline and solution benches.

(1) As used in this subsection:

"Lava rock shorelines" means sea cliffs and other vertical rock faces, horizontal basalts, volcanic tuff beaches, and boulder beaches formed by rocks falling from above or deposited by storm waves. Associated plants and animals are adapted to the harsh physical environment and are distinctly zoned to the degree of wave exposure[;].

"Solution benches" means sea level platforms developed on upraised reef or solidified beach rock by the erosive action of waves and rains. Solution benches are distinguished by a thick algal turf and conspicuous zonation of plants and animals[;].

(2) Water areas to be protected:

(A) Class I - All lava rock shorelines and solution benches in preserves, reserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195 or chapter 190, HRS, or similar reserves for the protection of marine life established under chapter 190, HRS, as amended; or in refuges or sanctuaries established by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service[;].

(B) Class II

(i) All other lava rock shorelines not in Class I[;].

(ii) The following solution benches:

| Maui | Oahu |
|---|---|
| Kihei | Diamond Head |
| Papaula Point | Manana Island |
| | Makapuu |
| Kauai | Laie |
| Near Hanapepe Salt Ponds | Kahuku |
| Milolii | Mokuleia |
| Nualolo | Makua |
| Makaha | Makaha |
| Mahaulepu | Maile |
| Kuhio Beach Park (Kukuiula) | Lualualei |
| | Barbers Point |

(3) The following criteria are specific to lava rock shorelines and solution benches:

(A) Episodic deposits of flood-borne sediment shall not occur in quantities exceeding an equivalent thickness of five millimeters (0.20 inches) for longer than twenty-four hours after a heavy rainstorm[;].

(B) The director shall determine parameters, measures, and criteria for bottom biological communities which may be affected by proposed actions. The location and boundaries of each bottom-type class will be clarified when situations require their identification. For example, when a discharge permit is applied for or a waiver pursuant to [Section]section 301(h) of the Federal Water Pollution Control Act (33 U.S.C. Section 1311) is required. Permanent benchmark stations may be required where necessary for monitoring purposes. The water quality standards for this subsection shall be deemed to be met if time series surveys

of benchmark stations indicate no relative changes in the relevant biological communities, as noted by biological community indicators or by indicator organisms which may be applicable to the specific site.

(c) Marine pools and protected coves.

(1) As used in this subsection:

"Marine pools" means waters which collect in depressions on sea level lava rock outcrops and solution benches and also behind large boulders fronting the sea. Pools farthest from the ocean have harsher environments and less frequent renewal of water and support fewer animals. Those closest to the ocean are frequently renewed with water, are essentially marine, and support more diverse fauna[;].

"Protected coves" means small inlets which are removed from heavy wave action or surge[;].

(2) Water areas to be protected[;].

(A) Class I.

(i) All marine pools and protected coves in preserves, reserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195 or chapter 190, HRS, or similar reserves for the protection of marine life established under chapter 190, HRS, as amended; or in refuges or sanctuaries established by the U.S. Fish and Wildlife Service or the National Fisheries Service[;].

(ii) Hawaii

Honaunau
Kiholo

[(A)] (B) Class II

| Hawaii | Maui |
|---|---|
| Kalapana | Hana |
| Pohakuloa | Keanae |
| Kapalaoa | Napili |
| Kapoho | Puu Olai to |
| King's Landing (Papai) | Cape Hanamanioa |
| Hilo | Kipahulu |
| Leileiwi Point | |
| Wailua Bay | Molokai |
| | Cape Halawa |
| | Kalaupapa |
| | South Coast |

Oahu
Diamond Head
Halona Blowhole to Makapuu
Mokuleia
Kaena Point
Makua
Punaluu

Kauai
Kealia
Mahaulepu
Hanamaulu
Poipu
Puolo Point

(3) The following criteria are specific to marine pools and protected coves:

(A) In marine pools and coves with sand bottoms, oxidation-reduction potential (EH) in the uppermost ten centimeters (four inches) of sediment shall not be less than +100 millivolts[.].

(B) In marine pools and coves with sand bottoms, no more than fifty per cent of the grain size distribution of the

sediment shall be smaller than 0.125 millimeters in diameter[;].

[(F)] (C) Episodic deposits of flood-borne soil sediment shall not occur in quantities exceeding equivalent thicknesses for longer than twenty-four hours following a heavy rainstorm according to the following:

(i) No thicker than an equivalent of five millimeters (0.20 inches) on hard bottoms (other than living corals)[;].

(ii) No thicker than an equivalent of ten millimeters (0.40 inches) on soft bottoms[;].

(D) The director shall determine parameters, measures, and criteria for bottom biological communities which may be affected by proposed actions. Permanent benchmark stations may be required where necessary for monitoring purposes. The water quality standards for this subsection shall be deemed to be met if time series surveys of benchmark stations indicate no relative changes in the relevant biological communities, as noted by biological community indicators or by indicator organisms which may be applicable to the specific site.

(d) Artificial basins.

(1) As used in this subsection:
"Artificial basins" means dredged or quarried channels or harbors, and harbor-associated submerged structures. Many organisms can attach to the vertical structures, but the soft, shifting sediment bottoms of harbors may only be colonized by a few hardy or transient species.

(2) Class II water areas to be protected are as follows:

(A) Shallow draft harbors:

Hawaii
Wailoa River Boat Harbor
Mahukona Harbor
Keauhou Harbor
Kailua-Kona Harbor
Honokohau Boat Harbor
Kawaihae Boat Harbor

Maui
Maalaea Boat Harbor
Lahaina Boat Harbor
Hana Harbor

Lanai
Manele Boat Harbor
Kaumalapau Harbor

Molokai
Kalaupapa Anchorage
Kaunakakai Small Boat Harbor
Hale o Lono Harbor

Oahu
Heeia Kea Boat Harbor
Kaneohe Marine Corps Air Station
Kaneohe Yacht Club
Hawaii Kai Marina (Kuapa Pond)
Pokai Bay
Waianae Boat Harbor
Keehi Marine Center
La Mariana Sailing Club
Haleiwa Harbor
Makani Kai Marina
Keehi Boat Harbor
Ala Wai Boat Harbor:
- Ala Wai Fuel Dock
- Hawaii Yacht Club
- Waikiki Yacht Club

Ko Olina

Kauai
Nawiliwili Small Boat Harbor
Kukuiula Boat Harbor

Kikiaola Boat Harbor
Port Allen Boat Harbor

(B) Deep draft commercial harbors:

Hawaii
Kuhio Bay (Hilo Harbor)
Kawaihae Deep Draft Harbor

Maui
Kahului Harbor

Molokai
Kaunakakai Barge Harbor

Oahu
Honolulu Harbor
Barbers Point Harbor
Kewalo Basin

Kauai
Nawiliwili Harbor
Port Allen Harbor

(3) Specific criterion to be applied - [Oxidation - reduction]Oxidation-reduction potential (EH) in the uppermost ten centimeters (four inches) of sediment shall not be less than -100 millivolts.

(e) Reef flats and reef communities.

(1) As used in this subsection:
"Nearshore reef flats" means shallow platforms of reef rock, rubble, and sand extending from the shoreline. Smaller, younger flats projected out as semicircular aprons while older, larger flats form wide continuous platforms. Associated animals are mollusks, echinoderms, worms, crustaceans (many living beneath the surface), and reef-building corals.

"Offshore reef flats" means shallow, submerged platforms of reef rock and sand between depths of zero to three meters (zero to ten feet) which are separated from the shoreline of high volcanic islands by lagoons or ocean expanses. Dominant organisms are bottom-dwelling algae. Biological composition is extremely variable. There are three types: patch, barrier, and atoll reef flats; quite different from one another structurally. The presence of heavier wave action, water more oceanic in character, and the relative absence of terrigenous influences distinguish offshore reef flats.

"Protected reef communities" means hard bottom aggregations, including scattered sand channels and patches, dominated by living coral thickets, mounds, or platforms. They are found at depths of ten to thirty meters (thirty-two to ninety-six feet) along protected leeward coasts or in shallow water (up to sea level) in sheltered lagoons behind atoll or barrier reefs and in the calm reaches of bays or coves.

"Wave-exposed reef communities" means aggregations, including scattered sand channels and patches, dominated by corals. They may be found at depths up to forty meters (approximately one hundred thirty feet) along coasts subject to continuous or heavy wave action and surge. Wave-exposed reef communities are dominated biologically by benthic algae, reef-building corals, and echinoderms.

(2) Water areas to be protected:

(A) Class 1.

(i) All reef flats and reef communities in preserves, reserves, sanctuaries, and refuges established by the

department of land and natural resources under chapter 195 or chapter 190, HRS, or similar reserves for the protection of marine life under chapter 190, HRS, as amended; or in refuges or sanctuaries established by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service;

(ii) Nearshore reef flats:

| | |
|---|---|
| Hawaii | Maui |
| Puako | Honolua |
| Lanai | Oahu |
| Northwest Lanai Reef | Hanauma Bay |
| Molokai | Kauai |
| Western Kalaupapa | Nualolokai |
| Southeast Molokai Reef | Hanalei |
| Honomuni Harbor | (Anini to |
| Kulaalamihi Fishpond | Haena) |

(iii) Offshore reef flats:
Moku o Loe (Coconut Island, Kaneohe Bay, Oahu)
Kure Atoll
Pearl and Hermes Atoll
Lisianski Island
Laysan Island
Maro Reef
French Frigate Shoals

(iv) Wave exposed reef communities:
Hawaii
1823 Lava Flow (Punaluu)
1840 Lava Flow (North Puna)
1868 Lava Flow (South Point)
1887 Lava Flow (South Point)
1955 Lava Flow (South Puna)
1960 Lava Flow (Kapoho)
1969 Lava Flow (Apuna Point)

1970 Lava Flow (Apuna Point)
1971 Lava Flow (Apuna Point)
1972 Lava Flow (Apuna Point)
1973 Lava Flow (Apuna Point)

Maui
Hana Bay
Makuleia Bay (Honolua)

Molokini Island
All wave exposed reef communities

Molokai
Moanui Kahinapohaku Waikolu - Kalawao
Halawa Bay

Oahu
Sharks Cove (Pupukea)
Moku Manu (Islands)
Outer Hanauma Bay
Waimea Bay
Kawela Bay
Kahana Bay

Kauai
Ke`e Beach
Poipu Beach
Kipu Beach

Niihau
All wave exposed communities

Lehua (off Niihau)
All wave exposed communities

(v) Protected reef communities:

Hawaii
Puako
Honaunau

Kealakekua
Kiholo
Anaehoomalu
Hapuna
Kahaluu Bay
Keaweula (North Kohala)
Milolii Bay to Keawaiki
Kailua-Kaiwi (Kona)
Onomea Bay
1801 Lava Flow (Keahole or Kiholo)
1850 Lava Flow (South Kona)
1859 Lava Flow (Kiholo)
1919 Lava Flow (Milolii)
1926 Lava Flow (Milolii)

Maui
Honolua

Ahihi-La Perouse (including 1790 Lava Flow at Cape Kinau)

Molokini Island
All protected reef communities

Lanai
Manele
Hulopoe

| Molokai | Oahu |
|---|---|
| Southeast Molokai | Hanauma Bay |
| Kalaupapa | Moku o Loe |
| Honomuni Harbor | (Coconut Island, Kaneohe Bay) |

Kauai
Hoai Bay (Poipu)

Northwestern Hawaiian Islands
Kure Atoll Lagoon
Pearl and Hermes Lagoon
Lisianski Lagoon

Maro Reef Lagoon
French Frigate Shoals Lagoon

(B) Class II.

(i) Existing or planned harbors may be located within nearshore reef flats showing degraded habitats and only where feasible alternatives are lacking and upon written approval by the director, considering environmental impact and the public interest pursuant to section 342D-6, HRS.

Hawaii
Blonde Reef (Hilo Harbor)
Kawaihae Small Boat Harbor

Maui
Lahaina Harbor
Kahului Harbor

Lanai
Manele

Molokai
Kaunakakai Harbor
Hale o Lono Harbor
Palaau (2.4 kilometers/1.5 mile, east of Pakanaka Fishpond)

Oahu
Keehi Boat Harbor
Ala Moana Reef
Honolulu Harbor
Heeia Harbor
Kaneohe Yacht Club
Ala Wai Harbor
Haleiwa Boat Harbor
Maunalua Bay
Pearl Harbor
Kaneohe Bay
Kahe

All other nearshore reef flats not in Class I;

(ii) Offshore reef flats:

Oahu
Kapapa Barrier Reef
Kaneohe Patch Reefs (Kaneohe Bay)

(iii) All other wave exposed or protected reef communities not in Class I.

(3) Specific criteria to be applied to all reef flats and reef communities: No action shall be undertaken which would substantially risk damage, impairment, or alteration of the biological characteristics of the areas named herein. When a determination of substantial risk is made by the director, the action shall be declared to be contrary to the public interest and no other permits shall be issued pursuant to chapter 342D, HRS.

(A) Oxidation-reduction potential (EH) in the uppermost ten centimeters (four inches) of sand patches shall not be less than +100 millivolts;

(B) No more than fifty per cent of the grain size distribution of sand patches shall be smaller than 0.125 millimeters in diameter;

(C) Episodic deposits of flood-borne soil sediment shall not occur in quantities exceeding equivalent thicknesses for longer than twenty-four hours after a heavy rainstorm as follows:

(i) No thicker than an equivalent of two millimeters (0.08 inches) on living coral surfaces;

(ii) No thicker than an equivalent of five millimeters (0.2 inches) on other hard bottoms;

(iii) No thicker than an equivalent of ten millimeters (0.4 inches) on soft bottoms;

(D) The director shall determine parameters, measures, and criteria for bottom biological communities which may be affected by proposed actions. The location and boundaries of each bottom-type class shall be clarified when situations require their identification. For example, the location and boundaries shall be clarified when a discharge permit is applied for or a waiver pursuant to Section 301(h) of the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251 et seq.) is required. Permanent benchmark stations may be required where necessary for monitoring purposes. The water quality standards for this subsection shall be deemed to be met if time series surveys of benchmark stations indicate no relative changes in the relevant biological communities, as noted by biological community indicators or by indicator organisms which may be applicable to the specific site.

(f) Soft bottom communities.

(1) As used in this subsection:
"Soft bottom communities" means poorly described and "patchy" communities, mostly of burrowing organisms, living in deposits at depths between two to forty meters (approximately six to one hundred thirty feet). The particle size of sediment, depth below sea level, and degree of water movement and associated sediment turnover dictate the composition of animals which rework the bottom with burrows, trails, tracks, ripples, hummocks, and depressions.

(2) Water areas to be protected:
Class II - All soft bottom communities[;].

(3) Specific criteria to be applied - Oxidation-reduction potential (EH) in the uppermost ten centimeters (four inches) of sediment should not be less than -100 millivolts. The location and boundaries of each bottom-type class shall be clarified when situations require their identification. For example, the location and boundaries shall be clarified when a discharge permit is applied for or a waiver pursuant to Section 301(h) of the Act is required. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp ](Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

§11-54-8 Specific criteria for recreational areas. (a) In inland recreational waters:

(1) Enterococcus content shall not exceed a geometric mean of 33 per one hundred milliliters in not less than five samples which shall be spaced to cover a period between [25]twenty five and [30]thirty days. No single sample shall exceed the single sample maximum of 89 CFU per 100 milliliters or the site-specific one-sided 82 per cent confidence limit.

(2) Inland recreational waters in which enterococcus content does not exceed the standard shall not be lowered in quality.

(3) At locations where sampling is less frequent than five samples per twenty-five to thirty days, no single sample shall exceed the single sample maximum nor shall the geometric mean of these samples taken during

the 30-day period exceed 33 CFU per 100 milliliters.

(4) Raw or inadequately treated sewage, sewage for which the degree of treatment is unknown, or other pollutants of public health significance, as determined by the director of health, shall not be present in natural public swimming, bathing or wading areas. Warning signs shall be posted at locations where human sewage has been identified as temporarily contributing to the enterococcus count.

(b) In marine recreational waters:

(1) Within 300 meters (one thousand feet) of the shoreline, including natural public bathing or wading areas, enterococcus content shall not exceed a geometric mean of 35 CFU per 100 milliliters in not less than five samples which shall be spaced to cover a period between twenty-five and thirty days. No single sample shall exceed the single sample maximum of 104 CFU per 100 milliliters or the site-specific one-sided 75 per cent confidence limit. Marine recreational waters along sections of coastline where enterococcus content does not exceed the standard, as shown by the geometric mean test described above, shall not be lowered in quality.

(2) At locations where sampling is less frequent than five samples per twenty-five to thirty days, no single sample shall exceed the single sample maximum nor shall the geometric mean of these samples taken during the thirty-day period exceed 35 CFU per 100 milliliters.

(3) Raw or inadequately treated sewage, sewage for which the degree of treatment is unknown, or other pollutants of public health significance, as determined by the director of health, shall not be present in

natural public swimming, bathing or wading areas. Warning signs shall be posted at locations where human sewage has been identified as temporarily contributing to the enterococcus count. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; am and comp 06/15/09; comp ] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

§11-54-9 Zones of mixing. (a) As used in this section, "zones of mixing" means limited areas around outfalls and other facilities to allow for the initial dilution of waste discharges.

(b) Zones of mixing for the assimilation of domestic, agricultural, and industrial discharges which have received the best degree of treatment or control are recognized as being necessary. It is the objective of these limited zones to provide for a current realistic means of control over the placement and manner of discharges or emissions so as to achieve the highest attainable level of water quality or otherwise to achieve the minimum environmental impact considering initial dilution, dispersion, and reactions from substances which may be considered to be pollutants.

(c) Establishment, renewal, and termination.

(1) Application for establishment of a zone of mixing shall be made concurrently with any discharge permits whenever applicable and the conditions of a zone of mixing shall be incorporated as conditions of the discharge permits. Every application for a zone of mixing shall be made on forms furnished by the director and shall be accompanied by a complete and detailed description of present conditions, how present conditions do not

conform to standards, and other information as the director may prescribe[;].

(2) Each application for a zone of mixing shall be reviewed in light of the descriptions, statements, plans, histories, and other supporting information as may be submitted upon the request of the director, and in light of the effect or probable effect upon water quality standards established pursuant to this chapter[;].

(3) Whenever an application is approved, the director shall establish the zone of mixing, taking into account the environmental impact, including but not limited to factors such as the protected uses of the body of water, existing natural conditions of the receiving water, character of the effluent, and the adequacy of the design of the outfall and diffuser system to achieve maximum dispersion and assimilation of the treated or controlled waste with a minimum of undesirable or noticeable effect on the receiving water[;].

(4) Approval of a zone of mixing shall be made either after a public hearing is held by the director in the county where the source is situated, in accordance with chapters 91 and 92, HRS and the rules of practice and procedures of the department, or after the public notification and comment process duly established for a discharge permit in the case when the zone of mixing is being considered concurrently with the discharge permit[;].

(5) No zone of mixing shall be established by the director unless the application and the supporting information clearly show that:

(A) The continuation of the function or operation involved in the discharge by the granting of the zone of mixing is in the public interest;

(B) The discharge occurring or proposed to occur does not substantially endanger human health or safety;

(C) Compliance with the existing water quality standards from which a zone of mixing is sought would produce serious hardships without equal or greater benefits to the public; and

(D) The discharge occurring or proposed to occur does not violate the basic standards applicable to all waters, will not unreasonably interfere with any actual or probable use of the water areas for which it is classified, and has received (or in the case of a proposed discharge will receive) the best degree of treatment or control[;].

(6) Any zone of mixing or renewal thereof shall be established within the requirements of this section and for time periods and under conditions consistent with the reasons therefore and within the following limitations:

(A) If the zone of mixing is established on the grounds that there is no reasonable means known or available for the adequate prevention, control, or abatement of the discharge involved, it shall be allowed only until the necessary means for prevention, control or abatement become practicable, and subject to the taking of any substitute or alternative measures that the director may prescribe. No renewal of a zone of mixing established under this subsection shall be allowed without a thorough review of known and available means of preventing, controlling, or abating the discharge involved;

(B) The director may issue a zone of mixing for a period not exceeding five years;

(C) Every zone of mixing established under this section shall include, but not be limited to, conditions requiring the applicant to perform appropriate effluent and receiving water sampling including monitoring of bottom biological communities and report the results of each sampling to the director. A program of research to develop reasonable alternatives to the methods of treatment or control in use by the applicant may be required if research is deemed prudent by the director; and

(D) In order to prevent high temperature discharges from violating section 11-54-04(a)(4), no new or increased domestic, industrial, or other controllable source shall discharge at a maximum temperature which will cause temperatures to exceed [3]three degrees Celsius above ambient, or [30]thirty degrees Celsius, whichever is less, within one meter of the bottom within a zone of mixing. For discharges with or without submerged outfalls, the director may make a limited allowance for higher discharge temperatures if there is satisfactory demonstration that the elevated temperature will not cause damage to the local aquatic community.

(7) Any zone of mixing established pursuant to this section may be renewed from time to time on terms and conditions and for periods not exceeding five years which would be appropriate on initial establishment of a zone of mixing, provided that the applicant for renewal had met all of the conditions specified in the immediately preceding mixing, and provided further that the

renewal and the zone of mixing established in pursuance thereof shall provide for the discharge not greater in quantity of mass emissions than that attained pursuant to the terms of the immediately preceding zone of mixing at its expiration. Any new zones of mixing or requests for zone of mixing renewals for wastewater treatment plants (WWTP) performing primary treatment shall comply with [Section]section 301(h) of the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251). No renewal shall be allowed except upon application. Any renewal application shall be made at least one hundred and eighty days prior to the expiration of the zone of mixing[;].

(8) No zone of mixing established pursuant to this part shall be construed to prevent or limit the application of any emergency provisions and procedures provided by law[;].

(9) The establishment of any zone of mixing shall be subject to the concurrence of the U.S. Environmental Protection Agency[;].

(10) Each mixing zone may be subject to revocation, suspension, or modification if, after notice and opportunity for a hearing pursuant to chapter 91, HRS and the rules of practice and procedures of the department, the director determines that the terms specified in section 342D-6, HRS have been violated. In taking any action, the director may consider operating records, compliance investigations, or other information regarding discharge quality or impact on receiving waters. The action shall be effected by giving written notice to the permittee, which shall contain the reasons for the action[;].

(11) The director shall be notified within thirty days of the permanent discontinuance of a

discharge. The zone of mixing shall terminate thirty days after such notification has been received[;].

(12) Upon expiration of the period stated in the designation, the zone of mixing shall automatically terminate and no rights shall become vested in the designee. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp ] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

§11-54-9.1 Water quality certification. As used in sections 11-54-9.1.01 to 11-54-9.1.10:

"33 CFR" means the Code of Federal Regulations, Title 33, Corps of Engineers, Department of the Army, Department of Defense, revised as of July 1, [1998]2011, unless otherwise specified.

"40 CFR" means the Code of Federal Regulations, Title 40, Protection of the Environment, revised as of July 1, [1998][2001] 2011, unless otherwise specified.

"Act" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 95-483 and Public Law 97-117, 33 U.S.C. [Section]section 1251 et. seq.

"Agent" means a duly authorized representative of the owner as defined in section 11-55-7(b).

"Department" means the state department of health.

"Director" means the director of the department or an authorized agent.

"Discharge" means the same thing as defined in Section 502(16) of the Act.

"Discharge of a pollutant" and "discharge of pollutants" means the same thing as defined in [Section]section 502(12) of the Act.

"Duly authorized representative" means a person or position as defined in 40 CFR [Section]section 122.22(b).

"HRS" means the Hawaii Revised Statutes.

"License or permit" means any permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission granted by an agency of the federal government to conduct any activity which may result in any discharge into navigable waters.

"Licensing or permitting agency" means any agency of the federal government to which a federal application is made for a "license or permit."

"Navigable waters" means the waters of the United States, including the territorial seas.

"Owner" means the person who owns any "facility" or "activity" which results in any discharge into navigable waters.

"Pollutant" means the same thing as defined in [Section]section 502(6) of the Act.

"Territorial seas" means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.

"Water quality certification" or "certification" means a statement which asserts that a proposed discharge resulting from an activity will not violate applicable water quality standards and the applicable provisions of sections 301, 302, 303, 306 and 307 of the Act. A water quality certification is required by [Section]section 401 of the Act from any applicant for a federal license or permit to conduct any activity, including the construction or operation of facilities which may result in any discharge into navigable waters.

"Water quality certification application" means any forms provided by the director for use in obtaining the water quality certification.

"Water quality standards" means standards established pursuant to [Section]section 10(c) of the Act, and state-adopted water quality standards for navigable waters which are not interstate waters.

"Waters of the United States" or "waters of the U.S." means:

(1) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(2) All interstate waters, including interstate "wetlands";

(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(A) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(B) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(C) Which are used or could be used for industrial purposes by industries in interstate commerce;

(4) All impoundments of waters otherwise defined as waters of the United States under this definition;

(5) Tributaries of waters identified in paragraphs (1) through (4) of this definition;

(6) The territorial sea; and

(7) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (1) through (6) of this definition. [Eff and comp 04/14/88; am

and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.01 Water quality certification; contents of certification. (a) A certification made by the department shall include:

(1) The legal name(s), street address, contact person's name and position title, and telephone and fax numbers of the owner and, if applicable, its duly authorized representative;

(2) A statement that the director has either:

(A) Examined the application made by the owner or its duly authorized representative to the licensing or permitting agency (specifically identifying the number or code affixed to the application) and bases its certification upon an evaluation of the information contained in the application which is relevant to water quality considerations; or

(B) Examined other information provided by the owner or its duly authorized representative sufficient to permit the director to make the statement described in paragraph (a)(3)

(3) A statement that there is reasonable assurance that the activity will be conducted in a manner which will not violate applicable water quality standards;

(4) A statement of any conditions which the director considers necessary or desirable with respect to the discharge resulting from an activity; and

(5) Other information the director determines to be appropriate.

(b) The director shall issue the certification after evaluating the complete water quality certification application, comments received during the public comment period, any record of a public hearing held pursuant to section 11-54-09.1.03, other information and data the director considers relevant, and after the director determines that there is reasonable assurance that applicable water quality standards will not be violated and the best practicable methods of control will be applied to a discharge resulting from an activity including the construction and operation of a facility.

(c) The department shall process applications for permits and water quality certifications for the reconstruction, restoration, repair, or reuse of any Hawaiian fishpond that meets the requirements of chapter 183B, HRS, before all other permits and certifications. The director shall render a decision on the completeness of any application for the permit or water quality certification within thirty days of receipt. Applications for fishpond reconstruction, restoration, or repair that are incomplete shall be denied without prejudice. The director shall render a decision on any complete application for a permit or water quality certification for any fishpond within one hundred fifty days.

(d) The director, at the director's discretion or after consideration of information presented by the owner or its duly authorized representative, the licensing or permitting agency, other government agencies, or interested parties, may modify or revoke an issued certification or waiver. [Eff and comp 4/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp ] (Auth: HRS §§342D-4, 342D-5, 342D6.5, 342D-53) (Imp: HRS §§342D-342D-6, 342D6.5, 342D-5)§11-54-09.1.02

§11-54-9.1.02 Water quality certification; contents of water quality certification application.

(a) The owner or its duly authorized representative shall submit a complete water quality certification application for the discharge resulting from an activity. The water quality certification application shall include at a minimum:

(1) The legal name(s), street address, contact person's name and position title, and telephone and fax numbers of the owner and, if applicable, its duly authorized representative;

(2) The company or organization name, contact person's name and position title, and telephone and fax numbers of the emergency contact(s);

(3) The name, street address, contact person's name and position title, telephone and fax numbers, island, and tax map key number(s) for the project;

(4) Associated existing or pending federal and environmental permits and corresponding file numbers;

(5) The name(s) of the navigable water where the discharge occurs, the latitude and longitude of the discharge point(s), the classification of the navigable water, and the associated existing recreational uses;

(6) The scope of work or a description of the overall project including: the construction or operation of facilities which may result in discharges into navigable waters; the proposed discharge resulting from an activity; and specific biological, chemical, physical, thermal, and other pertinent characteristics of the discharge resulting from an activity;

(7) If applicable, a description of the function and operation of equipment or facilities to control discharges, including specification of the methods of control to be used;

(8) The estimated dates on which the activity will begin and end and the date or dates on which the discharge(s) will take place;

(9) If applicable, a description of the methods and means being used or proposed to monitor the quality and characteristics of the discharge and the operation of equipment or facilities employed in the control of the proposed discharges and a map showing the location(s) of the monitoring point(s);

(10) The statement of assurance, statement of choice for publication, and if applicable, an authorization statement, with the owner's original signature. Any signatures required for the water quality certification application shall be provided as described in 40 CFR Section 122.22(a);

(11) Supporting documentation (e.g. maps, plans, specifications, copies of associated federal permits or licenses, federal applications, Environmental Assessments or Environmental Impact Statements, as applicable, etc.);

(12) Additional information regarding any irregularities or unique features of the project; and

(13) Additional information as required by the director.

(b) The director shall notify the owner or its duly authorized representative in writing if a water quality certification application is incomplete or otherwise deficient. A description of the additional information necessary to complete the water quality certification application or to correct the deficiency shall be included in the written notice. If a water quality certification application is incomplete or otherwise deficient, processing of the water quality certification application shall not be completed until the time the owner or its duly authorized representative has supplied the information or otherwise corrected the deficiency. Failure to provide additional information or to correct a

deficiency shall be sufficient grounds for denial of the certification or termination of the processing of the water quality certification application.

(c) The director shall notify the owner or its duly authorized representative in writing when a water quality certification application is considered complete. The director shall act on a request for certification within a period which shall not exceed one year from the date when the water quality certification application was considered complete.

(d) The owner or its duly authorized representative shall notify the department in writing of changes which may affect the water quality certification application and certification process.

(e) Each owner who submits a water quality certification application shall pay a filing fee of $1,000. This filing fee shall be submitted with the water quality certification application and shall not be refunded nor applied to any subsequent water quality certification application following final action of denial or termination of the processing of the water quality certification application.

(1) Fees shall be made payable to the "State of Hawaii" in the form of a cashier's check or money order;

(2) Water quality certification application(s) submitted by the U.S. Army Corps of Engineers, Honolulu Engineer District, for the purpose of adopting regional or nationwide general permit(s), in accordance with 33 CFR Parts 325 and 330, respectively, shall be exempt from the payment of filing fees.

(f) If a project or activity requiring a federal permit or license involves or may involve the discharge of a pollutant or pollutants and is initiated or completed without a water quality certification, the director may process an [After the Fact]after-the-fact water quality certification application as follows: [After the Fact]after-the-fact water quality certification application may be

accepted and processed only for the limited purpose of deeming projects or activities requiring federal permits or licenses to be properly permitted or licensed forward of the date of the water quality certification or waiver. No water quality certification or waiver shall be issued which allows the retroactive permitting or licensing of projects or activities before the date the water quality certification or waiver was issued. A water quality certification or waiver may be issued if the following criteria are met: [(1) The project or activity is not the subject of an on-going enforcement action by the federal, state or county government; (2) Any adverse impacts upon water quality resulting from the project or activity have been mitigated to the maximum extent feasible, and (3) The project or activity will not cause or contribute to any lack of attainment of water quality standards set forth in this chapter.]

(1) The project or activity is not the subject of an on-going enforcement action by the federal, state or county government;

(2) Any adverse impacts upon water quality resulting from the project or activity have been mitigated to the maximum extent feasible, and

(3) The project or activity will not cause or contribute to any lack of attainment of water quality standards set forth in this chapter.

(g) Written notification by the department under [section 11-54-9.1]subsection (b) is complete upon mailing or sending a facsimile transmission of the document or actual receipt of the document by the owner or its duly authorized representative. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.03 Water quality certification; notice and hearing. The director may provide the opportunity for public comment or hearing(s) or both to consider the issuance of a water quality certification. A notice shall be published in accordance with chapters 91 and 92, HRS. The director shall inform the owner or its duly authorized representative in writing that the action has been taken. All publication and mailing costs associated with the public notification of the director's tentative determinations with respect to the water quality certification application shall be paid by the owner to the appropriate newspaper agency or agencies determined by the director. Failure to provide and pay for public notification, as considered appropriate by the director, may result in a delay in the certification process. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.04 Water quality certification; waiver. (a) If the director fails or refuses to act on a request for certification within one year after receipt of a complete water quality certification application, then the certification requirements of section 11-54-9.1 shall be waived with respect to the federal application.

(b) If the discharge resulting from an activity receives a determination to be covered under a nationwide permit authorization, thereby fulfilling specific conditions of that permit pursuant to 33 CFR [Sections]sections 330.4, 330.5, and 330.6, then the director will determine, on a case-by-case basis, which projects are considered minor and non-controversial. Certification requirements of section 11-54-9.1 shall be waived for minor and non-controversial activities within one year of receipt of a complete water quality certification application.

[Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.05 Water quality certification; adoption of new water quality standards. (a) The licensee or permittee shall comply with any new water quality standards as adopted by the department.

(b) In any case where:

(1) A certification or waiver was issued without applicable water quality standards;

(2) Water quality standards applicable to the waters into which the activity may discharge are subsequently established before the activity is completed; or

(3) The director determines that the activity is violating new water quality standards

The director shall then notify the licensee or permittee and the licensing or permitting agency of the violation.

(c) If the licensee or permittee fails within one hundred eighty days of the date of the notice to cease the violation, the director shall notify the licensing or permitting agency that the licensee or permittee has failed to comply with the standards. The director, at the director's discretion, shall also revoke the certification or waiver or recommend suspension of the applicable license or permit pursuant to [Section]section 401 of the Act.

(d) The director shall notify the licensing or permitting agency that, in the director's opinion, there is reasonable assurance that applicable water quality standards will not be violated because the licensee or permittee took appropriate action to comply with the applicable water quality standards after their license or permit was suspended pursuant to subsection (c).

(e) This section shall not preclude the department from taking other enforcement action authorized by law. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-53s) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.06 Water quality certification; inspection of facility or activity before operation. Where any facility or activity has received certification or waiver pursuant to sections 11-54-9.1.01 to 11-54-9.1.09 in connection with the issuance of a license or permit for construction, and where the facility or activity is not required to obtain an operating license or permit, the director, prior to the initial operation of the facility or activity, shall be afforded the opportunity to inspect the facility or activity for the purpose of determining if the manner in which the facility or activity will be operated or conducted will violate applicable water quality standards. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp ] Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.07 Water quality certification; notification to licensing or permitting agency. If the director, after an inspection pursuant to section 11-54-9.1.06 determines that operation of the proposed facility or activity will violate applicable water quality standards, the director shall so notify the owner or, if applicable, its duly authorized representative and the licensing or permitting agency. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp ] (Auth:

HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.08 Water quality certification; termination or suspension. Where a licensing or permitting agency, following a public hearing, suspends a license or permit after receiving the director's notice and recommendation pursuant to section 11-54-9.1.07 the owner or its duly authorized representative may submit evidence to the director, that the facility or activity has been modified so as not to violate applicable water quality standards. If the director determines that the applicable water quality standards have not been and will not be violated, the director shall so notify the licensing or permitting agency. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.09 Water quality certification; review and advice. The director may, and upon request shall, provide licensing and permitting agencies with determinations, definitions, and interpretations to the meaning and content of state water quality standards. The director may, and upon request shall, also advise licensing and permitting agencies of the status of compliance by the owner(s) of a water quality certification with the conditions and requirements of applicable water quality standards. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp ](Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-10 Water quality analyses. (a) Laboratory analysis shall be performed by a laboratory approved by the department.

(b) Where applicable, analysis to determine compliance with these rules shall be by:

| Parameter | Reference |
|---|---|
| Sample Collection (Phytoplankton and other Bioassays) | Standard Methods for the Examination of Water and Waste Water, [twentieth]twenty first edition, APHA |
| Sample Preservation and Holding Time, Bacteriological and Chemical Methodology | "Guidelines Establishing Test Procedures for the Analysis of Pollutants," Federal Register, July 1, [1998]2011 (40 CFR 136). [and "Technical Amendments,"[Federal Register, July 1, 1998 (40 CFR 136).] 40 CFR 136, revised as of July 1, 2001.] |
| | "A Manual of Chemical and Biological Methods for Seawater Analysis" T.R. Parsons, Y. Maita, and C.M. Lalli, 1984, Pergamon Press, New York. |
| | "Methods of Seawater Analysis", 2nd, Revised and Extended Edition, ed. by K. Grashof, M. Erhardt, K. Kremling, 1983. Verlag Chemie, Weinheim, Germany. |

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|---|---|
| Toxicity Test | EPA[/600/4-91/002]821-R-02-031, Short-Term Methods For Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms, 4th edition, October 2002 [July 1994],<br><br>or:<br><br>EPA[/600/4-90-027F]821-R-02-012, Methods for Measuring the Acute Toxicity of Effluents and receiving waters to Freshwater and Marine Organisms, 5th edition,[. Cincinnati, Ohio, EMSL, August 1995]October 2002.<br><br>or:<br><br>EPA[-600/4-91/003]821-R-02-014, Short-Term methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms, 3rd edition,[. ORD, Cincinnati, Ohio, July 1994]October 2002.<br><br>or:<br><br>EPA 833-R-10-003, National Pollutant Discharge Elimination System Test of Significant Toxicity Implementation Document, June 2010. |

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| | or: |
| | EPA 833-R-10-004, National Pollutant Discharge Elimination System Test of Significant Toxicity Technical Document, June 2010. |
| | or: |
| | EPA/600/R-12/022, Tropical Collector Urchin, *Tripneustes gratilla*, Fertilization Test Method, April 2012. |
| Quality Control (Bacteriological and Biology) and Chemistry | EPA/600/4-79-019, Handbook for Analytical Quality Control in Water and Wastewater Laboratories, March 1979. |
| Kona Coast Area Specific Standards | Rationale for the Development of Area-Specific Water Quality Criteria for the West Coast of The Island of Hawaii and Procedures for Their Use. Hawaii State Department of Health. March 1997. |
| | [or: |
| | As otherwise previously specified or approved by the director.] |

or as otherwise previously specified or approved by the director.[Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp ] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

§11-54-11 Revision. These water quality criteria are based upon the best currently available data. Studies made in connection with the implementation program may suggest improvements to this chapter. For this reason, the chapter will be subject to periodic review and, where necessary, to change. Any change will be made only after public hearing, held in compliance with chapter 91, HRS and the rules of practice and procedures of the department. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp ] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

§11-54-12 Severability. If any provisions of this chapter, or the application thereof to any person or circumstances, is held invalid, the invalidity does not affect other provisions or application of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.[""] [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp ] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

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

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

4. These amendments to and compilation of chapter 11-54, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

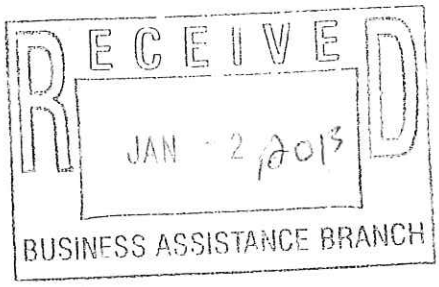
I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on , and filed with the Office of the Lieutenant Governor.

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

APPROVED AS TO FORM:

EDWARD G. BOHLEN
Deputy Attorney General

# Changes to HAR 11-55



NPDES General Permit coverage for discharges to State waters (HAR, Chapter 11-55, Appendices B through L) expired at midnight, October 21, 2012. Currently there are no NPDES General Permits. Anyone requiring NPDES permit, although qualified for coverage under a General Permit, must submit an NPDES individual permit.

The Department of Health (DOH) proposes to re-adopt, Hawaii Administrative Rules (HAR), Title 11, Chapter 55, Water Pollution Control (hereafter referred to as Chapter 11-55) with the following amendments:

§11-55-01 updated the "40 CFR" definition.

§11-55-15 add language to clarify that the Department may administratively extend individual NPDES permits, consistent with HRS 342D-6(h)

§11-55-34.02 added language for future HRS amendments to allow General Permits to be issued by order.

§11-55-34.02(b)(1) – (11) delete "dated October 2007." Instead of updating here, the first page of Appendices B - L were revised to require a date stamp. The stamp is of the date ten days after filing with the office of the Lieutenant Governor. The effective date of the general permit begins on the date stamped and expires five years afterwards, unless earlier amended. The purpose of the revision is to clearly identify the term of the permit.

§11-55-34.02(b)(12) delete "dated January 2012." The "January 2012" date on the first page of Appendix M was revised to: "This General Permit is effective on October 21, 2012, and expires five years from this date, unless amended earlier."

§11-55-34.03 add language to allow the Department to continue to process Notice of Intents (NOIs) and issue Notice of General Permit Coverages (NGPCs) under expired General Permits for a period of up two (2) years while actively seeking readoption.

§11-55-34.05(b) added to be consistent with 40 CFR 122.28(b)(3).

§11-55-34.05(f) added to clarify the Director may require an individual NPDES permit for those activities that discharged prior to obtaining coverage under a General Permit. Although, in such cases, the discharger is not in compliance with §11-55-34.08(j) and the Department may take enforcement action.

§11-55-34.05 (within citation of authority) – updated citation from §122.28(b)(3)(i) to §122.28(b)(3) for amendment to §11-55-34.05(b).

§11-55-34.06 moved entire section within §11-55-34.05. Section reserved for future amendments.

§11-55-34.08(a) revised to be consistent with Appendix C.

§11-55-34.08(j)(1) revised to be consistent with Appendix C.

§11-55-34.09(d) revised to:
(1) Clarify that an administrative extension may be granted automatically,
(2) Add a provision to automatically terminate an administrative extension for any non-compliance.

§11-55-34.09(e) revised to clarify that notification of general permit coverage may be by the department.

§11-55-34.11 revised to be consistent with 40 CFR 122.28.

§11-55-40 revised to clarify the common and easily verifiable situations in which a Field Citation may be issued and to ensure consistency and accuracy with the HRS 342D-50(a)-(d).

(1) Revisions to word use in 11-55-40(1)(A)(i) are to clarify the types of permit coverage addressed in this section. "NPDES Individual and General permits" replaces "individual permit or notice of general permit coverage". The "no exposure" exclusion was removed from the list of coverage, as the exclusion does not grant permission for storm water discharges. "Variance" was also added to be consistent with the HRS 342D-9, which allows enforcement "if the director determines that any person has violated or is violating this chapter, any rule adopted pursuant to this chapter, or any permit or variance issued pursuant to this chapter…"
(2) Section 11-55-40(1)(A)(ii) previously addressed only violations triggered by performing construction activity without first obtaining required NPDES General permit coverage for discharges of storm water associated with construction activities. The proposed revision of the section will allow the use of Field Citations when activities, not just construction, or discharges of pollutants occur without first obtaining a required NPDES Individual permit or required NPDES General permit coverage.
(3) Section 11-55-40(1)(A)(v) proposes that Field Citations may be used to settle violations triggered by the failure to comply with conditions set forth in NPDES permits. This proposal is consistent with and upholds the intent of HRS 342D-9(a), which provides for enforcement "if the director determines that any person has violated or is violating this chapter, any rule adopted pursuant to this chapter, or any permit or variance issued pursuant to this chapter…"
(4) Section 11-55-40(1)(B) establishes penalties for each easily verified violation of the HRS342D for which Field Citations may be used. Section 11-55-40(1)(B)(v) was added to establish the penalties for violations described in 11-55-40(1)(A)(v). The penalties established are fair and consistent with Sections 11-55-40(1)(B)(i) through (iv).

Chapter 11-55, Appendix A revisions:

(1) "October 2007" was replaced with requiring a date stamp. The stamp is of the date ten days after filing with the office of the Lieutenant Governor.
(2) Updated the "40 CFR" effective date.
(3) Deleted reference to the Clean Water Act amendment date to refer to the most current version.
(4) Sections 34(a) and 34(c) deleted fax number and added email address.

(5) Section 34(d) deleted requiring the coordinates of the separate storm water drainage system. Locations of the drainage system receiving the discharge are required to be submitted with the NOI.
(6) Section 34(g) deleted requiring maps on paper.
(7) Section 34(g)(2) deleted requiring a U.S. Geological Survey map.
(8) Section 34(h) deleted requiring flow chart for Appendices B, C, and K. Information is not needed for storm water discharges since drainage pattern maps are already required in these appendices.

Chapter 11-55, Appendix B revisions:
(1) "October 2007" was revised to "This General Permit is effective on [insert stamped date], and expires five years from this date, unless amended earlier." The stamp is of the date ten days after filing with the office of the Lieutenant Governor. The purpose of the revision is to clearly identify the term of the permit.
(2) Section 2(a)(4) revised to clarify that if the Permittee is the owner of the drainage system, separate approval is not required.
(3) Sections 6(a)(7)(A); 6(c); and Table 34.1 Notes 9 and 11 updated reference.
(4) Section 10(a)(2) revised to correct when monitoring results need to be submitted to the Department. The current requirement prevents the Department from receiving monitoring results until 60 days after each monitoring year. The Department needs to receive the monitoring results in a more-timely manner. Receiving these results within 30 calendar days after sample collection is required to ensure the Department's requirements are met [e.g. refer to Section 10(b)(2)]; for the protection of public health and the environment; and for the Department to take appropriate action (if necessary) for any non-compliance.
(5) Section 10(b)(1) added language for clarification.
(6) Section 10(b)(2) – For results in exceedance of any limitation, subsequent storm event monitoring was added to verify the effectiveness of actions taken.
(7) Table 34.1, Note 2 added language for clarification.
(8) Table 34.1, Note 3 added language to clarify that the Department can require applicable effluent limitations in HAR 11-55-19 and effluent limitations based on the EPA Multi-Sector General Permit.

Chapter 11-55, Appendix C
In accordance with HAR §11-55-02(c), §11-55-19(a)(4)(B), and 40 CFR 123.25(a), Appendix C was revised to be consistent with the Environmental Protection Agency's Construction General Permit and Effluent Limit Guidelines in 40 CFR 450.

Chapter 11-55, Appendix D
(1) "October 2007" was revised to "This General Permit is effective on [insert stamped date], and expires five years from this date, unless amended earlier." The stamp is of the date ten days after filing with the office of the Lieutenant Governor. The purpose of the revision is to clearly identify the term of the permit.
(2) Section 9(b) added language for clarification.
(3) Section 9(c)(3)(D) corrected typo.

(4) Table 34.2 Note 2 revised to clarify that the Department can require applicable effluent limitations in HAR 11-55-19.

(5) Table 34.2 Note 10 revised to clarify that the Department can require additional monitoring for toxic pollutants.

Chapter 11-55, Appendix E

(1) "October 2007" was revised to "This General Permit is effective on [insert stamped date], and expires five years from this date, unless amended earlier." The stamp is of the date ten days after filing with the office of the Lieutenant Governor. The purpose of the revision is to clearly identify the term of the permit.

(2) Section 8(b) added language for clarification.

Chapter 11-55, Appendix F

(1) "October 2007" was revised to "This General Permit is effective on [insert stamped date], and expires five years from this date, unless amended earlier." The stamp is of the date ten days after filing with the office of the Lieutenant Governor. The purpose of the revision is to clearly identify the term of the permit.

(2) Section 1(a) revised to clarify the definition of hydrotesting water.

(3) Section 8(d) revised to clarify that notification should be before the start of hydrotesting activities.

(3) Table 34.4 added language for clarification.

(4) Table 34.4 added language to clarify that the Department can require additional monitoring for toxic pollutants.

Chapter 11-55, Appendix G

(1) "October 2007" was revised to "This General Permit is effective on [insert stamped date], and expires five years from this date, unless amended earlier." The stamp is of the date ten days after filing with the office of the Lieutenant Governor. The purpose of the revision is to clearly identify the term of the permit.

(2) Section 1(a) revised to clarify the definition of construction activity dewatering.

(3) Section 4(b)(4) added to determine if project requires NPDES permit coverage for storm water associated with construction activities.

(4) Section 6(a)(3)(B) corrected typo.

(5) Section 8(a)(1) corrected typo.

(6) Section 8(b) added language for clarification.

(7) Section 8(d) corrected lettering typo. Revised to clarify that notification should be before the start of dewatering activities.

(8) Table 34.5 Note 2 revised for clarification.

Chapter 11-55, Appendix H

(1) "October 2007" was revised to "This General Permit is effective on [insert stamped date], and expires five years from this date, unless amended earlier." The stamp is of the date ten days after filing with the office of the Lieutenant Governor. The purpose of the revision is to clearly identify the term of the permit.

(2) Section 8(b) revised for clarification.

(3) Table 34.6 Note 3 revised for clarification.

Chapter 11-55, Appendix I

(1) "October 2007" was revised to "This General Permit is effective on [insert stamped date], and expires five years from this date, unless amended earlier." The stamp is of the date ten days after filing with the office of the Lieutenant Governor. The purpose of the revision is to clearly identify the term of the permit.

(2) Section 8(b) revised for clarification.

(3) Table 34.7 Note 2 revised for clarification.

Chapter 11-55, Appendix J

"October 2007" was revised to "This General Permit is effective on [insert stamped date], and expires five years from this date, unless amended earlier." The stamp is of the date ten days after filing with the office of the Lieutenant Governor. The purpose of the revision is to clearly identify the term of the permit.

Chapter 11-55, Appendix K

"October 2007" was revised to "This General Permit is effective on [insert stamped date], and expires five years from this date, unless amended earlier." The stamp is of the date ten days after filing with the office of the Lieutenant Governor. The purpose of the revision is to clearly identify the term of the permit.

Chapter 11-55, Appendix L

(1) "October 2007" was revised to "This General Permit is effective on [insert stamped date], and expires five years from this date, unless amended earlier." The stamp is of the date ten days after filing with the office of the Lieutenant Governor. The purpose of the revision is to clearly identify the term of the permit.

(2) Table 34.8 Note 2 revised for clarification.

Chapter 11-55, Appendix M

"August 2012" was revised to "This General Permit is effective on October 21, 2012, and expires five years from this date, unless amended earlier." The stamp is of the date ten days after filing with the office of the Lieutenant Governor. The purpose of the revision is to clearly identify the term of the permit.

