



## SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)  
No. 1 Capitol District Bldg., 250 South Hotel St. 5<sup>th</sup> Fl., Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Tel 808 586-2594  
Fax 808586-2572

David Y. Ige  
Governor

Luis P. Salaveria  
DBEDT Director

### Members

Anthony Borge  
Chairperson  
Oahu

Wayne Tanaka  
Vice Chair  
Oahu

Barbara Bennett  
2<sup>nd</sup> Chairperson  
Kauai

Kyoko Y. Kimura  
Maui

Harris Nakamoto  
Oahu

Ashley Leahey  
Maui

Director, DBEDT  
Voting Ex Officio

## AGENDA

Wednesday, January 28, 2015 ★ 9:30 a.m.  
No. 1 Capitol District Building  
250 South Hotel Street - Conference Room 436

### I. Call to Order

### II. Approval of December 10, 2014 Meeting Minutes

### III. Old Business

- A. Discussion and Action on Proposed Amendments to Hawaii Administrative Rules (HAR) Title 15 Chapter 6, **Enterprise Zones**, and the Small Business Statement After Public Hearing, promulgated by Department of Business, Economic Development and Tourism – attached and incorporated as Exhibit 1
- B. Discussion and Action on Recommendations to the following rules and Small Business Statement After Public Hearing, promulgated by Department of Human Services - attached and incorporated as Exhibit 2:
  1. Proposed Adoption of HAR Title 17 Chapter 1719.1, **State Funded Aged, Blind and Disabled Program**
  2. Repeal of HAR Title 17 Chapter 1722.3, **Basic Health Hawaii**
  3. Proposed Adoption of HAR Title 17 Chapter 1731, **Premium Assistance Program**
- C. Discussion and Action on Proposed Amendments to HAR Title 16 Chapter 110, **Physical Therapy**, and the Small Business Statement After Public Hearing, promulgated by Department of Commerce and Consumer Affairs - attached and incorporated as Exhibit 3
- D. Discussion and Action on Proposed Amendments to HAR Title 13 Chapter 60.8, **Haena Community-Based Subsistence Fishing Area, Kauai**, and the Small Business Statement after Public Hearing, promulgated by Department of Land and Natural Resources – attached and incorporated as Exhibit 4
- E. Discussion and Action on Proposed Amendments to HAR Title 5 Chapter 11, **Notaries Public**, and the Small Business Statement After Public Hearing, promulgated by the Department of the Attorney General – attached and incorporated as Exhibit 5
- F. Discussion and Action on Proposed Amendments to HAR Title 4 Chapter 60 Section 9, **Minimum Prices in the Honolulu Milk Shed**, and Chapter 60 Section 10, **Minimum Prices in the Hawaii Milk Shed**, and the Small Business Statement After Public Hearing, promulgated by Department of Agriculture – attached and incorporated as Exhibit 6 (*Signed by Governor Ige on December 29, 2014*)

**IV. Legislative Matters**

- A. Discussion and Action on Senate Bill 12, “Relating to the Small Business Regulatory Flexibility Act” – Entitles the Small Business Regulatory Review Board to a Separate Line Item within the Budget of the Department of Business, Economic Development, and Tourism
- B. Distribution of the following:
  - 1. List of Governor Ige’s Cabinet Members (2015)
  - 2. 2015 State of Hawaii Legislative Session Calendar
  - 3. Hawaii State Legislative Telephone and Fax Directories
  - 4. Hawaii State Senate and House of Representative Committee Assignments

**V. Administrative Matters**

- A. Discussion on the Board’s Power Point Presentation, Fact Sheet, and Update on the Board’s Current and Future Outreach Opportunities to Hawaii Small Businesses to Promote this Board’s Mission, in accordance with Chapter 201M, Hawaii Revised Statutes
- B. Discussion and Update on the Board’s Budget Request to the State Legislature for Fiscal Years 2016 and 2017

**VI. Next Meeting:** Scheduled for Wednesday, February 18, 2015, at 9:30 a.m., Conference Room 436, Capitol District Building, Honolulu, Hawaii

**VII. Adjournment**

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

# January 28, 2015 ~ SBRRB Meeting Checklist

Member Attendance				
	Airline Preference	From	Details	Attend
✓ Anthony Borge, Chair <i>(E) (P)</i>	NA	Oahu	Parking Pass ✓	