2. **Describe the manner in which the proposal would affect the agency's internal and external responsibilities, programs, functions, operations, activities, and inter-relationships.**

NPDES General Permit coverage for discharges to State waters (HAR, Chapter 11-55, Appendices B through L) expired at midnight, October 21, 2012. Currently there are no NPDES General Permits. Anyone requiring NPDES permit, although qualified for coverage under a General Permit, must submit an NPDES individual permit.

HAR, Chapter 11-54 will have no impact. The proposed rules will make HAR, Chapter 11-54 more consistent with the federal Clean Water Act.

3. **Identify the final result expected by instituting the proposal (e.g. a program improvement/clarification of statute).**

The final result expected is compliance with federal Regulations, and will allow CWB to issue NPDES general permits.

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.**
Currently there are no NPDES general permits. Discharges/activities that could be covered under a NPDES general permit need to obtain coverage under the Individual NPDES permit application. The Individual NPDES permit application typically takes at least 3 times longer to process, requires double the filing fee, and requires a public notice at the Permittee's expense.

Re-adoption of the NPDES general permits will allow the program to issue NPDES permit coverage faster for eligible discharges and decrease the permit backlog. Also, applicants for eligible discharges will save $500 in filing fee and approximately $1500 in public notice fees.

**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.**

No change in program funding.

5. **Describe long and short term impacts to the public or the economy of the State.**

Currently there are no NPDES general permits. Discharges/activities that could be covered under a NPDES general permit need to obtain coverage under the Individual NPDES permit application. The Individual NPDES permit application typically takes at least 3 times longer to process, requires double the filing fee, and requires a public notice at the Permittee's expense.

Re-adoption of the NPDES general permits will allow the program to issue NPDES permit coverage faster for eligible discharges and decrease the permit backlog. Also, applicants for eligible discharges will save $500 in filing fee and approximately $1500 in public notice fees.

6. **Identify the alternatives explored in lieu of implementing the proposal.**

No alternatives. The rule changes are to comply with federal regulations.

The Governor's office, the administration, the U.S. Environmental Protection Agency, and the regulated community wants the NPDES general permits readopted as soon as possible.

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 fulltime 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.**

**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.**

No change in program funding.

5. **Describe long and short term impacts to the public or the economy of the State.**

Currently there are no NPDES general permits. Discharges/activities that could be covered under a NPDES general permit need to obtain coverage under the Individual NPDES permit application. The Individual NPDES permit application typically takes at least 3 times longer to process, requires double the filing fee, and requires a public notice at the Permittee's expense.

Re-adoption of the NPDES general permits will allow the program to issue NPDES permit coverage faster for eligible discharges and decrease the permit backlog. Also, applicants for eligible discharges will save $500 in filing fee and approximately $1500 in public notice fees.

6. **Identify the alternatives explored in lieu of implementing the proposal.**

No alternatives. The rule changes are to comply with federal regulations.

The Governor's office, the administration, the U.S. Environmental Protection Agency, and the regulated community wants the NPDES general permits readopted as soon as possible.

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 fulltime 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.**

The proposed will only benefit small business by allowing NPDES general permit coverage as opposed to requiring all applicants to file Individual NPDES permit applications.

a. There are no alternatives in lieu of adopting the proposal.

b. Consideration of creative, innovative, or flexible methods of compliance for small business in lieu of adopting the proposed rules is also not an option.

c. Yes, a Small Business Impact Statement has been prepared.

DEPARTMENT OF HEALTH

**Amendment and Compilation of Chapter 11-55**
Hawaii Administrative Rules

(insert adoption date)

1. Chapter 55 of Title 11, Hawaii Administrative Rules, titled "Water Pollution Control," is amended and complied to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 55

WATER POLLUTION CONTROL

§11-55-01

§11-55-17 Termination of permits and denial of renewal
§11-55-18 Reporting discontinuance or dismantlement
§11-55-19 Application of effluent standards and limitations, water quality standards, and other requirements
§11-55-20 Effluent limitations in issued NPDES permits
§11-55-21 Schedule of compliance in issued NPDES permits
§11-55-22 Compliance schedule reports
§11-55-23 Other terms and conditions of issued NPDES permits
§11-55-24 National pretreatment standards and users of publicly owned treatment works
§11-55-25 Transmission to Regional Administrator of proposed NPDES permits
§11-55-26 Transmission to Regional Administrator of issued NPDES permits
§11-55-27 Renewal of NPDES permits
§11-55-28 Monitoring
§11-55-29 Recording of monitoring activities and results
§11-55-30 Reporting of monitoring results
§11-55-31 Sampling and testing methods
§11-55-32 Malfunction, maintenance, and repair of equipment
§11-55-33 Agency board membership
§11-55-34 General permit definitions
§11-55-34.01 General permit policy
§11-55-34.02 General permit authority and adoption
§11-55-34.03 General permit terms
§11-55-34.04 General permit conditions
§11-55-34.05 Requiring an individual permit
§11-55-34.06 [[Relationship of general and individual permits]]Reserved
§11-55-34.07 Degree of waste treatment
§11-55-34.08 Notice of intent
§11-55-34.09 Notice of intent review, notice of general permit coverage, additional conditions, terms, renewals, effective dates, and automatic coverage

Comment [RM1]: new

Comment [RM2]: deleted

Comment [RM3]: deleted

| | |
|---|---|
| | Wastewater Associated with Well Drilling Activities |
| Appendix J | NPDES General Permit Authorizing Occasional or Unintentional Discharges from Recycled Water Systems |
| Appendix K | NPDES General Permit Authorizing Discharges of Storm Water from Small Municipal Separate Storm Sewer Systems |
| Appendix L | NPDES General Permit Authorizing Discharges of Circulation Water from Decorative Ponds or Tanks |
| Appendix M | NPDES General Permit Authorizing Point Source Discharges from the Application of Pesticides |

Historical Note: Chapter 55 of Title 11 is based substantially on Public Health Regulations, Chapter 37, Water Pollution Control, Department of Health, State of Hawaii. [Eff 5/25/74, am 1/20/75, 8/19/75, 1/31/81; R 11/27/81]

§11-55-01 Definitions

"13 CFR" means the Code of Federal Regulations, Title 13, Business Credit and Assistance, revised as of January 1, 2011 unless otherwise specified.

"40 CFR" means the Code of Federal Regulations, Title 40, Protection of Environment, revised as of [July 1, 2011]July 1, 2012 unless otherwise specified.

"Act" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 95-483 and Public Law 97-117, 33 U.S.C. 1251 et. seq.

"Action threshold" means the point at which pest populations or environmental conditions necessitate that pest control action be taken based on economic, human health, aesthetic, or other effects. An action

threshold may be based on current and/or past environmental factors that are or have been demonstrated to be conducive to pest emergence and/or growth, as well as past and/or current pest presence. Action thresholds are those conditions that indicate both the need for control actions and the proper timing of such actions.

"Active ingredient" means any substance (or group of structurally similar substances if specified by the United States Environmental Protection Agency) that will prevent, destroy, repel or mitigate any pest, or that functions as a plant regulator, desiccant, or defoliant within the meaning of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) section 2(a). (See 40 CFR 152.3). Active ingredient also means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for the production of such a pesticidal substance. (See 40 CFR 174.3).

"Administrator" means the Administrator of the U.S. Environmental Protection Agency or an authorized agent.

"Adverse incident" means an unusual or unexpected incident that an operator has observed upon inspection or of which the operator otherwise becomes aware, in which:

(1) There is evidence that a person or non-target organism has likely been exposed to a pesticide residue; and

(2) The person or non-target organism suffered a toxic or adverse effect.

The phrase "toxic or adverse effects" includes effects that occur within state waters on non-target plants, fish or wildlife that are unusual or unexpected (e.g., effects are to organisms not otherwise described on the pesticide product label or otherwise not expected to be present) as a result of exposure to a pesticide residue, and may include: distressed or dead juvenile and small fishes; washed up or floating fish; fish swimming abnormally or erratically; fish lying lethargically at water surface or in shallow water; fish that are listless or nonresponsive to disturbance;

stunting, wilting, or desiccation of non-target submerged or emergent aquatic plants; other dead or visibly distressed non-target aquatic organisms (amphibians, turtles, invertebrates, etc.). The phrase "toxic or adverse effects" also includes any adverse effects to humans (e.g., skin rashes) or domesticated animals that occur either from direct contact with or as a secondary effect from a discharge (e.g., sickness from consumption of plants or animals containing pesticides) to state waters that are temporally and spatially related to exposure to a pesticide residue (e.g., vomiting, lethargy).

"Animal feeding operation" or "AFO" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

(1) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and

(2) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

"Annual treatment area threshold" means the additive area (in acres) or linear distance (in miles) in a calendar year to which a decision-maker is authorizing and/or performing pesticide applications in that area for activities covered under Appendix M. For calculating annual treatment areas for mosquitoes and other flying insect pest control and forest canopy pest for comparing with any threshold in table 1 of Appendix M, count each pesticide application activity to a treatment area (i.e., that area where a pesticide application is intended to provide pesticidal benefits within the pest management area) as a separate area treated. For example, applying pesticides three times a year to the same three thousand acre site should be counted as nine thousand acres of treatment area for purposes of determining if such an application exceeds an annual treatment area threshold. Similarly, for calculating annual treatment areas for weed and algae control and animal pest control for comparing with any

threshold in table 1 of Appendix M, calculations should include either the linear extent of or the surface area of waters for each application made to state waters or at water's edge adjacent to state waters. For calculating the annual treatment area, count each treatment area as a separate area treated. Also, for linear features (e.g., a canal or ditch), count the length of the linear feature each time an application is made to that feature during the calendar year, including counting separately applications made to each bank of the water feature if pesticides are applied to both banks. For example, applications four times a year to both banks of a three-mile long reach of stream will count as a total of twenty four linear miles (three miles * two banks * four applications per year = twenty four miles to which pesticides are applied in a calendar year).

"Applicable effluent standards and limitations" means all state and federal effluent standards and limitations to which a discharge is subject under the Act; chapter 342D, HRS; and rules of the department including, but not limited to, effluent limitations, standards of performance, toxic effluent standards and prohibitions, and pretreatment standards.

"Applicable water quality standards" means all water quality standards to which a discharge is subject under the Act; chapter 342D, HRS; rules of the department; and which have been:

(1) Approved or permitted to remain in effect by the Administrator under Section 303(a) or Section 303(c) of the Act, 33 U.S.C. §1313(a) or §1313(c); or

(2) Promulgated by the Administrator under Section 303(b) of the Act, 33 U.S.C. §1313(b).

"Applicator" means any entity who performs the application of a pesticide or who has day-to-day control of the application (i.e., they are authorized to direct workers to carry out those activities) that results in a discharge to state waters.

"Best management practices" or "BMPs" means schedules of activities, prohibitions or designations

of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of state waters. Best management practices also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Biological control agents" are organisms that can be introduced to your sites, such as herbivores, predators, parasites, and hyperparasites. (Source: US Fish and Wildlife Service (FWS) Integrated Pest Management (IPM) Guidance, 2004)

"Biological pesticides" (also called biopesticides) include microbial pesticides, biochemical pesticides and plant-incorporated protectants (PIP). "Microbial pesticide" means a microbial agent intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or dessicant, that:

(1) is a eucaryotic microorganism including, but not limited to, protozoa, algae, and fungi;
(2) is a procaryotic microorganism, including, but not limited to, eubacteria and archaebacteria; or
(3) is a parasitically replicating microscopic element, including but not limited to, viruses. (See 40 CFR 158.2100(b)).

"Biochemical pesticide" means a pesticide that is a naturally-occurring substance or structurally-similar and functionally identical to a naturally-occurring substance; has a history of exposure to humans and the environment demonstrating minimal toxicity, or in the case of a synthetically-derived biochemical pesticides, is equivalent to a naturally-occurring substance that has such a history; and has a non-toxic mode of action to the target pest(s). (See 40 CFR 158.2000(a)(1)).

"Plant-incorporated protectant" means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for production of such a pesticidal substance. It also includes any inert

ingredient contained in the plant, or produce thereof. (See 40 CFR 174.3).

"Bypass" means the same thing as defined in 40 CFR §122.41(m).

"Chemical Pesticides" means all pesticides not otherwise classified as biological pesticides.

"Concentrated animal feeding operation" or "CAFO" means an animal feeding operation that is defined as a large CAFO or as a medium CAFO under 40 CFR §122.23(b)(4) or (6), or that is designated as an AFO in accordance with 40 CFR §122.23(c). Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.

"Continuous discharge" means a "discharge" which occurs without interruption throughout the operating hours of the facility, except for infrequent shut-downs for maintenance, process changes, or other similar activities.

"Cooling water" means water used for contact or noncontact cooling, including water used for equipment cooling, evaporative cooling tower makeup, and dilution of effluent heat content. The intended use of the cooling water is to absorb waste heat rejected from the process or processes used, or from auxiliary operations on the facility's premises. Cooling water that is used in a manufacturing process either before or after it is used for cooling is considered process water for the purposes of calculating the percentage of a facility's intake flow that is used for cooling purposes in 40 CFR §125.91(a)(4).

"Cooling water intake structure" means the total physical structure and any associated constructed waterways used to withdraw cooling water from state waters. The cooling water intake structure extends from the point at which water is withdrawn from the surface water source up to, and including, the intake pumps.

"Cultural methods" means manipulation of the habitat to increase pest mortality by making the habitat less suitable to the pest.

"Decision-maker" means any entity with control over the decision to perform pesticide applications including the ability to modify those decisions that result in a discharge to state waters.

"Decision-maker who is or will be required to submit an NOI" means any decision-maker covered under Appendix M who knows or should have known that an NOI will be required for those discharges beginning 60 calendar days from when section 11-55-34.02(b)(12) becomes effective ten days after filing with the office of the lieutenant governor. Excluded from this definition are those activities for which an NOI is required based solely on that decision-maker exceeding an annual treatment area threshold.

"Declared pest emergency situation" means the same thing as defined in section 11-54-4(e)(1).

"Department" means the state department of health.

"Director" means the director of the department or an authorized agent.

"Discharge" when used without qualification, means the "discharge of a pollutant". (See 40 CFR 122.2).

"Discharge of a pollutant" means any addition of any pollutant or combination of pollutants to state waters from any point source, or any addition of any pollutant or combination of pollutants to the water of the contiguous zone or the ocean from any point source other than a vessel or other floating craft that is being used as a means of transportation. This includes additions of pollutants into state waters from: surface runoff that is collected or channeled by man; or discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. (Excerpted from 40 CFR 122.2).

"Draft permit" means a document prepared under 40 CFR §124.6 indicating the director's tentative decision to issue or modify, revoke and reissue, terminate, or reissue a "permit." A notice of intent to terminate a permit as discussed in 40 CFR §124.5(d) and defined in 40 CFR §124.2, and a notice of intent to deny a permit as defined in 40 CFR §124.2 are types of "draft permit." A denial of a request for modification, revocation and reissuance, or

termination, as discussed in 40 CFR §124.5(b), is not a "draft permit."

"Effluent" means any substance discharged into state waters or publicly owned treatment works or sewerage systems, including but not limited to, sewage, waste, garbage, feculent matter, offal, filth, refuse, any animal, mineral, or vegetable matter or substance, and any liquid, gaseous, or solid substances.

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

"EPA approved or established total maximum daily loads (TMDLs)" (EPA Approved TMDLs) means those that are developed by a state and approved by EPA.

"EPA established TMDLs" are those that are issued by EPA.

"Facility" or "activity" means any NPDES "point source" or any facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.

"Federal facility" means any buildings, installations, structures, land, public works, equipment, aircraft, vessels, and other vehicles and property, owned, operated, or leased by, or constructed or manufactured for the purpose of leasing to, the federal government.

"FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act.

"General permit" means an NPDES permit issued as a rule or document that authorizes a category of discharges into state waters from a category of sources within a geographical area.

"HRS" means the Hawaii Revised Statutes.

"Hawaiian fishponds" means the same thing as defined in section 183B-1, HRS.

"Impaired water" (or "water quality impaired water" or "water quality limited segment") means waters that have been identified by the state pursuant to Section 303(d) of the Clean Water Act as not meeting applicable state water quality standards (these waters are called "water quality limited segments" under 40 CFR 130.2(j)). Impaired waters include both waters

with approved or established TMDLs, and those for which a TMDL has not yet been approved or established.

"Indirect discharge" means the introduction of pollutants into a publicly owned treatment works from any non-domestic source regulated under Section 307(b), (c), or (d) of the Act.

"Individual permit" means an NPDES permit, other than a general permit, issued under this chapter to a specified person to conduct a discharge at a specified location.

"Industrial user" means a source of indirect discharge.

"Inert ingredient" means any substance (or group of structurally similar substances if designated by the EPA), other than an active ingredient, that is intentionally included in a pesticide product, (see 40 CFR 152.3). Inert ingredient also means any substance, such as a selectable marker, other than the active ingredient, where the substance is used to confirm or ensure the presence of the active ingredient, and includes the genetic material necessary for the production of the substance, provided that the genetic material is intentionally introduced into a living plant in addition to the active ingredient (see 40 CFR 174.3).

"Large Entity" means any entity that is not a "small entity".

"Large municipal separate storm sewer system" means the same thing as defined in 40 CFR §122.26(b)(4).

"Major facility" means any NPDES facility or activity classified by the Regional Administrator in conjunction with the director.

"Mechanical/physical methods" means mechanical tools or physical alterations of the environment for pest prevention or removal.

"Medical waste" means isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes and potentially contaminated laboratory wastes, dialysis wastes, and additional medical items as the Administrator shall prescribe by regulation.

"Medium municipal separate storm sewer system" means the same thing as defined in 40 CFR §122.26(b)(7).

"Minimize" means to reduce and/or eliminate pollutant discharges to state waters through the use of pest management measures to the extent technologically available and economically practicable and achievable.

"Municipal separate storm sewer" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains as defined in 40 CFR §122.26(b)(8)).

"Municipal separate storm sewer system" or "MS4" means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems under 40 CFR §122.26(b)(4), (b)(7), and (b)(16) or that the director designates consistently with 40 CFR §122.26(a)(1)(v). A "municipal separate storm sewer system" is also known as a "municipal separate storm water drainage system."

"National Pollutant Discharge Elimination System" or "NPDES" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 402, 318, and 405 of the Act.

"New discharger" means any building, structure, facility, activity, or installation:

(1) From which there is or may be a discharge of pollutants;

(2) That did not begin the discharge of pollutants at a particular site before August 13, 1979;

(3) Which is not a new source; and

(4) Which has never received a finally effective NPDES permit for discharges at the site.

"New source" means any building, structure, facility, activity, or installation from which there is or may be a "discharge of pollutants," the construction of which began:

(1) After the adoption, by the director, of rules prescribing a standard of performance which will be applicable to the source; or
(2) After the publication by the Administrator of regulations prescribing a standard of performance which will be applicable to the source, if the standard is thereafter promulgated by the Administrator,

whichever occurs first.

"No exposure" means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, or runoff or any combination of the above. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

"Non-target Organisms" includes the plant and animal hosts of the target species, the natural enemies of the target species living in the community, and other plants and animals, including vertebrates, living in or near the community that are not the target of the pesticide.

"Notice of cessation" or "NOC" means a form used to notify the director, within a specified time, that a discharge or activity, or phase of discharge or activity has ceased. Submission of this form means that the permittee is no longer authorized to discharge from the facility or project under the NPDES program.

"Notice of general permit coverage" or "NGPC" means an authorization issued to the owner or operator by the department to comply with the NPDES general permit.

"Notice of intent" or "NOI" means a form used to notify the director, within a specified time, that a person seeks coverage under a general permit.

"NPDES form" means any form provided by the Administrator or director for use in obtaining or

complying with the individual permit, notice of general permit coverage, or conditional "no exposure" exclusion. These forms include the NPDES permit applications, notice of intent forms, "no exposure" certification form, NPDES discharge monitoring report form, notice of cessation form, and other forms as specified by the director.

"NPDES permit" means an authorization, license, or equivalent control document issued by the EPA or the director to implement the requirements of 40 CFR Parts 122, 123, and 124. NPDES permit includes an NPDES general permit according to 40 CFR §122.28 and a notice of general permit coverage or NGPC, as the context requires. NPDES permit does not include any permit which has not yet been the subject of final agency action, such as a draft permit.

"NPDES permit application" means a form used to apply for an individual permit.

"Once-through cooling water system" means a system designed to withdraw water from a natural or other water source, use it at the facility to support contact or noncontact or both cooling uses, and then discharge it to a waterbody without recirculation. Once-through cooling systems sometimes employ canals, channels, ponds, or nonrecirculating cooling towers to dissipate waste heat from the water before it is discharged.

"Operator" for the purpose of Appendix M, means any entity associated with the application of pesticides which results in a discharge to state waters that meets either of the following two criteria:

(1) Any entity who performs the application of a pesticide or who has day-to-day control of the application (i.e., they are authorized to direct workers to carry out those activities; or

(2) Any entity with control over the decision to perform pesticide applications including the ability to modify those decisions.

"Owner" or "operator" means the person who owns or operates any "facility" or "activity" subject to regulation under the NPDES program.

"Person" means the same thing as defined in section 342D-1, HRS.

"Permittee" means the person to whom the individual permit or notice of general permit coverage is issued or the person who obtains automatic general permit coverage under section 11-55-34.09(e)(2).

"Pest" means the same thing as defined in section 11-54-4(e)(1).

"Pest management area" means the area of land, including any water, for which an operator has responsibility and is authorized to conduct pest management activities as covered by Appendix M (e.g., for an operator who is a mosquito control district, the pest management area is the total area of the district).

"Pest management measure" means any practice used to meet the effluent limitations that comply with manufacturer specifications, industry standards and recommended industry practices related to the application of pesticides, relevant legal requirements and other provisions that a prudent Operator would implement to reduce and/or eliminate pesticide discharges to state waters.

"Pesticide" means the same thing as defined in section 11-54-4(e)(1).

"Pesticide product" means a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide.

"Pesticide residue" includes that portion of a pesticide application that is discharged from a point source to state waters and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.

"Point source" means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged.

This term does not include return flows from irrigated agriculture or agricultural storm water runoff, except return flows from agriculture irrigated with reclaimed water. (See 40 CFR §122.2).

"Publicly owned treatment works" or "POTW" means any device or system used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a publicly owned treatment works providing treatment.

"R-1 water" means recycled water that has been oxidized, filtered, and disinfected to meet the corresponding standards set in chapter 11-62.

"Recycled water" or "reclaimed water" means treated wastewater that by design is intended or used for a beneficial purpose.

"Regional Administrator" means the Regional Administrator of the U.S. Environmental Protection Agency Region 9 or an authorized agent.

"Representative storm" means a rainfall that accumulates more than 0.1 inch of rain and occurs at least seventy-two hours after the previous measurable (greater than 0.1 inch) rainfall event.

"Sewage sludge" means the same thing as defined in section 342D-1, HRS.

"Silvicultural point source" means the same thing as defined in 40 CFR §122.27.

"Site" means the land or water area where any "facility" or "activity" is physically located or conducted, including adjacent land used in connection with the "facility" or "activity."

"Small entity" means any:

(1) private enterprise that does not exceed the Small Business Administration size standard as identified at 13 CFR 121.201, or

(2) local government that serves a population of 10,000 or less.

"Small municipal separate storm sewer system" or "small MS4" means all separate storm sewers that are:

(1) Owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or under state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under Section 208 of the Act that discharges to state waters;

(2) Not defined as "large" or "medium" municipal separate storm sewer systems under 40 CFR §122.2(b)(4) and (b)(7), or designated under section 11-55-04(a)(4) or 11-55-34.08(k)(2) or 40 CFR §122.26(a)(1)(v); and

(3) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

"Standard of performance" means a standard for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction which the director determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants; provided that the standard shall not be less stringent than required under Section 306 of the Act, 33 U.S.C. §1316.

"State waters" means the same thing as defined in section 11-54-1.

"Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm water discharge associated with industrial activity" means the same thing as defined in 40 CFR §122.26(b)(14).

"Target pest" means the organism(s) toward which pest management measures are being directed.

"Total maximum daily loads (TMDLs)" is a calculation of the maximum amount of a pollutant that a water body can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges; load allocations (LAs) for nonpoint sources and/or natural background, and must include a margin of safety (MOS) and account for seasonal variations. (See section 303(d) of the Clean Water Act and 40 CFR 130.2 and 130.7).

"Treatment area" means the entire area, whether over land or water, where a pesticide application is intended to provide pesticidal benefits within the pest management area. In some instances, the treatment area will be larger than the area where pesticides are actually applied. For example, the treatment area for a stationary drip treatment into a canal includes the entire width and length of the canal over which the pesticide is intended to control weeds. Similarly, the treatment area for a lake or marine area is the water surface area where the application is intended to provide pesticidal benefits.

"Treatment works" means the plant or other facility and the various devices used in the treatment of wastes including the necessary intercepting sewers, outfall sewers or outlets, pumping, power, and other equipment.

"Treatment works treating domestic sewage" or "TWTDS" means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, "domestic sewage" includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works.

"Upset" means the same thing as defined in 40 CFR §122.41(n).

"Waste" means sewage, industrial and agricultural matter, and all other liquid, gaseous, or solid substance, including radioactive substance, whether treated or not, which may pollute or tend to pollute state waters.

"Water pollution" means the same thing as defined in section 342D-1, HRS.

"Water quality impaired" see "Impaired Water".

"Wetlands" means the same thing as defined in section 11-54-1.

The definitions of the following terms contained in Section 502 of the Act, 33 U.S.C. §1362, shall be applicable to the terms as used in this part unless the context otherwise requires: "biological monitoring," "contiguous zone," "discharge," "discharge of a pollutant," "effluent limitations," "municipality," "navigable waters," "ocean," "pollutant," "schedule of compliance," "territorial seas," and "toxic pollutant." [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; am and comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; am and comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§6E-42(a), 183B-1, 342D-1, 342D-2, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subpart A and D; Part 125; §122.2)

§11-55-02 General policy of water pollution control. (a) It is the public policy of this State:

(1) To conserve state waters;

(2) To protect, maintain, and improve the quality of state waters:

(A) For drinking water supply, and food processing;

(B) For the growth, support, and propagation of shellfish, fish, and other desirable species of marine and aquatic life;

(C) For oceanographic research;

(D) For the conservation of coral reefs and wilderness areas; and
(E) For domestic, agricultural, industrial, and other legitimate uses;

(3) To provide that no waste be discharged into any state waters without first being given the degree of treatment necessary to protect the legitimate beneficial uses of the waters;
(4) To provide for the prevention, abatement, and control of new and existing water pollution; and
(5) To cooperate with the federal government in carrying out the objectives listed in paragraphs (1) through (4).

(b) Any industrial, public, or private project or development which could be considered a new source of pollution or an increased source of pollution shall, in its initial project design and subsequent construction, provide the highest and best degree of waste treatment practicable under existing technology.

(c) Permits issued under this chapter, and the related applications, processing, issuance, and post-issuance procedures and requirements, shall be at least as stringent as those required by 40 CFR §123.25(a). [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1251, 1288, 1311, 1312, 1316, 1317, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §123.25(a))

§11-55-03 General prohibition. No person shall violate any provision of section 342D-50, HRS, or any NPDES permit issued under this chapter. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp ] (Auth: HRS §§342D-4, 342D-5, 603-23; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50, 603-23;

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33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-04 Application for NPDES permit, notice of intent, or conditional "no exposure" exclusion. (a) Before discharging any pollutant, or beginning construction activities that disturb one or more acres of land, or substantially altering the quality of any discharges, or substantially increasing the quantity of any discharges, a person shall submit a complete NPDES permit application (which shall include whole effluent toxicity testing data as specified in 40 CFR §122.21(j)(5)), submit a complete notice of intent, except for the point source discharges from the application of pesticides, if not required (refer to Appendix M) or, for certain storm water discharges, meet all requirements for a conditional "no exposure" exclusion. Submittal of a notice of intent for coverage under a general permit shall comply with and be regulated by sections 11-55-34.08 through 11-55-34.10. Conditional "no exposure" exclusions shall comply with and be regulated by subsection (e). An NPDES permit application shall be submitted:

(1) At least one hundred eighty days before the discharge or construction begins or before the expiration date of the existing permit. The director may waive this one hundred eighty day requirement by issuing the permit with an effective date before the one hundred eighty days expire;

(2) In sufficient time prior to the beginning of the discharge of pollutants to ensure compliance with the requirements of new source performance standards under Section 306 of the Act, 33 U.S.C. §1316, or with any applicable zoning or site requirements established under Section 208(b)(2)(C) of the Act, 33 U.S.C. §1288(b)(2)(C), and any other applicable water quality standards and applicable effluent standards and limitations;

(3) For any storm water discharge associated with industrial activity from an existing facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, power-plant, or uncontrolled sanitary landfill;

(4) For any discharge from an existing regulated small municipal separate storm sewer system which is not qualified to obtain coverage under the general permit. The permit application shall be made under 40 CFR §122.33 if the small municipal separate storm sewer system is designated under 40 CFR §122.32(a)(1). A small municipal separate storm sewer system, including but not limited to systems operated by federal, state, and local governments, including state departments of transportation, is regulated when it is located in an urbanized area as determined by the latest decennial census by the Bureau of the Census. (If the small municipal separate storm sewer system is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated.) Small municipal separate storm sewer systems located outside of urbanized areas shall submit an NPDES permit application if the department determines that the system's storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts. The department shall evaluate the small municipal separate storm sewer system with the following elements, at a minimum: discharge to sensitive waters, high growth or growth potential, high population density, contiguity to an urbanized area, significant contributor of pollutants to state waters,

and ineffective protection of water quality by other programs. The NPDES permit application shall be submitted within one hundred eighty days of notice from the department;

(5) For any discharge from a regulated concentrated animal feeding operation. The permit application shall be made under 40 CFR §122.21;

(6) (Reserved); or

(7) At least one hundred eighty days before the construction activity as identified in 40 CFR §122.26 (b)(14)(x) or small construction activity as defined in 40 CFR §122.26(b)(15)(i) begins and is not qualified to obtain coverage under the general permit.

(b) Application for an individual permit shall be made by the owner or operator on an NPDES permit application provided by the director. The NPDES permit application shall be submitted with complete data, site information, plan description, specifications, drawings, and other detailed information. The information submitted shall comply with 40 CFR §§122.21(f) through (l) and (r) to determine in what manner the new or existing treatment works or wastes outlet, including a facility described in 40 CFR §§122.23, 122.24, 122.25, 122.26, or 122.27, will be constructed or modified, operated, and controlled. When a facility or activity is owned by one person, but is operated by another person, it is the operator's duty to obtain a permit on behalf of the owner. The operator shall provide written evidence that the owner authorizes the operator to apply on behalf of the owner and that the owner agrees to comply with all permit conditions. Only one permit is required for a single facility or activity.

(c) The director may require the submission of additional information after an NPDES permit application has been submitted, and shall ensure that, if an NPDES permit application is incomplete or otherwise deficient, processing of the application shall not be completed until the owner or its duly

authorized representative has supplied the missing information or otherwise corrected the deficiency.

(d) Every owner or operator applying for an individual permit or renewal of an individual permit shall pay a filing fee of $1,000. This filing fee shall be submitted with the NPDES permit application and shall not be refunded nor applied to any subsequent NPDES permit application following final action of denial of the NPDES permit application.

(1) When an NPDES permit application is submitted for an individual permit for a substantial alteration or addition to a treatment works or waste outlet and where an individual permit had previously been granted for the treatment works or waste outlet, the owner or operator shall pay a $1,000 filing fee which shall be submitted with the NPDES permit application;

(2) A new owner of a discharge facility covered by an individual permit shall submit a new NPDES permit application for a new individual permit unless the new owner submits a notice of automatic transfer that meets 40 CFR §122.61(b). The owner or operator shall pay a $500 filing fee which shall be submitted with the NPDES permit application or notice of automatic transfer that meets 40 CFR §122.61(b);

(3) An NPDES individual permittee shall submit a new NPDES permit application for the transfer of discharge from one permanent location to another permanent location. The owner or operator shall pay the $1,000 filing fee which shall be submitted with the NPDES permit application;

(4) Fees shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director.

(e) Discharges composed entirely of storm water are not storm water discharges associated with industrial activity, and do not require an individual

permit or general permit coverage, if there is "no exposure" of industrial materials and activities to rain, snow, snowmelt or runoff or any combination of the above, and the owner or operator of the discharge:

(1) Meets the conditions of 40 CFR §§122.26(g)(1) through 122.26(g)(4), except 40 CFR §122.26(g)(1)(iii);

(2) Submits a properly completed and signed "no exposure" certification on a form provided by the director;

(3) Submits a properly completed and signed "no exposure" certification form at least once every five years, or earlier if specified by the director or upon the change of ownership, operator, or location; and

(4) Provides any additional information requested by the director after a "no exposure" certification has been submitted.

The conditional "no exposure" exclusion is effective upon receipt by the department of the certification, assuming all other conditions are met, and the director may specify the term of a conditional "no exposure" exclusion, or any renewal, for any period not to exceed five years. There is no filing fee for submittal of a "no exposure" certification.

(f) (Reserved)

(g) Industrial activities, except construction activities under 40 CFR §122.26(b)(14)(x) and 40 CFR §122.26(b)(15), which provide calculations and certify that they do not discharge storm water to state waters are not required to obtain an individual permit or general permit coverage.

(h) (Reserved) [Eff 11/27/81; am and comp 10/29/92; am 09/23/96; am and comp 09/22/97; am and comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; am and comp 6/25/09; am and comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§6E-42(a), 342D-2, 342D-4, 342D-5, 342D-6, 342D-13; 33 U.S.C. §§1251, 1288(b)(2)(C), 1316, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A

and D; 125; §§122.21, 122.23, 122.24, 122.25, 122.26, 122.27, 122.61, 123.25(a), 124.3)

§11-55-05 Receipt of federal information. The director shall receive any relevant information collected by the Regional Administrator prior to participation in the NPDES in a manner as the director and the Regional Administrator shall agree. Any agreement between the director and the Regional Administrator shall provide for at least the following:

(1) Prompt transmittal to the director from the Regional Administrator of copies of any NPDES permit applications, or other relevant information collected by the Regional Administrator prior to the state or interstate agency's participation in the NPDES; and

(2) A procedure to ensure that the director will not issue an individual permit on the basis of any NPDES permit application received from the Regional Administrator which the Regional Administrator has identified as incomplete or otherwise deficient until the director has received information sufficient to correct the deficiency to the satisfaction of the Regional Administrator. [Eff 11/27/81; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/25/09; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §123.42)

§11-55-06 Transmission of information to Regional Administrator. The director shall transmit to the Regional Administrator copies of NPDES forms received by the State in a manner as the director and Regional Administrator shall agree. Any agreement between the

State and the Regional Administrator shall provide for at least the following:

(1) Prompt transmittal to the Regional Administrator of a complete copy of any NPDES form received by the State;

(2) Procedures for the transmittal to the national data bank of a complete copy, or relevant portions thereof, of any appropriate NPDES forms received by the State;

(3) Procedures for acting on the Regional Administrator's written waiver, if any, of the Regional Administrator's rights to receive copies of NPDES forms with respect to classes, types, and sizes within any category of point sources and with respect to minor discharges or discharges to particular state waters or parts thereof subject to the limits in 40 CFR §123.24(d);

(4) An opportunity for the Regional Administrator to object in writing to deficiencies in any NPDES permit application or reporting form received by the Regional Administrator and to have the deficiency corrected. If the Regional Administrator's objection relates to an NPDES permit application, the director shall send the Regional Administrator any information necessary to correct the deficiency and shall, if the Regional Administrator so requests, not issue the individual permit until the department receives notice from the Regional Administrator that the deficiency has been corrected;

(5) Procedures for the transmittal, if requested by the Regional Administrator, of copies of any notice received by the director from publicly owned treatment works under section 11-55-23(7) and 11-55-23(8); and

(6) Variance applications shall be processed in accordance with the procedures set forth in section 342D-7, HRS, and 40 CFR §§122.21(m) through (o), 124.62, and 403.13. [Eff

11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-14; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-14; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.21(m), 122.21(n), 122.21(o), 123.25(a), 123.43, 123.44, 124.62, 403.13)

§11-55-07 Identity of signatories to NPDES forms. (a) Any NPDES form and its certification, as stated in 40 CFR §122.22(d), submitted to the director shall be signed as follows:

(1) For a corporation. By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

(A) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or

(B) The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and

accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

(2) For a partnership or sole proprietorship. By a general partner or the proprietor, respectively; or

(3) For a municipality, state, federal, or other public agency. By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes:

(A) The chief executive officer of the agency, or

(B) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA);

(4) For a trust. By a trustee; or

(5) For a limited liability company (LLC). By a manager or a member authorized to make management decisions for the LLC and who is in charge of a principal business function, or who performs similar policy- or decision-making functions for the LLC.

(b) All other reports or information required to complete the application or information to comply with the conditions of the individual permit or notice of general permit coverage or responses to requests for information required by the director shall be signed by a person designated in subsection (a) or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, superintendent, or position of equivalent

responsibility, or an individual or position having overall responsibility for environmental matters for the company, (A duly authorized representative may thus be either a named individual or any individual occupying a named position.);

(2) The authorization is made in writing by a person designated under subsection (a); and

(3) The written authorization is submitted to the director.

(c) If an authorization under subsection (b) is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (b) must be submitted to the director prior to or together with any reports, information, or applications to be signed by an authorized representative. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.22, 123.25(a))

§11-55-08 Formulation of tentative determinations and draft permit. (a) The director shall formulate and prepare tentative staff determinations with respect to an NPDES permit application in advance of public notice of the proposed issuance or denial of an individual permit. Tentative determinations shall include at least the following:

(1) A proposed determination, including those contained in 40 CFR §122.44(m) if applicable, to issue or deny an individual permit for the discharge described in the NPDES permit application; and

(2) If the determination is to issue the individual permit, the following additional tentative determinations:

(A) Proposed effluent limitations, identified under sections 11-55-19 and 11-55-20 for those pollutants proposed to be limited;

(B) A proposed schedule of compliance, if required, including interim dates and requirements, for meeting the proposed effluent limitations, identified under sections 11-55-21 and 11-55-22;

(C) Monitoring requirements identified under sections 11-55-28, 11-55-29, and 11-55-30; and

(D) A brief description of any other proposed special conditions (other than those required in section 11-55-23) which will have a significant impact upon the discharge described in the NPDES permit application.

(b) If a tentative determination is to issue an individual permit, the director shall organize the tentative determination under subsection (a) into a draft permit.

(c) The director shall prepare draft permits when required by 40 CFR §124.5(c) or (d). [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp ] (Auth: HRS §§342D-4,342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4,342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.44(m), 123.25(a), 124.5, 124.6)

§11-55-09 Public notice of applications. (a) The director shall notify the public of every complete application for an individual permit in a manner designed to inform interested and potentially interested persons of the proposed discharge and of the proposed determination to issue an individual permit for the proposed discharge. Public notification of an application for a variance from an individual permit,

under Section 316(a) of the Act, 33 U.S.C. §1326(a), and section 342D-7, HRS, shall also comply with the requirements contained in 40 CFR §124.57(a). Public notice procedures shall include at least the following:

(1) Notice shall be circulated within the geographical areas of the proposed discharge; circulation includes any or all of the following:
   (A) Posting in the post office and public places of the municipality nearest the premises of the owner or operator in which the effluent source is located;
   (B) Posting near the entrance to the owner's or operator's premises and in nearby places; or
   (C) Publishing in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation.

(2) Notice shall be mailed to any person or group upon request and the persons listed in 40 CFR §§124.10(c)(1)(i) through (v); and

(3) The director shall add the name of any person, including those specified in 40 CFR §§124.10(c)(1)(ix) and (x), or group upon request to a mailing list to receive copies of notices for all NPDES permit applications within the State or within a certain geographical area.

(b) The director shall provide a period of not less than thirty days following the date of the public notice during which time interested persons may submit their written views on the tentative determinations with respect to the NPDES permit application. All written comments submitted during the thirty-day comment period shall be retained by the director and considered in the formulation of the director's final determination with respect to the NPDES permit application. The director shall respond to comments, at a minimum, when and as required by 40 CFR §§124.17(a) and (c). The comment period may be extended at the discretion of the director.

(c) The public notice shall include at least the following:

(1) Name and address of the agency issuing the public notice;

(2) Name and address of each owner or operator or both and the name and address of the facility or activity;

(3) A brief description of the activities or operations which result in the discharge described in the NPDES permit application;

(4) Name of the state water to which each discharge is made, a short description of the location of each discharge, and whether the discharge is a new or an existing discharge;

(5) A statement of the tentative determination to issue or deny an individual permit for the discharge described in the NPDES permit application;

(6) A brief description of the procedures for the formulation of final determinations, including the procedures for public comment, requesting a public hearing, and any other means of public participation offered;

(7) Name, address, and telephone number of a person at the state or interstate agency where interested persons may:

(A) Obtain further information;

(B) Request a copy of the draft permit prepared under section 11-55-08(b);

(C) Request a copy of the fact sheet prepared under section 11-55-10 (if prepared); and

(D) Inspect and copy NPDES forms and related documents; and

(8) Requirements applicable to cooling water intake structures under section 316(b) of the Act, in accordance with Part 125, Subparts I and J.

(d) All publication and mailing costs associated with the public notification of the director's tentative determinations with respect to the NPDES permit application shall be paid by the owner or

operator to the appropriate publishing agency or agencies determined by the director. The owner or operator shall submit the original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for public notification, as deemed appropriate by the director, is a basis to delay issuance of an individual permit. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp ] (Auth: HRS §§342D-4,342D-5, 342D-6, 342D-13; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4,342D-5, 342D-6; 33 U.S.C. §§1251, 1326(a), 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10, 124.13, 124.17, 124.57)

§11-55-10 Fact sheet. (a) The director shall prepare a fact sheet for every draft permit for a major facility or activity, for every class I sludge management facility, for every draft permit that incorporates a variance or requires an explanation under 40 CFR §124.56(b), and for every draft permit which the director finds is the subject of widespread public interest or raises major issues. The director shall send the fact sheet to the owner or operator, its authorized representative, and, upon request, to any other person.

(b) Fact sheets shall include at least the following information:

(1) A sketch or detailed description of the location of the discharge described in the NPDES permit application; a brief description of the type of facility or activity which is the subject of the draft permit;

(2) A quantitative description of the discharge described in the NPDES permit application which includes at least the following:

(A) The rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow in

gallons per day or million gallons per day or cubic feet per second;

(B) For thermal discharges subject to limitation under the Act, the average summer and winter temperatures in degrees Fahrenheit or Celsius; and

(C) The average daily discharge in pounds per day of any pollutants which are present in significant quantities or which are subject to limitations or prohibition under Sections 301, 302, 306, or 307 of the Act, 33 U.S.C. §§1311, 1312, 1316 or 1317, and regulations published under those sections;

(3) The tentative determinations required under section 11-55-08;

(4) A brief citation, including a brief identification of the uses for which the receiving state waters have been classified, of the water quality standards, and effluent standards and limitations applied to the proposed discharge;

(5) A more detailed description of the procedures for the formulation of final determinations than that given in the public notice including:

(A) The thirty-day comment period required by section 11-55-09(b);

(B) Procedures for requesting a public hearing and the nature thereof; and

(C) Any other procedures by which the public may participate in the formulation of the final determinations;

(6) The name and telephone number of a person to contact for additional information; and

(7) The information required by 40 CFR §§124.8(b)(5), 124.56(a), 124.56(b), 124.56(c), 124.56(e), and Part 125, subpart M.

(c) The director shall add the name of any person or group upon request to a mailing list to receive copies of fact sheets. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4,342D-5, 342D-6; 33 U.S.C. §§1251, 1311, 1312, 1316, 1317, 1342, 1370, 1252-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 501; §§123.25(a), 124.8, 124.56, 501.15(d)(4))

§11-55-11 Notice to other government agencies. (a) The director shall notify other appropriate government agencies of each complete NPDES permit application for an individual permit and shall provide the agencies an opportunity to submit their written views and recommendations.

(b) When notifying the public under section 11-55-09, a fact sheet shall be transmitted to the appropriate District Engineer of the Army Corps of Engineers of NPDES permit applications for discharges into state waters.

(c) The director and the District Engineer for each Corps of Engineers district within the State or interested area may arrange for:

(1) Waiver by the District Engineer of the District Engineer's right to receive fact sheets with respect to classes, types, and sizes within any category of point sources and with respect to discharges to particular state waters or parts thereof; and

(2) Any procedures for the transmission of forms, period for comment by the District Engineer (e.g., thirty days), and for objections of the District Engineer.

(d) A copy of any written agreement between the director and the District Engineer shall be forwarded to the Regional Administrator and shall be made available to the public for inspection and copying.

(e) The director shall mail copies of public notice (or, upon specific request, copies of fact sheets) of applications for individual permits to any federal, state, or local agency, upon request, and shall provide the agencies an opportunity to respond, comment, or request a public hearing. The notice and opportunity shall extend to at least the following:

(1) The agency responsible for the preparation of an approved plan under Section 208(b) of the Act, 33 U.S.C. §1288(b); and

(2) The state agency responsible for the preparation of a plan under an approved continuous planning process under Section 303(e) of the Act, 33 U.S.C. §1313(e), unless the agency is under the supervision of the director.

(f) The director shall notify and coordinate with appropriate public health agencies for the purpose of assisting the owner or its duly authorized representative in coordinating the applicable requirements of the Act with any applicable requirements of the public health agencies. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1288(b), 1313(e), 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10)

§11-55-12 Public access to information. (a) In accordance with chapter 2-71, the director shall ensure that any NPDES forms (including the draft permit prepared under section 11-55-08(b)), any public comment upon those forms under section 11-55-09(b), or information required, kept, or submitted under section 11-55-24 shall be available to the public for inspection and copying during established office hours. The director, at the director's discretion, may also make available to the public any other records,

reports, plans, or information obtained by the state agency under its participation in NPDES.

(b) The director shall protect any information (other than effluent data) as confidential upon a request and showing by any person at the time of submission that the information, if made public, would divulge methods or processes entitled to protection as trade secrets of a person. Any information obtained from a state and subject to a claim of confidentiality shall be treated in accordance with the regulations in 40 CFR Part 2 and section 92F-13, HRS. Claims of confidentiality shall be denied regarding the following: name and address of any owner or operator or permittee applying for an individual permit, notice of general permit coverage, or "no exposure" certification; NPDES permits; and effluent data. Information required by NPDES permit application forms may not be claimed confidential. This includes information supplied in attachments to the NPDES permit application forms. If, however, the information being considered for confidential treatment is contained in an NPDES form, the director shall forward the information to the Regional Administrator for the Regional Administrator's concurrence in any determination of confidentiality. If the Regional Administrator advises the director that the Regional Administrator does not concur in the withholding of the information, the director shall then make available to the public, upon request, that information determined by the Regional Administrator not to constitute trade secrets.

(c) Any information accorded confidential status, whether or not contained in an NPDES form, shall be disclosed, upon request, to the Regional Administrator, who shall maintain the disclosed information as confidential.

(d) The director shall provide facilities for the inspection of information relating to NPDES forms and shall ensure that state employees honor requests for inspection with due regard for the dispatch of other public duties. The director shall either:

(1) Ensure that a machine or device for the copying of papers and documents is available for a reasonable fee; or
(2) Otherwise provide for or coordinate with copying facilities or services so that requests for copies of nonconfidential documents may be honored promptly. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-14; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-14, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 2; 122; 123; 124, Subparts A and D; 125; §§122.7, 123.25(a), 123.41)

§11-55-13 Public hearings. (a) The owner or operator, Regional Administrator, any interested agency, person, or group of persons may request or petition for a public hearing with respect to NPDES permit applications. Any request or petition for public hearing shall be submitted within the thirty-day period prescribed in section 11-55-09(b) and shall indicate the interest of the party submitting the request and the reasons why a hearing is warranted.

(b) The director shall provide the public notice of public hearing to the owner or operator or its duly authorized representative for publication according to section 11-55-14. The public notice shall include the information required by 40 CFR §§124.10(d)(1) and (d)(2).

(c) The director shall hold a hearing if the director determines that there is a significant public interest (including the submitting of requests or petitions for a hearing) in holding a hearing. Instances of doubt should be resolved in favor of holding the hearing. Any hearing brought under this subsection shall be held in the geographical area of the proposed discharge or other appropriate area, at

the director's discretion, and may, as appropriate, consider related groups of NPDES permit applications.

(d) Any person may submit oral or written statements and data concerning the draft permit. The public comment period under section 11-55-09 shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-57; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10, 124.11, 124.12)

§11-55-14 Public notice of public hearings. (a) Public notice of any hearing held under section 11-55-13 shall be circulated as widely as the notice of the draft permit. Public notice for hearings held under section 11-55-13 shall be:

(1) Published at least once in a newspaper of general circulation within the geographical area of the discharge;
(2) Sent to all persons and government agencies which received a copy of the notice or the fact sheet for the NPDES permit application;
(3) Mailed to any person or group upon request and the persons listed in 40 CFR §§124.10(c)(1)(i) through (v), (ix), and (x); and
(4) Effected under paragraphs (1) and (3) at least thirty days in advance of the hearing.

(b) The public notice of any hearing held under section 11-55-13 shall include at least the following information:

(1) Name and address of the agency holding the public hearing;

(2) Name and address of each owner or operator or both whose NPDES permit application will be considered at the hearing and the name and address of the facility or activity;
(3) Name of the state water to which each discharge is made, a short description of the location of each discharge, and whether the discharge is a new or an existing discharge;
(4) A brief reference to the public notice for proposed action issued for each NPDES permit application, including identification number and date of issuance, if applicable;
(5) Information regarding the date, time, and location of the hearing;
(6) The purpose of the hearing, including a concise statement of the issues raised by the persons requesting the hearing, as applicable:
(7) A brief description of the nature of the hearing, including the rules and procedures to be followed; and
(8) Name, address, and telephone number of a person at the state or interstate agency where interested persons may:
    (A) Obtain further information;
    (B) Request a copy of each draft permit prepared under section 11-55-08(b);
    (C) Request a copy of the fact sheet prepared under section 11-55-10 (if prepared); and
    (D) Inspect and copy NPDES forms and related documents.

(c) All publication and mailing costs associated with the public notification of the director's determinations to hold public hearing with respect to the NPDES permit application shall be paid by the owner or operator to the appropriate publishing agency or agencies determined by the director. The owner or operator shall submit the original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for public notification, as deemed appropriate by the

director, is a basis to delay issuance of an individual permit. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-13; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10)

§11-55-15 Issuance of NPDES permits. (a) The director may issue an NPDES permit for any period not exceeding five years and may renew a permit for any additional periods not exceeding five years[.], except if the director administratively extends the permit until the effective date of the new permit for discharges that were covered prior to expiration. If previously granted permit covered prior to expiration, all permit limitations and conditions remain in force and effect.

Comment [RM4]: new

(b) The director shall issue or renew an NPDES permit on the following basis:

(1) The existing treatment works or waste outlet is designed, built, and equipped in accordance with:
   (A) The best practicable control technology currently available or the best available technology economically achievable or the best conventional pollutant control technology for point sources other than publicly owned treatment works; and
   (B) For publicly owned treatment works, secondary treatment or the best practicable waste treatment technology, so as to reduce wastes to a minimum;
(2) New treatment works or waste outlets are designed and built in compliance with the applicable standards of performance;
(3) The new or existing treatment works or waste outlet is designed and will be constructed or

modified to operate without causing a violation of applicable rules of the department;

(4) The new or existing treatment works or waste outlet will not endanger the maintenance or attainment of applicable water quality standards;

(5) The facility shall comply with effluent standards and limitations, water quality standards and other requirements, as applicable in sections 11-55-19, 11-55-20, and 11-55-22; and

(6) The facility shall comply with sections 11-55-27 through 11-55-32.

(c) NPDES permits at a minimum shall include conditions and requirements at least as stringent as:

(1) Those conditions contained in sections 11-55-16, 11-55-17, 11-55-23, and 40 CFR §122.41;

(2) The requirement that the owner or operator provide the facilities as necessary for monitoring of the authorized waste discharge into state waters and the effects of the wastes on the receiving state waters. The monitoring program shall comply with sections 11-55-28 through 11-55-32;

(3) The requirement of compliance with any applicable effluent standards and limitations, water quality standards, and other requirements imposed by the director under sections 11-55-19, 11-55-20, and 11-55-22; and

(4) Conditions requested by the Corps of Engineers and other government agencies as described in 40 CFR §124.59.

(d) The director may issue a permit to an existing facility which does not or cannot presently comply with subsections (b) and (c) only if the permit includes a schedule of compliance with specific deadlines for bringing the facility into compliance with subsections (b) and (c). Schedule of compliance shall comply with section 11-55-21.

(e) In acting upon an NPDES permit application for an individual permit the director shall deny the application unless the information submitted shows that the new or existing treatment works or waste outlet described in the NPDES permit application can, conditionally or otherwise, meet the conditions of subsection (b) or (c).

(f) Notwithstanding the provisions of subsections (a) through (e), the director shall not issue a permit or grant a modification or variance for any of the following:

(1) Discharge of any radiological or biological warfare agent, or high-level radioactive waste into state waters;

(2) Discharge which the Secretary of the Army, acting through the Chief of Engineers, finds would substantially impair anchorage and navigation;

(3) Discharge to which the Regional Administrator has objected in writing under any right to object provided the Administrator in Section 402(d) of the Act, 33 U.S.C. §1342(d);

(4) Discharge from a point source which is in conflict with a plan or amendment thereto approved under Section 208(b) of the Act, 33 U.S.C. §1288(b); or

(5) When prohibited by 40 CFR §122.4.

(g) The issuance of a permit does not convey any property rights of any sort or any exclusive privilege. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1288(b), 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.4, 122.5, 122.41, 122.43, 122.44, 122.45, 122.46, 123.25(a), 124.5, 124.59)

§11-55-16 Modification or revocation and reissuance of NPDES permits. (a) Each NPDES permit shall be subject to modification or revocation and reissuance by the director after notice and opportunity for a contested case hearing.

(b) Permits may be modified for the reasons and under the procedures specified in 40 CFR §§122.62 and 122.63.

(c) Permits may be revoked and reissued for the reasons and under the procedures specified in 40 CFR §122.62.

(d) The procedures and criteria for minor permit modifications are those specified in 40 CFR §122.63.

(e) All applications made under section 342D-7, HRS, for a variance from the terms and conditions of an NPDES permit shall also be deemed as applications for a modification under this section. Any variances, if granted, shall be for a period not to exceed five years. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-7; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-7, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.5, 122.62, 122.63, 123.25(a), 124.5)

§11-55-17 Termination of permits and denial of renewal. (a) On the expiration date specified in the NPDES permit, the NPDES permit shall automatically terminate and the permittee shall be divested of all rights therein.

(b) Each NPDES permit renewal application shall be subject to denial and each issued NPDES permit shall be subject to termination by the director after notice and opportunity for a contested case hearing.

(c) The following are causes for terminating a permit during its term or for denying a permit renewal application:

(1) Noncompliance by the permittee with any condition of the permit;

(2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;

(3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or

(4) A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit (for example, plant closure or termination of discharge by connection to a publicly owned treatment works).

(d) The director shall follow the applicable state procedures in terminating any NPDES permit under this section, except that if the entire discharge is permanently terminated by elimination of the flow or by connection to a publicly owned treatment works (but not by land application or disposal into a well), the director may terminate the permit by notice to the permittee. Termination by notice shall be effective thirty days after notice is sent ("expedited termination"), unless the permittee objects in writing during that time. If the permittee objects during that period, the director shall follow applicable state procedures for termination. Expedited termination is not available to permittees who are subject to pending state or federal or both enforcement actions including citizen suits brought under state or federal law. If requesting expedited termination, a permittee shall certify that it is not subject to any pending state or federal enforcement actions including citizen suits brought under state or federal law. A notice of intent to terminate is a type of draft permit which follows

the same procedures as any draft permit prepared under 40 CFR §124.6. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.5, 122.64, 122.64(b), 123.25(a), 124.5, 124.5(d), 124.15(a))

§11-55-18 Reporting discontinuance or dismantlement. An NPDES permittee shall report within thirty days after the permanent discontinuance or dismantlement of that treatment works or waste outlet for which the NPDES permit had been issued by submitting a notice of cessation. [Eff 11/27/81; comp 10/29/92; comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1252, 1342, 1370, 1251-1387; 40 CFR 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §122.64, 124.5)

§11-55-19 Application of effluent standards and limitations, water quality standards, and other requirements. (a) NPDES permits shall apply and ensure compliance with the following whenever applicable:

(1) Effluent limitations under Sections 301 and 302 of the Act, 33 U.S.C. §§1311 and 1312;
(2) Standards of performance for new sources;
(3) Effluent standards, effluent prohibitions, and pretreatment standards under Section 307 of the Act, 33 U.S.C. §1317;
(4) More stringent limitation, including those:
    (A) Necessary to meet water quality standards, treatment standards, or schedules of compliance, established

under any state law or rules (under authority preserved by Section 510 of the Act, 33 U.S.C. §1370); or

(B) Necessary to meet any other federal law or regulations including, but not limited to:

(i) Toxic pollutant effluent standards in 40 CFR Part 129;

(ii) Secondary treatment regulation in 40 CFR Part 133;

(iii) Effluent guidelines and standards in 40 CFR Chapter I, subchapter N, Parts 400 to 471;

(iv) Criteria and standards in 40 CFR Part 125, Subparts A, B, C, D, H, I, J, K, and M;

(v) Standards for sludge handling in 40 CFR §122.44(b)(2), 40 CFR Part 503 and state rules; and

(vi) Nutrient management requirements and technical standards for concentrated animal feeding operations in 40 CFR §123.36, 40 CFR §122.42, and 40 CFR Part 412; or

(C) Required to implement any applicable water quality standards; the limitations to include any legally applicable requirements necessary to implement total maximum daily loads established under Section 303(d) of the Act, 33 U.S.C. §1313(d), or incorporated in the continuing planning process approved under Section 303(e) of the Act, 33 U.S.C. §1313(e), and any regulations and guidelines issued pursuant thereto;

(5) More stringent legally applicable requirements necessary to comply with a plan approved under Section 208(b) of the Act, 33 U.S.C. §1288(b);

(6) Prior to promulgation by the Administrator of applicable effluent standards and limitations

under Sections 301, 302, 306, and 307 of the Act, 33 U.S.C. §§1311, 1312, 1316, and 1317, the conditions, as the director determines are necessary to carry out the provisions of the Act; and

(7) If the NPDES permit is for the discharge of pollutants into the state waters from a vessel or other floating craft, any applicable regulations promulgated by the secretary of the department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage, and stowage of pollutants.

(8) Other requirements developed under the continuing planning process under Section 303(e) of the Act and any regulations and guidelines issued under it.

(b) In any case where an issued NPDES permit applies the effluent standards and limitations described in subsection (a)(1), (2), and (3), the director shall state that the discharge authorized by the permit shall not violate applicable water quality standards and shall have prepared some explicit verification of that statement. In any case where an issued NPDES permit applies any more stringent effluent limitation based upon applicable water quality standards, a waste load allocation shall be prepared to ensure that the discharge authorized by the permit is consistent with applicable water quality standards. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; am and comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1288(b), 1311, 1312, 1313, 1316, 1317, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125, Subparts A, B, C, D, H, I, J, K, L, M; 129; 133; 136; 401; 403; 405-432; 434-436; 439-440; 443; 446-447; 454-455; 457-460; 503; 400-471, Subparts N; §§122.42, 122.43, 122.44, 123.25(a))

§11-55-20 Effluent limitations in issued NPDES permits. In the application of effluent standards and limitations, water quality standards, and other legally applicable requirements under section 11-55-19, each issued NPDES permit shall specify average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge in terms of weight (except pH, temperature, radiation, and any other pollutants not appropriately expressed by weight). The director, at the director's discretion, in addition to the specification of daily quantitative limitations by weight, may specify other limitations, such as average or maximum concentration limits. [Eff 11/27/81; comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §122.45(f), 123.25(a))

§11-55-21 Schedule of compliance in issued NPDES permits. (a) With respect to any discharge which is not in compliance with applicable effluent standards and limitations, applicable water quality standards, or other legally applicable requirements listed in section 11-55-19, the permit shall require the permittee to take specific steps to achieve compliance with the following:

(1) In accordance with any legally applicable schedule of compliance contained in:
    (A) Applicable effluent standards and limitations;
    (B) If more stringent, effluent standards and limitations needed to meet water quality standards; or
    (C) If more stringent, effluent standards and limitations needed to meet legally

applicable requirements listed in section 11-55-19; or

(2) In the absence of any legally applicable schedule of compliance, in the shortest, reasonable period of time, which shall be consistent with the guidelines and requirements of the Act.

(b) When a schedule specifies compliance longer than one year after permit issuance, the schedule of compliance shall specify interim requirements and the dates for their achievement and in no event shall more than one year elapse between interim dates. If the time necessary for completion of the interim requirement (such as the construction of a treatment facility) exceeds one year and is not readily divided into stages for completion, the schedule shall specify interim dates for the submission of reports of progress towards completion of the interim requirements. For each NPDES permit schedule of compliance, interim dates, reporting dates, and the final date for compliance shall, to the extent practicable, fall on the last day of the month of March, June, September, and December. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.43, 122.47, 123.25(a))

§11-55-22 Compliance schedule reports. (a) Either before or up to fourteen days following each interim date and the final date of compliance, the permittee shall provide the director with written notice of the permittee's compliance or noncompliance with the interim or final requirement.

(b) On the last day of the months of February, May, August, and November, the director shall transmit to the Regional Administrator a Quarterly Noncompliance Report (QNCR) which is a list of all instances, as of

thirty days prior to the date of the report, of failure or refusal of a permittee to comply with an interim or final requirement or to notify the director of compliance or noncompliance with each interim or final requirement (as required under subsection (a). The list shall be available to the public for inspection and copying and shall contain at least the following information with respect to each instance of noncompliance:

(1) Name, address, and permit number of each noncomplying permittee;

(2) A short description of each instance of noncompliance for which 40 CFR §123.45(a)(2) requires reporting (e.g., failure to submit preliminary plans; two weeks delay in beginning construction of treatment facility; failure to notify director of compliance with interim requirement to complete construction by June 30th, etc.);

(3) The date(s) and a short description of any actions or proposed actions by the permittee or the director to comply or enforce compliance with the interim or final requirement; and

(4) Any details which tend to explain or mitigate an instance of noncompliance with an interim or final requirement (e.g., construction delayed due to materials shortage, plan approval delayed by objection from state fish and wildlife agency, etc.).

(c) The first NPDES permit issued to a new source shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after beginning construction but less than three years before beginning the relevant discharge. For permit renewals, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before beginning the discharge again.

(d) If a permittee fails or refuses to comply with an interim or final requirement in an NPDES

permit, noncompliance shall constitute a violation of the permit for which the director may modify, revoke and reissue, or terminate the permit under sections 11-55-16 and 11-55-17 or may take direct enforcement action. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.43, 122.47, 123.25(a), 123.45)

§11-55-23 Other terms and conditions of issued NPDES permits. In addition to the requirements previously specified, each permit shall be subject to the following terms and conditions:

(1) All discharges authorized by the NPDES permit shall be consistent with the terms and conditions of the NPDES permit;

(2) The permittee shall report at least as required by 40 CFR §122.41(l), and where applicable, 40 CFR §122.42(a), (b), (c), (d), and (e);

(3) Facility expansions, production increase, or process modifications which result in new or increased discharges of pollutants shall be reported by submission of a new NPDES permit application, or, if the discharge does not violate effluent limitations specified in the NPDES permit, by submission to the director of notice of the new or increased discharges of pollutants under 40 CFR §122.42(a);

(4) The discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by the NPDES permit shall constitute a violation of the terms and conditions of the NPDES permit;

(5) The permittee shall allow the director or an authorized agent, including a contractor of

the Administrator, upon the presentation of credentials to:

(A) Enter the permittee's premises in which an effluent source is located or in which any records are kept under terms and conditions of the NPDES permit;

(B) Have access to and copy any records kept under terms and conditions of the NPDES permit;

(C) Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the NPDES permit; or

(D) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location;

(6) Any treatment facility treating domestic sewage and also receiving industrial waste from one or more indirect dischargers may be required to develop for the director's approval a pretreatment program in accordance with applicable requirements in 40 CFR Part 403. The pretreatment program approved by the director may then be incorporated into the NPDES permit as a permit condition;

(7) If the NPDES permit is for a discharge from a publicly or privately owned treatment works, the permittee shall notify the director in writing of the following:

(A) Any new introduction of pollutants into a publicly or privately owned treatment works from an indirect discharger which would be subject to Sections 301 and 306 of the Act, 33 U.S.C. §1311 and §1316, if the indirect discharger were directly discharging those pollutants;

(B) Any substantial change in volume or character of pollutants being introduced into the treatment works by a source

introducing pollutants into the treatment works at the time of issuance of the permit;

(C) The quality and quantity of effluent to be introduced into a treatment works; and

(D) Any anticipated impact caused by a change in the quality or quantity of effluent to be discharged from a publicly or privately owned treatment works;

(8) If the NPDES permit is for a discharge from a publicly owned treatment works with an approved pretreatment program under section 11-55-24, the director shall incorporate the approved pretreatment program into the NPDES permit as a permit condition. The permittee shall require any industrial user of the treatment works to comply with the requirements contained in the approved pretreatment program and the requirements of Sections 204(b), 307, and 308 of the Act, 33 U.S.C. §§1284, 1317, and 1318. The permittee shall also require each industrial user subject to the requirements of Section 307 of the Act, 33 U.S.C. §1317, to forward copies of periodic reports (over intervals not to exceed nine months) of progress towards full compliance with Section 307 of the Act, 33 U.S.C. §1317 requirements, to the permittee and the director;

(9) The permittee at all times shall maintain in good working order and operate as efficiently as possible any facility or system of control installed by the permittee to achieve compliance with the terms and conditions of the NPDES permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a

permittee only when the operation is necessary to achieve compliance with the conditions of the permit; and

(10) If a toxic effluent standard or prohibition (including any schedule of compliance specified in the effluent standards or prohibition) is promulgated under Section 307(a) of the Act, 33 U.S.C. §1317(a), for a toxic pollutant which is present in the permittee's discharge and the standard or prohibition is more stringent than any limitation upon the pollutant in the NPDES permit, the director shall revise or modify the permit in accordance with the toxic effluent standard or prohibition and notify the permittee; and

(11) A copy of the NPDES permit application, notice of intent, "no exposure" certification, individual permit, notice of general permit coverage, and conditional "no exposure" exclusion, as applicable, shall be retained on-site or at a nearby office or field office. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-8, 342D-50, 342D-55; 33 U.S.C. §§1251, 1284, 1311, 1316, 1317, 1318, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 403; §§122.41, 122.42, 122.44, 123.25(a))

§11-55-24 National pretreatment standards and users of publicly owned treatment works. (a) Any county desiring to administer its own publicly owned treatment works pretreatment program shall submit to the director for approval a program description which

shall at a minimum include the information set forth in 40 CFR §403.9(a) or 403.9(c).

(b) The director, upon receipt of the request for an approval of a pretreatment program, shall review and decide on the request in accordance with procedures described in 40 CFR §403.11.

(c) Any person discharging any pollutant or effluent into a publicly owned treatment works shall permit the director, upon presentation of credentials, to:

(1) Enter the premises of a person subject to pretreatment requirements in which an effluent source is located or in which any records are kept under terms and conditions of a pretreatment requirement;

(2) Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations required by a pretreatment requirement; and

(3) Sample any discharge of pollutants or effluent.

(d) No person shall introduce into any publicly owned treatment works any pollutant or effluent in violation of 40 CFR §403.5.

(e) The director may require any person discharging any pollutant or effluent into a publicly owned treatment works to:

(1) Establish and maintain records;

(2) Make reports;

(3) Install, use, and maintain monitoring equipment or methods;

(4) Sample effluent and state waters;

(5) Provide access to and copying of any records which are maintained; and

(6) Provide other information as the department may require. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-8, 342D-50,

342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 403, §§122.41(i))

§11-55-25 Transmission to Regional Administrator of proposed NPDES permits. The director shall transmit to the Regional Administrator copies of NPDES permits proposed to be issued by the agency in a manner as the director and Regional Administrator shall agree upon or as stated in 40 CFR §123.44(j). Any agreement between the State and Regional Administrator shall provide for at least the following:

(1) Except as waived under paragraph (4), the transmission by the director of any and all terms, conditions, requirements, or documents which are a part of the proposed NPDES permit or which affect the authorization by the proposed NPDES permit of the discharge of pollutants;

(2) A period of time (up to ninety days) in which the Regional Administrator, under any right to object provided in Section 402(d) of the Act, 33 U.S.C. §1342(d), may comment upon, object to, or make recommendations with respect to the proposed NPDES permit;

(3) Procedures for state acceptance or rejection of a written objection by the Regional Administrator; and

(4) Any written waiver by the Regional Administrator of the Regional Administrator's rights to receive, review, object to, or comment upon proposed NPDES permits for classes, types, or sizes within any category of point sources. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387;

40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.24(d), 123.43, 123.44)

§11-55-26 Transmission to Regional Administrator of issued NPDES permits. The director shall transmit to the Regional Administrator a copy of every issued NPDES permit, immediately following issuance, along with any and all terms, conditions, requirements, or documents which are a part of the NPDES permit or which affect the authorization by the NPDES permit of the discharge of pollutants. [Eff 11/27/81; comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 123.43(a)(3))

§11-55-27 Renewal of NPDES permits. (a) The director shall review applications for reissuance of NPDES permits. Any permittee who wishes to continue to discharge after the expiration date of the permittee's NPDES permit shall submit for renewal of the permit at least one hundred eighty days prior to its expiration.

(b) The scope and manner of any review of an application for renewal of an NPDES permit shall be within the discretion of the director and shall be sufficiently detailed as to ensure the following:

(1) The permittee is in compliance with or has substantially complied with all the terms, conditions, requirements, and schedules of compliance of the current or expired NPDES permit;

(2) That the director has current information on the permittee's production levels; permittee's waste treatment practices; nature, contents, and frequency of permittee's discharge through the submission of new forms and applications or from

monitoring records and reports submitted to the director by the permittee; and

(3) That the discharge is consistent with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements, including any additions to, revisions, or modifications of the effluent standards and limitations, water quality standards, or other legally applicable requirements during the term of the permit.

(c) The director shall follow the notice and public participation procedures specified in this chapter in connection with each request for reissuance of an NPDES permit.

(d) Notwithstanding any other provision in this section, any point source, the construction of which began after October 18, 1972 and which is constructed to meet all applicable new source performance standards, shall not be subject to any more stringent new source performance standard, except as specified in 40 CFR §122.29(d)(2), for the earliest ending of the following period;

(1) A ten-year period beginning on the date of completion of the construction;

(2) A ten-year period from the date the source begins to discharge process or other non-construction related wastewater; or

(3) During the period of depreciation or amortization of the facility for the purposes of Section 167 or 169 or both of the Internal Revenue Code of 1954, whichever period ends first.

(e) Application for renewal of an NPDES permit shall comply with section 11-55-04. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123;

124, Subparts A and D; 125; §§122.21(d), 122.29, 122.41(b), 122.41(l), 122.44, 123.25(a))

§11-55-28 Monitoring: (a) Any discharge authorized by an NPDES permit may be subject to monitoring requirements as may be reasonably required by the director, including the installation, use, and maintenance of monitoring equipment or methods (including, where appropriate, biological monitoring methods).

(b) Any discharge authorized by an NPDES permit which:

(1) Is not a minor discharge;

(2) The Regional Administrator requests, in writing, be monitored; or

(3) Contains toxic pollutants for which an effluent standard has been established by the Administrator under Section 307(a) of the Act, 33 U.S.C. §1317, shall be monitored by the permittee for at least the items listed in subsection (c).

(c) Monitored items:

(1) Flow (in gallons per day or cubic feet per second); and

(2) All of the following pollutants:

(A) Pollutants (either directly or indirectly through the use of accepted correlation coefficient or equivalent measurements) which are subject to reduction or elimination under the terms and conditions of the NPDES permit;

(B) Pollutants which the director finds, on the basis of available information, could have a significant impact on the quality of state waters;

(C) Pollutants specified by the Administrator in regulations issued under the Act, as subject to monitoring; and

(D) Any pollutants in addition to the above which the Regional Administrator requests, in writing, to be monitored.

(d) Each effluent flow or pollutant required to be monitored under subsection (c) shall be monitored at intervals sufficiently frequent to yield data which reasonably characterizes the nature of the discharge of the monitored effluent flow or pollutant. Variable effluent flows and pollutant levels shall be monitored at more frequent intervals than relatively constant effluent flows and pollutant levels. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-55; 33 U.S.C. §§1251, 1317, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.41, 122.43, 122.48, 123.25(a))

§11-55-29 Recording of monitoring activities and results. When any NPDES permit requires monitoring of the authorized discharge:

(1) The permittee shall maintain records of all information resulting from any monitoring activities required by the NPDES permit;

(2) Any records of monitoring activities and results shall include for all samples:
   (A) The date, exact place, and time of sampling or measurements;
   (B) The individual(s) who performed the sampling or measurements;
   (C) The date(s) the analyses were performed;
   (D) The individual(s) who performed the analyses;
   (E) The analytical techniques or methods used; and
   (F) The results of the analyses; and

(3) The permittee shall retain for a minimum of five years any records of monitoring activities and results including all original

strip chart recording for continuous monitoring instrumentation and calibration and maintenance records. This period of retention shall be extended during the course of any unresolved litigation or administrative enforcement action regarding the discharge of pollutants by the permittee or when requested by the director or Regional Administrator. [Eff 11/27/81; comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 122.41(j))

§11-55-30 Reporting of monitoring results. The director shall require periodic reporting (at a frequency of not less than once per year) on the proper NPDES discharge monitoring report form, or other form as specified by the director, of monitoring results obtained by a permittee under monitoring requirements in an NPDES permit. In addition to the NPDES discharge monitoring report form, or other form as specified by the director, the director may require submission of any other information regarding monitoring results as determined to be necessary. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 122.41(l)(4), 122.44(i))

§11-55-31 Sampling and testing methods. (a) All sampling and testing shall be done in accordance with test procedures approved under 40 CFR Part 136 unless

other test procedures have been specified in the permit or approved by the director and, when applicable, with guidelines establishing test procedures for the analysis of pollutants published by the Administrator in accordance with Section 304(h) of the Act, 33 U.S.C. §1314(h). All tests shall be made under the direction of persons knowledgeable in the field of water pollution control.

(b) The director may conduct tests of waste discharges from any source. Upon request of the director, the person responsible for the source to be tested shall provide necessary sampling stations and other safe and proper sampling and testing facilities, exclusive of instruments and sensing devices, as may be necessary for proper determination of the waste discharge. [Eff 11/27/81; comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-55; 33 U.S.C. §§1251, 1314, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.41(j)(4), 136)

§11-55-32 Malfunction, maintenance, and repair of equipment. (a) There shall be no shut-down of water pollution treatment facilities for purposes of maintenance unless a schedule or plan for the maintenance has been submitted to and approved by the director prior to the shut-down.

(b) In the case of a shut-down of water pollution control equipment for necessary maintenance, the intent to shut down the equipment shall be reported to and approved by the director at least twenty-four hours prior to the planned shut-down. The prior notice shall include, but is not limited to, the following:

(1) Identification of the specific facility to be taken out of service, as well as its location and NPDES permit number;

(2) The expected length of time that the water pollution control equipment will be out of service;
(3) The nature and quantity of discharge of water pollutants likely to be emitted during the shut-down period;
(4) Measures that will be taken to minimize the length of the shut-down period, such as the use of off-shift labor and equipment;
(5) Identification of any adverse impacts to the receiving state waters which could be caused by the wastes which are to be bypassed; and
(6) The reasons that it would be impossible or impractical to shut down the source operation during the maintenance period.

(c) In the event that any water pollution control equipment or related facility breaks down in a manner causing the discharge of water pollutants in violation of applicable rules, the person responsible for the equipment shall immediately notify the director of the failure or breakdown and provide a statement giving all pertinent facts, including the estimated duration of the breakdown. The director shall be notified when the condition causing the failure or breakdown has been corrected and the equipment is again in operation. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-33 Agency board membership. (a) Any board or body which approves NPDES permit applications, notices of intent, or "no exposure" certifications, or portions thereof shall not include as a member any person who receives, or has during the previous two years received, a significant portion of the person's income directly or indirectly from permittees or persons applying for an NPDES permit.

(b) For the purposes of this section, the term "board or body" includes any individual, including the director, who has or shares authority to approve permit applications or portions thereof either in the first instance or on appeal.

(c) For the purposes of this section, the term "significant portion of the person's income" shall mean ten per cent or more of gross personal income for a calendar year, except that it shall mean fifty per cent or more of gross personal income for a calendar year if the recipient is over sixty years of age and is receiving that portion under retirement, pension, or similar arrangement.

(d) For the purposes of this section, the term "permittees or persons applying for an NPDES permit" shall not include any state department or agency.

(e) For the purposes of this section, the term "income" includes retirement benefits, consultant fees, and stock dividends.

(f) For the purposes of this section, income is not received "directly or indirectly from permittees or persons applying for an NPDES permit" where it is derived from mutual fund payments or from other diversified investments over which the recipient does not know the identity of the primary sources of income.

[Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp ] (Auth: HRS §§342D-3, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-3, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 123.25(c))

§11-55-34 General permit definitions. As used in sections 11-55-34.01 through 11-55-34.12:

"Category of sources" means either:

(1) Storm water point sources; or

(2) A group of point sources other than storm water point sources if all sources in the group:

(A) Involve the same or substantially similar types of operations;
(B) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices;
(C) Require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal;
(D) Require the same or similar monitoring; and
(E) In the opinion of the director, are more appropriately controlled under a general permit than under an individual permit.

"Geographical area" means existing geographical or political boundaries such as:

(1) Designated planning areas under Sections 208 and 303 of the Act;
(2) Sewer districts or sewer authorities;
(3) City, county, or state political boundaries;
(4) State highway systems;
(5) Standard metropolitan statistical areas as defined by the Office of Management and Budget;
(6) Urbanized areas as designated by the Bureau of the Census according to criteria in 30 Federal Register 15202 (May 1, 1974); or
(7) Any other appropriate division or combination of boundaries. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.2, 122.28, 123.25(a)(11))

§11-55-34.01 General permit policy. It is the policy of the State that general permits shall comply, at a minimum, with federal requirements for general

permits, especially 40 CFR §122.28. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

§11-55-34.02 General permit authority and adoption. (a) The director may adopt general permits[.] by a rule or by order issued by the director. A permit adopted by rule may be terminated by a later permit issued by order if the later permit covers the same activity and specifically provides for termination of the earlier permit.

Comment [RM5]: new

(b) The appendices located at the end of this chapter are adopted and incorporated by reference as general permits for the following applicable categories of sources:

(1) Appendix B, titled "NPDES General Permit Authorizing Discharges of Storm Water Associated with Industrial Activities," dated October 2007, for discharges composed entirely of storm water associated with certain industrial activities as identified in 40 CFR §§122.26(b)(14)(i) through 122.26(b)(14)(ix) and §122.26(b)(14)(xi);

(2) Appendix C, titled "NPDES General Permit Authorizing Discharges of Storm Water Associated with Construction Activity," dated October 2007, for storm water discharges from construction activities which result in the disturbance of five acres or more of total land area or small construction activities which result in the disturbance of one to less than five acres of total land area;

(3) Appendix D, titled "NPDES General Permit Authorizing Discharges of Treated Effluent from Leaking Underground Storage Tank Remedial Activities," dated October 2007, for

the discharge of treated effluent from the leaking underground storage tank remedial activities;

(4) Appendix E, titled "NPDES General Permit Authorizing Discharges of Once Through Cooling Water Less Than One (1) Million Gallons Per Day," dated October 2007, for the discharge of once-through, non-contact cooling water for one million gallons per day or less;

(5) Appendix F, titled "NPDES General Permit Authorizing Discharges of Hydrotesting Waters," dated October 2007, for the discharge of non-polluted hydrotesting water;

(6) Appendix G, titled "NPDES General Permit Authorizing Discharges Associated with Construction Activity Dewatering," dated October 2007, for the discharge of dewatering effluent from a construction activity;

(7) Appendix H, titled "NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals," dated October 2007, for the discharge of treated process wastewater effluent from petroleum bulk stations and terminals;

(8) Appendix I, titled "NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Well Drilling Activities," dated October 2007, for the discharge of treated process wastewater effluent associated with well drilling activities;

(9) Appendix J, titled "NPDES General Permit Authorizing Occasional or Unintentional Discharges from Recycled Water Systems," dated October 2007, for the discharge of treated process wastewater effluent from recycled water distribution systems;

(10) Appendix K, titled "NPDES General Permit Authorizing Discharges of Storm Water and Certain Non-Storm Water Discharges from Small

Small Business Impact Statement
Administrative Directive No. 09-01

Department of Health
Environmental Management Division
Clean Water Branch
Hawaii Administrative Rules (HAR)
Chapters 11-54 (Water Quality Standards) and
11-55 (Water Pollution Control)
Contact Person: Mr. Darryl Lum, CWB Engineering Section Supervisor

1. Explain the exact changes to be made and the purpose, reasons for the change, and justification for the change. If applicable, cite the present rule and quote the proposed rule change in full without paraphrasing:

   See below.

IV. New Business

B. Proposed Amendments to HAR Title 18 Chapter 235 Income Tax Law, Adoption of HAR Title 18 Chapter 235-12.5-01T and 235-12.5-06T, Relating to Renewal Energy Technology Income Tax Credit; Citations (Department of Taxation)

# RENEWABLE ENERGY TECHNOLOGIES INCOME TAX CREDIT

**Section 235-12.5, Hawaii Revised Statutes**

**Year-end Workshops 2012**

1

## TEMPORARY ADMINISTRATIVE RULES OVERVIEW

- Effective November 16, 2012
- Expires May 16, 2014
- **Applies to systems installed and placed in service on or after January 1, 2013**
- Section 18-235-12.5-01T – Definitions
- Section 18-235-12.5-03T – Other Solar Energy Systems
- Section 18-235-12.5-05T – Mixed-use Properties and Multiple Properties
- Section 18-235-12.5-06T – Application of sections 18-235-12.5-01T through 18-235-12.5-05T

2

## SECTION 235-12.5(a), HAWAII REVISED STATUTES

(a) "When the requirements of subsection (d) are met, each individual or corporate taxpayer that files an individual or corporate net income tax return for a taxable year may claim a tax credit under this section against the Hawaii state individual or corporate net income tax. The tax credit may be claimed for every eligible renewable energy technology system that is **installed and placed in service** in the State by a taxpayer during the taxable year. The tax credit may be claimed as follows:

(1) For each solar energy system: thirty-five per cent of the actual cost or the cap amount determined in subsection (b), whichever is less. . .

3

## "INSTALLED AND PLACED IN SERVICE"

Section 18-235-12.5-01T(a)(3) of the temporary administrative rules states:

- "Installed and placed in service" means that the system is ready and available for its specific use.
- With respect to systems installed for **residential property**, all requirements will be completed and a system will be deemed to be installed and placed in service when: (1) The actual cost has been incurred; (2) all installation, including all related electrical work, has been completed; and (3) any required requests for inspection of the installation has been received by the appropriate government agency.
- However, if the residential installation fails to pass all the required inspections the credit is properly claimed in the taxable year in which the system passes such inspection.

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## "INSTALLED AND PLACED IN SERVICE" CONTINUED

- Examples:
  - If a request for any required inspection is received by the appropriate government agency in December of 2012 and the system passes inspection in January of 2013, the credit is properly claimed in the 2012 taxable year.
  - If a request for any required inspection is received by the appropriate government agency in December of 2012 and the system fails such inspection in January of 2013, the credit is properly claimed in the 2013 taxable year.
  - If a request for any required inspection is received by the appropriate government agency in October of 2012 and the system fails the first inspection in November of 2012, but passes a second inspection in December of 2012 the credit is properly claimed in the 2012 taxable year.
- Rationale:
  - If the system fails any required inspection, the installation and electrical work has not been completed.

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## "INSTALLED AND PLACED IN SERVICE" CONTINUED

- Tax Announcement 2012-14
  - Issued November 16, 2012
  - "Installed and placed in service" definition from section 18-235-12.5-01T(a)(3) also applies to **residential systems** installed and placed in service on or before December 31, 2012.
- Commercial Systems are considered "installed and placed in service" when the system is ready and available for its specific use.

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## TAX INFORMATION RELEASE NO. 2012-01

- Issued November 20, 2012
- Highlights important changes to the calculation of the Renewable Energy Technologies Income Tax Credit (RETITC) for "other solar energy systems," including photovoltaic systems.
- Explains that "total output capacity" is the starting point for calculating the RETITC for "other solar energy systems."
- Provides a worksheet that should be used to allocate the total actual cost to each system where more than one system is installed and placed in service on a single property during a taxable year.

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## "TOTAL OUTPUT CAPACITY"

Section 18-235-12.5-01T(a)(11) of the temporary administrative rules states:

- "Total output capacity" means the combined individual output capacities (maximum power) of all identifiable facilities, equipment, apparatus or the like that make up the renewable energy technology system installed and placed in service during a taxable year measured in kilowatts.
- For photovoltaic systems:
  - Total output capacity = maximum power of each cell, module, or panel at Standard Test Conditions in kilowatts multiplied by the number of cells, modules, or panels installed and placed in service during the taxable year.
    - Maximum power of the cell, module or panel must be obtained from the equipment specifications published by the manufacturer

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## "TOTAL OUTPUT CAPACITY"

- "Total output capacities" of all installations that occur during a taxable year must be combined.
  - Separate systems have not been installed simply because installations occurred at different times during a taxable year.
    - Each system for which a credit is claimed must meet the applicable total output capacity requirement or an exception.
- "Total output capacity" requirements – sections 18-235-12.5-03T(a)(1) through (a)(3)
  - Single-family residential property – at least 5 kilowatts per system
  - Multi-family residential property – at 0.360 kilowatts per unit per system
  - Commercial property – at least 1,000 kilowatts per system

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## "TOTAL OUTPUT CAPACITY" - EXCEPTIONS

- Under sections 18-235-12.5-03T(b)(1) and (b)(2) respectively, a credit may be claimed for a system which does not meet the applicable "total output capacity" requirement where:
  - Only one system has been installed and placed in service on a single property during a taxable year, or
  - More than one system has been installed and placed in service on a single property during a taxable year and only one of those systems fails to meet the applicable "total output capacity" requirement.
- The "total output capacity" exceptions provided under §18-235-12.5-03T(b)(1) and (2) apply to "other solar energy systems" installed for **all property classifications** including single-family residential, multi-family residential, commercial, and mixed-use properties.

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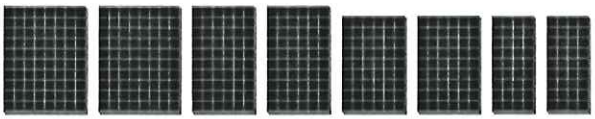
# MAXIMUM POWER – SPEC SHEET EXAMPLE 1

SPECIFICATIONS



| Standard Test Conditions (STC) *STC = 1000 W/M² irradiance, 25°C module temperature, AM 1.5 spectrum** | KD320 | KD315 | KD245 | KD240 | KD220 | KD215 | KD140 | KD135 |
|---|---|---|---|---|---|---|---|---|
| Maximum Power | 320W | 315W | 245W | 240W | 220W | 215W | 140W | 135W |
| Number of Cells | 80 | 80 | 60 | 60 | 54 | 54 | 36 | 36 |
| Tolerance | +5% / -3% | +5% / -3% | +5% / -3% | +5% / -3% | +5% / -3% | +5% / -0% | +5% / -5% | +5% / -5% |
| Maximum System Voltage | 600V | 600V | 600V | 600V | 600V | 600V | 600V | 600V |
| Maximum Power Voltage | 40.1V | 39.8V | 29.8V | 29.8V | 26.6V | 26.6V | 17.7V | 17.7V |
| Maximum Power Current | 7.99A | 7.92A | 8.23A | 8.06A | 8.28A | 8.09A | 7.91A | 7.63A |
| Open Circuit Voltage | 49.5V | 49.2V | 36.9V | 36.9V | 33.2V | 33.2V | 22.1V | 22.1V |
| Short Circuit Current | 8.60A | 8.50A | 8.91A | 8.59A | 8.98A | 8.78A | 8.68A | 8.37A |

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# MAXIMUM POWER – SPEC SHEET EXAMPLE 2

**PERFORMANCE UNDER STANDARD TEST CONDITIONS (STC)***

| | | SW 255 |
|---|---|---|
| Maximum power | $P_{max}$ | 255 Wp |
| Open circuit voltage | $V_{oc}$ | 37.8 V |
| Maximum power point voltage | $V_{mpp}$ | 31.4 V |
| Short circuit current | $I_{sc}$ | 8.66 A |
| Maximum power point current | $I_{mpp}$ | 8.15 A |

*STC: 1000W/m², 25°C, AM 1.5

**THERMAL CHARACTERISTICS**

| | |
|---|---|
| NOCT | 46 °C |
| $TCI_{sc}$ | 0.004 %/K |

**PERFORMANCE AT 800 W/m², NOCT, AM 1.5**

| | | SW 255 |
|---|---|---|
| Maximum power | $P_{max}$ | 184.1 Wp |
| Open circuit voltage | $V_{oc}$ | 34.0 V |
| Maximum power point voltage | $V_{mpp}$ | 28.3 V |
| Short circuit current | $I_{sc}$ | 6.99 A |
| Maximum power point current | $I_{mpp}$ | 6.52 A |

Minor reduction in efficiency under partial load conditions at 25°C: at 200W/m², 95% (+/-3%) of the STC efficiency (1000 W/m²) is achieved

**COMPONENT MATERIALS**

| | |
|---|---|
| Cells per module | 60 |
| Cell type | Mono crystalline |

- "Total output capacity" is based on the maximum power of each cell, module or panel at Standard Test Conditions.
- In this example, the maximum power should be obtained from the left column because the performance specifications of the module stated in the left column are determined under Standard Test Conditions.

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# CALCULATIONS WORKSHEET – TIR 2012-01

| Line | Description | |
|---|---|---|
| **Total Output Capacity** | | |
| A | Maximum power of each cell, module or panel | _____kilowatts |
| B | Total number of cells, modules or panels installed and placed in service during the taxable year | _____cells, modules, or panels |
| C | Total Output Capacity (Multiply Line A by Line B) | _____kilowatts |
| D | Total Actual Cost of all installations during the taxable year | $_____ |
| E | Actual Cost per kilowatt (Divide Line D by Line C) | $_____ |
| **Actual Cost Per System** | | |
| F1 | Actual Cost to be allocated to System 1 (Multiply Line E by Line F1-kW)<br>**F1-kW**<br>Total Output Capacity of System 1 = _____ kilowatts [8] | **F1**<br>$_____<br>Enter this amount on the appropriate line of Form N-342 or Form N-342A |
| F2 | Actual Cost to be allocated to System 2 (Multiply Line E by Line F2-kW)<br>**F2-kW**<br>Total Output Capacity of System 2 = _____ kilowatts [8] | **F2**<br>$_____<br>Enter this amount on the appropriate line of Form N-342 or Form N-342A |
| F3 | Actual Cost to be allocated to System 3 (Multiply Line E by Line F3-kW<br>**F3-kW**<br>Total Output Capacity of System 3 = _____ kilowatts [8] | **F3**<br>$_____<br>Enter this amount on the appropriate line of Form N-342 or Form N-342A |

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# CALCULATIONS CONTINUED

| | | |
|---|---|---|
| F4 | Actual Cost to be allocated to System 4 (Multiply Line E by Line F4-kw)<br>**F4-kW**<br>Total Output Capacity of System 4 = _____ kilowatts [8] | **F4**<br>$_____<br>Enter this amount on the appropriate line of Form N-342 or Form N-342A |
| F5 | Actual Cost to be allocated to System 5 (Multiply Line E by Line F5-kW)<br>**F5-kW**<br>Total Output Capacity of System 5 = _____ kilowatts [8] | **F5**<br>$_____<br>Enter this amount on the appropriate line of Form N-342 or Form N-342A |

Note: *Additional lines should be added here as needed where more than five systems have been installed and placed in service during the taxable year on a single property. A credit may be claimed for each system which meets the applicable total output capacity requirement or the exception as set forth in section 18-235-12.5-03T(b)(2).*

| | | |
|---|---|---|
| G | Sum of Lines F1 through F5<br>Line G must equal Line D. The sum of the Total Output Capacities allocated to each system must equal to Line C. | $_____ |
| H | Add Lines F1-kW to F5-kW (Sum of Total Output Capacities allocated to each system.)<br>Line H must equal Line C. | _____kilowatts |

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## CALCULATION EXAMPLE 1

- Facts: Single-family residential property, 10 photovoltaic panels installed and placed in service that have a maximum power of 0.265 kilowatts (265 watts) each, and an actual cost of $13,250.
- Total output capacity = 0.265 kW x 10 panels = **2.65 kW**
- Actual cost per kW = $13,250 / 2.65 kW = **$5,000**
- Actual cost allocated to system = total output capacity x actual cost per kW = 2.65 kW x $5,000 = **$13,250**
- Calculation of credit = actual cost allocated to system x 35% = $13,250 x 35% = **$4,637.50**
- Although the system does not meet the applicable total output capacity amount of 5 kilowatts per system, the exception set forth in section 18-235-12.5-03T(b)(1) allows the credit to be claimed where only one system has been installed and placed in service on a property during a single tax year.

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## CALCULATION EXAMPLE 2

- Facts: Multi-family residential property with 5 residential units, 7 photovoltaic panels installed and placed in service that have a maximum power of 0.235 kilowatts (235 watts) each, and an actual cost of $8,225.
- Total output capacity = 0.235 kW x 7 panels = **1.645 kW**
- Total output capacity requirement per system = 5 units x 0.360 kW = **1.8 kW**
- Actual cost per kW = $8,225 / 1.645 kW = **$5,000**
- Actual cost allocated to system = total output capacity x actual cost per kW = 1.645 kW x $5,000 = **$8,225**
- Calculation of credit = actual cost allocated to system x 35% = $8,225 x 35% = $2,878.75 (capped at $1,750 per system). Credit amount is **$1,750**
- Although the system does not meet the applicable total output capacity amount of 0.360 kilowatts per unit per system, the exception set forth in section 18-235-12.5-03T(b)(1) allows the credit to be claimed where only one system has been installed and placed in service on a property during a single tax year.

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## CALCULATION EXAMPLE 3

- Facts: Commercial property, 170 photovoltaic panels installed and placed in service that have a maximum power of 0.300 kilowatts (300 watts) each, and an actual cost of $204,000.
- Total output capacity = 0.300 kW x 170 panels = **51 kW**
- Actual cost per kW = $204,000 / 51 kW = **$4,000**
- Actual cost allocated to system = total output capacity x actual cost per kW = 51 kW x $4,000 = **$204,000**
- Calculation of credit = actual cost allocated to system x 35% = $204,000 x 35% = **$71,400**
- Although the system does not meet the applicable total output capacity amount of 1,000 kilowatts per system, the exception set forth in section 18-235-12.5-03T(b)(1) allows the credit to be claimed where only one system has been installed and placed in service on a property during a single tax year.

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## CALCULATION EXAMPLE 4

- Facts: Single-family residential property, 9 photovoltaic panels installed and placed in service that have a maximum power of 0.250 kilowatts (250 watts) each in February of a taxable year, 10 photovoltaic panels installed and placed in service that have a maximum power of 0.250 kilowatts (250 watts) each in September of the same taxable year and a total actual cost of $23,750 for both installations.
- Total output capacity of February installation = 0.250 kW x 9 panels = **2.25 kW**
- Total output capacity of September installation = 0.250 kW x 10 panels = **2.50 kW**
- Combined total output capacities of all installations occurring in the same taxable year = 2.25 kW + 2.5 kW = **4.75 kW**
- Actual cost per kW = $23,750 / 4.75 kW = **$5,000**

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## CALCULATION EXAMPLE 4 - CONTINUED

- Actual cost allocated to system = total output capacity x actual cost per kW = 4.75 kW x $5,000 = **$23,750**
- Calculation of credit = actual cost allocated to system x 35% = $23,750 x 35% = $8,312.50 (capped at $5,000).
- The cap per system for single-family residential property is $5,000 per system. Although installations occurred during different times during the same taxable year only one system for the purposes of the credit has been installed because the combined installations do not meet the total output capacity requirement of 5 kilowatts per system. Since only one system has been installed and placed in service on a single property, for the purpose of calculating the credit, the credit amount is capped at **$5,000**.

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## CALCULATION EXAMPLE 5

- Facts: Single-family residential property, 20 photovoltaic panels installed and placed in service that have a maximum power of 0.250 kilowatts (250 watts) each, and an actual cost of $25,000.
- Total output capacity = 0.250 kW x 20 panels = **5 kW**
- Actual cost per kW = $25,000 / 5 kW = **$5,000**
- Actual cost allocated to system = total output capacity x actual cost per kW = 5 kW x $5,000 = **$25,000**
- Calculation of credit = actual cost allocated to system x 35% = $25,000 x 35% = $8,750. The cap per system for single-family residential property is $5,000 per system. Since only one system has been installed and placed in service for the purpose of calculating the credit, the credit amount is capped at **$5,000**.

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## CALCULATION EXAMPLE 6

- Facts: Multi-family residential property with 20 residential units, 40 photovoltaic panels installed and placed in service that have a maximum power of 0.180 kilowatts (180 watts) each, and an actual cost of $39,600.
- Total output capacity = 0.180 kW x 40 panels = **7.2 kW**
- Total output capacity requirement per system = 20 units x 0.360 kW = **7.2 kW**
- Actual cost per kW = $39,600 / 7.2 kW = **$5,500**
- Actual cost allocated to system = total output capacity x actual cost per kW = 7.2 kW x $5,500 = **$39,600**
- Calculation of credit = actual cost allocated to system x 35% = $39,600 x 35% = $13,860. The cap per system for multi-family residential property with 20 units is $7,000 per system. Since only one system has been installed and placed in service for the purpose of calculating the credit, the credit amount is capped at **$7,000**.

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## CALCULATION EXAMPLE 7

- Facts: Commercial property, 2,000 photovoltaic panels installed and placed in service that have a maximum power of 0.500 kilowatts (500 watts) each, and an actual cost of $3,500,000.
- Total output capacity = 0.500 kW x 2,000 panels = **1,000 kW**
- Actual cost per kW = $3,500,000 / 1,000 kW = **$3,500**
- Actual cost allocated to system = total output capacity x actual cost per kW = 1,000 kW x $3,500 = **$3,500,000**
- Calculation of credit = actual cost allocated to system x 35% = $3,500,000 x 35% = $1,225,000. The cap per system for commercial property is $500,000 per system. Since only one system has been installed and placed in service for the purpose of calculating the credit, the credit amount is capped at **$500,000**.

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## CALCULATION EXAMPLE 8

- Facts: Single-family residential property, 48 photovoltaic panels installed and placed in service that have a maximum power of 0.260 kilowatts (260 watts) each, and an actual cost of $62,400.
- Total output capacity = 0.260 kW x 48 panels = **12.48 kW**
- Actual cost per kW = $62,400 / 12.48 kW = **$5,000**
- Actual cost allocated to system 1 = total output capacity x actual cost per kW = 5 kW x $5,000 = **$25,000**
- Actual cost allocated to system 2 = total output capacity x actual cost per kW = 5 kW x $5,000 = **$25,000**
- Actual cost allocated to system 3 = total output capacity x actual cost per kW = 2.48 kW x $5,000 = **$12,400**

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## CALCULATION EXAMPLE 8 - CONTINUED

- Calculation of credit = actual cost allocated to system 1 x 35% = $25,000 x 35% = $8,750 (capped at $5,000).
- Actual cost allocated to system 2 x 35% = $25,000 x 35% = $8,750 (capped at $5,000).
- Actual cost allocated to system 3 x 35% = $12,400 x 35% = $4,340.
- The cap per system for single-family residential property is $5,000 per system. The credit amount for system 1 and system 2 are capped at $5,000 per system. The credit amount for system 3 is $4,340 and is not limited by the cap. The credit for system 3 is allowed under section 18-235-12.5-03T(b)(2) because only one system fails to meet the applicable total output capacity requirement. Thus, the total credit for this installation is **$14,340**.

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## CALCULATION EXAMPLE 9

- Facts: Multi-family residential property with 20 residential units, 75 photovoltaic panels installed and placed in service that have a maximum power of 0.360 kilowatts (360 watts) each, and an actual cost of $114,750.
- Total output capacity = 0.360 kW x 75 panels = **27 kW**
- Total output capacity requirement per system = 20 units x 0.360 kW = **7.2 kW**
- Actual cost per kW = $114,750 / 27 kW = **$4,250**
- Actual cost allocated to system 1 = total output capacity x actual cost per kW = 7.2 kW x $4,250 = **$30,600**
- Actual cost allocated to system 2 = total output capacity x actual cost per kW = 7.2 kW x $4,250 = **$30,600**
- Actual cost allocated to system 3 = total output capacity x actual cost per kW = 7.2 kW x $4,250 = **$30,600**
- Actual cost allocated to system 4 = total output capacity x actual cost per kW = 5.4 kW x $4,250 = **$22,950**

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## CALCULATION EXAMPLE 9 - CONTINUED

- Calculation of credit = actual cost allocated to system 1 x 35% = $30,600 x 35% = $10,710 (capped at $7,000).
- Actual cost allocated to system 2 x 35% = $30,600 x 35% = $10,710 (capped at $7,000).
- Actual cost allocated to system 3 x 35% = $30,600 x 35% = $10,710 (capped at $7,000).
- Actual cost allocated to system 4 x 35% = $22,950 x 35% = $8,032.50 (capped at $7,000).

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## CALCULATION EXAMPLE 9 - CONTINUED

- The cap per system for multi-family residential property with 20 units is $7,000 per system. Three systems which meet the total output capacity requirement have been installed and placed in service for the purpose of calculating the credit and the credit is capped at $7,000 per system. The credit for system 4 is allowed under section 18-235-12.5-03T(b)(2) because only one system fails to meet the applicable total output capacity requirement. The total credit amount for all four systems installed and placed in service is **$28,000**.

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## CALCULATION EXAMPLE 10

- Facts: Commercial property, 4,500 photovoltaic panels installed and placed in service that have a maximum power of 1 kilowatt each, and an actual cost of $11,250,000.
- Total output capacity = 1 kW x 4,500 panels = **4,500 kW**
- Actual cost per kW = $11,250,000 / 4,500 kW = **$2,500**
- Actual cost allocated to system 1 = total output capacity x actual cost per kW = 1,000 kW x $2,500 = **$2,500,000**
- Actual cost allocated to system 2 = total output capacity x actual cost per kW = 1,000 kW x $2,500 = **$2,500,000**
- Actual cost allocated to system 3 = total output capacity x actual cost per kW = 1,000 kW x $2,500 = **$2,500,000**
- Actual cost allocated to system 4 = total output capacity x actual cost per kW = 1,000 kW x $2,500 = **$2,500,000**
- Actual cost allocated to system 5 = total output capacity x actual cost per kW = 500 kW x $2,500 = **$1,250,000**

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## CALCULATION EXAMPLE 10 - CONTINUED

- Calculation of credit = actual cost allocated to system 1 x 35% = $2,500,000 x 35% = $875,000 (capped at $500,000).
- Actual cost allocated to system 2 x 35% = $2,500,000 x 35% = $875,000 (capped at $500,000).
- Actual cost allocated to system 3 x 35% = $2,500,000 x 35% = $875,000 (capped at $500,000).
- Actual cost allocated to system 4 x 35% = $2,500,000 x 35% = $875,000 (capped at $500,000).
- Actual cost allocated to system 5 x 35% = $1,250,000 x 35% = $437,500.

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## CALCULATION EXAMPLE 10 - CONTINUED

- The cap per system for commercial property is $500,000 per system. The credit amount for each of the four systems which meet the total output capacity requirement is $500,000. The credit amount for system 5 which fails to meet the total output capacity requirement is $437,500. The credit for system 5 is allowed under section 18-235-12.5-03T(b)(2) because only one system fails to meet the applicable total output capacity requirement. The total credit amount for this installation is **$2,437,500**.

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## CALCULATION EXAMPLE 11

- Facts: Commercial property, 600 photovoltaic panels installed and placed in service that have a maximum power of 1 kilowatts each in January of a taxable year, 600 photovoltaic panels installed and placed in service that have a maximum power of 1 kilowatts each in July of the same taxable year and a total actual cost of $3,000,000 for both installations.
- Total output capacity of January installation = 1 kW x 600 panels = **600 kW**
- Total output capacity of July installation = 1 kW x 600 panels = **600 kW**
- Combined total output capacities of all installations occurring in the same taxable year = 600 kW + 600 kW = **1,200 kW**
- Actual cost per kW = $3,000,000 / 1,200 kW = **$2,500**

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## CALCULATION EXAMPLE 11 CONTINUED

- Actual cost allocated to system 1 = total output capacity x actual cost per kW = 1,000 kW x $2,500 = **$2,500,000**
- Actual cost allocated to system 2 = total output capacity x actual cost per kW = 200 kW x $2,500 = **$500,000**
- Calculation of credit for system 1 = actual cost allocated to system x 35% = $2,500,000 x 35% = $875,000 (capped at $500,000).
- Calculation of credit for system 2 = actual cost allocated to system x 35% = $500,000 x 35% = $175,000.
- The cap per system for commercial property is $500,000 per system. Although installations occurred during different times during the same taxable year the total output capacity of both installations must be combined. Since both installations have a total output capacity of 1,200 kilowatts the total actual cost be allocated as set forth above. The total credit for these installations is **$675,000**.

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# THE END

Revised November 28, 2012

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# SMALL BUSINESS REGULATORY REVIEW BOARD

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

Tel 808 586 2594
Fax 808 586 2572

February 23, 2012



Mr. Richard C. Lim, Director
Department of Business, Economic Development and Tourism (DBEDT)
No. 1 Capitol Place
250 South Hotel Street
Honolulu, HI 96813

Dear Director Lim:

On behalf of the Small Business Regulatory Review Board (Board), I respectfully inform you that pursuant to the Small Business Regulatory Flexibility Act, Section 201M-7, Hawaii Revised Statutes, a periodic review report is required for the period of July 1, 2009 to June 30, 2011.

Section 201M-7(a) states in relevant part:

1) Each agency having rules that affect small business shall submit by June 30 of each odd-numbered year, a list of those rules to the small business regulatory review board.

2) The agency shall also submit a report describing the specific public purpose or interest for adopting the respective rules and any other reasons to justify its continued implementation.

For your convenience, attached is a copy of DBEDT's first report submitted to this Board for the period ending June 30, 2003. Please amend this report, where appropriate, to reflect any rules that were adopted, repealed, or amended since the June 30, 2003 reporting period that affect small business; to describe changes to the public purpose or interest for adopting the rules; and to include the reasons that justify the rules' continued implementation.

We apologize for not requesting this information earlier and we sincerely appreciate that for some departments this may be a large and unfunded mandate. As this Board is required to submit its evaluation of the Departments' reports to the next (2013) regular session of the Legislature, in a collaborative effort to allow us time to complete our evaluation of your rules, we ask that you please submit your Department's report by July 2, 2012. Please submit this information to Ms. Dori Palcovich, Economic Development Specialist, DBEDT Director's Office. Should you have any questions, please do not hestiate to contact Ms. Palcovich at 586-2594.

Thank you very much for your assistance in this matter.

Sincerely,

Sharon L. Pang

Sharon L. Pang, Chairperson
Small Business Regulatory Review Board

cc: Governor Neil Abercrombie (w/o enclosure)
Bruce Bucky, Board Discussion Leader

Enclosure

# SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism
No. 1 Capitol District Bldg., 250 South Hotel St. 4th Fl., Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Tel 808 586-2594
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January 12, 2009

Dr. Chiyome L. Fukino
Director
Department of Health
P. O. Box 3378
Honolulu, HI 96801

Subject: 201M-7 Periodic Review; Evaluation Report

Dear Director Fukino:

On behalf of the Small Business Regulatory Review Board, I am respectfully informing you that pursuant to the Regulatory Flexibility Act, §201M-7, HRS, the following information is required:

**§201M-7 Periodic review; evaluation report.** (a) Each agency having rules that affect small business in effect on July 1, 1998 shall submit by June 30 of each odd-numbered year, a list of those rules to the small business regulatory review board. The agency shall also submit a report describing the specific public purpose or interest for adopting the respective rules and any other reasons to justify its continued implementation.

The Review Board appreciates that for some agencies providing this information may be a huge endeavor. Therefore, because it is within this Board's discretion to require a modified version of an evaluation report, the Board is requesting that your Agency, in a good faith effort, provide for both the health and environmental divisions the following:

- A list of the top ten (10) administrative rules under your jurisdiction that have received the most complaints or concerns from businesses or that have resulted in the most citations.

The Review Board is requesting this information by June 30, 2009. Please submit the requested information to Ms. Dori Palcovich, Business Advocate, DBEDT, 250 South Hotel Street, Honolulu, HI, 96813. Thank you for your anticipated response and assistance.

Sincerely,

Lynne Woods

Lynne Woods
Chairperson

cc: The Honorable Linda Lingle
Sharon L. Pang, Review Board Discussion Leader (Medical)
Michael C. L. Yee, Review Board Discussion Leader (Environmental)

# SMALL BUSINESS REGULATORY REVIEW BOARD

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

Tel 808 586 2594
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January 30, 2007

Mr. Barry Fukunaga, Interim Director
Department of Transportation
Aliiaimoku Hale
869 Punchbowl Street
Honolulu, HI 96813

Re: 201M-7 Periodic Review; Evaluation Report

Dear Interim Director Fukunaga:

On behalf of the Small Business Regulation Review Board (Review Board), I would like to thank you for submitting a list of administrative rules that affect small business, in effect on July 1, 1998, pursuant to my October 14, 2005 request.

Subsequently, Governor Lingle has approved the Review Board's summary report which encompasses this administrative rule review. The full report is in compliance with Section 201M-7, Hawaii Revised Statutes and may be viewed on DBEDT's website at: www.hawaii.gov/dbedt/main/about/annual, and on the Review Board's website at: www.hawaii.gov/dbedt/business/start_grow/small-business-info/sbrrb/agenda_minutes_reports.

As an accommodation, I have attached those sections of the report that relate directly to your department. As you will note, the Review Board has recommended that a full review and analysis be performed on 6 rules from the medical division and 3 rules from the environmental division in your department. As a result, we are requesting that such a review be performed and all of the amendments be submitted to this Board by December 2007.

The Review Board will be most appreciative of your compliance in this most important process. Should you have any questions regarding this request, please contact Ms. Dori Palcovich, Business Advocate, at DBEDT's Strategic Marketing and Support Division at 586-2594.

Sincerely Yours,

Lynne Woods
Chairperson
Small Business Regulatory Review Board

Enclosures

c: The Honorable Linda Lingle (without enclosure)
Theodore E. Liu, Director, DBEDT (without enclosure)

# SMALL BUSINESS REGULATORY REVIEW BOARD

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

Tel 808 586 2594
Fax 808 586 2548



October 20, 2005

Mr. David McClain
President
University of Hawaii
2444 Dole Street
Honolulu, HI 96822

Dear Mr. McClain:

On behalf of the Small Business Regulatory Review Board (Board), I would like to inform you that pursuant to the Small Business Regulatory Flexibility Act, Section 201M-7, HRS, the following report is required for 2005.

**[201M-7] Periodic review; evaluation report.** (a) Each agency having rules that affect small business in effect on July 1, 1998 shall submit by June 30 of each odd-numbered year, a list of those rules to the small business regulatory review board. The agency shall also submit a report describing the specific public purpose or interest for adopting the respective rules and any other reasons to justify its continued implementation.

As you may recall, the Board requested this information in May 2003, which resulted in our receiving a list of those rules, which were ascertained by your department, to have an affect on small business. In response to receving hundreds of these existing rules from the State departments, the Board spent pain-saking hours reviewing the rules for business impact.

In order to be in compliance with the law, this process, again, is required. As it is within the Board's discretion to require a modified version of such compliance, the Board is respectfully requesting that, based upon the 2003 rule submittals, only those rules which have been determined to bear significant business impact require a full re-analysis, by describing its specific purpose and reasons for justifying its continued implementation.

The Board appreciates that for some agencies this may be a large and unfunded mandate. To assist you in this process, attached is a listing of the rules in your department that the Board is requesting for such an analysis.

Please submit the requested information by January 3, 2006, to Ms. Dori Palcovich, Business Advocate, at DBEDT's Strategic Marketing and Support Division, P. O. Box 2359, Honolulu, HI 96804. Should you have any questions, she can be reached at 586-2594.

Thank you for your assistance.

Sincerely,

Lynne Woods

Lynne Woods
Chairperson

Cc: The Honorable Governor Linda Lingle
The Honorable Calvin K.Y. Say, Speaker
The Honorable Robert Bunda, President

Enclosure

# SMALL BUSINESS REGULATORY REVIEW BOARD

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

Tel 808 586 2594
Fax 808 587 3833

May 23, 2003



Ms. Sandra Lee Kunimoto
Chair/At-Large
Board of Agriculture, Department of Agriculture
1428 South King Street
Honolulu, Hawaii 96826

Dear Ms. Kunimoto:

On behalf of the Small Business Regulatory Review Board, and in compliance with the Regulatory Flexibitlity Act, Section 201M-7, I am respectfully requesting the following information.

1. A list of rules, in your agency, in effect on July 1, 1998, that affect small business.
2. A report describing the specific public purpose or interest for adopting the respective rules and any other reasons to justify its continued implementation.

The Board appreciates that for some agencies this may be a large and unfunded mandate. In addition to the list and report described above which are due June 30th, our members would appreciate your good faith effort to provide a list of the rules under your jurisduction that have received the most complaints or that have resulted in the most citations.

Please submit all requested information to Ms. Dori Palcovich, Business Advocate, Business Assistance Branch, DBEDT, P. O. Box 2359, Honolulu, HI 96804. Thank you for your assistance. Should you have any questions, please call Ms. Palcovich at 586-2594.

Sincerely,

for Denise Walker
Interim Chairperson

RE: SBRRB Meeting Agenda
Lum, Darryl C
to:
Dori Palcovich
02/19/2013 10:21 AM
Cc:
alec.wong, "Migita, Reef A", Myron.Honda
Hide Details
From: "Lum, Darryl C" <darryl.lum@doh.hawaii.gov>
To: "Dori Palcovich" <DPalcovi@dbedt.hawaii.gov>,
Cc: <alec.wong@doh.hawaii.gov>, "Migita, Reef A" <reef.migita@doh.hawaii.gov>, <Myron.Honda@doh.hawaii.gov>

2 Attachments

HAR11-54.pdf HAR11-5520130219.pdf

Hi Dori,

We had a few minor changes to HAR 11-55. Please see below. In Nos. 1 and 2 we are removing the proposed rule change and keeping the existing rules. In No. 3, we are revising language in the rules for clarification only. In No. 4 we are proposing to stagger the general permit expiration dates to avoid all of the general permits from expiring at the same time.

HAR 11-55-34.02: In the Small Business Impact Statement we indicated that language was added in HAR 11-55-34.02 for future HRS amendments to allow General Permits to be issued by order. We are removing this proposed provision based on discussions with our AG's office. **We will keep the existing language. No proposed changes.**

HAR 11-55-34.03: In the Small Business Impact Statement we indicated that language was added in HAR 11-55-34.03 to allow the DOH to continue processing NOIs and issue NGPCs under expired general permits for a period of up to 2 years while actively seeking readoption. We are removing this after discussion with EPA. **We will keep the existing language. No proposed changes.**

3. HAR 11-55, Appendix B
   - Section 2(a)(2) (Page 55-B-1): Removed exclusion of storm water discharges with effluent limitation guidelines promulgated by the EPA. The existing Table 34.1 of Appendix B, Note 9 (Page 55-B-34) requires permittees to comply with these effluent limitation guidelines. The CWB is already requiring all permittees to comply with effluent limitations promulgated by the EPA. **This proposed change is for clarification only.**
   - Section 8.b (Page 55-B-23): Added clarification that permittees need to comply with applicable non-numeric technology-based effluent limitations in the EPA's Multi-Sector General Permit. The CWB is already requiring this of all permittees. **This proposed change is for clarification only.**

Stagger Expiration Dates on All General Permits.

We are planning to staggering the expiration dates for all general permits. This was not included in the

Small Business Impact Statement. The decision to stagger the dates was based on recent discussions with EPA and our AG's office. The purpose is to avoid all of the general permits from expiring all at the same time.

- Will remove the October 2007 dates on the general permits and replace with a date stamp. The stamp is the date 10 days after filing with the Lieutenant Governor's office. The effective date of the general permit begins on the stamped date.

- Appendices G (dewatering), E (cooling water), F (hydrotesting), K (small MS4) will expire 3 years from the effective date.

- Appendices B (industrial storm water), D (leaking underground storage tank remedial activity), H (petroleum bulk station and terminal process water), I (well drilling) will expire 4 years from the effective date.

- Appendices C (construction storm water), J (recycled water systems), L (decorative ponds), M (pesticides) will expire 5 years from the effective date.

Attached is the revised HAR 11-55.

Also attached is HAR 11-54. This is the same file we gave you previously (no changes).

Thanks,
Darryl

Darryl Lum
Clean Water Branch
State of Hawaii Department of Health
Phone: (808) 586-4309
Fax: (808) 586-4352



**From:** Dori Palcovich [mailto:DPalcovi@dbedt.hawaii.gov]
**Sent:** Thursday, February 14, 2013 11:58 AM
**To:** Lum, Darryl C
**Subject:** RE: SBRRB Meeting Agenda

Hi Darryl:

Great. Thank you.

By the way, I'm attaching a corrected agenda. I had put "p.m." instead of "a.m." down.

Dori

From: "Lum, Darryl C" <darryl.lum@doh.hawaii.gov>
To: "Dori Palcovich" <DPalcovi@dbedt.hawaii.gov>,
Date: 02/14/2013 11:50 AM
Subject: RE: SBRRB Meeting Agenda

Hi Dori,

Thanks for the agenda. Alec Wong, Myron Honda, Reef Migita, and myself will be attending.

Thanks,
Darryl

Darryl Lum
Clean Water Branch
State of Hawaii Department of Health
Phone: (808) 586-4309
Fax: (808) 586-4352



**From:** Dori Palcovich [mailto:DPalcovi@dbedt.hawaii.gov]
**Sent:** Thursday, February 14, 2013 10:26 AM
**To:** Lum, Darryl C
**Subject:** SBRRB Meeting Agenda

Good morning Darryl:

Attached is the SBRRB's agenda for the Feb. 20th meeting.

Will you be attending?

Please advise.

Thank you.

Dori Palcovich

# SMALL BUSINESS REGULATORY REVIEW BOARD

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

Tel 808 586-2594
Fax 808586-2572



## CHAIR'S AGENDA

**Wednesday, February 20, 2013 ★ 9:30 a.m.**
**No. 1 Capitol District Building**
**250 South Hotel Street - Conference Room 436**

**I. Call to Order** – Margaret Ahn

**II. Discussion and Election of Acting Chair for February 20, 2013** – Mary Alice / Margaret Ahn

**III. Approval of the December 10, 2012 Minutes for 9:30 a.m., and 1:00 p.m. meetings**

**IV. New Business**

A. Proposed Amendments to Hawaii Administrative Rules (HAR) Title 11 Chapter 54 Water Quality Standards and HAR Title 11 Chapter 55 Water Pollution Control (Department of Health) – Darryl Lum, Alec Wong, Myron Honda, Reef Migita

B. Proposed Amendments to HAR Title 18 Chapter 235 Income Tax Law, Adoption of HAR Title 18 Chapter 235-12.5-01T and 235-12.5-06T, Relating to Renewal Energy Technology Income Tax Credit; Citations (Department of Taxation) – Ted Shiraishi, Administrative Rules Specialist

C. Proposed Amendments to Title 4 Chapter 143 Coffee (Department of Agriculture) – Jeri Kahana

D. Correspondence from Dora Beck, P.E., Acting Director, County of Hawaii, Department of Environmental Management, dated January 22, 2013, regarding "Small Business Impact Statement Education of Tourists Update," under Ordinance 12-1, Section 1, Article IV, Rules Relating to Plastic Bag Reduction – Chair / Barbara – No action to be taken - only follow-up to Dec.' review of Proposed Rule

**V. Legislative Matters**

A. Delegation of Authority to a Board Member and/or Staff to Submit Testimony at the State Legislature on behalf of the Board – Chair / Dori

B. Governor's Message No. 526, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Anthony Borge, for a term to expire June 30, 2015 – Chair – Does Board want to provide testimony for the individual board members?

C. Governor's Message No. 527, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Barbara Bennett, for a term to expire June 30, 2014

D. Governor's Message No. 528, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Chu Lan Shubert-Kwock, for a term to expire June 30, 2016

E. Governor's Message No. 529, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Howard Lum, for a term to expire June 30, 2014
F. Governor's Message No. 530, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Kyoko Kimura, for a term to expire June 30, 2016
G. Governor's Message No. 531, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Leslie Mullens, for a term to expire June 30, 2015

**VI. Board Administrative Matters**

A. Correspondence to State agencies requesting information required for Periodic Review; Evaluation Report, pursuant to Section 201M-7, Hawaii Revised Statutes (HRS) – Chair / Dori
B. Review Board's Brochure for update and outreach purposes – Chair / Barbara
C. Review Board's "Member" Webpage – Chair – do board members want their email addresses on the webpage?
D. Review of Public Agency and Meetings Records (Sunshine Law), Chapter 92 HRS – Barbara / Chu Lan / Margaret?
E. Leslie Mullens to facilitate discussion on: 1) Meeting etiquette; 2) Guiding principles and values as an advisory board; and 3) Questions to consider in decision-making – Leslie

**VII. Election of a Board Chair, pursuant to Section 201M-5(c), HRS, and Election of Vice Chair and Second Vice Chair - ?**

**VIII. Adjournment – Chair**

**IX. Next Meeting:** Scheduled for Wednesday, March 20, 2013, at 9:30 a.m., Conference Room 436, Capitol District Building, Honolulu, Hawaii

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

NEIL ABERCROMBIE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR

FREDERICK D. PABLO
DIRECTOR OF TAXATION

JOSHUA WISCH
DEPUTY DIRECTOR

STATE OF HAWAII
**DEPARTMENT OF TAXATION**
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560



January 4, 2013

Sharon L. Pang
Small Business Regulatory Review Board
Department of Business, Economic Development & Tourism
No. 1 Capitol District Building
Honolulu, Hawaii 96813

**Re: Proposed Changes to Chapter 18-235 "Income Tax Law," Hawaii Administrative Rules, adopting sections 18-235-12.5-01T and 18-235-12.5-06T, Relating to Renewable Energy Technologies Income Tax Credit; Citations.**

Dear Ms. Pang:

Please find enclosed, proposed changes to Chapter 18-235 "Income Tax Law," Hawaii Administrative Rules, adopting sections 18-235-12.5-01T and 18-235-12.5-06T, Relating to Renewable Energy Technologies Income Tax Credit; Citations, as well as the Small Business Impact Statement. Pursuant to Section 201M-2(b), Hawaii Revised Statutes (HRS), the Department of Taxation (Department) is transmitting these proposed administrative rules for your review and approval prior to seeking the Governor's approval to hold public hearings on the adoption. These proposed rules are simultaneously being submitted to the Department of the Attorney General for their review. In addition, the substance of these proposed rules have been adopted as temporary rules pursuant to the authority granted to the Department under section 231-10.7, HRS.

Section 235-12.5, HRS, provides an income tax credit for solar and wind renewable energy technology systems installed and placed in service during a taxable year. Wind energy systems qualify for a credit of twenty percent and solar energy systems qualify for a credit of thirty-five percent of actual costs. The credit for wind energy systems is capped at $1,500 per system for single-family residential property, $200 per unit per system for multi-family residential property, and $500,000 per system for commercial property.

For solar energy systems primarily used to heat water for household use, the credit is capped at $2,250 per system for single-family residential property, $350 per unit per system for multi-family residential property, and $250,000 per system for commercial property. Finally, for all other solar energy systems (including photovoltaic), the credit is capped at $5,000 per system

for single-family residential property, $350 per unit per system for multi-family residential property, and $500,000 per system for commercial property.

The term "solar or wind energy system" is defined in section 235-12.5(c), HRS, as "any identifiable facility, equipment, apparatus, or the like that converts solar or wind energy to useful thermal or electrical energy for heating, cooling, or reducing the use of other types of energy that are dependent upon fossil fuel for their generation." This definition lacks clarity as to the number of "systems" that a taxpayer has installed and placed in service. Previously, the Department issued Tax Information Release (TIR) 2007-02, TIR 2010-02, and TIR 2010-03 in an attempt to quantifiably define the term "system," as used in section 235-12.5, HRS, with limited success.

These proposed administrative rules set forth "total output capacity" requirements for solar energy systems such as photovoltaic systems. The "total output capacity" requirements are as follows: single-family residential systems must be at least 5 kilowatts, multi-family residential systems must be at least 0.360 kilowatts per unit, and commercial systems must be at least 1,000 kilowatts. For a photovoltaic system, total output capacity is calculated by multiplying the maximum power of each cell, module or panel under Standard Test Conditions by the number of cells, modules or panels installed and placed in service on a single property during a taxable year.

These proposed administrative rules provide exceptions for systems that do not meet the total output capacity requirement where only one system has been installed and placed in service on one property and where more than one system has been installed and placed into service on a property and only one system does not meet the total output capacity requirement.

These proposed administrative rules also define other terms relevant to the application and calculation of the tax credit. In addition, the rules codify previous Department guidance on when a system serves multiple properties, mixed-use properties, and allocation methods under both types of installations.

If you have any question please contact the Department at (808) 587-1540.

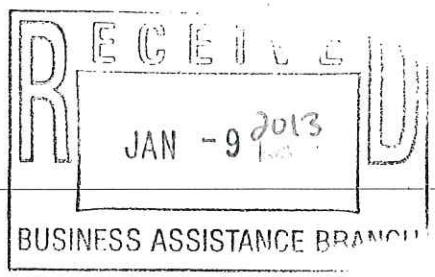
Sincerely,

Frederick D. Pablo

FREDERICK D. PABLO
Director of Taxation

Enclosures

"SMALL BUSINESS IMPACT STATEMENT"




**DEPARTMENT OR AGENCY:**

Department of Taxation (Department)

**Chapter and Title:**

Hawaii Revised Statutes (HRS), Chapter 235, Income Tax Law

Hawaii Administrative Rules (HAR), Chapter 18-235, Income Tax Law

**Name and Phone Number of Contact Person:**

Ted S. Shiraishi, Administrative Rules Specialist, ted.s.shiraishi@hawaii.gov, 587-1569
Jacob L. Herlitz, Acting Rules Officer, 587-5334

**A. Description:**
**_XX_ New rule(s) ___Repeal of Rule ___Amendment to rule(s)**

**B. Provide the following information described in Items 1-7 of the Policy Section in the Governor's *Administrative Directive No. 09-01*:**

**1. Exact Changes and Reasons for Changes.**

**Exact Changes**

Section 18-235-12.5-01T of the proposed administrative rules sets forth definitions for the following terms: (1) "actual cost"; (2) "commercial property"; (3) "installed and placed in service"; (4) "mixed-use property"; (5) "multi-family residential property"; (6) "property"; (7) "renewable energy technology system"; (8) "residence"; (9) "single-family residential property"; (10) "Standard Test Conditions"; and (11) "total output capacity."

Section 18-235-12.5-01T(a)(3) of the proposed administrative rules defines "installed and placed in service." Prior to defining "installed and placed in service" in §18-235-12.5-01T(a)(3), the Department's position for residential systems was that any outstanding building and electrical permits needed to be closed in order for the system to be deemed "installed and placed in service." It is the Department's understanding that the various county building and electrical inspectors have been overwhelmed by the number of final inspection requests and are not able to keep up with the demand at this time. The new definition of "installed and placed in service" helps to alleviate this issue by allowing the RETITC to be claimed when: (1) the actual cost is incurred (this covers cash and accrual basis taxpayers); (2) all installation, including all related electrical work, has been completed; and (3) any required requests for inspection of the installation has been received by the appropriate government agency.

However, if the residential installation fails to pass all the required inspections the credit is properly claimed in the taxable year in which the system passes such inspection. The following examples illustrate this concept:

- If a request for any required inspection is received by the appropriate government agency in December of 2012 and the system passes inspection in January of 2013, the credit is properly claimed in the 2012 taxable year.
- If a request for any required inspection is received by the appropriate government agency in December of 2012 and the system fails such inspection in January of 2013, the credit is properly claimed in the 2013 taxable year.
- If a request for any required inspection is received by the appropriate government agency in October of 2012 and the system fails the first inspection in November of 2012, but passes a second inspection in December of 2012 the credit is properly claimed in the 2012 taxable year.

"Total output capacity" is the starting point for computing the RETITC for "other solar energy systems," such as photovoltaic systems. "Total output capacity" means the combined individual output capacities (maximum power) of all identifiable facilities, equipment, apparatus, or the like, that make up the renewable energy technology system installed and placed in service during a taxable year measured in kilowatts. For photovoltaic systems, "total output capacity" is the maximum power of each cell, module, or panel at Standard Test Conditions in kilowatts multiplied by the number of cells, modules, or panels installed and placed in service during the taxable year. The maximum power of the cell, module or panel must be obtained from the equipment specifications published by the manufacturer.

In order to claim the RETITC for more than one system installed and placed in service on single property, each system must meet the applicable "total output capacity" requirement set forth in §18-235-12.5-03T(a)(1) through (3), unless the exception under §18-235-12.5-03T(b)(2) applies. The "total output capacity" requirements are as follows:

- Single-family residential property – at least 5 kilowatts per system
- Multi-family residential property – at 0.360 kilowatts per unit per system
- Commercial property – at least 1,000 kilowatts per system

Under §§18-235-12.5-03T(b)(1) and (b)(2) respectively, a credit may be claimed for a system which does not meet the applicable "total output capacity" requirement where:

- Only one system has been installed and placed in service on a single property during a taxable year; or
- More than one system has been installed and placed in service on a single property during a taxable year and only one of those systems fails to meet the applicable "total output capacity" requirement.

The "total output capacity" exceptions, provided under §18-235-12.5-03T(b)(1) and (2), apply to "other solar energy systems" installed for all property classifications including single-family residential, multi-family residential, commercial, and mixed-use properties.

In addition, the proposed administrative rules codify previous Department guidance regarding systems which serve multiple properties, mixed-use properties, and allocation methods under both types of installations.

**Justification of Proposed Administrative Rules**

The term "solar or wind energy system" is defined in §235-12.5(c), HRS, as "any identifiable facility, equipment, apparatus, or the like that converts solar or wind energy to useful thermal or electrical energy for heating, cooling, or reducing the use of other types of energy that are dependent upon fossil fuel for their generation." This definition lacks clarity as to the number of "systems" that a taxpayer has installed and placed in service, and the requirements that need to be met in order to claim the RETITC for more than one system installed on a single property during a taxable year. The Department issued Tax Information Release (TIR) 2007-02, TIR 2010-02, and TIR 2010-03 in an attempt to quantifiably define the term "system," as used in §235-12.5, HRS, with limited success.

As indicated by varying taxpayer interpretations of "system" and the number of inquiries that the Department has received regarding the definition of "system" from both taxpayers and tax practitioners since the issuance of the TIRs in 2010, it is clear that the existing TIRs do not sufficiently and clearly define the term "system." Moreover, as written, the current TIRs prevent the Department from administering the tax credit in a consistent, uniform and fair manner. By clarifying and simplifying the definition of "system," the Department will be able to provide taxapayers and tax practitioners with clarity, as well as assist with the administration and audit of claims for the tax credit when applicable.

The proposed administrative rules allow for a consistent and objective calculation of the RETITC. By eliminating the previously subjective nature of the calculation, the businesses and consumers will gain confidence in knowing the exact amount of the RETITC that the installation qualifies for. Tax practitioners will benefit because the RETITC amount submitted to them by the taxpayers can be independently verified without any knowledge of electrical engineering, and/or the design and installation of renewable energy technology systems.

**2. Nature of Proposed Changes.**

**a. Is the proposed rule authorized by a federal or state law or statute that does not require an agency to interpret or describe the requirements of the law or statute?**

**___Yes _XX_ No**

**b. Is the proposed rule an emergency regulation?**

**___Yes _XX_ No**

**c. Will the proposed rule affect small business because it:**

1) **will apply to a for-profit enterprise consisting of fewer than 200 full-time or part-time employees?**
**_XX_ Yes ___No**

2) **will cause a direct and significant economic burden upon a small business?**
**___ Yes _XX_ No**

3) **is directly related to the formation, operation, or expansion of a small business?**
**___Yes _XX_ No**

**Provide the information requested in only Items 3-7 (Skip items 8-11):**

- **If you answered YES to either Item 2.a. or Item 2.b.; or**
- **If you answered NO to Item 2.c. 1); or**
- **If you answered YES to Item 2.c. 1) and NO to both Item 2.c. 2) and Item 2.c. 3).**

NOTE: Although the Department answered YES to Item 2.c. 1 and NO to both Item 2.c. 2 and Item 2.c. 3, the Department has answered items 8-11 to better inform the SBRRB concerning the impact of these rules on small businesses.

3. **Departmental Impact (i.e. fiscal, personnel, program)?**
**_XX_ Yes __No (If yes, describe long and short-range impacts, estimated in dollar amounts or personnel, due to enforcement, administration, execution, or implementation of the proposed rule that may result in a savings or shortfall under the current program budget.)**

As the Department is charged with administering Hawai'i tax laws, the Department believes that these proposed administrative rules will be easier to administer as knowledge of electrical engineering and/or design and installation of renewable energy technology systems will no longer be necessary to administer the RETITC. Department personnel who handle taxpayer inquiries will be able to explain the proper calculation of the RETITC to taxpayers who request assistance. Department compliance personnel (audit, collection, etc.) will be able to determine whether the RETITC was properly claimed through taxpayer substantiation and simple math calculations without any knowledge of electrical engineering and/or the design and installation of renewable energy technology systems.

4. **Impact on General Public (i.e. individuals, consumers, and businesses)?**
**_XX_ Yes ___ No (If yes, describe long- and short-range impacts due to the enforcement, implementation, or execution of the proposed rule.)**

The proposed administrative rules will have a positive effect on consumers and businesses. The TIRs issued in 2007 and 2010 allows taxpayers to use different methods to calculate how much tax credit a taxpayer may claim. The lack of clear objective standards to calculate the tax credit created an unlevel playing field among renewable energy technology

installation companies, as well as allowed for different interpretations of how to calculate the tax credit amount.

By providing a simple method by which everyone can properly calculate the RETITC, consumers will be confident in the price quotes that they receive as the RETITC amounts can be self-verified. The businesses selling and installing renewable energy technology systems will also benefit because the proposed administrative rules have the effect of leveling the playing field by eliminating the use of different interpretations of the TIRs that allowed some renewable energy technology installation businesses to gain an advantage over similar businesses. Under the proposed administrative rules, the number of systems will not vary when purchasing a system with the same "total output capacity;" therefore, the RETITC amount that a taxpayer qualifies for will have little variance from seller to seller. Consumers will then be able to evaluate the value of every price quote received.

Tax practitioners and tax return preparers will also benefit from the proposed administrative rules. Under prior Department guidance issued regarding the definition of "system," tax practitioners and tax return preparers were preparing the RETITC forms based on the amounts indicated on the purchase contracts prepared by the renewable energy installation businesses without any way to verify that the number of "systems" for which the RETITC could be claimed was correct.

**5. Impact on state economy?**
**__XX__ Yes ___ No (If yes, describe long and short-range impacts.)**

The Department anticipates that the economy will benefit both in the long term and short term because the proposed administrative rules allow for consistent, uniform and fair administration of the RETITC. In particular, the proposed administrative rules will ensure that similarly situated taxpayers will be able to claim the same or very similar amounts of the RETITC.

**6. Final result anticipated from the proposed rule change.**

The Department anticipates that consumers and businesses will embrace and benefit from the proposed administrative rules because the absolute clarity that the proposed administrative rules provide in terms of the number of "systems" installed and placed in service.

**7. Other alternatives explored to carry out the statutory purpose other than rulemaking.**

Prior to issuing the proposed administrative rules, the Department issued three TIRs in an attempt to define "system" for the purposes of the RETITC. Through discussion with Department of The Attorney General, Tax Division, the Department learned that administrative rules are necessary in cases where the proposed rules set forth an interpretation of a statute that may not be reasonably derived from the face of the statute itself.

**8. Is there a new or increased fee or fine?**

**___Yes _XX_No If yes, provide the following information:**

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

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

---

**b. Reason for new or increased fee or fine.**

**c. Administrative cost to implement or enforce the proposed rule.**

**d. Amount agency expects to collect annually from change in fee or fine.**

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

**f. Criteria used to determine amount of fee or fine. (Example: cost of specific service, general overhead or overall program cost, or no relationship to cost).**

**9. Will the proposed rule affect small business?**

**_XX_Yes ___No If yes, provide the following information:**

**a. Describe the type(s) of small business that will be directly or adversely affected by, bear the costs of, or directly benefit from the proposed rule.**

The small businesses that will be affected are the seller and installers of the renewable energy technology systems, tax practitioners, and tax return preparers. As discussed above, the Department anticipates that fairness provided by the proposed administrative rules will benefit the affected businesses by leveling the playing field.

**b. Description of any increase in direct costs, in estimated dollar amounts, to small business, such as fees or fines, or other direct costs associated with compliance.**

The proposed administrative rules should not have the effect of increasing direct costs because the RETITC is claimed by the taxpayer, not by the seller or installer.

**c. Description of any increase in indirect costs, in estimated dollar amounts, to small business, such as reporting, record keeping, equipment, construction, labor, professional services, revenue loss or other costs associated with compliance.**

There are no additional indirect costs that would be incurred by the adoption of the proposed administrative rules.

**d. Description of how small business was involved in the development of the proposed rules.**

Since 2011, the Department has met with tax practitioners and representatives from the various solar industry associations to hear their concerns arising from the TIRs released in 2007 and 2010. The Department also met with industry representatives and state legislators during and after the 2012 legislative session. Although there has been much discussion related to the tax credit in general, the renewable energy industry does not have a unified position regarding how to address the definition of "system."

With no clarifying amendments made to the tax credit statute in 2012, the Department is using its administrative authority to clarify the definition of "system" for taxpayers and tax practitioners to insure that the tax credit law is applied in a consistent, uniform and fair manner. Most renewable energy technology businesses do not apply for the tax credit themselves; their customers are the taxpayers who must understand and properly claim the tax credit. Therefore, providing clarity and certainty in the calculation of the tax credit, insures that all businesses are competing on a level playing field.

**e. Methods considered or used to reduce the impact on small business such as:**

**Simplification,**
**Consolidation,**
**Varying schedule for fees or fines,**
**Modified compliance or reporting requirements, or**
**Other alternative or less stringent measures proposed by affected businesses and, if proposed, why those proposals were not adopted.**

These proposed administrative rules simply seek to provide objective clarity to the number of credits that an installation will qualify for. Small businesses are generally not impacted because the taxpayer (or customer of the small business) is actually claiming the RETITC.

**f. If the proposed rule is more stringent than those mandated by governing federal or state law or statute, explain how and why the proposed rule is more stringent.**

Not applicable.

# TEMPORARY ADMINISTRATIVE RULES

**THESE ADMINISTRATIVE RULES ARE TEMPORARY RULES ISSUED PURSUANT TO SECTION 231-10.7, HAWAII REVISED STATUES.**

**AS TEMPORARY RULES, THESE ADMINISTRATIVE RULES BECOME EFFECTIVE SEVEN DAYS AFTER PUBLIC NOTICE IS ISSUED. THESE TEMPORARY ADMINISTRATIVE RULES TAKE EFFECT ON**

_____.

**TEMPORARY ADMINISTRATIVE RULES ARE EFFECTIVE FOR EIGHTEEN MONTHS. THESE TEMPORARY ADMINISTRATIVE RULES WILL EXPIRE ON**

_____.

**PERMANENT ADMINISTRATIVE RULES, SUBJECT TO PROCEDURAL REQUIREMENTS OF CHAPTER 91, HAWAII REVISED STATUTES, (THE HAWAII ADMINISTRATIVE PROCEDURES ACT), ARE SIMULTANEOUSLY BEING PROPOSED FOR FORMAL ADOPTION.**

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DEPARTMENT OF TAXATION

Adoption of Temporary Rules of
the Department of Taxation
Relating to the Renewable Energy Technologies;
Income Tax Credit; Citations,
§18-235-12.5-01T through §18-235-12.5-06T
Hawaii Administrative Rules

November 5, 2012

SUMMARY

1. Temporary Rules of the Department of Taxation, Relating to the Renewable Energy Technologies; Income Tax Credit; Citations, §18-235-12.5-01T through §18-235-12.5-06T, are adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 18

DEPARTMENT OF TAXATION

CHAPTER 235

INCOME TAX LAW
RENEWABLE ENERGY TECHNOLOGIES; INCOME TAX CREDIT;
CITATIONS

1. Chapter 18-235, Hawaii Administrative Rules is amended by adding a new section 18-235-12.5-01T to read as follows:

"**§18-235-12.5-01T Definitions.** (a) As used in section 235-12.5, HRS, and sections 18-235-12.5-01T through 18-235-12.5-05T:

(1) "Actual cost" means the amounts actually paid for renewable energy technology systems under section 235-12.5, HRS, subsection (a), including peripheral equipment ordinarily and necessarily required for system operation and installation. The amounts actually paid shall not include any consumer incentive payments or premiums offered with the system, regardless of when such payment or premium is made to the customer, and shall not include any amount for which another credit is claimed under chapter 235, HRS. Any costs incurred and paid for the repair, construction, or reconstruction of a structure in conjunction with the installation and placing in service of a solar or wind energy system shall not constitute a part of actual cost for the purposes of section 235-12.5, HRS.

(2) "Commercial property" means a property which cannot be properly characterized as residential or mixed-use property. A hotel, or any other place in which lodgings are regularly furnished to transients for consideration, in which all of the rooms, apartments, suites, or the like are occupied by a transient for less than one hundred eighty consecutive days for each letting will be considered commercial property to the extent of that use.

(3) "Installed and placed in service" means that the system is ready and available for its specific use. With respect to systems installed for residential property, all requirements will be completed and a system will be deemed to be

installed and placed in service when: (1) The actual cost has been incurred; (2) all installation, including all related electrical work, has been completed; and (3) any required requests for inspection of the installation has been received by the appropriate government agency. However, if the residential installation fails to pass all the required inspections the credit is properly claimed in the taxable year in which the system passes such inspection.

(4) "Mixed-use property" means a property on which at least one residence exists and commercial activity takes place.

(5) "Multi-family residential property" means a property on which more than one residence is located. The determination that property is multi-family residential property is fact specific, but in general and in the absence of other relevant facts to the contrary, multi-family residential property will be real property that is described in a recorded title and that has more than one mailing address or separate entrances to separate living areas. The following exceptions may apply:

(A) The Ohana House Exception: If a single property has two separate residences, each occupied by members of a family as defined in the Internal Revenue Code, section 267(b)(1), then each residence will be considered a separate single-family residential property if the system services both residences. Partners in a civil union will also be considered members of a family for the purpose of this exception; or

(B) The Directed Use Exception: If a system only services one residence on a multi-family residential property, then the system will be treated as servicing a single-family residential property.

(6) "Property" means a single, definable portion of real property located in the State as described in a title recorded with the Bureau of

Conveyances or Land Court of the state of Hawaii and that the applicable law allows to be sold in fee simple separately from any other real property located in the State. For purposes of the Renewable Energy Technologies Income Tax Credit under section 235-12.5, HRS, all such titled property in the State is to be characterized as commercial, residential, or a mix of the two (mixed-use).

(7) "Renewable energy technology system" means a new system that captures and converts a renewable source of energy, such as solar or wind energy, into a usable source of thermal or mechanical energy, electricity, or fuel.

(8) "Residence" means dwelling place or place of habitation, an abode.

(9) "Single-family residential property" means a property on which one residence is located.

(10) "Standard Test Conditions" means 25 degrees Celsius cell/module temperature, 1,000 watts per square meter ($W/m^2$) irradiance, air mass 1.5(AM 1.5) spectrum.

(11) "Total output capacity" means the combined individual output capacities (maximum power) of all identifiable facilities, equipment, apparatus or the like that make up the renewable energy technology system installed and placed in service during a taxable year measured in kilowatts. The total output capacity of a solar energy system shall be calculated using the manufacturer's published specifications of the components of the solar energy system. Generally, for photovoltaic solar energy systems, total output capacity is the output capacity (maximum power) of each cell, module or panel at Standard Test Conditions in kilowatts multiplied by the number of cells, modules or panels installed and placed into service during a taxable year. The amount of energy actually produced is not relevant to calculating total output capacity." [Eff ] (Auth: HRS §§231-10.7, 235-12.5) (Imp: HRS §235-12.5)

2. Chapter 18-235, Hawaii Administrative Rules is amended by adding a new section 18-235-12.5-02T to read as follows:

"**§18-235-12.5-02T** [Reserved]"

3. Chapter 18-235, Hawaii Administrative Rules is amended by adding a new section 18-235-12.5-03T to read as follows:

"**§18-235-12.5-03T Other Solar Energy Systems.** (a) "Solar energy system" means any identifiable facility, equipment, apparatus, or the like that converts solar energy to useful thermal or electrical energy for heating, cooling, or reducing the use of other types of energy that are dependent upon fossil fuel for their generation. Unless subsection (b) applies, each solar energy system installed and placed in service on or after January 1, 2013 shall have a total output capacity at Standard Test Conditions as follows:

(1) Single-family residential property: For credits calculated under section 235-12.5(a)(1), HRS, and capped under section 235-12.5(b)(2)(A), HRS, each system for which a credit is claimed shall have a total output capacity of at least 5 kilowatts.

(2) Multi-family residential property: For credits calculated under section 235-12.5(a)(1), HRS, and capped under section 235-12.5(b)(2)(B), HRS, each system for which a credit is claimed shall have a total output capacity of at least 0.360 kilowatts per unit per system.

(3) Commercial property: For credits calculated under section 235- 12.5(a)(1), HRS, and capped under section 235-12.5(b)(2)(C), HRS, each system for which a credit is claimed shall have a total output capacity of at least 1,000 kilowatts.

**Example 1:** Taxpayer installs and places into service solar energy equipment including 20 photovoltaic panels, each of which has an output capacity (maximum power) of 0.250 kilowatts on a single-family

residential property. The installation has a total output capacity of 5 kilowatts (0.250 kilowatts times 20 photovoltaic panels). One system has been installed and placed into service for the purpose of calculating the credit. The actual cost of the system may not be divided in order to claim multiple credits because the solar energy system only meets the total output capacity requirement for one system.

**Example 2:** Taxpayer installs and places into service solar energy equipment including 40 photovoltaic panels, each of which has an output capacity (maximum power) of 0.180 kilowatts on a multi-family residential property. The installation has a total output capacity of 7.2 kilowatts (0.180 kilowatts times 40 photovoltaic panels). If the installation serves 20 units, the total output capacity for each system must be at least 7.2 kilowatts (0.360 kilowatts times 20 units). One system has been installed and placed into service for the purpose of calculating the credit.

**Example 3:** Taxpayer installs and places into service solar energy equipment including 4,000 photovoltaic panels, each of which has an output capacity (maximum power) of 0.250 kilowatts on a commercial property. The installation has a total output capacity of 1,000 kilowatts (0.250 kilowatts times 4,000 photovoltaic panels). Since each system must have a total output capacity of at least 1,000 kilowatts, one system has been installed and placed into service for the purpose of calculating the credit.

**Example 4:** Taxpayer installs and places into service solar energy equipment including 40 photovoltaic panels, each of which has an output capacity (maximum power) of 0.250 kilowatts on a single-family residential property. The installation has a total output capacity of 10 kilowatts (0.250 kilowatts times 40 photovoltaic panels). Since each system must have a total output capacity of at least 5 kilowatts, two

systems have been installed and placed into service for the purpose of calculating the credit.

**Example 5:** During March of a taxable year, Taxpayer installs and places into service solar energy equipment including 10 photovoltaic panels, each of which has an output capacity (maximum power) of 0.250 kilowatts on a single-family residential property. During August of the same taxable year, Taxpayer installs and places into service additional equipment including 10 photovoltaic panels, each of which also has an output capacity (maximum power) of 0.250 kilowatts on the same the single-family residential property. The total output capacity of both installations is 5 kilowatts [(0.250 kilowatts times 10 photovoltaic panels)+ (0.250 kilowatts times 10 photovoltaic panels)] because the output capacity of both installations must be combined. Since each system must have a total output capacity of at least 5 kilowatts, one system has been installed and placed into service for the purpose of calculating the credit.

(b) The credit may be claimed for one solar energy system installed and placed in service per property which fails to meet the applicable total output capacity requirement as set forth in subsections (a)(1) through (a)(3), where:

(1) Only one solar energy system, for the purposes of the credit, has been installed and placed in service during a taxable year on a single property; or

(2) More than one solar energy system, for the purposes of the credit, has been installed and placed in service during a taxable year on a single property and one of the systems fails to meet the applicable total output capacity requirement.

**Example 6:** Taxpayer installs and places into service solar energy equipment including 10 photovoltaic panels, each of which has an output capacity (maximum

power) of 0.250 kilowatts on a single-family residential property. The installation has a total output capacity of 2.5 kilowatts (0.250 kilowatts times 10 photovoltaic panels). Although the system does not meet the total output capacity requirement, subsection (b)(1) permits the claiming of the credit because only one system has been installed and placed into service on one property.

**Example 7:** Taxpayer installs and places into service solar energy equipment on a single-family residential property which has a total output capacity of 7.5 kilowatts and an actual cost of $37,500. In order to calculate the credit, the actual cost per kilowatt must be determined by dividing the actual cost by the total output capacity. The actual cost per kilowatt is $5,000 ($37,500 divided by 7.5 kilowatts). Since a system installed and placed in service on a single-family residential property must have a total output capacity of at least 5 kilowatts, the actual cost of the first system is $25,000 ($5,000 times 5 kilowatts). The credit for the first system is $5,000 because thirty-five percent of $25,000 exceeds the applicable cap of $5,000. A credit for the second system may also be claimed because subsection (b)(2) permits taxpayers to claim the credit for one system per property that fails to meet the total output capacity requirement. The actual cost of the second system is $12,500 ($5,000 times 2.5 kilowatts). The credit for the second system is $4,375 or thirty-five percent of $12,500." [Eff ] (Auth: HRS §§231-10.7, 235-12.5) (Imp: HRS §235-12.5)

4. Chapter 18-235, Hawaii Administrative Rules is amended by adding a new section 18-235-12.5-04T to read as follows:

"**§18-235-12.5-04T** [Reserved]"

5. Chapter 18-235, Hawaii Administrative Rules is amended by adding a new section 18-235-12.5-05T to read as follows:

"**§18-235-12.5-05T Multiple Properties and Mixed-use Property.** (a) Property will be considered residential or mixed-use if any portion of the property is being used as a residence. If at the time of installation and placing in service of the system the property is not occupied, then property will be considered residential or mixed-use if any portion of the property is intended for use as a residence.

(b) Allocation. Where a single system is installed and placed in service to serve more than one property or to service a mixed-use property the taxpayer shall apply a reasonable allocation method such as square footage or a measure of use as follows:

(1) For a system installed and placed in service to serve more than one property, the actual cost of a single system servicing multiple properties is allocated among the properties. The actual cost of other solar energy systems shall be allocated in a manner consistent with section 18-235-12.5-03T. With multiple properties, the appropriate cap is applied for each separate property.

**Example 1:** Assume Taxpayer installs and places into service a wind farm that services one community of 50 single-family homes and 10 separate commercial properties. Each property is equal in size and use, the allocation of the actual cost would be made equally to each property. Further assume that a $600,000 wind-powered system were installed and placed in service for these properties, the credit would be calculated as follows: Allocation of cost: The actual cost of $600,000 would be divided equally among the properties, allocating $10,000 to each property. Single-family residential: Each single-family residential property would be treated

independently. In each case, twenty percent of $10,000, or $2,000, would be compared against the $1,500 single-family residential property cap. Under the facts of this example, each single-family residential property would generate a $1,500 credit, for a total of $75,000 (50 properties times $1,500). Commercial: Each commercial property would be treated independently. In each case, twenty percent of $10,000, or $2,000, would be compared against the $500,000 commercial property cap. Under the facts of this example, each commercial property would generate a $2,000 credit, for a total of $20,000 (10 properties times $2,000). The total credit for the $600,000 wind-powered system is $1,500 for each single-family residential property ($75,000) plus $2,000 for each commercial property ($20,000) for a total credit of $95,000.

**Example 2:** Taxpayer, an independent energy provider installs and places into service a wind farm that does not service any particular property, but is entirely directed into the energy grid of the local electricity provider. The renewable energy technology system will be considered to be servicing commercial property only; no allocation is necessary. However, if an identifiable connection exists to customers situated on the property where the power is produced in addition to a connection to the energy grid of the local electricity provider, then the cost of the system must be allocated among and between the particular property or properties being serviced and the connection to the energy grid, which is treated as servicing a single commercial property.

**Example 3:** Taxpayer installs and places into service solar energy equipment for a condominium that contains both residential and commercial units. Each condominium unit has a separate

title, so each unit would be treated as a separate property. The taxpayer must reasonably allocate the actual cost of the system between the residential and commercial properties. The condominium contains 50 single-family units and 10 commercial units of equal size and use, and a $600,000 photovoltaic energy system that has a total output capacity of 60 kilowatts. The credit is calculated as follows: Allocation of cost: The actual cost per kilowatt is $10,000 ($600,000 divided by 60 kilowatts). Since there are 60 separate units that have equal energy use, the actual cost of a 1 kilowatt portion of the installation must be allocated to each unit. Thus, actual cost of $600,000 would be divided equally among the 60 properties, allocating $10,000 to each property. Single-family residential: Although each system does not meet the total output capacity requirement, subsection 18-235-12.5-03T(b)(1) allows a credit to be claimed for each system because only one system has installed and placed into service on each property. Each single-family residential condo unit would be treated independently. In each case, thirty-five percent of $10,000, or $3,500, would be compared against the $5,000 single-family residential property cap. Under the facts of this example, each single-family residential property would generate a $3,500 credit, for a total of $175,000 (50 units times $3,500). Commercial: Each commercial condo unit would be treated independently. In each case, thirty-five percent of $10,000, or $3,500, would be compared against the $500,000 commercial property cap. Each commercial property would generate a $3,500 credit, for a total of $35,000 (10 properties times $3,500). The total credit for the $600,000 photovoltaic energy system is $3,500 for each single-family condo unit ($175,000) plus $3,500 for each commercial condo unit ($35,000) for a total credit of $210,000.

(2) For a system installed and placed in service to service a mixed-use property, the actual cost of the system is allocated between the residential use (which may be single-family use or multiple-family use) and the commercial use. For a photovoltaic energy system, thirty-five percent of the cost allocated to residential use is compared against either the single-family residential cap or the multiple-family residential cap; and thirty-five percent of the cost allocated to commercial use is compared against the commercial property cap.

**Example 4:** Taxpayer is a farmer and has a dwelling and barn on one of the lots which is considered to be a mixed-use property. Taxpayer installs and places into service a renewable energy technology system that only services the barn. Allocation by use results in the system being subject only to the commercial property limitations. (Note: This is not an example of the directed use exception; an allocation would still be made, but it would be a 0% residential/100% commercial allocation based upon use.)

**Example 5:** Same facts as Example 4, but the system services both the barn and the dwelling. A portion of the system's actual cost would be subject to the commercial property limitations and the rest would be subject to the single-family residential property limitations.

**Example 6:** Taxpayer installs and places into service renewable energy technology equipment for an apartment complex that contains both residential and commercial units. Each unit is not separately titled, so each unit would not be treated as separate property. Instead, the titled property is the entire apartment complex. Since the titled property is mixed-use, the taxpayer will have to reasonably allocate the

actual cost of the system between the residential and commercial uses of the property. The complex contains 50 single-family units and 10 commercial units of equal size and use, and a $600,000 photovoltaic energy system that has a total output capacity of 60 kilowatts. The credit would be calculated as follows: Allocation of cost: The actual cost per kilowatt is $10,000 ($600,000 divided by 60 kilowatts). Since each of the units has an equal energy use, the actual cost of $600,000 would be divided between residential use of the property and the commercial use of the property, allocating $500,000 ($10,000 times 50 units) to the residential use and $100,000 ($10,000 times 10 units) to the commercial use. Residential Use: Since the property contains more than one residence, the proper characterization of this use is multi-family residential. Because the installation serves 50 residential units, the total output capacity of each system must be at least 18 kilowatts (0.360 kilowatts times 50 units). The total output capacity of the residential portion of the installation is 50 kilowatts. For the purpose of calculating the credit, two systems that meet the total output capacity requirement and one system that fails to meet the requirement have been installed and placed into service. The actual cost for each of the two systems which meet the 18 kilowatt total output capacity requirement is $180,000 ($10,000 times 18 kilowatts) each. Thirty-five percent of $180,000, or $63,000, would be compared against the multi-family residential property cap, or $17,500 ($350 times 50 units). Because the credit is capped at $17,500 per system, the total credit for the two systems that meet the total output capacity requirement is $35,000 ($17,500 plus $17,500). The third system has an actual cost of $140,000 ($10,000 times 14 kilowatts). Although the system does not meet the total output capacity requirement the credit may be

claimed under subsection 18-235-12.5-03T(b)(2). Thirty-five percent of $140,000, or $49,000, would be compared against the multi-family residential property cap, or $17,500 ($350 times 50 units). The credit for the third system is $17,500 due to the cap. The total credit for the three systems serving the multi-family residential portion of the property is $52,500 ($17,500 times 3 systems). Commercial Use: Each system serving commercial property must have a total output capacity of at least 1,000 kilowatts. The total output capacity of the installation serving the commercial portion of the property is 10 kilowatts and the actual cost is $100,000 ($10,000 times 10 kilowatts). Since the portion of the installation serving commercial property fails to meet the total output capacity requirement and the credit is already claimed for a system that does not meet the applicable total output capacity requirement on a single property, a credit may not be claimed for the installation that serves the commercial portion of the property. The total credit for the entire $600,000 solar energy installation is $52,500. Note: A credit for the commercial part of the installation may have been claimed if the credit for the third multi-family residential system had not been claimed." [Eff ] (Auth: HRS §§231-10.7, 235-12.5) (Imp: HRS §235-12.5)

6. Chapter 18-235, Hawaii Administrative Rules is amended by adding a new section 18-235-12.5-06T to read as follows:

"**§18-235-12.5-06T Application of sections 18-235-12.5-01T through 18-235-12.5-05T.** Sections 18-235-12.5-01T through 18-235-12.5-05T shall apply to renewable energy technology systems that are installed and placed in service on or after January 1, 2013. To the extent that sections 18-235-12.5-01T through 18-235-12.5-05T conflict with guidance issued by the

department prior to January 1, 2013, these sections shall prevail." [Eff ] (Auth: HRS §§231-10.7, 235-12.5) (Imp: HRS §235-12.5)

# TEMPORARY ADMINISTRATIVE RULES

**THESE ADMINISTRATIVE RULES ARE TEMPORARY RULES ISSUED PURSUANT TO SECTION 231-10.7, HAWAII REVISED STATUES.**

**AS TEMPORARY RULES, THESE ADMINISTRATIVE RULES BECOME EFFECTIVE SEVEN DAYS AFTER PUBLIC NOTICE IS ISSUED. THESE TEMPORARY ADMINISTRATIVE RULES TAKE EFFECT ON**

**_____.**

**TEMPORARY ADMINISTRATIVE RULES ARE EFFECTIVE FOR EIGHTEEN MONTHS. THESE TEMPORARY ADMINISTRATIVE RULES WILL EXPIRE ON**

**_____.**

**PERMANENT ADMINISTRATIVE RULES, SUBJECT TO THE PROCEDURAL REQUIREMENTS OF CHAPTER 91, HAWAII REVISED STATUTES, (THE HAWAII ADMINISTRATIVE PROCEDURES ACT), ARE SIMULTANEOUSLY BEING PROPOSED FOR FORMAL ADOPTION.**

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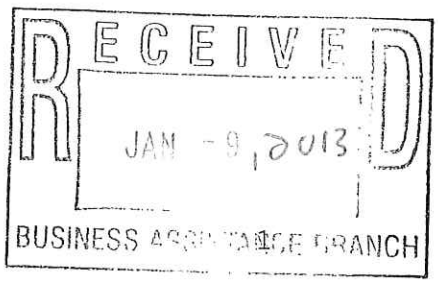
DEPARTMENT OF TAXATION

Adoption of Temporary Rules of
the Department of Taxation
Relating to the Renewable Energy Technologies;
Income Tax Credit; Citations,
§18-235-12.5-01T through §18-235-12.5-06T
Hawaii Administrative Rules

November 5, 2012

SUMMARY

1. Temporary Rules of the Department of Taxation, Relating to the Renewable Energy Technologies; Income Tax Credit; Citations, §18-235-12.5-01T through §18-235-12.5-06T, are adopted.



HAWAII ADMINISTRATIVE RULES

TITLE 18

DEPARTMENT OF TAXATION

CHAPTER 235

INCOME TAX LAW
RENEWABLE ENERGY TECHNOLOGIES; INCOME TAX CREDIT;
CITATIONS

**§18-235-12.5-01T Definitions.** (a) As used in section 235-12.5, HRS, and sections 18-235-12.5-01T through 18-235-12.5-05T:

(1) "Actual cost" means the amounts actually paid for renewable energy technology systems under section 235-12.5, HRS, subsection (a), including peripheral equipment ordinarily and necessarily required for system operation and installation. The amounts actually paid shall not include any consumer incentive payments or premiums offered with the system, regardless of when such payment or premium is made to the customer, and shall not include any amount for which another credit is claimed under chapter 235, HRS. Any costs incurred and paid for the repair, construction, or reconstruction of a structure in conjunction with the installation and placing in service of a solar or wind energy system shall not constitute a part of actual cost for the purposes of section 235-12.5, HRS.

(2) "Commercial property" means a property which cannot be properly characterized as residential or mixed-use property. A hotel, or any other place in which lodgings are regularly furnished to transients for consideration, in which all of the rooms, apartments, suites, or the like are occupied by a transient for less than one hundred eighty consecutive days for each letting will be considered commercial property to the extent of that use.

(3) "Installed and placed in service" means that the system is ready and available for its specific use. With respect to systems installed for residential property, all requirements will be completed and a system will be deemed to be installed and placed in service when: (1) The actual cost has been incurred; (2) all installation, including all related electrical work, has been completed; and (3) any required requests for inspection of the installation has been received by the appropriate government agency. However, if the residential installation

fails to pass all the required inspections the credit is properly claimed in the taxable year in which the system passes such inspection.

(4) "Mixed-use property" means a property on which at least one residence exists and commercial activity takes place.

(5) "Multi-family residential property" means a property on which more than one residence is located. The determination that property is multi-family residential property is fact specific, but in general and in the absence of other relevant facts to the contrary, multi-family residential property will be real property that is described in a recorded title and that has more than one mailing address or separate entrances to separate living areas. The following exceptions may apply:

(A) The Ohana House Exception: If a single property has two separate residences, each occupied by members of a family as defined in the Internal Revenue Code, section 267(b)(1), then each residence will be considered a separate single-family residential property if the system services both residences. Partners in a civil union will also be considered members of a family for the purpose of this exception; or

(B) The Directed Use Exception: If a system only services one residence on a multi-family residential property, then the system will be treated as servicing a single-family residential property.

(6) "Property" means a single, definable portion of real property located in the State as described in a title recorded with the Bureau of Conveyances or Land Court of the state of Hawaii and that the applicable law allows to be sold in fee simple separately from any other real property located in the State. For purposes of the Renewable Energy Technologies Income Tax Credit under section 235-12.5, HRS, all such titled property in the State is to be characterized as commercial, residential, or a mix of the two (mixed-use).

(7) "Renewable energy technology system" means a new system that captures and converts a renewable source of energy, such as solar or wind energy,

into a usable source of thermal or mechanical energy, electricity, or fuel.

(8) "Residence" means dwelling place or place of habitation, an abode.

(9) "Single-family residential property" means a property on which one residence is located.

(10) "Standard Test Conditions" means 25 degrees Celsius cell/module temperature, 1,000 watts per square meter ($W/m^2$) irradiance, air mass 1.5(AM 1.5) spectrum.

(11) "Total output capacity" means the combined individual output capacities (maximum power) of all identifiable facilities, equipment, apparatus or the like that make up the renewable energy technology system installed and placed in service during a taxable year measured in kilowatts. The total output capacity of a solar energy system shall be calculated using the manufacturer's published specifications of the components of the solar energy system. Generally, for photovoltaic solar energy systems, total output capacity is the output capacity (maximum power) of each cell, module or panel at Standard Test Conditions in kilowatts multiplied by the number of cells, modules or panels installed and placed into service during a taxable year. The amount of energy actually produced is not relevant to calculating total output capacity. [Eff ] (Auth: HRS §§231-10.7, 235-12.5) (Imp: HRS §235-12.5)

**§18-235-12.5-02T** [Reserved]

**§18-235-12.5-03T Other Solar Energy Systems.** (a) "Solar energy system" means any identifiable facility, equipment, apparatus, or the like that converts solar energy to useful thermal or electrical energy for heating, cooling, or reducing the use of other types of energy that are dependent upon fossil fuel for their generation. Unless subsection (b) applies, each solar energy system installed and placed in service on or after January 1, 2013 shall have a total output capacity at Standard Test Conditions as follows:

(1) Single-family residential property: For credits calculated under section 235-12.5(a)(1), HRS, and

capped under section 235-12.5(b)(2)(A), HRS, each system for which a credit is claimed shall have a total output capacity of at least 5 kilowatts.

(2) Multi-family residential property: For credits calculated under section 235-12.5(a)(1), HRS, and capped under section 235-12.5(b)(2)(B), HRS, each system for which a credit is claimed shall have a total output capacity of at least 0.360 kilowatts per unit per system.

(3) Commercial property: For credits calculated under section 235- 12.5(a)(1), HRS, and capped under section 235-12.5(b)(2)(C), HRS, each system for which a credit is claimed shall have a total output capacity of at least 1,000 kilowatts.

**Example 1:** Taxpayer installs and places into service solar energy equipment including 20 photovoltaic panels, each of which has an output capacity (maximum power) of 0.250 kilowatts on a single-family residential property. The installation has a total output capacity of 5 kilowatts (0.250 kilowatts times 20 photovoltaic panels). One system has been installed and placed into service for the purpose of calculating the credit. The actual cost of the system may not be divided in order to claim multiple credits because the solar energy system only meets the total output capacity requirement for one system.

**Example 2:** Taxpayer installs and places into service solar energy equipment including 40 photovoltaic panels, each of which has an output capacity (maximum power) of 0.180 kilowatts on a multi-family residential property. The installation has a total output capacity of 7.2 kilowatts (0.180 kilowatts times 40 photovoltaic panels). If the installation serves 20 units, the total output capacity for each system must be at least 7.2 kilowatts (0.360 kilowatts times 20 units). One system has been installed and placed into service for the purpose of calculating the credit.

**Example 3:** Taxpayer installs and places into service solar energy equipment including 4,000 photovoltaic panels, each of which has an output capacity (maximum power) of 0.250 kilowatts on a commercial property. The installation has a total output capacity of 1,000 kilowatts (0.250 kilowatts times 4,000 photovoltaic

panels). Since each system must have a total output capacity of at least 1,000 kilowatts, one system has been installed and placed into service for the purpose of calculating the credit.

**Example 4:** Taxpayer installs and places into service solar energy equipment including 40 photovoltaic panels, each of which has an output capacity (maximum power) of 0.250 kilowatts on a single-family residential property. The installation has a total output capacity of 10 kilowatts (0.250 kilowatts times 40 photovoltaic panels). Since each system must have a total output capacity of at least 5 kilowatts, two systems have been installed and placed into service for the purpose of calculating the credit.

**Example 5:** During March of a taxable year, Taxpayer installs and places into service solar energy equipment including 10 photovoltaic panels, each of which has an output capacity (maximum power) of 0.250 kilowatts on a single-family residential property. During August of the same taxable year, Taxpayer installs and places into service additional equipment including 10 photovoltaic panels, each of which also has an output capacity (maximum power) of 0.250 kilowatts on the same the single-family residential property. The total output capacity of both installations is 5 kilowatts [(0.250 kilowatts times 10 photovoltaic panels)+ (0.250 kilowatts times 10 photovoltaic panels)] because the output capacity of both installations must be combined. Since each system must have a total output capacity of at least 5 kilowatts, one system has been installed and placed into service for the purpose of calculating the credit.

(b) The credit may be claimed for one solar energy system installed and placed in service per property which fails to meet the applicable total output capacity requirement as set forth in subsections (a)(1) through (a)(3), where:

(1) Only one solar energy system, for the purposes of the credit, has been installed and placed in service during a taxable year on a single property; or

(2) More than one solar energy system, for the purposes of the credit, has been installed and

placed in service during a taxable year on a single property and one of the systems fails to meet the applicable total output capacity requirement.

**Example 6:** Taxpayer installs and places into service solar energy equipment including 10 photovoltaic panels, each of which has an output capacity (maximum power) of 0.250 kilowatts on a single-family residential property. The installation has a total output capacity of 2.5 kilowatts (0.250 kilowatts times 10 photovoltaic panels). Although the system does not meet the total output capacity requirement, subsection (b)(1) permits the claiming of the credit because only one system has been installed and placed into service on one property.

**Example 7:** Taxpayer installs and places into service solar energy equipment on a single-family residential property which has a total output capacity of 7.5 kilowatts and an actual cost of $37,500. In order to calculate the credit, the actual cost per kilowatt must be determined by dividing the actual cost by the total output capacity. The actual cost per kilowatt is $5,000 ($37,500 divided by 7.5 kilowatts). Since a system installed and placed in service on a single-family residential property must have a total output capacity of at least 5 kilowatts, the actual cost of the first system is $25,000 ($5,000 times 5 kilowatts). The credit for the first system is $5,000 because thirty-five percent of $25,000 exceeds the applicable cap of $5,000. A credit for the second system may also be claimed because subsection (b)(2) permits taxpayers to claim the credit for one system per property that fails to meet the total output capacity requirement. The actual cost of the second system is $12,500 ($5,000 times 2.5 kilowatts). The credit for the second system is $4,375 or thirty-five percent of $12,500. [Eff ] (Auth: HRS §§231-10.7, 235-12.5) (Imp: HRS §235-12.5)

**§18-235-12.5-04T** [Reserved]

**§18-235-12.5-05T Multiple Properties and Mixed-use Property.** (a) Property will be considered

residential or mixed-use if any portion of the property is being used as a residence. If at the time of installation and placing in service of the system the property is not occupied, then property will be considered residential or mixed-use if any portion of the property is intended for use as a residence.

(b) Allocation. Where a single system is installed and placed in service to serve more than one property or to service a mixed-use property the taxpayer shall apply a reasonable allocation method such as square footage or a measure of use as follows:

(1) For a system installed and placed in service to serve more than one property, the actual cost of a single system servicing multiple properties is allocated among the properties. The actual cost of other solar energy systems shall be allocated in a manner consistent with section 18-235-12.5-03T. With multiple properties, the appropriate cap is applied for each separate property.

**Example 1:** Assume Taxpayer installs and places into service a wind farm that services one community of 50 single-family homes and 10 separate commercial properties. Each property is equal in size and use, the allocation of the actual cost would be made equally to each property. Further assume that a $600,000 wind-powered system were installed and placed in service for these properties, the credit would be calculated as follows: Allocation of cost: The actual cost of $600,000 would be divided equally among the properties, allocating $10,000 to each property. Single-family residential: Each single-family residential property would be treated independently. In each case, twenty percent of $10,000, or $2,000, would be compared against the $1,500 single-family residential property cap. Under the facts of this example, each single-family residential property would generate a $1,500 credit, for a total of $75,000 (50 properties times $1,500). Commercial: Each commercial property would be treated independently. In each case, twenty percent of $10,000, or $2,000, would be compared against the $500,000 commercial property cap. Under the facts of this example, each commercial property would generate a $2,000 credit, for a total of

$20,000 (10 properties times $2,000). The total credit for the $600,000 wind-powered system is $1,500 for each single-family residential property ($75,000) plus $2,000 for each commercial property ($20,000) for a total credit of $95,000.

**Example 2:** Taxpayer, an independent energy provider installs and places into service a wind farm that does not service any particular property, but is entirely directed into the energy grid of the local electricity provider. The renewable energy technology system will be considered to be servicing commercial property only; no allocation is necessary. However, if an identifiable connection exists to customers situated on the property where the power is produced in addition to a connection to the energy grid of the local electricity provider, then the cost of the system must be allocated among and between the particular property or properties being serviced and the connection to the energy grid, which is treated as servicing a single commercial property.

**Example 3:** Taxpayer installs and places into service solar energy equipment for a condominium that contains both residential and commercial units. Each condominium unit has a separate title, so each unit would be treated as a separate property. The taxpayer must reasonably allocate the actual cost of the system between the residential and commercial properties. The condominium contains 50 single-family units and 10 commercial units of equal size and use, and a $600,000 photovoltaic energy system that has a total output capacity of 60 kilowatts. The credit is calculated as follows: Allocation of cost: The actual cost per kilowatt is $10,000 ($600,000 divided by 60 kilowatts). Since there are 60 separate units that have equal energy use, the actual cost of a 1 kilowatt portion of the installation must be allocated to each unit. Thus, actual cost of $600,000 would be divided equally among the 60 properties, allocating $10,000 to each property. Single-family residential: Although each system does not meet

the total output capacity requirement, subsection 18-235-12.5-03T(b)(1) allows a credit to be claimed for each system because only one system has installed and placed into service on each property. Each single-family residential condo unit would be treated independently. In each case, thirty-five percent of $10,000, or $3,500, would be compared against the $5,000 single-family residential property cap. Under the facts of this example, each single-family residential property would generate a $3,500 credit, for a total of $175,000 (50 units times $3,500). Commercial: Each commercial condo unit would be treated independently. In each case, thirty-five percent of $10,000, or $3,500, would be compared against the $500,000 commercial property cap. Each commercial property would generate a $3,500 credit, for a total of $35,000 (10 properties times $3,500). The total credit for the $600,000 photovoltaic energy system is $3,500 for each single-family condo unit ($175,000) plus $3,500 for each commercial condo unit ($35,000) for a total credit of $210,000.

(2) For a system installed and placed in service to service a mixed-use property, the actual cost of the system is allocated between the residential use (which may be single-family use or multiple-family use) and the commercial use. For a photovoltaic energy system, thirty-five percent of the cost allocated to residential use is compared against either the single-family residential cap or the multiple-family residential cap; and thirty-five percent of the cost allocated to commercial use is compared against the commercial property cap.

**Example 4:** Taxpayer is a farmer and has a dwelling and barn on one of the lots which is considered to be a mixed-use property. Taxpayer installs and places into service a renewable energy technology system that only services the barn. Allocation by use results in the system being subject only to the commercial property limitations. (Note: This is not an example of the directed use exception; an allocation would still be made, but it would be a 0%

residential/100% commercial allocation based upon use.)

**Example 5:** Same facts as Example 4, but the system services both the barn and the dwelling. A portion of the system's actual cost would be subject to the commercial property limitations and the rest would be subject to the single-family residential property limitations.

**Example 6:** Taxpayer installs and places into service renewable energy technology equipment for an apartment complex that contains both residential and commercial units. Each unit is not separately titled, so each unit would not be treated as separate property. Instead, the titled property is the entire apartment complex. Since the titled property is mixed-use, the taxpayer will have to reasonably allocate the actual cost of the system between the residential and commercial uses of the property. The complex contains 50 single-family units and 10 commercial units of equal size and use, and a $600,000 photovoltaic energy system that has a total output capacity of 60 kilowatts. The credit would be calculated as follows: Allocation of cost: The actual cost per kilowatt is $10,000 ($600,000 divided by 60 kilowatts). Since each of the units has an equal energy use, the actual cost of $600,000 would be divided between residential use of the property and the commercial use of the property, allocating $500,000 ($10,000 times 50 units) to the residential use and $100,000 ($10,000 times 10 units) to the commercial use. Residential Use: Since the property contains more than one residence, the proper characterization of this use is multi-family residential. Because the installation serves 50 residential units, the total output capacity of each system must be at least 18 kilowatts (0.360 kilowatts times 50 units). The total output capacity of the residential portion of the installation is 50 kilowatts. For the purpose of calculating the credit, two systems that meet the total output capacity requirement and one system that fails to meet the requirement have been installed and

placed into service. The actual cost for each of the two systems which meet the 18 kilowatt total output capacity requirement is $180,000 ($10,000 times 18 kilowatts) each. Thirty-five percent of $180,000, or $63,000, would be compared against the multi-family residential property cap, or $17,500 ($350 times 50 units). Because the credit is capped at $17,500 per system, the total credit for the two systems that meet the total output capacity requirement is $35,000 ($17,500 plus $17,500). The third system has an actual cost of $140,000 ($10,000 times 14 kilowatts). Although the system does not meet the total output capacity requirement the credit may be claimed under subsection 18-235-12.5-03T(b)(2). Thirty-five percent of $140,000, or $49,000, would be compared against the multi-family residential property cap, or $17,500 ($350 times 50 units). The credit for the third system is $17,500 due to the cap. The total credit for the three systems serving the multi-family residential portion of the property is $52,500 ($17,500 times 3 systems). Commercial Use: Each system serving commercial property must have a total output capacity of at least 1,000 kilowatts. The total output capacity of the installation serving the commercial portion of the property is 10 kilowatts and the actual cost is $100,000 ($10,000 times 10 kilowatts). Since the portion of the installation serving commercial property fails to meet the total output capacity requirement and the credit is already claimed for a system that does not meet the applicable total output capacity requirement on a single property, a credit may not be claimed for the installation that serves the commercial portion of the property. The total credit for the entire $600,000 solar energy installation is $52,500. Note: A credit for the commercial part of the installation may have been claimed if the credit for the third multi-family residential system had not been claimed. [Eff ] (Auth: HRS §§231-10.7, 235-12.5) (Imp: HRS §235-12.5)

**§18-235-12.5-06T Application of sections 18-235-12.5-01T through 18-235-12.5-05T.** Sections 18-235-12.5-01T through 18-235-12.5-05T shall apply to renewable energy technology systems that are installed and placed in service on or after January 1, 2013. To the extent that sections 18-235-12.5-01T through 18-235-12.5-05T conflict with guidance issued by the department prior to January 1, 2013, these sections shall prevail. [Eff ] (Auth: HRS §§231-10.7, 235-12.5) (Imp: HRS §235-12.5)

DEPARTMENT OF TAXATION

Chapter 18-235, Hawaii Administrative Rules, on the Summary Page dated November 5, 2012, were submitted to the Governor as temporary rules for approval on November 5, 2012. As is required by section 231-10.7, Hawaii Revised Statutes, these temporary administrative rules are also being submitted as formal administrative rules pursuant to Chapter 91, Hawaii Revised Statutes.

Statewide, public notice is by publication in the following newspapers on the following dates:

The Honolulu Star-Advertiser, November ___, 2012;

West Hawaii Today, November ___, 2012:

Hawaii Tribune-Herald, November ___, 2012;

The Maui News, November ___, 2012.

The temporary adoption of chapter 18-235, Hawaii Administrative Rules, as amended, shall take effect on _____. Pursuant to section 231-10.7, Hawaii Revised Statutes, these rules shall be effective for eighteen months from their effective date.

_____
FREDERICK D. PABLO
Director of Taxation

APPROVED:

_____
NEIL ABERCROMBIE
Governor
State of Hawaii

Dated:_____

# RENEWABLE ENERGY TECHNOLOGIES INCOME TAX CREDIT

**Section 235-12.5, Hawaii Revised Statutes**

**Year-end Workshops 2012**

## TEMPORARY ADMINISTRATIVE RULES OVERVIEW

- Effective November 16, 2012
- Expires May 16, 2014
- **Applies to systems installed and placed in service on or after January 1, 2013**
- Section 18-235-12.5-01T – Definitions
- Section 18-235-12.5-03T – Other Solar Energy Systems
- Section 18-235-12.5-05T – Mixed-use Properties and Multiple Properties
- Section 18-235-12.5-06T – Application of sections 18-235-12.5-01T through 18-235-12.5-05T

## SECTION 235-12.5(a), HAWAII REVISED STATUTES

(a) "When the requirements of subsection (d) are met, each individual or corporate taxpayer that files an individual or corporate net income tax return for a taxable year may claim a tax credit under this section against the Hawaii state individual or corporate net income tax. The tax credit may be claimed for every eligible renewable energy technology system that is **installed and placed in service** in the State by a taxpayer during the taxable year. The tax credit may be claimed as follows:

(1) For each solar energy system: thirty-five per cent of the actual cost or the cap amount determined in subsection (b), whichever is less. . .

## "INSTALLED AND PLACED IN SERVICE"

Section 18-235-12.5-01T(a)(3) of the temporary administrative rules states:

- "Installed and placed in service" means that the system is ready and available for its specific use.
- With respect to systems installed for **residential property**, all requirements will be completed and a system will be deemed to be installed and placed in service when: (1) The actual cost has been incurred; (2) all installation, including all related electrical work, has been completed; and (3) any required requests for inspection of the installation has been received by the appropriate government agency.
- However, if the residential installation fails to pass all the required inspections the credit is properly claimed in the taxable year in which the system passes such inspection.

## "INSTALLED AND PLACED IN SERVICE" CONTINUED

- Examples:
  - If a request for any required inspection is received by the appropriate government agency in December of 2012 and the system passes inspection in January of 2013, the credit is properly claimed in the 2012 taxable year.
  - If a request for any required inspection is received by the appropriate government agency in December of 2012 and the system fails such inspection in January of 2013, the credit is properly claimed in the 2013 taxable year.
  - If a request for any required inspection is received by the appropriate government agency in October of 2012 and the system fails the first inspection in November of 2012, but passes a second inspection in December of 2012 the credit is properly claimed in the 2012 taxable year.
- Rationale:
  - If the system fails any required inspection, the installation and electrical work has not been completed.

## "INSTALLED AND PLACED IN SERVICE" CONTINUED

- Tax Announcement 2012-14
  - Issued November 16, 2012
  - "Installed and placed in service" definition from section 18-235-12.5-01T(a)(3) also applies to **residential systems** installed and placed in service on or before December 31, 2012.
- Commercial Systems are considered "installed and placed in service" when the system is ready and available for its specific use.

## TAX INFORMATION RELEASE NO. 2012-01

- Issued November 20, 2012
- Highlights important changes to the calculation of the Renewable Energy Technologies Income Tax Credit (RETITC) for "other solar energy systems," including photovoltaic systems.
- Explains that "total output capacity" is the starting point for calculating the RETITC for "other solar energy systems."
- Provides a worksheet that should be used to allocate the total actual cost to each system where more than one system is installed and placed in service on a single property during a taxable year.

## "TOTAL OUTPUT CAPACITY"

Section 18-235-12.5-01T(a)(11) of the temporary administrative rules states:

- "Total output capacity" means the combined individual output capacities (maximum power) of all identifiable facilities, equipment, apparatus or the like that make up the renewable energy technology system installed and placed in service during a taxable year measured in kilowatts.
- For photovoltaic systems:
  - Total output capacity = maximum power of each cell, module, or panel at Standard Test Conditions in kilowatts multiplied by the number of cells, modules, or panels installed and placed in service during the taxable year.
    - Maximum power of the cell, module or panel must be obtained from the equipment specifications published by the manufacturer

## "Total Output Capacity"

- "Total output capacities" of all installations that occur during a taxable year must be combined.
  - Separate systems have not been installed simply because installations occurred at different times during a taxable year.
    - Each system for which a credit is claimed must meet the applicable total output capacity requirement or an exception.
- "Total output capacity" requirements – sections 18-235-12.5-03T(a)(1) through (a)(3)
  - Single-family residential property – at least 5 kilowatts per system
  - Multi-family residential property – at 0.360 kilowatts per unit per system
  - Commercial property – at least 1,000 kilowatts per system

## "Total Output Capacity" - Exceptions

- Under sections 18-235-12.5-03T(b)(1) and (b)(2) respectively, a credit may be claimed for a system which does not meet the applicable "total output capacity" requirement where:
  - Only one system has been installed and placed in service on a single property during a taxable year, or
  - More than one system has been installed and placed in service on a single property during a taxable year and only one of those systems fails to meet the applicable "total output capacity" requirement.
- The "total output capacity" exceptions provided under §18-235-12.5-03T(b)(1) and (2) apply to "other solar energy systems" installed for **all property classifications** including single-family residential, multi-family residential, commercial, and mixed-use properties.

# MAXIMUM POWER – SPEC SHEET EXAMPLE 1

SPECIFICATIONS

| Standard Test Conditions (STC) STC = 1000 W/M² irradiance, 25°C module temperature, AM 1.5 spectrum* | KD320 | KD315 | KD245 | KD240 | KD220 | KD215 | KD140 | KD135 |
|---|---|---|---|---|---|---|---|---|
| Maximum Power | 320W | 315W | 245W | 240W | 220W | 215W | 140W | 135W |
| Number of Cells | 80 | 80 | 60 | 60 | 54 | 54 | 36 | 36 |
| Tolerance | +5% / -3% | +5% / -3% | +5% / -3% | +5% / -3% | +5% / -3% | +5% / -3% | +5% / -5% | +5% / -5% |
| Maximum System Voltage | 600V | 600V | 600V | 600V | 600V | 600V | 600V | 600V |
| Maximum Power Voltage | 40.1V | 39.8V | 29.8V | 29.8V | 26.6V | 26.6V | 17.7V | 17.7V |
| Maximum Power Current | 7.99A | 7.92A | 8.23A | 8.06A | 8.28A | 8.09A | 7.91A | 7.63A |
| Open Circuit Voltage | 49.5V | 49.2V | 36.9V | 36.9V | 33.2V | 33.2V | 22.1V | 22.1V |
| Short Circuit Current | 8.60A | 8.50A | 8.91A | 8.59A | 8.98A | 8.78A | 8.68A | 8.37A |

# MAXIMUM POWER – SPEC SHEET EXAMPLE 2

PERFORMANCE UNDER STANDARD TEST CONDITIONS (STC)*

| | | SW 255 |
|---|---|---|
| Maximum power | $P_{max}$ | 255 Wp |
| Open circuit voltage | $V_{oc}$ | 37.8 V |
| Maximum power point voltage | $V_{mpp}$ | 31.4 V |
| Short circuit current | $I_{sc}$ | 8.66 A |
| Maximum power point current | $I_{mpp}$ | 8.15 A |

*STC: 1000 W/m², 25°C, AM 1.5

THERMAL CHARACTERISTICS

| | |
|---|---|
| NOCT | 46 °C |
| TC $I_{sc}$ | 0.004 %/K |

PERFORMANCE AT 800 W/m², NOCT, AM 1.5

| | | SW 255 |
|---|---|---|
| Maximum power | $P_{max}$ | 184.1 Wp |
| Open circuit voltage | $V_{oc}$ | 34.0 V |
| Maximum power point voltage | $V_{mpp}$ | 28.3 V |
| Short circuit current | $I_{sc}$ | 6.99 A |
| Maximum power point current | $I_{mpp}$ | 6.52 A |

Minor reduction in efficiency under partial load conditions at 25°C, at 200W/m², 95% (+/- 4%) of the STC efficiency (1000 W/m²) is achieved

COMPONENT MATERIALS

| | |
|---|---|
| Cells per module | 60 |
| Cell type | Mono crystalline |

- "Total output capacity" is based on the maximum power of each cell, module or panel at Standard Test Conditions.
- In this example, the maximum power should be obtained from the left column because the performance specifications of the module stated in the left column are determined under Standard Test Conditions.

# CALCULATIONS WORKSHEET – TIR 2012-01

| List | Description | |
|---|---|---|
| **Total Output Capacity** | | |
| A | Maximum power of each cell, module or panel | _____kilowatts |
| B | Total number of cells, modules or panels installed and placed in service during the taxable year | _____cells, modules, or panels |
| C | Total Output Capacity (Multiply Line A by Line B) | _____kilowatts |
| D | Total Actual Cost of all installations during the taxable year | $_____ |
| E | Actual Cost per kilowatt (Divide Line D by Line C) | $_____ |
| **Actual Cost Per System** | | |
| F1 | Actual Cost to be allocated to System 1 (Multiply Line E by Line F1-kW) **F1-kW** Total Output Capacity of System 1 = _____ kilowatts [8] | **F1** $_____ Enter this amount on the appropriate line of Form N-342 or Form N-342A |
| F2 | Actual Cost to be allocated to System 2 (Multiply Line E by Line F2-kW) **F2-kW** Total Output Capacity of System 2 = _____ kilowatts [8] | **F2** $_____ Enter this amount on the appropriate line of Form N-342 or Form N-342A |
| F3 | Actual Cost to be allocated to System 3 (Multiply Line E by Line F3-kW **F3-kW** Total Output Capacity of System 3 = _____ kilowatts [8] | **F3** $_____ Enter this amount on the appropriate line of Form N-342 or Form N-342A |

# CALCULATIONS CONTINUED

| | | |
|---|---|---|
| F4 | Actual Cost to be allocated to System 4 (Multiply Line E by Line F4-kw) **F4-kW** Total Output Capacity of System 4 = _____ kilowatts [8] | **F4** $_____ Enter this amount on the appropriate line of Form N-342 or Form N-342A |
| F5 | Actual Cost to be allocated to System 5 (Multiply Line E by Line F5-kW) **F5-kW** Total Output Capacity of System 5 = _____ kilowatts [8] | **F5** $_____ Enter this amount on the appropriate line of Form N-342 or Form N-342A |

Note: *Additional lines should be added here as needed where more than five systems have been installed and placed in service during the taxable year on a single property. A credit may be claimed for each system which meets the applicable total output capacity requirement or the exception as set forth in section 18-235-12.5-03T(b)(2).*

| | | |
|---|---|---|
| G | Sum of Lines F1 through F5 Line G must equal Line D. The sum of the Total Output Capacities allocated to each system must equal to Line C. | $_____ |
| H | Add Lines F1-kW to F5-kW (Sum of Total Output Capacities allocated to each system.) Line H must equal Line C. | _____kilowatts |

## CALCULATION EXAMPLE 1

- Facts: Single-family residential property, 10 photovoltaic panels installed and placed in service that have a maximum power of 0.265 kilowatts (265 watts) each, and an actual cost of $13,250.
- Total output capacity = 0.265 kW x 10 panels = **2.65 kW**
- Actual cost per kW = $13,250 / 2.65 kW = **$5,000**
- Actual cost allocated to system = total output capacity x actual cost per kW = 2.65 kW x $5,000 = **$13,250**
- Calculation of credit = actual cost allocated to system x 35% = $13,250 x 35% = **$4,637.50**
- Although the system does not meet the applicable total output capacity amount of 5 kilowatts per system, the exception set forth in section 18-235-12.5-03T(b)(1) allows the credit to be claimed where only one system has been installed and placed in service on a property during a single tax year.

## CALCULATION EXAMPLE 2

- Facts: Multi-family residential property with 5 residential units, 7 photovoltaic panels installed and placed in service that have a maximum power of 0.235 kilowatts (235 watts) each, and an actual cost of $8,225.
- Total output capacity = 0.235 kW x 7 panels = **1.645 kW**
- Total output capacity requirement per system = 5 units x 0.360 kW = **1.8 kW**
- Actual cost per kW = $8,225 / 1.645 kW = **$5,000**
- Actual cost allocated to system = total output capacity x actual cost per kW = 1.645 kW x $5,000 = **$8,225**
- Calculation of credit = actual cost allocated to system x 35% = $8,225 x 35% = $2,878.75 (capped at $1,750 per system). Credit amount is **$1,750**
- Although the system does not meet the applicable total output capacity amount of 0.360 kilowatts per unit per system, the exception set forth in section 18-235-12.5-03T(b)(1) allows the credit to be claimed where only one system has been installed and placed in service on a property during a single tax year.

## CALCULATION EXAMPLE 3

- Facts: Commercial property, 170 photovoltaic panels installed and placed in service that have a maximum power of 0.300 kilowatts (300 watts) each, and an actual cost of $204,000.
- Total output capacity = 0.300 kW x 170 panels = **51 kW**
- Actual cost per kW = $204,000 / 51 kW = **$4,000**
- Actual cost allocated to system = total output capacity x actual cost per kW = 51 kW x $4,000 = **$204,000**
- Calculation of credit = actual cost allocated to system x 35% = $204,000 x 35% = **$71,400**
- Although the system does not meet the applicable total output capacity amount of 1,000 kilowatts per system, the exception set forth in section 18-235-12.5-03T(b)(1) allows the credit to be claimed where only one system has been installed and placed in service on a property during a single tax year.

## CALCULATION EXAMPLE 4

- Facts: Single-family residential property, 9 photovoltaic panels installed and placed in service that have a maximum power of 0.250 kilowatts (250 watts) each in February of a taxable year, 10 photovoltaic panels installed and placed in service that have a maximum power of 0.250 kilowatts (250 watts) each in September of the same taxable year and a total actual cost of $23,750 for both installations.
- Total output capacity of February installation = 0.250 kW x 9 panels = **2.25 kW**
- Total output capacity of September installation = 0.250 kW x 10 panels = **2.50 kW**
- Combined total output capacities of all installations occurring in the same taxable year = 2.25 kW + 2.5 kW = **4.75 kW**
- Actual cost per kW = $23,750 / 4.75 kW = **$5,000**

## CALCULATION EXAMPLE 4 - CONTINUED

- Actual cost allocated to system = total output capacity x actual cost per kW = 4.75 kW x $5,000 = **$23,750**
- Calculation of credit = actual cost allocated to system x 35% = $23,750 x 35% = $8,312.50 (capped at $5,000).
- The cap per system for single-family residential property is $5,000 per system. Although installations occurred during different times during the same taxable year only one system for the purposes of the credit has been installed because the combined installations do not meet the total output capacity requirement of 5 kilowatts per system. Since only one system has been installed and placed in service on a single property, for the purpose of calculating the credit, the credit amount is capped at **$5,000**.

## CALCULATION EXAMPLE 5

- Facts: Single-family residential property, 20 photovoltaic panels installed and placed in service that have a maximum power of 0.250 kilowatts (250 watts) each, and an actual cost of $25,000.
- Total output capacity = 0.250 kW x 20 panels = **5 kW**
- Actual cost per kW = $25,000 / 5 kW = **$5,000**
- Actual cost allocated to system = total output capacity x actual cost per kW = 5 kW x $5,000 = **$25,000**
- Calculation of credit = actual cost allocated to system x 35% = $25,000 x 35% = $8,750. The cap per system for single-family residential property is $5,000 per system. Since only one system has been installed and placed in service for the purpose of calculating the credit, the credit amount is capped at **$5,000**.

## CALCULATION EXAMPLE 6

- Facts: Multi-family residential property with 20 residential units, 40 photovoltaic panels installed and placed in service that have a maximum power of 0.180 kilowatts (180 watts) each, and an actual cost of $39,600.
- Total output capacity = 0.180 kW x 40 panels = **7.2 kW**
- Total output capacity requirement per system = 20 units x 0.360 kW = **7.2 kW**
- Actual cost per kW = $39,600 / 7.2 kW = **$5,500**
- Actual cost allocated to system = total output capacity x actual cost per kW = 7.2 kW x $5,500 = **$39,600**
- Calculation of credit = actual cost allocated to system x 35% = $39,600 x 35% = $13,860. The cap per system for multi-family residential property with 20 units is $7,000 per system. Since only one system has been installed and placed in service for the purpose of calculating the credit, the credit amount is capped at **$7,000**.

## CALCULATION EXAMPLE 7

- Facts: Commercial property, 2,000 photovoltaic panels installed and placed in service that have a maximum power of 0.500 kilowatts (500 watts) each, and an actual cost of $3,500,000.
- Total output capacity = 0.500 kW x 2,000 panels = **1,000 kW**
- Actual cost per kW = $3,500,000 / 1,000 kW = **$3,500**
- Actual cost allocated to system = total output capacity x actual cost per kW = 1,000 kW x $3,500 = **$3,500,000**
- Calculation of credit = actual cost allocated to system x 35% = $3,500,000 x 35% = $1,225,000. The cap per system for commercial property is $500,000 per system. Since only one system has been installed and placed in service for the purpose of calculating the credit, the credit amount is capped at **$500,000**.

## CALCULATION EXAMPLE 8

- Facts: Single-family residential property, 48 photovoltaic panels installed and placed in service that have a maximum power of 0.260 kilowatts (260 watts) each, and an actual cost of $62,400.
- Total output capacity = 0.260 kW x 48 panels = **12.48 kW**
- Actual cost per kW = $62,400 / 12.48 kW = **$5,000**
- Actual cost allocated to system 1 = total output capacity x actual cost per kW = 5 kW x $5,000 = **$25,000**
- Actual cost allocated to system 2 = total output capacity x actual cost per kW = 5 kW x $5,000 = **$25,000**
- Actual cost allocated to system 3 = total output capacity x actual cost per kW = 2.48 kW x $5,000 = **$12,400**

## CALCULATION EXAMPLE 8 - CONTINUED

- Calculation of credit = actual cost allocated to system 1 x 35% = $25,000 x 35% = $8,750 (capped at $5,000).
- Actual cost allocated to system 2 x 35% = $25,000 x 35% = $8,750 (capped at $5,000).
- Actual cost allocated to system 3 x 35% = $12,400 x 35% = $4,340.
- The cap per system for single-family residential property is $5,000 per system. The credit amount for system 1 and system 2 are capped at $5,000 per system. The credit amount for system 3 is $4,340 and is not limited by the cap. The credit for system 3 is allowed under section 18-235-12.5-03T(b)(2) because only one system fails to meet the applicable total output capacity requirement. Thus, the total credit for this installation is **$14,340**.

## CALCULATION EXAMPLE 9

- Facts: Multi-family residential property with 20 residential units, 75 photovoltaic panels installed and placed in service that have a maximum power of 0.360 kilowatts (360 watts) each, and an actual cost of $114,750.
- Total output capacity = 0.360 kW x 75 panels = **27 kW**
- Total output capacity requirement per system = 20 units x 0.360 kW = **7.2 kW**
- Actual cost per kW = $114,750 / 27 kW = **$4,250**
- Actual cost allocated to system 1 = total output capacity x actual cost per kW = 7.2 kW x $4,250 = **$30,600**
- Actual cost allocated to system 2 = total output capacity x actual cost per kW = 7.2 kW x $4,250 = **$30,600**
- Actual cost allocated to system 3 = total output capacity x actual cost per kW = 7.2 kW x $4,250 = **$30,600**
- Actual cost allocated to system 4 = total output capacity x actual cost per kW = 5.4 kW x $4,250 = **$22,950**

## CALCULATION EXAMPLE 9 - CONTINUED

- Calculation of credit = actual cost allocated to system 1 x 35% = $30,600 x 35% = $10,710 (capped at $7,000).
- Actual cost allocated to system 2 x 35% = $30,600 x 35% = $10,710 (capped at $7,000).
- Actual cost allocated to system 3 x 35% = $30,600 x 35% = $10,710 (capped at $7,000).
- Actual cost allocated to system 4 x 35% = $22,950 x 35% = $8,032.50 (capped at $7,000).

## CALCULATION EXAMPLE 9 - CONTINUED

- The cap per system for multi-family residential property with 20 units is $7,000 per system. Three systems which meet the total output capacity requirement have been installed and placed in service for the purpose of calculating the credit and the credit is capped at $7,000 per system. The credit for system 4 is allowed under section 18-235-12.5-03T(b)(2) because only one system fails to meet the applicable total output capacity requirement. The total credit amount for all four systems installed and placed in service is **$28,000**.

## CALCULATION EXAMPLE 10

- Facts: Commercial property, 4,500 photovoltaic panels installed and placed in service that have a maximum power of 1 kilowatt each, and an actual cost of $11,250,000.
- Total output capacity = 1 kW x 4,500 panels = **4,500 kW**
- Actual cost per kW = $11,250,000 / 4,500 kW = **$2,500**
- Actual cost allocated to system 1 = total output capacity x actual cost per kW = 1,000 kW x $2,500 = **$2,500,000**
- Actual cost allocated to system 2 = total output capacity x actual cost per kW = 1,000 kW x $2,500 = **$2,500,000**
- Actual cost allocated to system 3 = total output capacity x actual cost per kW = 1,000 kW x $2,500 = **$2,500,000**
- Actual cost allocated to system 4 = total output capacity x actual cost per kW = 1,000 kW x $2,500 = **$2,500,000**
- Actual cost allocated to system 5 = total output capacity x actual cost per kW = 500 kW x $2,500 = **$1,250,000**

## CALCULATION EXAMPLE 10 - CONTINUED

- Calculation of credit = actual cost allocated to system 1 x 35% = $2,500,000 x 35% = $875,000 (capped at $500,000).
- Actual cost allocated to system 2 x 35% = $2,500,000 x 35% = $875,000 (capped at $500,000).
- Actual cost allocated to system 3 x 35% = $2,500,000 x 35% = $875,000 (capped at $500,000).
- Actual cost allocated to system 4 x 35% = $2,500,000 x 35% = $875,000 (capped at $500,000).
- Actual cost allocated to system 5 x 35% = $1,250,000 x 35% = $437,500.

## CALCULATION EXAMPLE 10 - CONTINUED

- The cap per system for commercial property is $500,000 per system. The credit amount for each of the four systems which meet the total output capacity requirement is $500,000. The credit amount for system 5 which fails to meet the total output capacity requirement is $437,500. The credit for system 5 is allowed under section 18-235-12.5-03T(b)(2) because only one system fails to meet the applicable total output capacity requirement. The total credit amount for this installation is **$2,437,500**.

## CALCULATION EXAMPLE 11

- Facts: Commercial property, 600 photovoltaic panels installed and placed in service that have a maximum power of 1 kilowatts each in January of a taxable year, 600 photovoltaic panels installed and placed in service that have a maximum power of 1 kilowatts each in July of the same taxable year and a total actual cost of $3,000,000 for both installations.
- Total output capacity of January installation = 1 kW x 600 panels = **600 kW**
- Total output capacity of July installation = 1 kW x 600 panels = **600 kW**
- Combined total output capacities of all installations occurring in the same taxable year = 600 kW + 600 kW = **1,200 kW**
- Actual cost per kW = $3,000,000 / 1,200 kW = **$2,500**

## CALCULATION EXAMPLE 11 CONTINUED

- Actual cost allocated to system 1 = total output capacity x actual cost per kW = 1,000 kW x $2,500 = **$2,500,000**
- Actual cost allocated to system 2 = total output capacity x actual cost per kW = 200 kW x $2,500 = **$500,000**
- Calculation of credit for system 1 = actual cost allocated to system x 35% = $2,500,000 x 35% = $875,000 (capped at $500,000).
- Calculation of credit for system 2 = actual cost allocated to system x 35% = $500,000 x 35% = $175,000.
- The cap per system for commercial property is $500,000 per system. Although installations occurred during different times during the same taxable year the total output capacity of both installations must be combined. Since both installations have a total output capacity of 1,200 kilowatts the total actual cost be allocated as set forth above. The total credit for these installations is **$675,000**.

# THE END

Revised November 28, 2012

IV. New Business

C. Proposed Amendments to Title 4 Chapter 143, Coffee (Department of Agriculture)

SMALL BUSINESS IMPACT STATEMENT

Department of Agriculture
Quality Assurance Division/Commodities Branch

**Chapter 4-143, Hawaii Administrative Rules**
**Standards for Coffee**

Jeri Kahana, Acting Administrator, Quality Assurance Division
Phone 832-0707 / FAX 832-0683



February 20, 2013

A. *Description*

_____New Rules _____ Repeal of Rules __X__ Amendment to Rules

Note: Preliminary approval of proposed amendment to Section 4-143, Hawaii Administrative Rules, entitled "Coffee" has been granted. The Board of Agriculture has approved authorization for the chairperson to schedule a public hearing and appoint a hearing officer in connection with the proposed amendment.

B. Provide the following information described in Items 1-7 of the Policy Section in the Governor's Administrative Directive No. 99-02:

1. *Exact Changes and Reasons for Changes*

Act 328, SLH 2012, made the offense of false labeling as to the geographic origin of Hawaii grown coffee a class C felony under Chapter 708, Hawaii Revised Statutes (Penal Code). The Act also authorized the department of agriculture to adopt administrative rules relating to the inspection and documentation of the geographic origin of Hawaii-grown coffee beans, removes the requirement that all Hawaii-grown green coffee beans shall be inspected and certified by the Department of Agriculture unless otherwise specified by rules of the Department and requires that no Hawaii-grown coffee beans shall be shipped outside of the area of their geographic origin unless they have been marked with or contain documentation of geographic origin unless they have been marked with or contain documentation of geographic origin approved by the department of agriculture.

The department held several meetings with coffee industry members representing various coffee geographic regions and associations to gather information on drafting the proposed amendments.

The Kona coffee industry has reported that Coffee Berry Borer damage is resulting in diminished quality that could jeopardize the region's position in the global coffee market. The proposed amendments represent comprehensive changes to the administrative rules which have not been amended for more than 10 years and to comply with the necessary changes due to the passage of Act 328.

2. *Nature of Proposed Changes*

   a. *Is the proposed rule authorized by a federal or state law or statute that does not require an agency to interpret or describe the requirements of the law or statute?*

   _____ Yes ___X__ No

   b. *Is the proposed rule an emergency regulation?*

   ____ Yes __X__ No

   c. *Will the proposed rule affect small business because it:*

      1) *will apply to a for-profit enterprise consisting of fewer than 200 full-time or part-time employees?*

      __X__ Yes _____ No

      2) *will cause a direct and significant economic burden upon a small business?*

      _____ Yes __X__ No

      *3) is directly related to the formation, operation, or expansion of a small business?*

      __X__ Yes _____ No

3. *Department Impact (i.e. fiscal, personnel, program)?*

   _____ Yes __X__ No

4. *Impact on General Public (i.e. individuals, consumers, and businesses)?*

   ____ Yes ___X__ No

5. *Impact on state economy?*

__X__ Yes _____ No (*If yes, describe long and short-range impacts.)*

In the long range, the coffee farmers will be able to continue to market the Hawaii-grown coffee.

In the short range, the coffee farmers will be able to guarantee payment for supplies, and services necessary to market the Hawaii-grown coffee .

6. *Final result anticipated from the proposed rule change.*

Profitability will encourage farmers to increase coffee production, and help to stabilize the coffee industry.

7. *Other alternative explored to carry out the statutory purpose other than rulemaking.*

None.

Small Business Impact Statement:

8. *Is there a new or increased fee or fine?*

__X___ Yes _____ No *(If yes, provide the following information:)*

Certification inspection of coffee is conducted at the request of the industry. Fees are borne by the industry for certification services. Fees have not been changed since 2001. Fees will increase from $31.00 per hour to $48.00 per hour, which is reflective of the average staff hourly salary.

9. *Will the proposed rule affect small business?*

__X__ Yes _____ No (*if yes, provide the following information:)*

a. *Describe the type(s) of small business that will be directly of adversely affected by, bear the costs of, or directly benefit from the proposed rule.*

Act 328 removed the mandatory certification of coffee and has made it voluntary. Many small coffee businesses will no longer be required to certify their coffees before being exported and will not have to bear the burden of certification costs. Those who wish, may still request for certification services.

b. *Description of any increase in direct costs, in estimated dollar amount, to small businesses, such as fees or fines, or other direct costs associated with compliance.*

Although there is a proposed fee increase, we anticipate that small businesses will have an overall savings since coffee certification is no longer mandatory.

c. *Description of any increase in indirect costs, in estimated dollar amounts, to small business, such as reporting, record keeping, equipment, construction, labor, professional services, revenue loss or other costs.*

None.

d. *Description how small business was involved in the development or the proposed rules.*

The department held several meetings with coffee industry members representing various coffee geographic regions and associations to gather information on drafting the proposed amendments.

e. *Methods considered or used to reduce the impact on small business such as: Simplification, Consolidation, Varying schedule for fees or fines, Modified compliance or reporting requirements, or other alternative or less stringent measures proposed by affected businesses and, if proposed, why those proposals were not adopted.*

Not applicable.

f. *If the proposed rule is more stringent than those mandated by governing federal or state law or statute, explain how and why the proposed rule is more stringent.*

Not applicable.

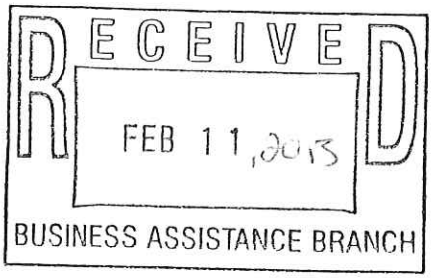
10. *Was the departmental advisory committee on small business or other small businesses or organizations consulted during the drafting of the propose rule, and were the committee's recommendations, if any, incorporated into the proposed rule?*

Yes, representatives of the coffee industry representing various coffee producing regions and associations met to discuss and develop the necessary rule amendments.

11. *Did the Small Business Regulatory Review Board or a small business make any recommendation to the department or agency regarding the need for any rule change that may be related to the proposed rule?*

Not applicable.

State of Hawaii
Department of Agriculture
Quality Assurance Division
Honolulu, Hawaii




A summary of the proposed amendments to Chapter 4-143, Hawaii Administrative Rules, is as follows:

1. **Section 4-143-1**

   Requires Hawaii-grown green or natural coffee be marked with the exact grade or lower grade;

   Requires cherry, parchment, green or natural coffees be labeled with the exact recognized geographic region either on the bag, a tag which is sewn on the bag or on a form accompanying each container.

2. **Section 4-143-2**

   Repeals exemptions to mandatory certification. Exemptions are not needed for the mandatory requirement for certification has been removed statutorily;

   Increases the fee for additional copy of an issued certificate from $1 per page to $48 per page. This is due to the time it takes for staff to research previously issued certificates for those applicants who requests for an additional copy of a certificate previously issued much earlier;

   Increases the regular hourly inspection fee rate from $31.00 per hour to $48.00 per hour and the overtime inspection fee rate from $46.50 to $72.00 per hour. The hourly fee rates have not been changed for more than ten years. The proposed rate reflects the calculated current average salaries of the full-time staff;

   Establishes the fee rate for an appeal inspection from $150.00 to $350.00 or the hourly fee rate and other charges, whichever is greater;

3. **Section 4-143-3**

   Establishes a definition for "Hawaii Island coffee".

   Establishes a definition for "natural coffee" and other recognized geographic regions for natural coffee;

   Other necessary housekeeping changes.

4. **Section 4-143-4**

   Repeals the standards for grades of cherry coffee grown in the geographic region of Kona. This standard was established only for Kona coffee and has not been used by the

industry for many years. Grading system currently being utilized by the industry is based on green bean.

5. **Section 4-143-5**

   Repeals the standards for parchment grades of coffee. This standard has not been used by the industry for many years. Grading system currently being utilized by the industry is currently based on green bean.

6. **Section 4-143-6**

   Standards for grades of green coffee amended to include the addition of Hawaii Island and Oahu green coffee grade standards;

   Removes a two-tenth percentage points and the plus or minus tolerance of 0.3 percentage points on moisture;

   Amends the total defect allowed for Hawaii Prime coffee from fifteen to twenty percent.

   Establishes additional defect criteria for allowing pinholes caused by insect damage. This is to address the pinholes damage caused by the Coffee Berry Borer which is considered to not impact the cupping quality.

7. **Section 4-143-7 (repeal)**

   Repeals the minimum export requirement for green coffee. All grades of coffee are already allowed to be exported, provided that they are properly labeled;

8. **Section 4-143-8**

   Amends provisions for enforcement, penalties, and prosecution section for consistency with other amendments.

9. **Section 4-143-9**

   Amends abbreviations section for consistency with other amendments.

10. **Section 4-143-10 (repeal)**

    Repeals the coffee quality verification program which is a self certification program for dry millers. Since its adoption, no miller has utilized this program and Act 328, SLH 2012 allows for a voluntary certification program.

11. **Section 4-143-11 (new section within the administrative rules)**

    Establishes a Hawaii Natural Prime grade standard for Hawaii-grown natural coffee. Criteria being proposed is similar to the requirements of Hawaii Prime grade green coffee standards, and allows for characteristics specific to natural coffee.

12. **Section 4-143-12 (new section within the administrative rules)**

Establishes recordkeeping requirement for persons who produces, processes, transports, or distributes Hawaii-grown cherry, parchment, green or natural coffee.

DEPARTMENT OF AGRICULTURE

Amendments to Chapter 4-143
Hawaii Administrative Rules

January 29, 2013 (BOA AMENDED)

1. Section 4-143-1, Hawaii Administrative Rules, is amended to read as follows:

§4-143-1 Labeling and documentation requirements. (a) No person shall sell or offer, expose for sale, or transport Hawai'i-grown green coffee or natural coffee [~~packed in wholesale quantities~~] outside the geographic region of production as defined in section 4-143-3, unless each container is conspicuously [~~marked, stamped, printed, or~~] labeled in the [~~english~~] English language with the exact grade or lower grade for the green coffee or natural coffee or the term [~~Offgrade~~] offgrade, as applicable. No person shall transport, or cause the transport of, Hawai'i-grown cherry coffee, parchment coffee, green coffee, or natural coffee outside the geographic region of production as defined in section 4-143-3, unless each container is conspicuously labeled or accompanied by documentation written in the English language with the exact geographic region. This grade or geographic region statement shall appear on the tag [~~required~~] described in subsection (i), or on the container on the same panel as the declaration of identity required by section 4-93-2, Hawaii Administrative Rules[~~.~~], provided that the geographic region statement may also be documented on a form provided by the department accompanying each container.

(b) Any tag or container label representing a geographic region or grade term which is determined to be incorrect shall be corrected by complete obliteration of the incorrect information and [~~substitution~~] substituted with the correct statement of fact. Any accompanying documentation form determined to be incorrect shall be corrected by

complete obliteration of the incorrect information and substituted with the correct statement of fact.

(c) The letters and figures used to meet the requirements of this section shall be of bold type and legible.

(d) The grade terms to be used shall be exactly as shown in sections [~~4-143-4, 4-143-5, and~~] 4-143-6 and 4-143-11, except that grade terms may be abbreviated as shown in section 4-143-9, or may be expressed in all capital letters, or both. The geographic region terms to be used shall be exactly as shown in section 4-143-3. The use of a geographic region term on offgrade coffee is prohibited.

(e) The requirements of this section shall apply to both intra-state and export sales and distribution of Hawai'i-grown [~~green~~] coffee.

(f) Any [~~cherry coffee, parchment coffee, or~~] green coffee or natural coffee labeled with a grade term defined in sections [~~4-143-4, 4-143-5, or~~] 4-143-6[~~,~~] or 4-143-11, shall meet the standards of the labeled grade.

(g) The use of a grade term defined in sections [~~4-143-4, 4-143-5, and~~] 4-143-6[~~,~~] or 4-143-11, or any abbreviation or variation of the grade term that is intended to represent or imply that the [~~cherry coffee, parchment coffee, or~~] green coffee or natural coffee so labeled is grown in Hawai'i, [~~or in~~] on coffee that is not grown in Hawai'i is prohibited. The use of any geographic region defined in section 4-143-3, on cherry coffee, parchment coffee, [~~or~~] green coffee, or natural coffee that is not grown in [~~Hawai'i or in any~~] the geographic region defined in section 4-143-3, is prohibited.

(h) The use of any other grade term or fanciful term which is not defined in sections [~~4-143-4, 4-143-5, or~~] 4-143-6 or 4-143-11, to represent or imply that the cherry coffee, parchment coffee, [~~or~~] green coffee or natural coffee has a grade adopted under this chapter is prohibited.

(i) [~~Each container of green coffee subject to inspection for certification required by subsections (b) and (d) of section 4-143-2 shall have~~] Tags marked

with a grade or geographic region statement pursuant to subsection (a) or (j) or as required for inspection for certification pursuant to section 4-143-2(b) shall consist of a tamper-proof tag attached to each container of coffee beans in a manner that opening the container will alter the tag. The tags shall be light in color, made of a material that resists tearing and measuring a minimum of two inches by four inches, with a blank area at least two inches by two inches.

(j) Hawai'i-grown green coffee or natural coffee not meeting the quality standards of Hawaii No. 3 green coffee or Hawaii Natural Prime coffee shall be labeled with the term "offgrade" or the term "coffee" without reference to any geographic region. The term "offgrade" shall appear on the tag described in subsection (i), or on the container on the same panel as the declaration of identity required by section 4-93-2 Hawaii Administrative Rules. [Eff 10/8/01; am and comp ] (Auth: HRS §§147-4, 147-22) (Imp: HRS §§147-4, 147-22, 147-23)

2. Section 4-143-2, Hawaii Administrative Rules is amended to read as follows:

§4-143-2 Inspection and fees. (a) Inspection for certification of [~~cherry coffee, and parchment~~] green coffee and natural coffee by the department shall be voluntary on the part of the applicant and will be made only upon the request of the applicant.

(b) Inspection for certification of green coffee or natural coffee for [~~origin, grade, or both origin and~~] grade and condition by the department shall be [~~required~~] conducted upon the initial processing of parchment coffee into green coffee or natural coffee, provided that the green coffee or natural coffee shall be graded, placed into sealed containers, and tagged as [~~required~~] described in section 4-143-1(i) before the green coffee or natural coffee is offered for inspection[~~, except for:~~].

[~~(1) Green coffee packed in less than wholesale quantities and labeled for retail sale as~~

~~required by Title 21 of the Code of Federal Regulations, or green coffee packed in less than wholesale quantities and labeled for sample distribution such as "Sample - not to be sold".~~

~~(2) Green coffee that is not to be shipped out of the geographic region of production as defined in section 4-143-3, provided that all sales receipts, invoices, and mill reports shall indicate that that product is not to be shipped out of the geographic region of production as defined in section 4-143-3.~~

~~(3) Offgrade green coffee in containers that are properly marked as required in section 4-143-1, provided that Offgrade green coffee that is to be exported out of the geographic region of production shall also be properly marked as required in section 4-143-7.~~

~~(4) Green coffee processed in approved mills that are under a coffee quality verification program as described in section 4-143-10, and appropriately labeled.~~]

~~(c) Green coffee exempt from certification in paragraphs (b)(1), (2) and (3) that is not certified and which totals more than 400 pounds per month for any single applicant shall be reported to the department on an approved form within 30 days following the end of each month.~~

~~(d)~~] (c) [~~Cherry coffee, or parchment coffee that is shipped out of the geographic region of production, upon the initial processing of the parchment of coffee into green coffee, shall be inspected for certification, provided that the green~~] Green coffee or natural coffee [~~shall~~] requested to be [~~graded,~~] inspected, shall be placed into sealed containers and tagged as [~~required~~] described in section 4-143-1(i) before the green coffee or natural coffee is offered for inspection[~~, except as noted in paragraphs (b)(1), (3) and (4)~~]. The application for certification shall include a signed statement attesting to the geographic region of production as

defined in [~~subsection~~] section 4-143-3, of the [~~cherry coffee or parchment coffee,~~] green coffee or natural coffee, and the quantity in pounds.

[~~(c)~~] (d) It shall be the responsibility of the owner of the [~~green~~] coffee to apply to the department for certification [~~when required in subsection (b) or (d)~~].

[~~(f) Certification of green coffee not required by subsection (b) or (d) may be made by the department upon the request of the applicant.~~

~~(g) Requests for certification of origin with no certification of grade may be made only upon approval of the supervisor.~~

~~(h)~~] (e) The department shall provide [~~cherry coffee, parchment coffee, or~~] green coffee or natural coffee inspection at centralized pulping, hulling, grading, milling, processing, shipping or storage plants.

[~~(i)~~] (f) Each application for inspection shall be completed by the applicant on an approved department form, signed and filed with the office of inspection or any inspector at or near the place where the inspection is desired. The application, due to noncompliance with this chapter, may be rejected by the supervisor. The supervisor shall notify the applicant in writing of the reason for the rejection as soon as possible.

[~~(j)~~] (g) The applicant shall make every container of each lot of the product to be inspected readily accessible for sampling and inspection.

[~~(k)~~] (h) Inspection and certification for quality or condition [~~required by subsection (b) or (d)~~] shall be based on sections 4-143-6 or 4-143-11. A request for certification [~~not required under subsection (b) or (d)~~] may include a request restricted to a portion of, or in addition to the requirements in sections 4-143-6 or 4-143-11 upon approval of the supervisor, provided that a letter of certification may be issued in lieu of a certificate at the discretion of the supervisor.

[~~(l)~~] (i) An application for certification may be withdrawn by the applicant at any time before the

inspection is performed, provided that the applicant shall be billed for any expenses incurred after the application was made.

[~~(m)~~] (j) Proof of the authority of any person applying for inspection on behalf of another person may be required at the discretion of the inspector.

[~~(n)~~] (k) The original certificate, when issued, shall immediately be mailed or made available to the applicant or a person designated by the applicant. [~~Two~~] One additional [~~copies~~] copy of the certificate shall be issued without charge if requested by the applicant before the certificate is issued. Applicants may make a request in writing to the inspection office for [~~Additional~~] additional copies or facsimile copies of a certificate [~~may be supplied to the interested parties applicant~~] at a fee of [~~$1~~] $48.00 for each page.

[~~(o)~~] (l) An inspection fee rate of [~~$31.00~~] $48.00 per hour for regular time and [~~$46.50~~] $72.00 per hour for overtime shall be charged by the department, and shall be paid by the applicant. Additional charges may be assessed for transportation, travel time, stand-by time, per diem, mileage, and other actual expenses incurred by the department.

[~~(p)~~] (m) When payment for inspection is not received within [~~30~~] thirty days of the date of the bill, the department may withhold inspection for certification until payment is made. An interest charge of [~~.5~~] one-half of one per cent of the unpaid balance shall be assessed for each month, or portion of a month, that payment is not received after the initial [~~30~~] thirty days after the date of the bill.

[~~(q)~~] (n) An application for an appeal inspection may be made by any financially interested person dissatisfied with the original determination, provided that:

(1) The identity of the product has not been lost;

(2) [~~More than half of the~~] The original lot has not been disturbed and is accessible;

(3) The [~~reason for the~~] appeal request and the reason for the appeal is [~~stated~~] submitted

in writing, and the reason for the appeal request is not unsubstantial;

(4) The product has not undergone material change in condition since the original inspection; and

(5) Not more than [~~14~~] fourteen days has transpired from the date of the original certificate.

The fee to be charged for an appeal inspection shall be based on the fees and other charges specified in subsection [~~(c)~~] (1) or [~~$150.00~~] $350.00, whichever is greater, provided that should the result of the appeal inspection disclose that a material error was made in the original inspection, no fees or charges shall be assessed for the appeal inspection.

[Eff 10/8/01; am and comp ] (Auth: HRS §§147-7, 147-8) (Imp: HRS §§147-7, 147-8)

3. Section 4-143-3, Hawaii Administrative Rules is amended to read as follows:

§4-143-3 Definitions. As used in this chapter:

"Applicant" means a person that applies for or requests inspection for certification who has a financial interest in the product and who shall be responsible for payment of certification fees.

"Bean" means the seed of the fruit of the [~~coffea arabica~~] coffee plant, which has been dried and from which the pulp and the spermoderm have been removed and is also known as green coffee bean.

"Black bean" means:

(1) For cherry coffee, when any blackening can be seen through the translucent seed capsule containing the bean; and

(2) For green coffee or natural coffee, when the bean is darkly discolored.

"Broken bean" or "cut bean" means a bean or part of a bean that is damaged by a cracked, chipped, or nicked condition.

"Certificate" means any form of certification, either written, or printed, issued by an inspector

under this chapter to certify the [~~identity,~~] type, grade, quality, quantity, [~~origin,~~] or condition of [~~cherry coffee, parchment coffee, or~~] green coffee[~~, including compliance of the product with applicable specifications, provided that approved individuals from an approved Coffee Quality Verification Program (CQVP) mill may issue a CQVP certificate for quality, condition, and origin for green coffee~~] or natural coffee.

"Cherry coffee" means an agricultural commodity comprised of the unprocessed fruit of the [~~coffea arabica~~] coffee plant.

[~~"Cherry coffee" means an agricultural commodity comprised of cherries.~~]

"Clean" means [~~cherry coffee, parchment coffee~~] green coffee or natural coffee that is free from damage by dirt, dust, or other foreign matter.

"Damage" means any defect which materially detracts from the quality and condition of the [~~seed in the cherry coffee, or materially detracts from the appearance of the parchment, or materially detracts from the appearance of the bean,~~] green coffee or natural coffee bean.

~~["Decay" means the cherry coffee has decomposed to the extent that the epidermis is disintegrating.~~]

"Department" means the department of agriculture.

[~~"Dieback cherry" means a cherry which has received inadequate nutrition, is likely to be small in size, is identified by a characteristic dieback yellow color or smooth dark scars, and frequently has a capsule so difficult to eject as to cause it to be classed as immature.~~]

"Dry mill" means a location where parchment coffee is processed into green or natural coffee.

"Dry miller" means a person who processes parchment coffee into green or natural coffee.

"Excessively dirty" means caked with dirt.

"Fermentation" means the cherry has a definite sour odor.

"Firm" means not wilted, flabby or shriveled.

"Floater" means a cherry which has specific gravity less than one.

"Geographic region means the geographic areas designated as follows:
Hamakua is the district of Hamakua on the island of Hawai'i, as designated by the State of Hawaii Tax Map; Hawaii is the State of Hawaii; Kau is the district of Ka'u on the island of Hawai'i; as designated by the State of Hawaii Tax Map; Kauai is the island of Kaua'i; Kona is the North Kona and South Kona districts on the island of Hawai'i; as designated by the State of Hawaii Tax Map; Maui is the island of Maui; Molokai is the island of Moloka'i; and Oahu is the island of Oahu.

"Good aroma and flavor when brewed" means the coffee beverage, prepared according to accepted procedures, possesses a desirable flavor and aroma and is free from all foreign, undesirable, or offensive flavors or aromas.

"Good roasting quality" means the green coffee, when properly roasted, possesses uniform color and brightness.

"Green coffee" means [~~an agricultural commodity comprised of green coffee beans~~] coffee beans which have been processed from cherry coffee by removing the pulp, the adhering mucilage, and the hull.

"Hamakua coffee" means green coffee processed from cherry coffee which is grown in the geographic region of Hamakua and which at least meets the minimum requirements of Hawaii Prime green coffee.

"Hamakua natural coffee" means natural coffee processed from cherry coffee which is grown in the geographic region of Hamakua and which at least meets the minimum requirements of Hawaii Natural Prime coffee.

"Hawaii coffee" means green coffee processed from cherry coffee which is grown in the State of Hawaii and which at least meets the minimum requirements of Hawaii No. 3 green coffee.

"Hawaii Island coffee" means green coffee processed from cherry coffee which is grown in the geographic region of the island of Hawai'i and which at least meets the minimum requirements of Hawaii Island Prime coffee.

"Hawaii Island natural coffee" means natural coffee processed from cherry coffee which is grown in the island of Hawai'i and which at least meets the minimum requirements of Hawaii Natural Prime coffee.

"Hawaii natural coffee" means natural coffee processed from cherry coffee which is grown in the State of Hawaii and which at least meets the minimum requirements of Hawaii Natural Prime coffee.

"Hull" means the dried spermoderm which is the light tan or buff-colored membrane encasing the bean.

"Husk" means the outer part of the dried cherry consisting of dried pulp.

"Injury" means any defect which appreciably detracts from the quality of the seed in the cherry. A cherry that is broken so as to expose the parchment or to cause one seed capsule to be separated from the other is not considered injured.

"Inspector" means an employee of the department or a person designated by the supervisor, who is authorized to investigate, sample, inspect, and certify for any applicant the quality[~~,~~] and condition[~~, and origin~~] of [~~cherry coffee, parchment coffee, and~~] green coffee and natural coffee, and to enforce the requirements of this chapter.

"Interested party" means any person who has a financial interest in the product for which inspection is requested.

"Kau coffee" means green coffee processed from cherry coffee which is grown in the geographic region of Ka'u and which at least meets the minimum requirements of Hawaii Prime green coffee.

"Kau natural coffee" means natural coffee processed from cherry coffee which is grown in the geographic region of Ka'u and which at least meets the minimum requirements of Hawaii Natural Prime coffee.

"Kauai coffee" means green coffee processed from cherry coffee which is grown in the geographic region of Kaua'i and which at least meets the minimum requirements of Kauai Prime green coffee.

"Kauai natural coffee" means natural coffee processed from cherry coffee which is grown in the

geographic region of Kaua‘i and which at least meets the minimum requirements of Kauai Natural Prime coffee.

"Kona coffee" means green coffee processed from cherry coffee which is grown in the geographic region of Kona and which at least meets the minimum requirements of Kona Prime green coffee.

"Kona natural coffee" means natural coffee processed from cherry coffee which is grown in the geographic region of Kona and which at least meets the minimum requirements of Kona Natural Prime coffee.

"Mature" means the cherry has reached the stage of development when the seed capsules can be ejected readily from the cherry when firm pressure is applied to the cherry.

"Maui coffee" means green coffee processed from cherry coffee which is grown in the geographic region of Maui and which at least meets the minimum requirements of Maui Prime green coffee.

"Maui natural coffee" means natural coffee processed from cherry coffee which is grown in the geographic region of Maui and which at least meets the minimum requirements of Maui Natural Prime coffee.

"Mill" means a location where cherry coffee is processed into parchment coffee or parchment coffee is processed into green coffee, or both.

"Miller" means a person that processes cherry coffee into parchment coffee or processes parchment coffee into green coffee, or both.

"Moldy bean" means a bean with mold or evidence of mold growth.

"Molokai coffee" means green coffee processed from cherry coffee which is grown in the geographic region of Moloka‘i and which at least meets the minimum requirements of Molokai Prime green coffee.

"Molokai natural coffee" means natural coffee processed from cherry coffee which is grown in the geographic region of Moloka‘i and which at least meets the minimum requirements of Molokai Natural Prime coffee.

"Mother bean" means a bean that is not solid and has a loosely wrapped cotyledon.

"Natural coffee" means coffee which has been processed from cherry coffee that has been dried with the husk on, or coffee which has been processed from parchment coffee with adhering mucilage.

"Oahu coffee" means green coffee processed from cherry coffee which is grown in the geographic region of Oahu and which at least meets the minimum requirements of [~~Hawaii~~] Oahu Prime green coffee.

"Oahu natural coffee" means natural coffee processed from cherry coffee which is grown in the geographic region of Oahu and which at least meets the minimum requirements of Oahu Natural Prime coffee.

"Offgrade" is a descriptive term applicable to coffee which has a market value, and designates a quality lower than [~~the lowest applicable~~] Hawaii No. 3 grade for green coffee or the grade terms defined in section 4-143-11 for natural coffee.

"Office of inspection" means the office of an authorized inspector of coffee.

"Parchment" means the portion of the fruit of the coffee plant, [~~coffea arabica,~~] consisting of the hull, from which the pulp has been removed, and the enclosed seed.

"Parchment coffee" means an agricultural commodity comprised of parchment.

"Partly black bean" means a bean that is darkly discolored only partially.

"Partly moldy bean" means a bean that is moldy only partially or shows evidence of mold growth only partially.

"Partly sour bean" means a bean that has a faint fermented flavor or odor and is partially buff or yellowish-brown in color.

"Partly stinker bean" means a bean that, on being freshly cut, gives off an unpleasant odor. A partly stinker bean may be partly light-brown or brownish or occasionally have a waxy appearance.

"Person" means any individual, partnership, corporation, or separate legal entity.

"Pod" means an intact dried cherry.

"Pulp" means the fleshy pericarp, including the skin of the cherry.

"Quaker" means a bean that is poorly developed, exceptionally light in weight and is light in color when roasted.

"Quality" means the inherent properties or attributes of a product which determines its relative degree of excellence.

"Raisined cherry" means a cherry that is dried and wrinkled.

"Serious damage" means any defect which seriously detracts from the quality of the cherry, including but not limited to dieback cherry, when there is less than twenty per cent pink or red color on the surface of the cherry; or any penetration of the seed capsule by mold or other organism.

"Shell" means part of a bean that is thin, light in weight, and shell-like in appearance.

"Silver-skin" means the dried seed coat of the bean, which is tightly adhering, thin, tissue-like membrane covering the bean.

"Sour bean" means a bean that has a fermented odor or flavor. A sour bean is usually buff or yellowish-brown in color.

"Stick" means a slender piece of wood from a tree or shrub.

"Stinker bean" means a bean, upon being freshly cut, that gives off a very unpleasant odor. A stinker bean may be light-brown or brownish or occasionally have a waxy appearance.

"Stone" means a rock, a piece of a rock, or concreted earthy or mineral matter.

"Supervisor" means the [~~processed foods~~] coffee program specialist in the commodities branch of the department or a person designated by the [~~processed foods program specialist~~] manager of the commodities branch.

"Type I bean" means a bean which is produced two to a cherry and which is perceptively flat on one side and convex on the other.

"Type II bean" means a bean which is produced one to a cherry and is generally oval in shape and round in diameter. Also referred to as peaberry.

"Uniformly good green color" means all of the beans are of nearly the same green color, characteristic for the variety of properly grown and processed beans which have not undergone any material deterioration.

"Well colored" means:

(1) For cherries that are not brown or turning brown, the cherry shows at least fifteen per cent red color or is olive green over all of the surface that is not red; and

(2) For cherries that are turning brown, the cherry shows no more than seventy-five per cent brown color and that portion of the cherry that is not brown colored shows at least fifteen per cent red color or is olive green over all of the surface that is not red or brown.

"Wet mill" means a location where cherry coffee is processed into parchment coffee.

"Wet miller means a person that processes cherry coffee into parchment coffee.

[~~"Wholesale quantity" means a container of more than ten pounds net weight intended for sale, processing, re-packing or transport.~~] [Eff 10/8/01; am and comp ] (Auth: HRS §§147-4, 147-22) (Imp: §§147-4, 147-22)

4. Section 4-143-4, Hawaii Administrative Rules is repealed.

[~~§4-143-4 Standards for grades of cherry coffee grown in the geographic region of Kona. (a) Hawaii No. 1 cherry coffee consists of cherries which are firm, mature, well colored, not excessively dirty, and free from fermentation, decay, raisined cherries, dieback cherries, black beans, floaters, foreign material, and injury caused by disease, insects, or mechanical or other means.~~

~~Not more than a total of two per cent, by weight, of the cherries in any lot may fail to meet the~~

~~requirements of this grade, and not more than one-eighth of one per cent, by weight, shall be allowed for foreign material.~~

~~(b) Hawaii No. 2 cherry coffee consists of cherries which are matured, not excessively dirty, and free from fermentation, decay, raisined cherries, dieback cherries, black beans, floaters, foreign material, and damage caused by disease, insects, or mechanical or other means.~~

~~Not more than a total of seven per cent, by weight, of the cherries in any lot may fail to meet the requirements of this grade, and not more than one-fourth of one per cent, by weight, shall be allowed for foreign material.~~

~~(c) Hawaii No. 3 cherry coffee consists of cherries which are mature, not excessively dirty and free from fermentation, decay, black beans, floaters, foreign material, and serious damage caused by dieback cherries, mold penetration, disease, insects, or mechanical or other means.~~

~~Not more than a total of twelve per cent, by weight, of the cherries in any lot may fail to meet the requirements of this grade, and not more than one-fourth of one per cent, by weight, shall be allowed for foreign material.~~

~~(d) Averages for the entire lot, based on the examination of representative samples, shall be within the tolerances specified, but the contents of individual containers in any lot may vary from the specified tolerances subject to the following limitations:~~

~~(1) When the tolerance specified is more than five per cent, individual packages in any lot may contain not more than one and one-half times the tolerance; and~~

~~(2) When the tolerance specified is five per cent or less, individual packages in any lot may contain not more than double the tolerance.~~] [Eff 10/8/01; R ] (Auth: HRS §147-4) (Imp: §147-4)

5. Section 4-143-5, Hawaii Administrative Rules is repealed.

[~~§4-143-5 Standards for grades of parchment coffee. (a) Hawaii Grade A parchment coffee consists of parchment in which the enclosed beans are of one type, clean and free from defects, and possess a uniformly green color, good roasting quality, and good aroma and flavor when brewed; which are free from imperfections and meet the moisture content limitations of subsection (c); and which in the case of type I beans meet the minimum size requirement of size 18 and in the case of type II beans meet the minimum size requirement of size 12.~~

~~(b) Hawaii Grade B parchment coffee consists of parchment in which the enclosed beans are of one type, clean, and free from defects, and possess a uniformly good green color, good roasting quality and good aroma and flavor when brewed; which are free from imperfections and meet the moisture content limitations of subsection (c); and which in the case of type I beans meet the minimum size requirement of size 17 and in the case of type II beans meet the minimum size requirement of size 10.~~

~~(c) Offgrade parchment coffee is not a grade within the meaning of these standards but is a descriptive term that designates a quality lower than Hawaii Grade B parchment coffee.~~

~~(d) A defect is a bean or part of a bean after milling, is sour, discolored, off-color, or not clean; that is broken or cut; or that is a quaker, mother bean, shell or pod.~~

~~(e) The maximum and minimum limitations on moisture content of the beans shall be thirteen per cent and ten and one-half per cent, respectively by weight.~~

~~(f) Size classifications and tolerances for type I and type II beans recovered from parchment coffee shall be the same as those contained in subsection (k) of section section 4-143-6.~~]

[Eff 10/8/01; R ] (Auth: HRS §147-4) (Imp: HRS §147-4)

6. Section 4-143-6, Hawaii Administrative Rules is amended to read as follows:

§4-143-6 Standards for grades of green coffee. (a) Hawaii Extra Fancy green coffee consists of Hawaii beans of one type, which are clean and possess a uniformly good green color, good roasting quality, and good aroma and flavor when brewed; which do not exceed twelve [~~and two tenths~~] per cent or which do not contain less than nine per cent moisture by weight; which do not exceed eight full imperfections per three hundred grams as described in subsection [~~(j)~~] (i); which do not exceed three per cent by weight other type beans; and which in the case of type I beans meet the minimum size requirement of size 19 and in the case of type II beans meet the minimum size requirement of size 13 as stated in subsection [~~(k)~~] (j); provided that:

(1) Kona coffee which meets the requirements of this subsection may be classified as Kona Extra Fancy green coffee. This classification shall apply to Kona coffee only.

(2) Kauai coffee which meets the requirements of this subsection may be classified as Kauai Extra Fancy green coffee. This classification shall apply to Kauai coffee only.

(3) Maui coffee which meets the requirements of this subsection may be classified as Maui Extra Fancy green coffee. This classification shall apply to Maui coffee only.

(4) Molokai coffee which meets the requirements of this subsection may be classified as Molokai Extra Fancy green coffee. This classification shall apply to Molokai coffee only.

(5) Oahu coffee which meets the requirements of this subsection may be classified as Oahu

Extra Fancy green coffee. This classification shall apply to Oahu coffee only.

(6) Hawaii Island coffee which meets the requirements of this subsection may be classified as Hawaii Island Extra Fancy green coffee. This classification shall apply to Hawaii Island coffee only.

(b) Hawaii Fancy green coffee consists of Hawaii beans of one type, which are clean and possess a uniformly good green color, good roasting quality, and good aroma and flavor when brewed; which do not exceed twelve [~~and two tenths~~] per cent or which do not contain less than nine per cent moisture by weight; which do not exceed twelve full imperfections per three hundred grams as described in subsection [~~(j)~~] (i); which do not exceed three per cent by weight other type beans; and which in the case of type I beans meet the minimum size requirement of size 18, provided a larger size may be specified, and in the case of type II beans meet the minimum size requirement of size 12 as stated in subsection [~~(k)~~] (j); provided that:

(1) Kona coffee which meets the requirements of this subsection may be classified as Kona Fancy green coffee. This classification shall apply to Kona coffee only.

(2) Kauai coffee which meets the requirements of this subsection may be classified as Kauai Fancy green coffee. This classification shall apply to Kauai coffee only.

(3) Maui coffee which meets the requirements of this subsection may be classified as Maui Fancy green coffee. This classification shall apply to Maui coffee only.

(4) Molokai coffee which meets the requirements of this subsection may be classified as Molokai Fancy green coffee. This classification shall apply to Molokai coffee only.

(5) Oahu coffee which meets the requirements of this subsection may be classified as Oahu

Fancy green coffee. This classification shall apply to Oahu coffee only.

(6) Hawaii Island coffee which meets the requirements of this subsection may be classified as Hawaii Island Fancy green coffee. This classification shall apply to Hawaii Island coffee only.

(c) Hawaii No. 1 green coffee consists of Hawaii beans of one type, which are clean and possess a uniformly good green color, good roasting quality, and good aroma and flavor when brewed; which do not exceed twelve [~~and two-tenths~~] per cent or which do not contain less than nine per cent moisture by weight; which do not exceed eighteen full imperfections per three hundred grams as described in subsection [~~(j)~~] (i); which do not exceed three per cent by weight other type beans, and which meet the minimum size requirement for size 16 for type I beans, provided a larger size may be specified, and size 10 for type II beans as stated in subsection [~~(k)~~] (j); provided that:

(1) Kona coffee which meets the requirements of this subsection may be classified as Kona No. 1 green coffee. This classification shall apply to Kona coffee only.

(2) Kauai coffee which meets the requirements of this subsection may be classified as Kauai No. 1 green coffee. This classification shall apply to Kauai coffee only.

(3) Maui coffee which meets the requirements of this subsection may be classified as Maui No. 1 green coffee. This classification shall apply to Maui coffee only.

(4) Molokai coffee which meets the requirements of this subsection may be classified as Molokai No. 1 green coffee. This classification shall apply to Molokai coffee only.

(5) Oahu coffee which meets the requirements of this subsection may be classified as Oahu No. 1 green coffee. This classification shall apply to Oahu coffee only.

(6) Hawaii Island coffee which meets the requirements of this subsection may be classified as Hawaii Island No. 1 green coffee. This classification shall apply to Hawaii Island coffee only.

(d) Hawaii Select green coffee consists of Hawaii beans, which are clean and which do not impart sour, fermented, moldy, medicinal, or other undesirable aromas and flavors when brewed; which do not exceed twelve [~~and two-tenths~~] per cent or which do not contain less than nine per cent moisture by weight; and which do not exceed five per cent defective beans, by weight, included therein not more than two per cent, by weight, sour, stinker, black, or moldy beans that equal full imperfections only, as described in [~~paragraphs~~] subsection [~~(j)~~] (i)(1) and [~~(j)~~] (i)(2); which may be assigned a size classification as stated in [~~paragraph~~] subsection [~~(k)~~](j)(1); provided that:

(1) Kona coffee which meets the requirements of this subsection may be classified as Kona Select green coffee. This classification shall apply to Kona coffee only.

(2) Kauai coffee which meets the requirements of this subsection may be classified as Kauai Select green coffee. This classification shall apply to Kauai coffee only.

(3) Maui coffee which meets the requirements of this subsection may be classified as Maui Select green coffee. This classification shall apply to Maui coffee only.

(4) Molokai coffee which meets the requirements of this subsection may be classified as Molokai Select green coffee. This classification shall apply to Molokai coffee only.

(5) Oahu coffee which meets the requirements of this subsection may be classified as Oahu Select green coffee. This classification shall apply to Oahu coffee only.

(6) Hawaii Island coffee which meets the requirements of this subsection may be

classified as Hawaii Island Select green coffee. This classification shall apply to Hawaii Island coffee only.

(e) Hawaii Prime green coffee consists of Hawaii beans which are clean; which do not impart sour, fermented, moldy, medicinal, or other undesirable aromas and flavors when brewed; which do not exceed twelve [~~and two-tenths~~] per cent or which do not contain less than nine per cent moisture by weight; and which do not exceed [~~fifteen~~] twenty per cent defective beans, by weight, included therein not more than five per cent, by weight, sour, stinker, black or moldy beans that equal full imperfections only, as described in [~~paragraphs~~] subsections [~~(j)~~] (i)(1) and [~~(j)~~] (i)(2); which may be assigned a size classification as stated in [~~paragraph~~] subsection [~~(k)~~] (j)(1); provided that:

(1) Kona coffee which meets the requirements of this subsection may be classified as Kona Prime green coffee. This classification shall apply to Kona coffee only.

(2) Kauai coffee which meets the requirements of this subsection may be classified as Kauai Prime green coffee. This classification shall apply to Kauai coffee only.

(3) Maui coffee which meets the requirements of this subsection may be classified as Maui Prime green coffee. This classification shall apply to Maui coffee only.

(4) Molokai coffee which meets the requirements of this subsection may be classified as Molokai Prime green coffee. This classification shall apply to Molokai coffee only.

(5) Oahu coffee which meets the requirements of this subsection may be classified as Oahu Prime green coffee. This classification shall apply to Oahu coffee only.

(6) Hawaii Island coffee which meets the requirements of this subsection may be classified as Hawaii Island Prime green

coffee. This classification shall apply to Hawaii Island coffee only.

(f) Hawaii No. 3 green coffee consists of Hawaii beans which are clean; which do not impart sour, fermented, moldy, medicinal, or other undesirable aromas and flavors when brewed; which do not exceed twelve [~~and two-tenths~~] per cent or do not contain less than nine per cent moisture, by weight; and which do not exceed thirty-five per cent defective beans, by weight, included therein not more than five per cent, by weight, black, moldy, sour, or stinker beans that equal full imperfections only, as described in [~~paragraphs~~] subsections [~~(j)~~] (i)(1) and [~~(j)~~] (i)(2). Use of the terms "Kona", "Kauai", "Maui", [~~or~~] "Molokai", "Oahu" or "Hawaii Island" in conjunction with the term "No. 3" is prohibited.

(g) Offgrade is not a grade within the meaning of these standards but is a descriptive term applicable to green coffee which has a market value and designates a quality lower than Hawaii No. 3 green coffee. Use of the terms "Hamakua", "Hawaii", "Kau", "Kona", "Kauai", "Maui", [~~or~~] "Molokai", "Oahu" or "Hawaii Island" in conjunction with the term [Offgrade] offgrade is prohibited.

(h) Allowances and limitations stated in this section shall be applied to the entire lot, and a composite sample from the lot shall be used to determine the grade.

[~~(i) The maximum and minimum limitations on the moisture content of green coffee shall have a tolerance of plus or minus .3 percentage points.~~]

~~(j)~~] (i) Specific defects and the extent to which these defects affect grade in terms of imperfection equivalents shall be as follows:

(1) One bean that has more than fifty per cent of an equivalent full bean surface that is black or moldy shall equal one full imperfection;

(2) One bean that is more than faintly affected by a sour or stinker odor shall equal one full imperfection;

(3) One pod or piece of a pod that is more than fifty per cent equivalent of a full pod shall equal one full imperfection;

(4) One full husk or piece of a husk that is more than fifty per cent equivalent of a full husk shall equal one full imperfection;

(5) One full hull or piece of a hull that is more than fifty per cent equivalent of a full hull shall equal one full imperfection;

(6) One stone more than [~~4~~] four millimeters in any dimension shall equal one full imperfection;

(7) One stick more than [~~4~~] four millimeters and up to [~~10~~] ten millimeters in length shall equal one full imperfection;

(8) One stick more than [~~10~~] ten millimeters in length shall equal two full imperfections.

Where only a piece of a black bean, moldy bean, sour bean, stinker bean, pod, husk or hull are present, and they do not equal one full imperfection as described in paragraphs (1), (2), (3), (4) and (5), each shall be scored as one-fifth of a full imperfection. For example, one bean with less than [~~50%~~] fifty per cent of its surface black shall be scored as one-fifth of a full imperfection.

A partly black, partly moldy, or partly sour bean, or a stick or a stone that does not equal one full imperfection as described in paragraphs (1), (2), (6) and (7) shall be scored as one-fifth of a full imperfection.

A quaker, shell, mother bean, or bean or piece of a bean affected by damage by an insect or damage by a broken or cut bean shall be scored as one-fifth of a full imperfection.

A bean that is affected by not more than two pinholes caused by insect damage regardless of discoloration associated with the insect damage shall be scored as one-tenth of a full imperfection.

A bean that is affected by greater than two pinholes caused by insect damage regardless of discoloration associated with the insect damage shall be scored as one-fifth of a full imperfection.

Any other defect not listed in this subsection shall be scored as an imperfection to the extent that these defects affect the quality of the beans in the lot.

[~~(k)~~] (j) Size classifications for green coffee shall be as follows:

(1) For type I green coffee:

(A) Size [~~16~~] 11 shall consist of beans which will not pass through a [~~16/64~~] 11/64 inch round hole;

(B) Size [~~17~~] 14 shall consist of beans which will not pass through a [~~17/64~~] 14/64 inch round hole;

(C) Size [~~18~~] 16 shall consist of beans which will not pass through a [~~18/64~~] 16/64 inch round hole; [~~and~~]

(D) Size [~~19~~] 17 shall consist of beans which will not pass through a [~~19/64~~] 17/64 inch round hole; [~~and~~]

(E) Size 18 shall consist of beans which will not pass through a 18/64 inch round hole;

(F) Size 19 shall consist of beans which will not pass through a 19/64 inch round hole; and

(2) For type II green coffee:

(A) Size 10 shall consist of beans which will not pass through a 10/64 inch slotted hole;

(B) Size 12 shall consist of beans which will not pass through a 12/64 inch slotted hole; and

(C) Size 13 shall consist of beans which will not pass through a 13/64 inch slotted hole.

In order to allow for variations incident to proper sizing for type I and type II green coffee, not more than a total of ten per cent, by weight, of the beans in any lot may be smaller than the size specified.

[~~(l)~~] (k) When size is specified for Hawaii Select green coffee or Hawaii Prime green coffee, not

more than a total to three per cent by weight other type beans shall be permitted in any lot. [Eff 10/8/01; am and comp ] (Auth: HRS §§147-4, 147-22) (Imp HRS §§147-4, 147-22)

5. Section 4-143-7, Hawaii Administrative Rules is repealed.

[~~§4-143-7 Minimum export requirement. Green coffee destined for shipment in wholesale quantities to points outside the State shall meet the requirements of Hawaii No. 3 green coffee except that Offgrade green coffee may be exported provided that all containers are printed or labeled in bold letters of not less than one and one half inch in height "OFFGRADE COFFEE" parallel to and within twelve inches of the top of or on both sides of each container. In addition, all invoices for this product shall be marked in large bold capital letters "OFFGRADE COFFEE".~~] [Eff 10/8/01; R ] (Auth: HRS §147-22) (Imp: HRS §§147-22, 147-23)

6. Section 4-143-8, Hawaii Administrative Rules is amended to read as follows:

§4-143-8 Provisions for enforcement, penalties and prosecution. (a) Any authorized inspector of the department may enter any public or private premises, including any vehicle of transport, during business hours to:

(1) Inspect for the quality, condition, and origin of [~~green~~] coffee; and

(2) Enforce the labeling, record keeping, and certification requirements of this chapter[~~; and~~].

~~(3) Enforce the minimum export requirements for green coffee~~].

(b) The inspector may take representative samples of the [~~green~~] coffee for inspection.

(c) Any authorized inspector, upon determining that this chapter or chapter 147, Hawaii Revised Statutes, is being violated, may place a stop sale notice upon or near the [~~green~~] coffee that is in violation. When a stop sale notice is issued:

(1) The [~~green~~] coffee shall not be sold, offered for sale, transferred, moved off the premises, or otherwise disposed of until the stop sale notice has been removed by an authorized inspector or written permission is received from the department.

(2) No person shall remove, deface, or otherwise tamper with any stop sale notice except upon approval of an authorized inspector.

(3) The stop sale notice shall be accompanied by a non-compliance notice issued by the department indicating the violation and corrective action required.

(d) Any person who violates any provision of this chapter may be subject to the actions, procedures, and penalties provided in sections 147-2 and 147-25, Hawaii Revised Statutes. [Eff 10/8/01; am and comp ] (Auth: HRS §§147-2, 147-22, 147-25) (Imp: HRS §§147-4, 147-24)

7. Section 4-143-9, Hawaii Administrative Rules is amended to read as follows:

§4-143-9 Abbreviations. Grade designations on labels for [~~green~~] coffee shall be as stated in [~~section 4-143-6~~] this chapter except that Hawaii may be abbreviated as "HI." or "Haw." and Extra may be abbreviated as "Ex.", provided that a period need not be used. [Eff 10/8/01; am and comp ] (Auth: HRS §§147-4, 147-22) (Imp: HRS §§147-4, 147-22)

8. Section 4-143-10, Hawaii Administrative Rules is repealed.

[~~§4-143-10 Coffee quality verification program.~~

~~(a) The coffee quality verification program (CQVP) is a self-certification program where dry millers are authorized to certify green coffee and issue a CQVP certificate, following specific department requirements. A dry mill that wishes to participate in this program shall meet the following requirements:~~

~~(1) Be committed to the concepts and processes of the CQVP;~~

~~(2) Process at least 5,000 pounds of green coffee per week for three consecutive weeks during a twelve month period;~~

~~(3) Establish a satisfactory record of milling and grading, of which nine of ten lots of various grades of green coffee milled meet all grade and labeling requirements;~~

~~(4) Provide a clean grading area with adequate lighting and an available desk, chair, and secured cabinet with hasp of the department's use;~~

~~(5) Provide the department with a flow chart and a narrative of processing operations;~~

~~(6) Provide the department with an organization chart and list of responsible individuals;~~

~~(7) Provide the department with a listing of all sack and label markings to be used for the program, including a required date code and other codes if used and the key to interpretation of the codes;~~

~~(8) Provide the department with a weekly schedule of operations;~~

~~(9) Maintain and make available to the department a log showing:~~

~~(A) All cherry coffee, parchment coffee, and green coffee received by the mill, whether to be processed by the mill or not;~~

~~(B) Name of producer, shipper, wholesaler, or miller of each lot of all coffee received and amount by type and weight;~~

~~(C) Daily volume of green coffee processed by grade and weight; and~~

(D) Distribution of all green coffee including where applicable, certificate type and certificate number and the respective container type; grade, weight and receiver, including green coffee exempt from certification; and

(10) Have available for inspection at the department's request all green coffee packed by the mill in wholesale quantities, including green coffee exempt from certification.

(b) The department shall follow a CQVP audit scheme consisting of three levels of audits. Millers that meet requirements in subsection (a) shall enter the program at CQVP Level I and shall move up to the next higher level as specified in "Table 1 Coffee Quality Verification Program (CQVP) System Audit Levels and Requirements (10/30/00)" located at the end of this chapter and incorporated herein.

(c) Charges for all CQVP Levels shall be based on a minimum of $100 administrative fee per required audit, in addition to the hourly audit fees and grading charges. If the department determines that an additional audit visit is necessary, it shall be conducted at no cost to the miller.

(d) If a miller requests additional audit inspections over the minimum, the miller shall be charged at the same hourly audit and grading rate for the CQVP. Requested audits shall be conducted on a time-available basis.

(e) Full certification by the department may be requested by a CQVP miller at full certification charges on a time available basis.

(f) To withdraw from the program, a CQVP miller shall provide two weeks advance written notification to the department.

(g) The department shall utilize recent inspection records and CQVP audit results from the previous season to determine a miller's qualification for re-entry into the CQVP.

(h) Millers approved for CQVP Level I, shall be assigned a CQVP stamp with a miller number. This

~~stamp may be used for wholesale quantities of green beans processed under CQVP Level I, CQVP Level II, or CQVP Level III. Millers may also purchase pre-numbered CQVP Certificates from the department. The miller shall be responsible for the safekeeping of the stamp and certificates.~~

~~(i) Millers using department issued CQVP certificates shall forward copies of all certificates issued or voided each month to the department within 7 days after the end of the month.~~

~~(j) The department shall remove the miller from the CQVP program for any of the following reasons:~~

~~(1) Failure to comply with this section;~~

~~(2) Unsatisfactory performance at CQVP level I;~~

~~(3) Failure to pay inspection fees;~~

~~(4) Misuse or misrepresentation of the CQVP stamp, certificate, or program;~~

~~(5) Providing false information to the department;~~

~~(6) Hindering or attempting to influence the inspector; or~~

~~(7) Other reason that the department finds harmful or contrary to the intent of the CQVP program.~~

~~(k) If a miller on the CQVP level I, II or III withdraws from the program or is removed from the CQVP by the department, the miller shall immediately surrender all assigned CQVP stamps and unused certificates to the department. The miller upon re-entry into the CQVP will be issued an equivalent number of certificates at no cost. Any miller falling back to the CQVP Level I or CQVP Level II due to product failure, shall submit an explanation to the department as to why the product failed and what steps were taken to correct the situation.~~

~~The department shall:~~

~~(1) Provide written instructions and detailed requirements regarding the CQVP to all interested millers.~~

~~(2) Initiate the CQVP with new millers upon mutual agreement.~~

~~(3) Provide inspection audits as required in subsection (b).~~

~~(4) Notify millers of audit results as soon as practicable.~~

~~(5) Inform millers that have failed to meet CQVP requirements, in writing, of corrective action needed to enter or re-enter the program.~~

~~(6) Keep all proprietary and individual producer and miller data confidential.~~]

[Eff 10/8/01; R ] (Auth: HRS §147-7) (IMP: 10/8/01)

9. Chapter 143, Hawaii Administrative Rules is amended by adding a new section 4-143-11 to read as follows:

§4-143-11 Standards for grades of natural coffee. (a) Hawaii Natural Prime coffee consists of Hawaii coffee beans which have been processed from cherry coffee that has been dried with the husk on, or which has been processed from parchment coffee with adhering mucilage, of one type, which are clean and do not exceed thirteen per cent or which do not contain less than eight per cent moisture by weight, which do not exceed fifteen per cent defective beans, by weight, as defined in section 4-143-6, included therein not more than five per cent by weight, black or moldy beans that equal full imperfections only, as described in section 4-143-6 (i)(1). Sour or stinker beans, or partly sour or partly stinker beans are not considered defective beans.

(1) Kona natural coffee which meets the requirements of this subsection may be classified as Kona Natural Prime coffee. This classification shall apply to Kona natural coffee only.

(2) Kauai natural coffee which meets the requirements of this subsection may be classified as Kauai Natural Prime coffee.

This classification shall apply to Kauai natural coffee only.

(3) Maui natural coffee which meets the requirements of this subsection may be classified as Maui Natural Prime coffee. This classification shall apply to Maui natural coffee only.

(4) Molokai natural coffee which meets the requirements of this subsection may be classified as Molokai Natural Prime coffee. This classification shall apply to Molokai natural coffee only.

(5) Oahu natural coffee which meets the requirements of this subsection may be classified as Oahu Natural Prime coffee. This classification shall apply to Oahu natural coffee only.

(6) Hawaii Island natural coffee which meets the requirements of this subsection may be classified as Hawaii Island Natural Prime coffee. This classification shall apply to Hawaii Island natural coffee only.

(b) Size classifications for natural coffee shall be as follows:

(1) For type I natural coffee:

(A) Size 11 shall consist of beans which do not pass through a 11/64 inch round hole;

(B) Size 14 shall consist of beans which will not pass through a 14/64 inch round hole;

(C) Size 16 shall consist of beans which will not pass through a 16/64 inch round hole;

(D) Size 17 shall consist of beans which will not pass through a 17/64 inch round hole;

(E) Size 18 shall consist of beans which will not pass through a 18/64 inch round hole;

(F) Size 19 shall consist of beans which will not pass through a 19/64 inch round hole; and

(2) For type II natural coffee:

(A) Size 10 shall consist of beans which will not pass through a 10/64 inch slotted hole;

(B) Size 12 shall consist of beans which will not pass through a 12/64 inch slotted hole; and

(C) Size 13 shall consist of beans which will not pass through a 13/64 inch slotted hole.

In order to allow for variations incident to proper sizing for type I and type II natural coffee, not more than a total of ten per cent, by weight, of the beans in any lot may be smaller than the size specified.

(c) When size is specified, not more than a total of three per cent by weight other type beans shall be permitted in any lot.

(d) Offgrade is not a grade within the meaning of these standards but is a descriptive term applicable to natural coffee which has a market value and designates a quality lower than Hawaii Natural Prime coffee. Use of the terms "Hamakua", "Hawaii", "Kau", "Kona", "Kauai", "Maui", "Molokai", "Oahu" or "Hawaii Island" in conjunction with the term offgrade is prohibited. [Eff and comp ] (Auth: HRS §§147-4, 147-22) (Imp: HRS §§147-4, 147-22)

10. Chapter 143, Hawaii Administrative Rules is amended by adding a new section 4-143-12 to read as follows:

§4-143-12 Record keeping. (a) Every person who produces, processes, transports, or distributes Hawai'i-grown cherry, parchment, green, or natural coffee shall maintain records of each purchase, transport, or sale.

(b) Records shall include:

(1) The name, address, and telephone number of the seller;

(2) The name, address, and telephone number of the buyer;

(3) The name, address, and telephone number of the transporter;

(4) The quantity of Hawaii-grown coffee purchased, transported, or sold;

(5) The grade of Hawaii-grown coffee purchased, transported, or sold, if applicable;

(6) The date of the sale or purchase; and

(7) A lot number, tax map key, or other identifying mark for each transaction.

(c) Records of each sale, purchase, or transport of Hawaii-grown coffee shall be retained for a minimum of six years. [Eff and comp ] (Auth: §147-4) (Imp: §147-4)

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

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

13. These amendments to chapter 4-143, Hawaii Administrative Rules, shall take effect on the first day of the month that begins at least 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 Month xx, XXXX, and filed with the Office of the Lieutenant Governor.

_____

Russell Kokubun
Chairperson
Board of Agriculture

APPROVED AS TO FORM:

_____

Deputy Attorney General

IV. New Business

D. Correspondence from Dora Beck, P.E., Acting Director, County of Hawaii, Department of Environmental Management, dated January 22, 2013, regarding Small Business Impact Statement Education of Tourists Update for Article IV, Rules Relating to Plastic Bag Reduction

**William P. Kenoi**
*Mayor*

**Walter K.M. Lau**
*Managing Director*



# County of Hawai'i

**DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**
**25 Aupuni Street • Hilo, Hawai`i 96720**
(808) 961-8083 · Fax (808) 961-8086
http://co.hawaii.hi.us/directory/dir_envmng.htm

January 22, 2013

Mr. Richard C. Lim, Director
Small Business Regulatory Review Board
Department of Business, Economic Development and Tourism
P. O. Box 2359
Honolulu, HI 96804

Re: SMALL BUSINESS IMPACT STATEMENT EDUCATION OF TOURISTS UPDATE (§201M-3, Hawai`i Revised Statutes) FOR RULES RELATING TO PLASTIC BAG REDUCTION

Dear Mr. Lim,

This letter is an update on Big Island efforts to educate tourists about the Plastic Bag Reduction Ordinance.

A County of Hawai'i Department of Environmental Management (DEM) representative attended the public hearing conducted by the State Small Business Regulatory Review Board (SBRRB) on December 10, 2012 pertaining to review of the Administrative Rules for the Plastic Bag Reduction Ordinance for the County of Hawai'i. We appreciate the SBRRB's acknowledgement and review of the rules meant to implement the law. Not only are small businesses affected but tourists to the Big Island who visit business and hotel establishments are affected.

The DEM delivered the message below (italics) via email on January 8, 2013 to:

Big Island Visitors Bureau
Kohala Coast Resort Association
Destination Hilo
Destination Kona Coast
State Airports
Kona Business Improvement District
Hilo Downtown Improvement Association

*"Aloha,*

*The County of Hawaii has adopted a new law entitled "Plastic Bag Reduction" to reduce plastic checkout bag use on Hawaii Island. We want to reach out to leaders in the Visitor Industry to make sure that your industry is well informed about the new law and that visitors to our island are not taken by surprise when they go to purchase merchandise. Hawai`i County's ordinance is similar in many ways to those adopted previously by Kauai and Maui counties, and our Administrative Rules have been informed by those efforts as well. A copy of the Administrative Rules implementing the law is attached for your easy reference.*

*The best way to access additional information about the Plastic Checkout Bag Reduction Ordinance is via our website http://www.hawaiizerowaste.org/reuse/plastic-bag-reduction-ordinance/ . The website includes copies of both the original Ordinance and the recently adopted Administrative Rules. There are also a number of posters and related collateral material that merchants are welcome to print and circulate to support the roll out of this effort.*

*Some highlights of the new law include:*

- *The Plastic Bag Reduction law takes effect on January 17, 2013 making it illegal to offer single-use plastic checkout bags to customers*
- *For a one year period (until January 17, 2014) merchants may continue to offer single use plastic checkout bags but must charge consumers for them.*
- *The Bill effects all commercial enterprises, including restaurants and independent contractors associated with a business (i.e. vendors at farmers markets etc.).*
- *Certain types of reusable plastic checkout bags are permitted. See Section 2.05 on the attached rules.*
- *Enforcement powers and fines are spelled out in the Rules.*

*The County is optimistic about the positive impacts the new law will have on the environment through the reduction of this particularly mobile part of the waste stream. We understand the need for ongoing consumer and merchant education and have committed funds to continue these efforts going forward.*

*If you have any questions about the plastic checkout bag reduction, please feel free to contact the County Solid Waste and Recycling Office at 961-8270 or bring-ur-bag@co.hawaii.hi/us."*

The recipients were also sent a copy of the final Administrative rules explaining the Plastic Bag Reduction Ordinance as well as information on the resources available which could be used to inform visitors to the Big Island of the upcoming Ordinance.

The DEM apologizes for the lateness of this update as it was meant to be communicated earlier than the SBRBB's scheduled meeting on January 23, 2013. Should you have any questions, please do not hesitate to call me at (808) 961-8083.

Best Regards,

Dora Beck

Dora Beck, P.E.
ACTING DIRECTOR

cc: Barbara Bennett, SBRBB Member
William P. Kenoi, Mayor, Hawai`i County
Walter K.M. Lau, Managing Director, Hawai`i County
Randy Kurohara, Deputy Managing Director, Hawai`i County
Ivan Torigoe, Deputy Corporation Counsel
Greg Goodale, SWD Chief
Linda Peters, Recycling Coordinator

V. Discussion of the following Legislative Matters:

B. Governor's Message No. 526, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Anthony Borge, for a term to expire June 30, 2015

# GM526

| | |
|---|---|
| Measure Title: | Submitting for consideration and confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, ANTHONY BORGE, for a term to expire 6-30-2015. |
| Report Title: | Small Business Regulatory Review Board |
| Description: | |
| Companion: | |
| Package: | |
| Current Referral: | EGH |
| Introducer(s): | |

| Sort by Date | | Status Text |
|---|---|---|
| 1/22/2013 | S | Received. |
| 1/22/2013 | S | Referred to EGH. |

**S** = Senate | **H** = House | **D** = Data Systems | **$** = Appropriation measure | **ConAm** = Constitutional Amendment

Some of the above items require Adobe Acrobat Reader. Please visit Adobe's download page for detailed instructions.

GM526

GOV. MSG. NO. 526

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

January 16, 2013

The Honorable Donna Mercado Kim, Senate President,
and Members of the Senate
Twenty-Seventh State Legislature
State Capitol, Room 409
Honolulu, HI 96813

Dear Senate President Kim and Members of the Senate,

In accordance with the provisions of Article V, Section 6, of the Hawai'i State Constitution, I have the honor to submit herewith for your consideration and confirmation, the following nomination to the **Small Business Regulatory Review Board:**

| SMALL BUSINESS REGULATORY REVIEW BOARD | TERM TO EXPIRE |
|---|---|
| Anthony Borge | 6/30/2015 |

Sincerely,

Neil Abercrombie

NEIL ABERCROMBIE
Governor, State of Hawai'i

V. Discussion of the following Legislative Matters:

C. Governor's Message No. 527, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Barbara Bennett, for a term to expire June 30, 2014

# GM527

| | |
|---|---|
| Measure Title: | Submitting for consideration and confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, BARBARA BENNETT, for a term to expire 6-30-2014. |
| Report Title: | Small Business Regulatory Review Board |
| Description: | |
| Companion: | |
| Package: | |
| Current Referral: | EGH |
| Introducer(s): | |

| Sort by Date | | Status Text |
|---|---|---|
| 1/22/2013 | S | Received. |
| 1/22/2013 | S | Referred to EGH. |

**S** = Senate | **H** = House | **D** = Data Systems | **$** = Appropriation measure | **ConAm** = Constitutional Amendment

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GM527

GOV. MSG. NO. 527

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

January 16, 2013

The Honorable Donna Mercado Kim, Senate President,
and Members of the Senate
Twenty-Seventh State Legislature
State Capitol, Room 409
Honolulu, HI 96813

Dear Senate President Kim and Members of the Senate,

In accordance with the provisions of Article V, Section 6, of the Hawai'i State Constitution, I have the honor to submit herewith for your consideration and confirmation, the following nomination to the **Small Business Regulatory Review Board:**

| SMALL BUSINESS REGULATORY REVIEW BOARD | TERM TO EXPIRE |
|---|---|
| Barbara Bennett | 6/30/2014 |

Sincerely,

Neil Abercrombie

NEIL ABERCROMBIE
Governor, State of Hawai'i

V. Discussion of the following Legislative Matters:

D. Governor's Message No. 528, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Chu Lan Shubert-Kwock, for a term to expire June 30, 2016

# GM528

| | |
|---|---|
| Measure Title: | Submitting for consideration and confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, CHU LAN SHUBERT-KWOCK, for a term to expire 6-30-2016. |
| Report Title: | Small Business Regulatory Review Board |
| Description: | |
| Companion: | |
| Package: | |
| Current Referral: | EGH |
| Introducer(s): | |

| Sort by Date | | Status Text |
|---|---|---|
| 1/22/2013 | S | Received. |
| 1/22/2013 | S | Referred to EGH. |

**S** = Senate | **H** = House | **D** = Data Systems | **$** = Appropriation measure | **ConAm** = Constitutional Amendment

Some of the above items require Adobe Acrobat Reader. Please visit Adobe's download page for detailed instructions.

## GM528

GOV. MSG. NO. 528

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

January 16, 2013

The Honorable Donna Mercado Kim, Senate President,
and Members of the Senate
Twenty-Seventh State Legislature
State Capitol, Room 409
Honolulu, HI 96813

Dear Senate President Kim and Members of the Senate,

In accordance with the provisions of Article V, Section 6, of the Hawai'i State Constitution, I have the honor to submit herewith for your consideration and confirmation, the following nomination to the **Small Business Regulatory Review Board:**

| SMALL BUSINESS REGULATORY REVIEW BOARD | TERM TO EXPIRE |
|---|---|
| Chu Lan Shubert-Kwock | 6/30/2016 |

Sincerely,

Neil Abercrombie

NEIL ABERCROMBIE
Governor, State of Hawai'i

V. Discussion of the following Legislative Matters:

E. Governor's Message No. 529, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Howard Lum, for a term to expire June 30, 2014

# GM529

| | |
|---|---|
| Measure Title: | Submitting for consideration and confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, HOWARD LUM, for a term to expire 6-30-2014. |
| Report Title: | Small Business Regulatory Review Board |
| Description: | |
| Companion: | |
| Package: | |
| Current Referral: | EGH |
| Introducer(s): | |

| Sort by Date | | Status Text |
|---|---|---|
| 1/22/2013 | S | Received. |
| 1/22/2013 | S | Referred to EGH. |

**S** = Senate | **H** = House | **D** = Data Systems | **$** = Appropriation measure | **ConAm** = Constitutional Amendment

Some of the above items require Adobe Acrobat Reader. Please visit Adobe's download page for detailed instructions.

GM529

GOV. MSG. NO. 529

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

January 16, 2013

The Honorable Donna Mercado Kim, Senate President,
and Members of the Senate
Twenty-Seventh State Legislature
State Capitol, Room 409
Honolulu, HI 96813

Dear Senate President Kim and Members of the Senate,

In accordance with the provisions of Article V, Section 6, of the Hawai'i State Constitution, I have the honor to submit herewith for your consideration and confirmation, the following nomination to the **Small Business Regulatory Review Board:**

| SMALL BUSINESS REGULATORY REVIEW BOARD | TERM TO EXPIRE |
|---|---|
| Howard Lum | 6/30/2014 |

Sincerely,

Neil Abercrombie

NEIL ABERCROMBIE
Governor, State of Hawai'i

V. Discussion of the following Legislative Matters:

F. Governor's Message No. 530, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Kyoko Kimura, for a term to expire June 30, 2016

# GM530

Measure Title: Submitting for consideration and confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, KYOKO KIMURA, for a term to expire 6-30-2016.

Report Title: Small Business Regulatory Review Board

Description:

Companion:

Package:

Current Referral: EGH

Introducer(s):

| Sort by Date | | Status Text |
|---|---|---|
| 1/22/2013 | S | Received. |
| 1/22/2013 | S | Referred to EGH. |

**S** = Senate | **H** = House | **D** = Data Systems | **$** = Appropriation measure | **ConAm** = Constitutional Amendment

Some of the above items require Adobe Acrobat Reader. Please visit Adobe's download page for detailed instructions.

GM530

GOV. MSG. NO. 530

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

January 16, 2013

The Honorable Donna Mercado Kim, Senate President,
and Members of the Senate
Twenty-Seventh State Legislature
State Capitol, Room 409
Honolulu, HI 96813

Dear Senate President Kim and Members of the Senate,

In accordance with the provisions of Article V, Section 6, of the Hawai'i State Constitution, I have the honor to submit herewith for your consideration and confirmation, the following nomination to the **Small Business Regulatory Review Board:**

| SMALL BUSINESS REGULATORY REVIEW BOARD | TERM TO EXPIRE |
|---|---|
| Kyoko Kimura | 6/30/2016 |

Sincerely,

Neil Abercrombie

NEIL ABERCROMBIE
Governor, State of Hawai'i

V. Discussion of the following Legislative Matters:

G. Governor's Message No. 531, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Leslie Mullens, for a term to expire June 30, 2015

# GM531

Measure Title: Submitting for consideration and confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, LESLIE MULLENS, for a term to expire 6-30-2015.

Report Title: Small Business Regulatory Review Board

Description:

Companion:

Package:

Current Referral: EGH

Introducer(s):

| Sort by Date | | Status Text |
|---|---|---|
| 1/22/2013 | S | Received. |
| 1/22/2013 | S | Referred to EGH. |

**S** = Senate | **H** = House | **D** = Data Systems | **$** = Appropriation measure | **ConAm** = Constitutional Amendment

Some of the above items require Adobe Acrobat Reader. Please visit Adobe's download page for detailed instructions.

GM531

GOV. MSG. NO. 531

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

January 16, 2013

The Honorable Donna Mercado Kim, Senate President,
and Members of the Senate
Twenty-Seventh State Legislature
State Capitol, Room 409
Honolulu, HI 96813

Dear Senate President Kim and Members of the Senate,

In accordance with the provisions of Article V, Section 6, of the Hawai'i State Constitution, I have the honor to submit herewith for your consideration and confirmation, the following nomination to the **Small Business Regulatory Review Board:**

| SMALL BUSINESS REGULATORY REVIEW BOARD | TERM TO EXPIRE |
|---|---|
| Leslie Mullens | 6/30/2015 |

Sincerely,

Neil Abercrombie

NEIL ABERCROMBIE
Governor, State of Hawai'i

VI. Discussion of the following Board Administrative Matters:

A. Review of correspondence to State agencies requesting information required for Periodic Review; Evaluation Report, pursuant to Section 201M-7, HRS

New Language frm Act 241, SLH 2012

**§201M-7 Periodic review; evaluation report.** (a) Each agency having rules that affect small business shall submit by June 30 of each odd-numbered year, a list of those rules to the small business regulatory review board; [provided that, by June 30 of each year, each agency shall submit to the small business regulatory review board a list of any rules to be amended or repealed, based upon any new, amended, or repealed statute.] The agency shall also submit a report describing the specific public purpose or interest for adopting the respective rules that affect small business and any other reasons to justify their continued implementation.

(b) The small business regulatory review 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 next regular session of the legislature. 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]

Previous Vol04_Ch0201-0257 Next

# SAMPLES OF PAST 201M-7 LETTERS

# SMALL BUSINESS REGULATORY REVIEW BOARD

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

Tel 808 586 2594
Fax 808 586 2572

February 23, 2012



Mr. Richard C. Lim, Director
Department of Business, Economic Development and Tourism (DBEDT)
No. 1 Capitol Place
250 South Hotel Street
Honolulu, HI 96813

Dear Director Lim:

On behalf of the Small Business Regulatory Review Board (Board), I respectfully inform you that pursuant to the Small Business Regulatory Flexibility Act, Section 201M-7, Hawaii Revised Statutes, a periodic review report is required for the period of July 1, 2009 to June 30, 2011.

Section 201M-7(a) states in relevant part:

1) Each agency having rules that affect small business shall submit by June 30 of each odd-numbered year, a list of those rules to the small business regulatory review board.

2) The agency shall also submit a report describing the specific public purpose or interest for adopting the respective rules and any other reasons to justify its continued implementation.

For your convenience, attached is a copy of DBEDT's first report submitted to this Board for the period ending June 30, 2003. Please amend this report, where appropriate, to reflect any rules that were adopted, repealed, or amended since the June 30, 2003 reporting period that affect small business; to describe changes to the public purpose or interest for adopting the rules; and to include the reasons that justify the rules' continued implementation.

We apologize for not requesting this information earlier and we sincerely appreciate that for some departments this may be a large and unfunded mandate. As this Board is required to submit its evaluation of the Departments' reports to the next (2013) regular session of the Legislature, in a collaborative effort to allow us time to complete our evaluation of your rules, we ask that you please submit your Department's report by July 2, 2012. Please submit this information to Ms. Dori Palcovich, Economic Development Specialist, DBEDT Director's Office. Should you have any questions, please do not hestiate to contact Ms. Palcovich at 586-2594.

Thank you very much for your assistance in this matter.

Sincerely,

Sharon L. Pang

Sharon L. Pang, Chairperson
Small Business Regulatory Review Board

cc: Governor Neil Abercrombie (w/o enclosure)
Bruce Bucky, Board Discussion Leader

Enclosure

# SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism
No. 1 Capitol District Bldg., 250 South Hotel St. 4th Fl., Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Tel 808 586-2594
Fax 808 586-8449

January 12, 2009



Dr. Chiyome L. Fukino
Director
Department of Health
P. O. Box 3378
Honolulu, HI 96801

Subject: 201M-7 Periodic Review; Evaluation Report

Dear Director Fukino:

On behalf of the Small Business Regulatory Review Board, I am respectfully informing you that pursuant to the Regulatory Flexibility Act, §201M-7, HRS, the following information is required:

**§201M-7 Periodic review; evaluation report.** (a) Each agency having rules that affect small business in effect on July 1, 1998 shall submit by June 30 of each odd-numbered year, a list of those rules to the small business regulatory review board. The agency shall also submit a report describing the specific public purpose or interest for adopting the respective rules and any other reasons to justify its continued implementation.

The Review Board appreciates that for some agencies providing this information may be a huge endeavor. Therefore, because it is within this Board's discretion to require a modified version of an evaluation report, the Board is requesting that your Agency, in a good faith effort, provide for both the health and environmental divisions the following:

- A list of the top ten (10) administrative rules under your jurisdiction that have received the most complaints or concerns from businesses or that have resulted in the most citations.

The Review Board is requesting this information by June 30, 2009. Please submit the requested information to Ms. Dori Palcovich, Business Advocate, DBEDT, 250 South Hotel Street, Honolulu, HI, 96813. Thank you for your anticipated response and assistance.

Sincerely,

Lynne Woods

Lynne Woods
Chairperson

cc: The Honorable Linda Lingle
Sharon L. Pang, Review Board Discussion Leader (Medical)
Michael C. L. Yee, Review Board Discussion Leader (Environmental)

# SMALL BUSINESS REGULATORY REVIEW BOARD

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

Tel 808 586 2594
Fax 808 586 2548



January 30, 2007

Mr. Barry Fukunaga, Interim Director
Department of Transportation
Aliiaimoku Hale
869 Punchbowl Street
Honolulu, HI 96813

Re: 201M-7 Periodic Review; Evaluation Report

Dear Interim Director Fukunaga:

On behalf of the Small Business Regulation Review Board (Review Board), I would like to thank you for submitting a list of administrative rules that affect small business, in effect on July 1, 1998, pursuant to my October 14, 2005 request.

Subsequently, Governor Lingle has approved the Review Board's summary report which encompasses this administrative rule review. The full report is in compliance with Section 201M-7, Hawaii Revised Statutes and may be viewed on DBEDT's website at: www.hawaii.gov/dbedt/main/about/annual, and on the Review Board's website at: www.hawaii.gov/dbedt/business/start_grow/small-business-info/sbrrb/agenda_minutes_reports.

As an accommodation, I have attached those sections of the report that relate directly to your department. As you will note, the Review Board has recommended that a full review and analysis be performed on 6 rules from the medical division and 3 rules from the environmental division in your department. As a result, we are requesting that such a review be performed and all of the amendments be submitted to this Board by December 2007.

The Review Board will be most appreciative of your compliance in this most important process. Should you have any questions regarding this request, please contact Ms. Dori Palcovich, Business Advocate, at DBEDT's Strategic Marketing and Support Division at 586-2594.

Sincerely Yours,

Lynne Woods
Chairperson
Small Business Regulatory Review Board

Enclosures

c: The Honorable Linda Lingle (without enclosure)
Theodore E. Liu, Director, DBEDT (without enclosure)

# SMALL BUSINESS REGULATORY REVIEW BOARD

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

Tel 808 586 2594
Fax 808 586 2548



October 20, 2005

Mr. David McClain
President
University of Hawaii
2444 Dole Street
Honolulu, HI 96822

Dear Mr. McClain:

On behalf of the Small Business Regulatory Review Board (Board), I would like to inform you that pursuant to the Small Business Regulatory Flexibility Act, Section 201M-7, HRS, the following report is required for 2005.

**[201M-7] Periodic review; evaluation report.** (a) Each agency having rules that affect small business in effect on July 1, 1998 shall submit by June 30 of each odd-numbered year, a list of those rules to the small business regulatory review board. The agency shall also submit a report describing the specific public purpose or interest for adopting the respective rules and any other reasons to justify its continued implementation.

As you may recall, the Board requested this information in May 2003, which resulted in our receiving a list of those rules, which were ascertained by your department, to have an affect on small business. In response to receving hundreds of these existing rules from the State departments, the Board spent pain-saking hours reviewing the rules for business impact.

In order to be in compliance with the law, this process, again, is required. As it is within the Board's discretion to require a modified version of such compliance, the Board is respectfully requesting that, based upon the 2003 rule submittals, only those rules which have been determined to bear significant business impact require a full re-analysis, by describing its specific purpose and reasons for justifying its continued implementation.

The Board appreciates that for some agencies this may be a large and unfunded mandate. To assist you in this process, attached is a listing of the rules in your department that the Board is requesting for such an analysis.

Please submit the requested information by January 3, 2006, to Ms. Dori Palcovich, Business Advocate, at DBEDT's Strategic Marketing and Support Division, P. O. Box 2359, Honolulu, HI 96804. Should you have any questions, she can be reached at 586-2594.

Thank you for your assistance.

Sincerely,

Lynne Woods

Lynne Woods
Chairperson

Cc: The Honorable Governor Linda Lingle
The Honorable Calvin K.Y. Say, Speaker
The Honorable Robert Bunda, President

Enclosure

# SMALL BUSINESS REGULATORY REVIEW BOARD

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

Tel 808 586 2594
Fax 808 587 3833

May 23, 2003



Ms. Sandra Lee Kunimoto
Chair/At-Large
Board of Agriculture, Department of Agriculture
1428 South King Street
Honolulu, Hawaii 96826

Dear Ms. Kunimoto:

On behalf of the Small Business Regulatory Review Board, and in compliance with the Regulatory Flexibitlity Act, Section 201M-7, I am respectfully requesting the following information.

1. A list of rules, in your agency, in effect on July 1, 1998, that affect small business.
2. A report describing the specific public purpose or interest for adopting the respective rules and any other reasons to justify its continued implementation.

The Board appreciates that for some agencies this may be a large and unfunded mandate. In addition to the list and report described above which are due June 30th, our members would appreciate your good faith effort to provide a list of the rules under your jurisdiction that have received the most complaints or that have resulted in the most citations.

Please submit all requested information to Ms. Dori Palcovich, Business Advocate, Business Assistance Branch, DBEDT, P. O. Box 2359, Honolulu, HI 96804. Thank you for your assistance. Should you have any questions, please call Ms. Palcovich at 586-2594.

Sincerely,

for Denise Walker
Interim Chairperson

VI. Discussion of the following Board Administrative Matters:

B. Review Board's Brochure for update and outreach purposes

*This is how you can help us:*

**Contact us if you would like to share a concern that you have. Let us know the issue, rule, or law that you would like us to review by the title, chapter, and section.**

**This is how you can contact us:**

**Email: sbrrb@dbedt.hawaii.gov**

**Phone: (808) 586-2576 or (808) 586-2594**

**~~Fax: (808) 586-8449~~**

**Mail: Small Business Regulatory Review Board**
**c/o DBEDT**
**P. O. Box 2359**
**Honolulu, HI 96804**

**Visit: Monthly meetings in Honolulu**

**Website:**
**http://www.hawaii.gov/dbedt/business/start_grow/small-business-info/sbrrb**

*How can we reach you?*
*Please give us the following information:*

**Name**
**Address**
**Daytime Phone**
**Best time to call**
**E-mail**

**Issue, rule, or law: title, chapter, section (if possible)**

**Small Business Regulatory Review Board**

**DBEDT**
**P. O. Box 2359**
**Honolulu, HI 96804**

# Small Business Regulatory Review Board

## *Who we a...*

- Volunteers, appointed by the Governor and ratified by the Senate
- Small business owners/officers from across the State

**Lynne Woods**
**Chair**
**Maui - Maui Real Estate**

**Sharon L. Pang**
**Vice Chair**
**Oahu - Home Health Care Consulting**

**Michael Yee**
**2nd Vice Chair**
**Oahu - Environmental Consulting & Engineering**

**Charles K. H. Au**
**Oahu - Accountant**

**Donald Dymond**
**Oahu - Small Business Owner**

**Dorvin Leis**
**Maui - Mechanical Contractor**

**Richard Schnitzler**
**Hawaii - Hamakua Macadamia Nut Co.**

**Bruce Bucky**
**Oahu - Hildgund Jewelry**

**Peter Yukimura**
**Kauai - Yukimura's Inc.**

~~David De Luz, Jr.~~
**Hawaii - Big Island Toyota**

## *Purpose:*

- Support the growth and viability of Hawaii small businesses
- Bring an awareness to small businesses when changes in laws or rules may affect them
- Bring an awareness to government when changes in laws or rules may affect small business

*"As we move forward, our Small Business Regulatory Review Board is confident that we will make substantive changes in the way the State of Hawaii supports its' business community. Our goals have the support of Governor Lingle and the Legislature, and we feel that now is the time to get involved as changes are being made in the way business is being conducted. It is our objective to have Hawaii in the nation's top ranking of business friendly states."*

*~Lynne Woods, Chair*
*Small Business Regulatory Review Board*

## *How we affect State and Cou...y agencies:*

- We make recommendations to the legislature to change laws
- We make recommendations for City & County ordinances to the County councils and mayors
- We review new and existing rules and regulations in conjunction with an impact statement on small business
- We review all rules and regulations that affect small businesses before and after public hearings, followed by our recommendations to the Governor
- We work with State agencies and departments to explore how their administrative rules can be improved for small business:

  - Accounting & General Services
  - Agriculture
  - Budget & Finance
  - Business, Economic Development & Tourism
  - Commerce & Consumer Affairs
  - Education
  - Hawaiian Home Lands
  - Health
  - Labor and Industrial Relations/HIOSH
  - Land and Natural Resources
  - Public Safety
  - Taxation
  - Transportation
  - Land Use Commission
  - Office of the Attorney General
  - Office of Hawaiian Affairs
  - Public Utilities Commission
  - University of Hawaii

## *This is how we help you!*

VI. Discussion of the following Board Administrative Matters:

C. Review of Board's "Member" Webpage

# Board Members

**COMPOSITION OF THE SMALL BUSINESS REGULATORY REVIEW BOARD**

Appointed by the Governor and ratified by the Senate, the Board is comprised of nine members. Eight members must be current or former owners or officers from the Islands of Maui, Hawaii, Kauai and Oahu and the ninth member is the Director of DBEDT or the Director's designated representative who serves as an ex officio voting member.

Members volunteer their time by reviewing rules and regulations, attending state agency meetings, making presentations, performing outreach activities to small business organizations, and commenting on legislation. The Board is scheduled to meet monthly, is administratively attached to the DBEDT, and operates under the Director's Office.

You may email the Board directly at sbrrb@dbedt.hawaii.gov.

**Oahu**

Chu Lan Shubert-Kwock - clskwock@aol.com
Howard Lum - chinatownds58@yahoo.com
Anthony B. Borge - tony@rmasales.com

To be determined

**Hawaii**

To be determined

**Kauai**

Barbara Bennett - bbennett@hawaii.rr.com

**Maui**

Leslie Mullens - leslie@thelawbookgroup.com

Kyoko Kimura - kkimura@hotelwailea.com

**DBEDT**

DBEDT Director Richard Lim, or the Director's designated representative, serves as an ex officio voting member.

**Testimonials**

VI. Discussion of the following Board Administrative Matters:

D. Review of Sunshine Law, Chapter 92, HRS

contains helpful practice tips, and provides links and contact information for additional help in complying with the Sunshine Law.

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**Quick Review:**
**Sunshine Law Requirements**
**for Meeting Minutes** (December 2012) (pdf)

For boards subject to the Sunshine Law, Part I of Chapter 92, Hawaii Revised Statutes (HRS), here is a **quick review of the Sunshine Law's requirements for meeting minutes**. Like the earlier Quick Review on Sunshine Law meeting notice requirements (see What's New for November 14, 2012), this short guide summarizes the content and other requirements for public meeting minutes, contains helpful practice tips, and provides links and contact information for additional help in complying with the Sunshine Law.

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**Forms for Boards:**

- Public Meeting Notice Checklist (rev 9/08) (MS Word)
- Public Meeting Notice Checklist (rev 9/08) (pdf)
- Request for OIP's Concurrence for a Limited Meeting (11/11) (pdf)

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**Chapter 92, Hawaii Revised Statutes:**
**Public Agency Meetings and Records**

This is an unofficial copy of part I of chapter 92, Hawaii Revised Statutes. It contains all amendments enacted through the Legislature's **2012** regular and special sessions.

Link to the **2012** Hawaii Revised Statutes, chapter 92, on the Hawaii State Legislature website (the 2012 HRS has been updated for all Acts passed in the **2012** Legislative session).

Hawaii Revised Statutes

CHAPTER 92
PUBLIC AGENCY MEETINGS AND RECORDS

PART I. MEETINGS

SECTION
92-1 DECLARATION OF POLICY AND INTENT
92-1.5 ADMINISTRATION OF THIS PART
92-2 DEFINITIONS
92-2.5 PERMITTED INTERACTIONS OF MEMBERS
92-3 OPEN MEETINGS
92-3.1 LIMITED MEETINGS
92-3.5 MEETING BY INTERACTIVE CONFERENCE TECHNOLOGY; NOTICE; QUORUM
92-4 EXECUTIVE MEETINGS
92-5 EXCEPTIONS
92-6 JUDICIAL BRANCH, QUASI-JUDICIAL BOARDS AND INVESTIGATORY FUNCTIONS; APPLICABILITY
92-7 NOTICE
92-8 EMERGENCY MEETINGS
92-9 MINUTES
92-10 LEGISLATIVE BRANCH; APPLICABILITY
92-11 VOIDABILITY
92-12 ENFORCEMENT
92-13 PENALTIES

PART I. MEETINGS

**§92-1 Declaration of policy and intent.** In a democracy, the people are vested with the ultimate decision-making power. Governmental agencies exist to aid the people in the formation and conduct of public policy. Opening up the governmental processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. Therefore, the legislature declares that it is the policy of this State that the formation and conduct of public policy - the discussions, deliberations, decisions, and action of

governmental agencies - shall be conducted as openly as possible. To implement this policy the legislature declares that:

(1) It is the intent of this part to protect the people's right to know;

(2) The provisions requiring open meetings shall be liberally construed; and

(3) The provisions providing for exceptions to the open meeting requirements shall be strictly construed against closed meetings. [L 1975, c 166, pt of §1]

**§92-1.5 Administration of this part.** The director of the office of information practices shall administer this part. The director shall establish procedures for filing and responding to complaints filed by any person concerning the failure of any board to comply with this part. An agency may not appeal a decision by the office of information practices made under this chapter, except as provided in section 92F-43. The director of the office of information practices shall submit an annual report of these complaints along with final resolution of complaints, and other statistical data to the legislature, no later than twenty days prior to the convening of each regular session. [L 1998, c 137, §2; am L 2012, c 176, §2]

**§92-2 Definitions.** As used in this part:

"Board" means any agency, board, commission, authority, or committee of the State or its political subdivisions which is created by constitution, statute, rule, or executive order, to have supervision, control, jurisdiction or advisory power over specific matters and which is required to conduct meetings and to take official actions.

"Chance meeting" means a social or informal assemblage of two or more members at which matters relating to official business are not discussed.

"Interactive conference technology" means any form of audio or audio and visual conference technology, including teleconference, videoconference, and voice over internet protocol, that facilitates interaction between the public and board members.

"Meeting," means the convening of a board for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power. [L 1975, c 166, pt of §1; am L 1976, c 212, §1; am L 2012, c 202, §1]

**§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:

(A) The scope of the investigation and the scope of each member's authority are defined at a meeting of the board;

(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]

**§92-3 Open meetings.** Every meeting of all boards shall be open to the public and all persons shall be permitted to attend any meeting unless otherwise provided in the constitution or as closed pursuant to sections 92-4 and 92-5; provided that the removal of any person or persons who wilfully disrupts a meeting to prevent and compromise the conduct of the meeting shall not be prohibited. The boards shall afford all interested persons an opportunity to submit data, views, or arguments, in writing, on any agenda item. The boards shall also afford all interested persons an opportunity to present oral testimony on any agenda item. The boards may provide for reasonable administration of oral testimony by rule. [L 1975, c 166, pt of §1; am L 1985, c 278, §1]

**§92-3.1 Limited meetings.** (a) If a board determines that it is necessary to meet at a location that is dangerous to health or safety, or if a board determines that it is necessary to conduct an on-site inspection of a location that is related to the board's business at which public attendance is not practicable, and the director of the office of information practices concurs, the board may hold a limited meeting at that location that shall not be open to the public; provided that at a regular meeting of the board prior to the limited meeting:

(1) The board determines, after sufficient public deliberation, that it is necessary to hold the limited meeting and specifies the reasons for its determination that the location is dangerous to health or safety or that the on-site inspection is necessary and public attendance is impracticable;

(2) Two-thirds of all members to which the board is entitled vote to adopt the determinations required by paragraph (1); and

(3) Notice of the limited meeting is provided in accordance with section 92-7.

(b) At all limited meetings, the board shall:

(1) Videotape the meeting, unless the requirement is waived by the director of the office of information practices, and comply with all requirements of section 92-9;

(2) Make the videotape available at the next regular meeting; and

(3) Make no decisions at the meeting. (L 1995, c 212, §1; am L 2008, c20, §1]

**§92-3.5 Meeting by interactive conference technology; notice; quorum.** (a) A board may hold a meeting by interactive conference technology; provided that the interactive conference technology used by the board allows interaction among all members of the board participating in the meeting and all members of the public attending the meeting, and the notice required by section 92-7 identifies all of the locations where participating board members will be physically present and indicates that members of the public may join board members at any of the identified locations.

(b) Any board member participating in a meeting by interactive conference technology shall be considered present at the meeting for the purpose of determining compliance with the quorum and voting requirements of the board.

(c) A meeting held by interactive conference technology shall be terminated when audio communication cannot be maintained with all locations where the meeting is being held, even if a quorum of the board is physically present in one location. If copies of visual aids required by, or brought to the meeting by board members or members of the public, are not available to all meeting participants, at all locations where audio-only interactive conference technology is being used, within fifteen minutes after audio-only communication is used, those agenda items for which visual aids are not available for all participants at all meeting locations cannot be acted upon at the meeting.

(d) Notwithstanding the other provisions of this section to the contrary, a board member with a disability that limits or impairs the member's ability to physically attend the meeting may participate in a board meeting from a location not accessible to the public; provided that the member with a disability is connected to other members of the board and the public by both visual and audio means, and the member identifies where the member is located and who, if anyone, is present at that location with the member. [L 1994, c 121, §1; am L 2000, c 284, §2; am L 2006, c 152, §1; am L 2012, c 202, §2]

**§92-4 Executive meetings.** A board may hold an executive meeting closed to the public upon an affirmative vote, taken at an open meeting, of two-thirds of the members present; provided the affirmative vote constitutes a majority of the members to which the board is entitled. A meeting closed to the public shall be limited to matters exempted by section 92-5. The reason for holding such a meeting shall be publicly announced and the vote of each member on the question of holding a meeting closed to the public shall be recorded, and entered into the minutes of the meeting. (L 1975,
c 166, pt of §1; am L 1985, c 278, §2]

**§92-5 Exceptions.** (a) A board may hold a meeting closed to the public pursuant to section 92-4 for one or more of the following purposes:

(1) To consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in section 26-9 or both;

(2) To consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held;

(3) To deliberate concerning the authority of persons designated by the board to conduct labor negotiations or to negotiate the acquisition of public property, or during the conduct of such negotiations;

(4) To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities;

(5) To investigate proceedings regarding criminal misconduct;

(6) To consider sensitive matters related to public safety or security;

(7) To consider matters relating to the solicitation and acceptance of private donations; and

(8) To deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a state or federal law, or a court order.

(b) In no instance shall the board make a decision or deliberate toward a decision in an executive meeting on matters not directly related to the purposes specified in subsection (a). No chance meeting, permitted interaction, or electronic communication shall be used to circumvent the spirit or requirements of this part to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power. [L 1975, c 166, pt of §1; am L 1985, c 278, §3; gen ch 1985; am L 1996, c 267, §3; am L 1998, c 48, §1; am L 1999, c 49, §1]

[§92-6 AMENDED. "Criminal injuries compensation commission" changed to "crime victim compensation commission". L 1998, c 240, §6.]

**§92-6 Judicial branch, quasi-judicial boards and investigatory functions; applicability.**

(a) This part shall not apply:

(1) To the judicial branch.

(2) To adjudicatory functions exercised by a board and governed by sections 91-8 and 91-9, or authorized by other sections of the Hawaii Revised Statutes. In the application of this subsection, boards exercising adjudicatory functions include, but are not limited to, the following:

(A) Hawaii labor relations board, chapters 89 and 377;

(B) Labor and industrial relations appeals board, chapter 371;

(C) Hawaii paroling authority, chapter 353;

(D) Civil service commission, chapter 26;

(E) Board of trustees, employees' retirement system of the State of Hawaii, chapter 88;

(F) Crime victim compensation commission, chapter 351; and

(G) State ethics commission, chapter 84.

(b) Notwithstanding provisions in this section to the contrary, this part shall apply to require open deliberation of the adjudicatory functions of the land use commission. (L 1975, c 166, pt of §1; am L 1976, c 92, §8; am L 1985, c 25s1, §11]

**§92-7 Notice.** (a) The board shall give written public notice of any regular, special, or rescheduled meeting, or any executive meeting when anticipated in advance. The notice shall include an agenda which lists all of the items to be considered at the forthcoming meeting, the date, time, and place of the meeting, and in the case of an executive meeting the purpose shall be stated. The means specified by this section shall be the only means required for giving notice under this part notwithstanding any law to the contrary.

(b) The board shall file the notice in the office of the lieutenant governor or the appropriate county clerk's office, and in the board's office for public inspection, at least six calendar days before the meeting. The notice shall also be posted at the site of the meeting whenever feasible.

(c) If the written public notice is filed in the office of the lieutenant governor or the appropriate county clerk's office less than six calendar days before the meeting, the lieutenant governor or the appropriate county clerk shall immediately notify the chairperson of the board, or the director of the department within which the board is established or placed, of the tardy filing of the meeting notice. The meeting shall be canceled as a matter of law, the chairperson or the director shall ensure that a notice canceling the meeting is posted at the place of the meeting, and no meeting shall be held.

(d) No board shall change the agenda, once filed, by adding items thereto without a two-thirds recorded vote of all members to which the board is entitled; provided that no item shall be added to the agenda if it is of reasonably major importance and action thereon by the board will affect a significant number of persons. Items of reasonably major importance not decided at a scheduled meeting shall be considered only at a meeting continued to a reasonable day and time.

(e) The board shall maintain a list of names and addresses of persons who request notification of meetings and shall mail a copy of the notice to such persons at their last recorded address no later than the time the agenda is filed under subsection (b). [L 1975, c 166, pt of §1; am L 1976, c 212, §2; am L 1984, c 271, §1; am L 1985, c 278, §4; am L 1995, c 13, §2; am L 2012, c 177, §2]

**§92-8 Emergency meetings.** (a) If a board finds that an imminent peril to the public health, safety, or welfare requires a meeting in less time than is provided for in section 92-7, the board may hold an emergency meeting provided that:

(1) The board states in writing the reasons for its findings;

(2) Two-thirds of all members to which the board is entitled agree that the findings are correct

and an emergency exists;

(3) An emergency agenda and the findings are filed with the office of the lieutenant governor or the appropriate county clerk's office, and in the board's office; and

(4) Persons requesting notification on a regular basis are contacted by mail or telephone as soon as practicable.

(b) If an unanticipated event requires a board to take action on a matter over which it has supervision, control, jurisdiction, or advisory power, within less time than is provided for in section 92-7 to notice and convene a meeting of the board, the board may hold an emergency meeting to deliberate and decide whether and how to act in response to the unanticipated event; provided that:

(1) The board states in writing the reasons for its finding that an unanticipated event has occurred and that an emergency meeting is necessary and the attorney general concurs that the conditions necessary for an emergency meeting under this subsection exist;

(2) Two-thirds of all members to which the board is entitled agree that the conditions necessary for an emergency meeting under this subsection exist;

(3) The finding that an unanticipated event has occurred and that an emergency meeting is necessary and the agenda for the emergency meeting under this subsection are filed with the office of the lieutenant governor or the appropriate county clerk's office, and in the board's office;

(4) Persons requesting notification on a regular basis are contacted by mail or telephone as soon as practicable; and

(5) The board limits its action to only that action which must be taken on or before the date that a meeting would have been held, had the board noticed the meeting pursuant to section 92-7.

(c) For purposes of this part, an "unanticipated event" means:

(1) An event which members of the board did not have sufficient advance knowledge of or reasonably could not have known about from information published by the media or information generally available in the community;

(2) A deadline established by a legislative body, a court, or a federal, state, or county agency beyond the control of a board; or

(3) A consequence of an event for which reasonably informed and knowledgeable board members could not have taken all necessary action. [L 1975, c 166, pt of §1; am L 1996, c 267, §4]

**§92-9 Minutes.** (a) The board shall keep written minutes of all meetings. Unless otherwise required by law, neither a full transcript nor a recording of the meeting is required, but the written minutes shall give a true reflection of the matters discussed at the meeting and the views of the participants. The minutes shall include, but need not be limited to:

(1) The date, time and place of the meeting;

(2) The members of the board recorded as either present or absent;

(3) The substance of all matters proposed, discussed, or decided; and a record, by individual member, of any votes taken; and

(4) Any other information that any member of the board requests be included or reflected in the minutes.

(b) The minutes shall be public records and shall be available within thirty days after the meeting, except where such disclosure would be inconsistent with section 92-5; provided that minutes of executive meetings may be withheld so long as their publication would defeat the lawful purpose of the executive meeting, but no longer.

(c) All or any part of a meeting, of a board may be recorded by any person in attendance by means of a tape recorder or any other means of sonic reproduction, except when a meeting is closed pursuant to section 92-4; provided the recording does not actively interfere with the conduct of the meeting.
(L 1975, c 166, pt of §1]

**§92-10 Legislative branch; applicability.** Notwithstanding any provisions contained in this chapter to the contrary, open meeting requirements, and provisions regarding enforcement, penalties and sanctions, as they are to relate to the state legislature or to any of its members shall be such as shall be from time to time prescribed by the respective rules and procedures of the senate and the house of representatives, which rules and procedures shall take precedence over this part. Similarly, provisions relating to notice, agenda and minutes of meetings, and such other requirements as may be necessary, shall also be governed by the respective rules and procedures of the senate and the house of representatives. [L 1975, c 166, pt of §11]

**§92-11 Voidability.** Any final action taken in violation of sections 92-3 and 92-7 may be voidable upon proof of violation. A suit to void any final action shall be commenced within ninety days of the action. [L 1975, c 166, pt of §1; am L 2005, c 84, §2]

**§92-12 Enforcement.**

(a) The attorney general and the prosecuting attorney shall enforce this part.

(b) The circuit courts of the State shall have jurisdiction to enforce the provisions of this part by injunction or other appropriate remedy.

(c) Any person may commence a suit in the circuit court of the circuit in which a prohibited act occurs for the purpose of requiring compliance with or preventing violations of this part or to determine the applicability of this part to discussions or decisions of the public body. The court may order payment of reasonable attorney's fees and costs to the prevailing party in a suit brought under this section.

(d) Opinions and rulings of the office of information practices shall be admissible in an action brought under this part and shall be considered as precedent unless found to be palpably erroneous.

(e) The proceedings for review shall not stay the enforcement of any agency decisions; but the reviewing court may order a stay if the following criteria have been met:

(1) There is likelihood that the party bringing the action will prevail on the merits;

(2) Irreparable damage will result if a stay is not ordered;

(3) No irreparable damage to the public will result from the stay order; and

(4) Public interest will be served by the stay order. [L 1975, c 166, pt of §1; am L 1985, c 278, §5; am L 2012, c 176, §3]

**§92-13 Penalties.** Any person who wilfully violates any provisions of this part shall be guilty of a misdemeanor, and upon conviction, may be summarily removed from the board unless otherwise provided by law. [L 1975, c 166, pt of §1]

# HAWAII REVISED STATUTES
# CHAPTER 84
# STANDARDS OF CONDUCT

# CHAPTER 84
# STANDARDS OF CONDUCT

## Preamble

The purpose of this chapter is to (1) prescribe a code of ethics for elected officers and public employees of the State as mandated by the people of the State of Hawaii in the Hawaii Constitution, Article XIV; (2) educate the citizenry with respect to ethics in government; and (3) establish an ethics commission which will administer the codes of ethics adopted by the constitutional convention and by the legislature and render advisory opinions and enforce the provisions of this law so that public confidence in public servants will be preserved.

## Part I. General Provisions

**§84-1 Construction.** This chapter shall be liberally construed to promote high standards of ethical conduct in state government.

**§84-2 Applicability.** This chapter shall apply to every nominated, appointed, or elected officer, employee, and candidate to elected office of the State and for election to the constitutional convention, but excluding justices and judges; provided that in the case of elected delegates and employees of the constitutional convention, this chapter shall apply only to the enforcement and administration of the code of ethics adopted by the constitutional convention.

**§84-3 Definitions.**

"Business" includes a corporation, a partnership, a sole proprietorship, a trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.

"Compensation" means any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by oneself or another.

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest be greater or less than fifty per cent.

"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices and judges.

"Employment" means any rendering of services for compensation.

"Financial interest" means an interest held by an individual, the individual's spouse, or dependent children which is:

(1) An ownership interest in a business.
(2) A creditor interest in an insolvent business.
(3) An employment, or prospective employment for which negotiations have begun.
(4) An ownership interest in real or personal property.
(5) A loan or other debtor interest.
(6) A directorship or officership in a business.

"Official act" or "official action" means a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.

"Official authority" includes administrative or legislative powers of decision, recommendation, approval, disapproval, or other discretionary action.

"State agency" includes the State, the legislature and its committees, all executive departments, boards, commissions, committees, bureaus, offices, the University of Hawaii, and all independent commissions and other establishments of the state government but excluding the courts.

"Task force" means a group convened by resolution, statute, executive order, proclamation, or by invitation of the legislature, governor, or another state officer, to study a specific subject or issue, for a specific defined period of time, and to report to, offer a recommendation to, or advise the legislature, governor, or a state officer.

## Part II. Code of Ethics

**§84-11 Gifts.** No legislator or employee shall solicit, accept, or receive, directly or indirectly, any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing, or promise, or in any other form, under circumstances in which it can reasonably be inferred that the gift is intended to influence the legislator or employee in the performance of the legislator's or employee's official duties or is intended as a reward for any official action on the legislator's or employee's part.

**§84-11.5 Reporting of gifts.** (a) Every legislator and employee shall file a gifts disclosure statement with the state ethics commission on June 30 of each year if all the following conditions are met:

(1) The legislator or employee, or spouse or dependent child of a legislator or employee, received directly or indirectly from one source any gift or gifts valued singly or in the aggregate in excess of $200, whether the gift is in the form of money, service, goods, or in any other form;
(2) The source of the gift or gifts have interests that may be affected by official action or lack of action by the legislator or employee; and
(3) The gift is not exempted by subsection (d) from reporting requirements under this subsection.

(b) The report shall cover the period from June 1 of the preceding calendar year through June 1 of the year of the report.

(c) The gifts disclosure statement shall contain the following information:
(1) A description of the gift;
(2) A good faith estimate of the value of the gift;
(3) The date the gift was received; and
(4) The name of the person, business entity, or organization from whom, or on behalf of whom, the gift was received.

(d) Excluded from the reporting requirements of this section are the following:
(1) Gifts received by will or intestate succession;
(2) Gifts received by way of distribution of any inter vivos or testamentary trust established by a spouse or ancestor;
(3) Gifts from a spouse, fiancé, fiancee, any relative within four degrees of consanguinity or the spouse, fiancé, or fiancee of such a relative. A gift from any such person is a reportable gift if the person is acting as an agent or intermediary for any person not covered by this paragraph;
(4) Political campaign contributions that comply with state law;
(5) Anything available to or distributed to the public generally without regard to the official status of the recipient;

(6) Gifts that, within thirty days after receipt, are returned to the giver or delivered to a public body or to a bona fide educational or charitable organization without the donation being claimed as a charitable contribution for tax purposes; and

(7) Exchanges of approximately equal value on holidays, birthday, or special occasions.

(e) Failure of a legislator or employee to file a gifts disclosure statement as required by this section shall be a violation of this chapter.

(f) This section shall not affect the applicability of section 84-11.

**§84-12 Confidential information.** No legislator or employee shall disclose information which by law or practice is not available to the public and which the legislator or employee acquires in the course of the legislator's or employee's official duties, or use the information for the legislator's or employee's personal gain or for the benefit of anyone; provided that this section shall not preclude a person who serves as the designee or representative of an entity that is a member of a task force from disclosing information to the entity which the person acquires as the entity's designee or representative.

**§84-13 Fair treatment.** No legislator or employee shall use or attempt to use the legislator's or employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others; including but not limited to the following:

(1) Seeking other employment or contract for services for oneself by the use or attempted use of the legislator's or employee's office or position.

(2) Accepting, receiving, or soliciting compensation or other consideration for the performance of the legislator's or employee's official duties or responsibilities except as provided by law.

(3) Using state time, equipment or other facilities for private business purposes.

(4) Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the legislator or employee inspects or supervises in the legislator's or employee's official capacity.

Nothing herein shall be construed to prohibit a legislator from introducing bills and resolutions, or to prevent a person from serving on a task force or from serving on a task force committee, or from making statements or taking official action as a legislator, or a task force member or a task force member's designee or representative. Every legislator, or task force member or designee or representative of a task force member shall file a full and complete public disclosure of the nature and extent of the interest or transaction which the legislator or task force member or task force member's designee or representative believes may be affected by the legislator's or task force member's official action.

**§84-13.5 Washington Place; campaign activities.** The governor shall not allow Washington Place to be used for any events intended to solicit funds, support, or votes for any candidate for elective public office.

**§84-14 Conflicts of interests.** (a) No employee shall take any official action directly affecting:

(1) A business or other undertaking in which the employee has a substantial financial interest; or

(2) A private undertaking in which the employee is engaged as legal counsel, advisor, consultant, representative, or other agency capacity.

A department head who is unable to disqualify the department head's self on any matter described in paragraphs (1) and (2) will not be in violation of this subsection if the department head has complied with the disclosure requirements of section 84-17.

A person whose position on a board, commission, or committee is mandated by statute, resolution, or executive order to have particular qualifications shall only be prohibited from taking official action that directly and specifically affects a business or undertaking in which the person has a substantial financial interest; provided that the substantial financial interest is related to the member's particular qualifications.

(b) No employee shall acquire financial interests in any business or other undertaking which the employee has reason to believe may be directly involved in official action to be taken by the employee.

(c) No legislator or employee shall assist any person or business or act in a representative capacity before any state or county agency for a contingent compensation in any transaction involving the State.

(d) No legislator or employee shall assist any person or business or act in a representative capacity for a fee or other compensation to secure passage of a bill or to obtain a contract, claim, or other transaction or proposal in which the legislator or employee has participated or will participate as a legislator or employee, nor shall the legislator or employee assist any person or business or act in a representative capacity for a fee or other compensation on such bill, contract, claim, or other transaction or proposal before the legislature or agency of which the legislator or employee is an employee or legislator.

(e) No employee shall assist any person or business or act in a representative capacity before a state or county agency for a fee or other consideration on any bill, contract, claim, or other transaction or proposal involving official action by the agency if the employee has official authority over that state or county agency unless the employee has complied with the disclosure requirements of section 84-17.

(f) Subsections (a), (b), and (d) shall not apply to a task force member or the designee or representative of that task force member whose service as a task force member would not otherwise cause that member, designee, or representative to be considered an employee, if the task force member or the designee or representative of that task force member complies with the disclosure requirements under section 84-17.

**§84-15 Contracts.** (a) A state agency shall not enter into any contract to procure or dispose of goods or services, or for construction, with a legislator, an employee, or a business in which a legislator or an employee has a controlling interest, involving services or property of a value in excess of $10,000 unless:

(1) The contract is awarded by competitive sealed bidding pursuant to section 103D-302;
(2) The contract is awarded by competitive sealed proposal pursuant to section 103D-303; or
(3) The agency posts a notice of its intent to award the contract and files a copy of the notice with the state ethics commission at least ten days before the contract is awarded.

(b) A state agency shall not enter into a contract with any person or business which is represented or assisted personally in the matter by a person who has been an employee of the agency within the preceding two years and who participated while in state office or employment in the matter with which the contract is directly concerned. This subsection shall not apply to any contract that is awarded in accordance with subsection (a) with a person or business represented or assisted by a person who was a member of a task force or served as the designee or representative of a task force member.

**§84-16 Contracts voidable.** In addition to any other penalty provided by law, any contract entered into by the State in violation of this chapter is voidable on behalf of the State; provided that in any action to avoid a contract pursuant to this section the interests of third parties who may be damaged thereby shall be taken into account, and the action to void the transaction is initiated within sixty days after the determination of a violation under this chapter. The attorney general shall have the authority to enforce this provision.

**§84-17 Requirements of disclosure.** (a) For the purposes of this section, the terms:

"Disclosure period" refers to the period from January 1 of the preceding calendar year to the time of the filing of the employee's or legislator's disclosure of financial interests.

"Substantially the same" refers to no more than ten amendments or changes to the information reported for the preceding disclosure period.

(b) The disclosure of financial interest required by this section shall be filed:
(1) Between January 1 and May 31 of each year;
(2) Within thirty days of one's election or appointment to a state position enumerated in subsection (c); or
(3) Within thirty days of separation from a state position if a prior financial disclosure statement for the position was not filed within the one hundred eighty days preceding the date of separation;

provided that candidates for state elective offices or the constitutional convention shall file the required statements no later than twenty days prior to the date of the primary election for state offices or the election of delegates to the constitutional convention.

(c) The following persons shall file annually with the state ethics commission a disclosure of financial interests:
(1) The governor, the lieutenant governor, the members of the legislature, and delegates to the constitutional convention; provided that delegates to the constitutional convention shall only be required to file initial disclosures;
(2) The directors and their deputies, the division chiefs, the executive directors and the executive secretaries and their deputies, the purchasing agents and the fiscal officers, regardless of the titles by which the foregoing persons are designated, of every state agency and department;
(3) The permanent employees of the legislature and its service agencies, other than persons employed in clerical, secretarial, or similar positions;
(4) The administrative director of the State, and the assistants in the office of the governor and the lieutenant governor, other than persons employed in clerical, secretarial, or similar positions;
(5) The hearings officers of every state agency and department;
(6) The president, the vice presidents, assistant vice presidents, the chancellors, and the provosts of the University of Hawaii and its community colleges;
(7) The superintendent, the deputy superintendent, the assistant superintendents, the complex area superintendents, the state librarian, and the deputy state librarian of the department of education;
(8) The administrative director and the deputy director of the courts;
(9) The members of every state board or commission whose original terms of office are for periods exceeding one year and whose functions are not solely advisory;
(10) Candidates for state elective offices, including candidates for election to the constitutional convention, provided that candidates shall only be required to file initial disclosures; and
(11) The administrator and assistant administrator of the office of Hawaiian affairs.

(d) The financial disclosure statements of the following persons shall be public records and available for inspection and duplication:

(1) The governor, the lieutenant governor, the members of the legislature, candidates for and delegates to the constitutional convention, the trustees of the office of Hawaiian affairs, and candidates for state elective offices;

(2) The directors of the state departments and their deputies, regardless of the titles by which the foregoing persons are designated; provided that with respect to the department of the attorney general, the foregoing shall apply only to the attorney general and the first deputy attorney general;

(3) The administrative director of the State;

(4) The president, the vice presidents, the assistant vice presidents, the chancellors, and the provosts of the University of Hawaii;

(5) The members of the board of education and the superintendent, the deputy superintendent, the state librarian, and the deputy state librarian of the department of education;

(6) The administrative director and the deputy director of the courts; and

(7) The administrator and the assistant administrator of the office of Hawaiian affairs.

(e) The information on the financial disclosure statements shall be confidential, except as provided in subsection (d). The commission shall not release the contents of the disclosures except as may be permitted pursuant to this chapter. Any person who releases any confidential information shall be subject to section 84-31(c).

[Note: This reference to section 84-31(c) pertains to previous statutory language which was deleted by Act 221, SLH 1995.]

(f) Candidates for state elective offices, including candidates for election to the constitutional convention, shall only be required to disclose their own financial interests. The disclosures of financial interests of all other persons designated in subsection (c) shall state, in addition to the financial interests of the person disclosing, the financial interests of the person's spouse and dependent children. All disclosures shall include:

(1) The source and amount of all income of $1,000 or more received, for services rendered, by the person in the person's own name or by any other person for the person's use or benefit during the preceding calendar year and the nature of the services rendered; provided that information that may be privileged by law or individual items of compensation that constitute a portion of the gross income of the business or profession from which the person derives income need not be disclosed;

(2) The amount and identity of every ownership or beneficial interest held during the disclosure period in any business having a value of $5,000 or more or equal to ten per cent of the ownership of the business and, if the interest was transferred during the disclosure period, the date of the transfer; provided that an interest in the form of an account in a federal or state regulated financial institution, an interest in the form of a policy in a mutual insurance company, or individual items in a mutual fund or a blind trust, if the mutual fund or blind trust has been disclosed pursuant to this paragraph, need not be disclosed;

(3) Every officership, directorship, trusteeship, or other fiduciary relationship held in a business during the disclosure period, the term of office and the annual compensation;

(4) The name of each creditor to whom the value of $3,000 or more was owed during the disclosure period and the original amount and amount outstanding; provided that debts arising out of retail installment transactions for the purchase of consumer goods need not be disclosed;

(5) The street address and, if available, the tax map key number, and the value of any real property in which the person holds an interest whose value is $10,000 or more, and, if

the interest was transferred or obtained during the disclosure period, a statement of the amount and nature of the consideration received or paid in exchange for such interest, and the name of the person furnishing or receiving the consideration; provided that disclosure shall not be required of the street address and tax map key number of the person's residence;

(6) The names of clients personally represented before state agencies, except in ministerial matters, for a fee or compensation during the disclosure period and the names of the state agencies involved; and

(7) The amount and identity of every creditor interest in an insolvent business held during the disclosure period having a value of $5,000 or more.

(g) Where an amount is required to be reported, the person disclosing may indicate whether the amount is at least $1,000 but less than $10,000; at least $10,000 but less than $25,000; at least $25,000 but less than $50,000; at least $50,000 but less than $100,000; at least $100,000 but less than $150,000; at least $150,000 but less than $250,000; at least $250,000 but less than $500,000; at least $500,000 but less than $750,000; at least $750,000 but less than $1,000,000; or $1,000,000 or more. An amount of stock may be reported by number of shares.

(h) The state ethics commission shall provide a long form of disclosure on all even-numbered years and a short form of disclosure for subsequent annual filings on all odd-numbered years in those instances where the financial interests of the person disclosing are substantially the same as those reported for the preceding disclosure period.

(i) Failure of a legislator, a delegate to the constitutional convention, or employee to file a disclosure of financial interests as required by this section shall be a violation of this chapter. Any legislator, delegate to a constitutional convention, or employee who fails to file a disclosure of financial interests when due shall be assessed an administrative fine of $50. The state ethics commission shall notify a person, by registered mail, return receipt requested, of the failure to file, and the disclosure of financial interests shall be submitted to the commission not later than 4:30 p.m. on the tenth day after notification of the failure to file has been mailed to the person. If a disclosure of financial interests has not been filed within ten days of the due date, an additional administrative fine of $10 for each day a disclosure remains unfiled shall be added to the administrative fine. All administrative fines collected under this section shall be deposited in the State's general fund. Any administrative fine for late filing shall be in addition to any other action the commission may take under this chapter for violations of the state ethics code. The commission may waive any administrative fines assessed under this subsection for good cause shown.

(j) The chief election officer, upon receipt of the nomination paper of any person seeking a state elective office, including the office of delegate to the constitutional convention, shall notify the ethics commission of the name of the candidate for state office and the date on which the person filed the nomination paper. The ethics commission, upon the expiration of the time allowed for filing, shall release to the public a list of all candidates who have failed to file financial disclosure statements and shall immediately assess a late filing penalty fee against those candidates of $25 which shall be collected by the state ethics commission and deposited into the general fund. The ethics commission may investigate, initiate, or receive charges as to whether a candidate's financial disclosure statement discloses the financial interests required to be disclosed. After proceeding in conformance with section 84-31, the ethics commission may issue a decision as to whether a candidate has complied with section 84-17(f) and this decision shall be a matter of public record.

**§84-17.5 Disclosure files; disposition.** (a) All financial disclosure statements filed by a legislator, employee, or delegate to a constitutional convention shall be maintained by the state ethics commission during the term of office of the legislator, employee, or delegate and for a period of six years thereafter. Upon the expiration of the six-year period, the financial disclosure statement and all copies thereof shall be destroyed.

(b) Upon the expiration of six years after an election for which a candidate for state elective office or a constitutional convention has filed a financial disclosure statement, the state ethics commission shall destroy the candidate's financial disclosure statement and all copies thereof.

(c) Financial disclosure statements provided for in section 84-17(d) shall cease to be public records once the six-year period in subsection (a) or (b) has run.

(d) Nothing herein shall bar the state ethics commission from retaining a financial disclosure statement or copy of a financial disclosure statement that has become part of a charge case or advisory opinion request, or is part of an ongoing investigation.

**§84-18 Restrictions on post employment.** (a) No former legislator or employee shall disclose any information which by law or practice is not available to the public and which the former legislator or employee acquired in the course of the former legislator's or employee's official duties or use the information for the former legislator's or employee's personal gain or the benefit of anyone.

(b) No former legislator, within twelve months after termination of the former legislator's employment, shall represent any person or business for a fee or other consideration, on matters in which the former legislator participated as a legislator or on matters involving official action by the legislature.

(c) No former employee, within twelve months after termination of the former employee's employment, shall represent any person or business for a fee or other consideration, on matters in which the former employee participated as an employee or on matters involving official action by the particular state agency or subdivision thereof with which the former employee had actually served. This section shall not apply to a former task force member who, but for service as a task force member, would not be considered an employee.

(d) This section shall not prohibit any agency from contracting with a former legislator or employee to act on a matter on behalf of the State within the period of limitations stated herein, and shall not prevent such legislator or employee from appearing before any agency in relation to such employment.

(e) This section shall not apply to any person who is employed by the State for a period of less than one hundred and eighty-one days.

(f) For the purposes of this section, "represent" means to engage in direct communication on behalf of any person or business with a legislator, a legislative employee, a particular state agency or subdivision thereof, or their employees.

**§84-19 Violation.** (a) Any favorable state action obtained in violation of the code of ethics for legislators or employees and former employees is voidable in the same manner as voidable contracts as provided for under section 84-16; and the State by the attorney general may pursue all legal and equitable remedies available to it.

(b) The State by the attorney general may recover any fee, compensation, gift, or profit received by any person as a result of a violation of the code of ethics by a legislator or employee or former legislator or employee. Action to recover under this subsection shall be brought within one year of a determination of such violation.

(c) Any violation of this chapter by an employee, candidate for election to and elected delegate to the constitutional convention shall be punishable only in accordance with the code of ethics adopted by the constitutional convention.

## Part III. State Ethics Commission

**§84-21 State ethics commission established; composition.** (a) There is established within the office of the auditor for administrative purposes only a commission to be known as the state ethics commission. The commission shall consist of five members appointed by the governor from a panel of ten persons nominated by the judicial council. Each member of the commission shall be a citizen of the United States and a resident of the State. Members of the commission shall hold no other public office.

(b) The chairperson of the commission shall be elected by the majority of the members of the commission. The term of each member of the commission shall be for four years. No person shall be appointed consecutively to more than two terms as a member of the commission. A vacancy on the commission shall be filled for the remainder of the unexpired term in the same manner as the original appointment, except that the judicial council shall nominate for gubernatorial appointment two persons for a vacancy.

(c) No member of the commission shall hold office for more than one hundred and twenty days after the expiration of the member's term. If the governor fails to appoint a person to a vacant office within sixty days after receipt of the list of nominees from the judicial council, council shall select a person from its list of nominees to fill the vacant office, notwithstanding subsection (b) and section 26-34 to the contrary.

(d) The governor may remove or suspend any member of the commission upon the filing of a written finding with the commission, and upon service of a copy of the written finding on the member to be removed or suspended.

## Part IV. Administration and Enforcement

**§84-31 Duties of commission; complaint, hearing, determination.** (a) The ethics commission shall have the following powers and duties:

(1) It shall prescribe forms for the disclosures required by Article XIV of the Hawaii Constitution and section 84-17 and the gifts disclosure statements required by section 84-11.5 and shall establish orderly procedures for implementing the requirements of those provisions;

(2) It shall render advisory opinions upon the request of any legislator, employee, or delegate to the constitutional convention, or person formerly holding such office or employment as to whether the facts and circumstances of a particular case constitute or will constitute a violation of the code of ethics. If no advisory opinion is rendered within thirty days after the request is filed with the commission, it shall be deemed that an advisory opinion was rendered and that the facts and circumstances of that particular case do not constitute a violation of the code of ethics. The opinion rendered or deemed rendered, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the legislator, employee, or delegate to the constitutional convention, or person formerly holding such office or employment, who sought the opinion and acted in reliance on it in good faith, unless material facts were omitted or misstated by such persons in the request for an advisory opinion;

(3) It shall initiate, receive, and consider charges concerning alleged violation of this chapter, initiate or make investigation, and hold hearings;

(4) It may subpoena witnesses, administer oaths, and take testimony relating to matters before the commission and require the production for examination of any books or papers relative to any matter under investigation or in question before the commission.

Before the commission shall exercise any of the powers authorized in this section with respect to any investigation or hearings it shall by formal resolution, supported by a vote of three or more members of the commission, define the nature and scope of its inquiry;

(5) It may, from time to time adopt, amend, and repeal any rules, not inconsistent with this chapter, that in the judgment of the commission seem appropriate for the carrying out of this chapter and for the efficient administration thereof, including every matter or thing required to be done or which may be done with the approval or consent or by order or under the direction or supervision of or as prescribed by the commission. The rules, when adopted as provided in chapter 91, shall have the force and effect of law;

(6) It shall have jurisdiction for purposes of investigation and taking appropriate action on alleged violations of this chapter in all proceedings commenced within six years of an alleged violation of this chapter by a legislator or employee or former legislator or employee. A proceeding shall be deemed commenced by the filing of a charge with the commission or by the signing of a charge by three or more members of the commission. Nothing herein shall bar proceedings against a person who by fraud or other device, prevents discovery of a violation of this chapter;

(7) It shall distribute its publications without cost to the public and shall initiate and maintain programs with the purpose of educating the citizenry and all legislators, delegates to the constitutional convention, and employees on matters of ethics in government employment; and

(8) It shall administer any code of ethics adopted by a state constitutional convention, subject to the procedural requirements of this part and any rules adopted thereunder.

(b) Charges concerning the violation of this chapter shall be in writing, signed by the person making the charge under oath, except that any charge initiated by the commission shall be signed by three or more members of the commission. The commission shall notify in writing every person against whom a charge is received and afford the person an opportunity to explain the conduct alleged to be in violation of the chapter. The commission may investigate, after compliance with this section, such charges and render an informal advisory opinion to the alleged violator. The commission shall investigate all charges on a confidential basis, having available all the powers herein provided, and proceedings at this stage shall not be public. If the informal advisory opinion indicates a probable violation, the person charged shall request a formal opinion or within a reasonable time comply with the informal advisory opinion. If the person charged fails to comply with such informal advisory opinion or if a majority of the members of the commission determine that there is probable cause for belief that a violation of this chapter might have occurred, a copy of the charge and a further statement of the alleged violation shall be personally served upon the alleged violator. Service shall be made by personal service upon the alleged violator wherever found or by registered or certified mail with request for a return receipt and marked deliver to addressee only. If after due diligence service cannot be effected successfully in accordance with the above, service may be made by publication if so ordered by the circuit court of the circuit wherein the alleged violator last resided. The state ethics commission shall submit to the circuit court for its consideration in issuing its order to allow service by publication an affidavit setting forth facts based upon the personal knowledge of the affiant concerning the methods, means, and attempts made to locate and effect service by personal service or by registered or certified mail in accordance with the above. Service by publication when ordered by the court shall be made by publication once a week for four successive weeks of a notice in a newspaper of general circulation in the circuit of the alleged violator's last known state address. The alleged violator shall have twenty days after service thereof to respond in writing to the charge and statement.

(c) If after twenty days following service of the charge and further statement of alleged violation in accordance with this section, a majority of the members of the commission conclude that there is probable cause to believe that a violation of this chapter or of the code of ethics adopted by the constitutional convention has been committed, then the commission shall set a time and place for a hearing, giving notice to the complainant and the alleged violator. Upon the commission's issuance of

a notice of hearing, the charge and further statement of alleged violation and the alleged violator's written response thereto shall become public records. The hearing shall be held within ninety days of the commission's issuance of a notice of hearing. If the hearing is not held within that ninety-day period, the charge and further statement of alleged violation shall be dismissed; provided that any delay that is at the request of, or caused by, the alleged violator shall not be counted against the ninety-day period. All parties shall have an opportunity (1) to be heard, (2) to subpoena witnesses and require the production of any books or papers relative to the proceedings, (3) to be represented by counsel and (4) to have the right of cross-examination. All hearings shall be in accordance with chapter 91. All witnesses shall testify under oath and the hearings shall be open to the public. The commission shall not be bound by the strict rules of evidence but the commission's findings must be based upon competent and substantial evidence. All testimony and other evidence taken at the hearing shall be recorded. Copies of transcripts of such record shall be available only to the complainant and the alleged violator at their own expense, and the fees therefor shall be deposited in the State's general fund.

(d) A decision of the commission pertaining to the conduct of any legislator, delegate to the constitutional convention, or employee or person formerly holding such office or employment shall be in writing and signed by three or more of the members of the commission. A decision of the commission rendered after a hearing together with findings and the record of the proceeding shall be a public record.

(e) A person who files a frivolous charge with the commission against any person covered by this chapter shall be civilly liable to the person charged for all costs incurred in defending the charge, including but not limited to costs and attorneys' fees. In any case where the commission decides not to issue a complaint in response to a charge, the commission shall upon the written request of the person charged make a finding as to whether or not the charge was frivolous. The person charged may initiate an action in the circuit court for recovery of fees and costs incurred in commission proceedings within one year after the commission renders a decision. The commission's decision shall be binding upon the court for purposes of a finding pursuant to section 607-14.5.

(f) The commission shall cause to be published yearly summaries of decisions, advisory opinions, and informal advisory opinions. The commission shall make sufficient deletions in the summaries to prevent disclosing the identity of persons involved in the decisions or opinions where the identity of such persons is not otherwise a matter of public record under this chapter.

**§84-31.3 Filing of false charges.** (a) Any person who knowingly and intentionally files a false charge with the commission, or any member of the commission who initiates action against any state official, state employee, or any other person covered by this chapter, knowing such charge to be false, shall be guilty of the crime of perjury and subject to the penalty set forth in section 710-1060.

(b) Whoever is convicted in a court of competent jurisdiction of the crime of perjury under this section, in addition to any other punishment prescribed by law thereof, shall be required by court order to reimburse the person against whom the false charge was filed for all of the person's legal expenses and any other expenses incurred in relation to the person's defense against the false complaint.

(c) If such charge is filed within six months prior to an election in which the accused's name appears on the ballot, the person filing the false complaint shall pay to the accused the amount set out above plus an equal amount to the general fund of the State.

(d) This section shall not supersede or preclude any other right or remedy at law available to the person falsely accused.

**§84-32 Procedure.** (a) With respect to legislators and employees removable only by impeachment: when the ethics commission after due hearings pursuant to section 84-31(c) determines that there is sufficient cause to file a complaint against a legislator or an employee removable only by impeachment, it shall issue a complaint and refer the matter to the appropriate body of the legislature. The complaint shall contain a statement of the facts alleged to constitute the violation. The complaint shall be a matter of public record. The legislature shall take appropriate disciplinary action unless it determines that disciplinary action is not warranted and, within thirty days of the referral of the complaint, shall notify the commission of the action taken. Days during which the legislature is not in session shall not be included in determining the thirty-day period. Any disciplinary action taken by the legislature, or the fact that no disciplinary action is taken, shall be a matter of public record.

(b) With respect to employees other than legislators and employees removable only by impeachment: when the commission determines after due hearing pursuant to section 84-31(c) that there is sufficient cause to file a complaint against an employee other than a legislator, or an employee removable only by impeachment, it shall issue a complaint and refer the matter to the governor who shall take appropriate disciplinary action unless the governor determines that disciplinary action is not warranted. The governor shall notify the commission of the disciplinary action taken or the fact that no disciplinary action was taken, within sixty days of the referral of the complaint. The complaint and any disciplinary action taken, or the fact that no disciplinary action is taken, shall be a matter of public record.

(c) With respect to former employees and former legislators, when the commission determines after due hearing pursuant to section 84-31(c) that there is sufficient cause to file a complaint against a former employee or former legislator, it shall issue a complaint and refer the matter to the attorney general who may exercise whatever legal or equitable remedies which may be available to the State. The complaint shall be a matter of public record.

(d) With respect to delegates to the constitutional convention removable only by impeachment: when the ethics commission after due hearing pursuant to section 84-31(c) determines that there is sufficient cause to file a complaint against a delegate to the constitutional convention, it shall issue a complaint and refer the matter to the appropriate body of the constitutional convention. The complaint shall be a matter of public record. The appropriate body of the constitutional convention shall take appropriate disciplinary action unless it determines that disciplinary action is not warranted and, within thirty days of the referral of the complaint, shall notify the commission of the action taken. Days during which the constitutional convention is not in session shall not be included in determining the thirty-day period. Any disciplinary action taken by the constitutional convention, or the fact that no disciplinary action is taken, shall be a matter of public record.

**§84-33 Disciplinary action for violation.** In addition to any other powers the civil service commission or other authority may have to discipline employees, the civil service commission or authority may reprimand, put on probation, demote, suspend, or discharge an employee found to have violated the code of ethics.

**§84-34 No compensation.** The members of the ethics commission shall serve without compensation but shall be allowed their actual and necessary expenses incurred in the performance of their duties.

**§84-35 Staff.** The ethics commission may employ and at pleasure remove such persons, including an executive director, as it may deem necessary for the performance of its functions. Effective July 1, 2005, the salary of the executive director shall be the same as the salary of the director of health. The commission shall fix the compensations of its employees within the amounts made available by appropriation therefor. The employees of the commission shall be exempt from chapter 76.

**§84-35.5 Prohibition from political activity.** The members of the ethics commission and its staff shall not take an active part in political management or in political campaigns during the term of office or employment.

**§84-36 Cooperation.** The ethics commission may request and shall receive from every department, division, board, bureau, commission, or other agency of the state cooperation and assistance in the performance of its duties.

**§84-37 Concurrent jurisdiction.** Notwithstanding any provision contained herein, pursuant to Article III, section 12 of the Constitution of the State of Hawaii each house of the legislature may prescribe further rules of conduct covering its members and may investigate and discipline a member for any violation of its rules or the code of ethics.

**§84-38 Judicial branch.** The powers and duties assigned in this part IV to the governor shall, with respect to employees in the judicial branch, be assigned to the chief justice of the supreme court.

**§84-39 Administrative fines.** (a) Where an administrative fine has not been established for a violation of a provision of this chapter, any person, including a legislator or employee, who violates a provision of this chapter shall be subject to an administrative fine imposed by the ethics commission that shall not exceed $500 for each violation. All fines collected under this section shall be deposited in the general fund.

(b) No fine shall be assessed under this section unless:
(1) The commission convenes a hearing in accordance with section 84-31(c) and chapter 91; and
(2) A decision has been rendered by the commission.

## Part V. Mandatory Ethics Training

**§84-41 Applicability of part.** This part applies to legislators, members of the board of education, trustees of the office of Hawaiian affairs, the governor, the lieutenant governor, and executive department heads and deputies. This part does not apply to any other officer or employee of the State.

**§84-42 Mandatory ethics training course.** All state officers and employees enumerated in section 84-41 shall complete an ethics training course administered by the state ethics commission as provided in this part. For the purposes of this part, "ethics training" includes education and training in:
(1) The ethics laws set forth in this chapter; and
(2) The lobbying laws set forth in chapter 97.

**§84-43 Ethics training course.** (a) The state ethics commission shall establish, design, supervise, and conduct ethics training designed specifically for the officers and employees to whom this part applies.

(b) The ethics training course shall include:
(1) Explanations and discussions of the ethics laws, administrative rules, and relevant internal policies;
(2) Specific technical and legal requirements;
(3) The underlying purposes and principles of ethics laws;
(4) Examples of practical application of the laws and principles; and
(5) A question-and-answer participatory segment regarding common problems and situations.

The state ethics commission shall develop the methods and prepare any materials necessary to implement the course.

(c) The state ethics commission shall:
(1) Administer the ethics training course;
(2) Designate those of its legal staff who are to conduct the ethics training course; and
(3) Notify each officer or employee enumerated in section 84-41 that their attendance in this course is mandatory.

(d) The ethics training course shall be held in January of each year for those who have not attended the course previously. The course shall last at least two hours in length.

(e) The state ethics commission may repeat the course as necessary to accommodate all persons who are required to attend.

(f) Each state agency shall provide to the state ethics commission the names of those required to take the course in a timely manner and assist the commission by providing adequate meeting facilities for the ethics training course.

[This revision of the code of ethics is unofficial and for convenience only. Consult Hawaii Revised Statutes for the official codification of this law.]

October 2012

VI. Discussion of the following Board Administrative Matters:

E. Leslie Mullens to facilitate discussion on: 1) Meeting etiquette; 2) Guiding principles and values as an advisory board; and 3) Questions to consider in decision-making

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# PRIORITIZING YOUR VALUES

We all operate from a core set of values that drive our decisions, our behavior, and our relationships. The values and beliefs we hold as important to us and the way we prioritize them is what makes us unique. Our culture and family usually are a big part of why we value the things we do. The same holds true in an organization. Below is a list of values that relates to organizational and business choices. All of them may be important to how an organization works and the decisions the leadership makes, but some will have more significance than others.

Read the list carefully and circle the **TOP 10** that are most important in the organization from your perspective.

Alaka`i – Leadership & learning
Aloha – Unconditional love
Ha`aha`a – Be humble, be modest, and open your thoughts
Ho`ohana – working with intent & purpose
Ho`ohanohano – Respect & honor the dignity of others
Ho`okipa – Hospitality of complete giving
Ho`omau – Perseverance & persistence
`Ike loa – To seek knowledge & wisdom
`Imi ola – To seek life in its highest form
Kakou – Togetherness & inclusiveness
Kuleana – Personal sense of responsibility
Kulia i ka nu`u – Achievement & personal excellence
Lokahi – Harmony & unity
Malama – To serve, honor, protect & care for
Nana i ke kumu – Look to your source; find your truth
Ohana – Family – the human circle of Aloha
Pono – Rightness & balance

Accountability
Accuracy
Adventure
Appreciation, Gratitude
Beauty
Calm
Challenge
Change
Cleanliness
Collaboration
Commitment
Communication
Community
Competence
Competition
Continuous Improvement
Contribution
Cooperation
Coordination
Creativity
Cultural Identity
Customer Satisfaction
Decisiveness
Joy
Discipline
Discovery
Efficiency
Equality
Fairness
Faith
Flexibility
Freedom
Friendship
Fun
Goodness
Hard work
Honesty
Honor
Humor
Independence
Innovation
Integrity
Justice
Leadership
Loyalty
Money
Openness
Optimism
Peace, Non-violence
Perfection (e.g. of details)
Personal Growth
Pleasure
Positive attitude
Power
Practicality
Privacy
Problem Solving
Progress
Quality of work
Respect of you by others
Responsiveness
Results-oriented
Risk
Safety
Satisfying others
Security
Self-reliance
Service (to others, society)
Skill
Speed
Stability
Status
Strength
Success
Teamwork
Timeliness
Tradition
Trust
Truth
Variety
Wealth
Wisdom

# Crafting Our Checklist

Brainstorm the "make or break" criteria the board will use to gauge any request's viability

**MUST HAVE'S**

"Does it support SBRRB's defined **purpose**?"

"Does it cause a direct and significant economic burden upon a small business (fewer than 100 P/T or F/T employees)?"

Guiding Principle Alignment

Directly Addresses Issue(s)

Small Business Impact

Reasonable Compliance Methods

Reasonable Alternatives

Response to Public Input



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# SBRRB's Purpose

*§201M-5*

Review any proposed new or amended rule or to 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. (Recommendations to county councils or mayors for county ordinance requests)



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# Always Keeps in Mind

- ✓ Defined Purpose
- ✓ Guiding Principles
- ❖ Constituency Served
- ❖ "Services" / Role / Powers



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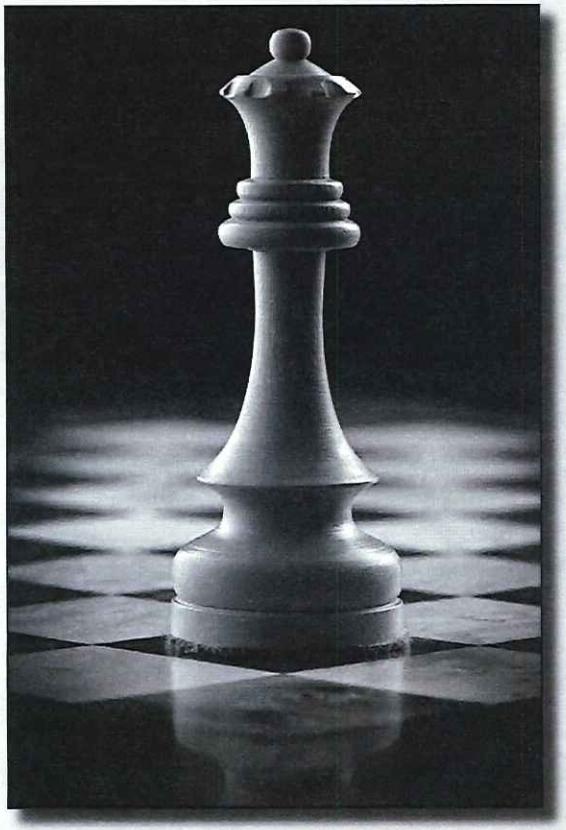
# *PLAYBOOK CONSULTING GROUP'S* STRATEGIC CHECKLIST

| Criteria | Option A | Option B |
|---|---|---|
| *Does the proposed solution further our **MISSION?*** | ✔ | |
| *Does the proposed solution create, strengthen, or reinforce our **COMPETITIVE ADVANTAGE?*** | ✔ | |
| *Do we have the **RESOURCES** to effectively implement the proposed solution (Time, Staff, Funding)?* | | |
| *Is this solution aligned with our **CORE VALUES** (See Organizational Overview)* | | |
| *Does this solution address the **ROOT CAUSE OR CHALLENGE**?* | | |

# Strategic Checklist



*A sound decision-making process whose criteria is **aligned** with the organization's **core identity***

Created ***before*** a need arises

Used to determine whether SBRRB should recommend a proposed rule for public hearing or adoption.



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# Values: What Matters Most

We all operate from a core set of values – or *guiding principles* – that drive:

- *Our decisions*
- *Our behavior*
- *Our relationships*

- Org culture drives what we do and how we do it
  - Based on our collective values & belief system

**So, what are our GUIDING PRINCIPLES?**



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# Meeting Agreements - *Sample*

- Contribute to Quorum
- Silence Cellphones
- Come Prepared
- Be on Time
- No Side Conversations
- *ONE* Speaker at a Time
- *Respect* ALL Ideas
- Be Patient (with others & with yourself)
- *Listen* to each other
- Honestly represent information
- Don't Interrupt
- "Step Up & Step Back"
- Don't take ANYthing personally
- Be open-minded
- Look forward, not back
- Share solutions, not problems
- Assume Good Intention



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# The Four Agreements

## Be Impeccable With Your Word

Speak with Integrity.
Say Only What You Mean.
No Gossip.

## Don't Make Assumptions

Ask Questions.
Express What You Really Mean.
Communicate Clearly to Avoid Misunderstanding, Sadness, & Drama.

## Don't Take Anything Personally

Nothing Others Do is Because of You.
It's Always a Projection of their own Reality.
Remain Immune to the Opinions & Actions of Others.

## Always Do Your Best

Your Best is Going to Change from Moment to Moment
Doing Your Best in each Moment avoids Self-Judgment, Abuse, & Regret.

*Don Miguel Ruiz*

# Recommended Tools

**Meeting Agreements**

A series of simple agreements we make to one another about how we interact as SBRRB members. Focused on respecting, valuing, and considering one another's time, skills, and perspective to get the most out of each session.

**Guiding Principles**

The values, beliefs, and principles that guide our behavior, actions, relationships and decisions. We define these as a group so that we can act in a consistent manner in service to the purpose for which the SBRRB was convened.

**Strategic Checklist**

A defined series of "Go/No-Go" questions we consistently pose in our deliberations to determine the SBRRB's position on business brought before us. The checklist minimizes influencing factors that are not in alignment with our defined purpose as a review board.



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# Meeting Effectiveness

In our work as facilitators at PlayBook Consulting Group, we've identified some key structures that vastly improve **productivity and effectiveness in meetings**.

We offer these tools to the Small Business Regulatory Review Board in the spirit of increasing effectiveness, enjoyment, and **overall value of each of our personal investments** of time and expertise in service to this Board and the purpose for which it was convened.

**Group consensus** in the design and application of these tools results in improved performance. We *THANK YOU* for having an open mind in considering this recommendation.



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VII. Election of a Board Chair, pursuant to Section 201M-5(c), HRS, and Election of Vice Chair and Second Vice Chair

**§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 or to 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 nine 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 by the governor;

(4) 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;

(5) The appointments shall reflect representation of a variety of businesses in the State;

(6) No more than two members shall be representatives from the same type of business; and

(7) There shall be at least one representative from each county.

For the purposes of paragraphs (1) and (2), nominations shall be solicited from small business organizations, state and county chambers of commerce, and other interested business organizations.

(c) Except for the ex officio member, all members of the board shall be either a current or former owner or officer of a business and shall not be an officer or employee of the federal, state, or county government. A majority of the board shall elect the chairperson. The chairperson shall serve a term of not more than one year, unless removed earlier by a two-thirds vote of all members to which the board is entitled.

(d) A majority of all the members to which the board is entitled shall constitute a quorum to do business, and the concurrence of a majority of all the members to which the board is entitled shall be necessary to make any action of the board valid.

(e) In addition to any other powers provided by this chapter, the board may:

(1) Adopt any rules necessary to implement this chapter;

(2) Organize and hold conferences on problems affecting small business; and

(3) Do any and all things necessary to effectuate the purposes of this chapter.

(f) The board shall submit an annual report to the legislature twenty days prior to each regular session detailing any requests from small business owners for review of any rule adopted by a state agency, and any recommendations made by the board to an agency or the

legislature regarding the need for a rule change or legislation. The report shall also contain a summary of the comments made by the board to agencies regarding its review of proposed new or amended rules. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §§3, 5; am L 2007, c 217, §4; am L 2012, c 241, §3]

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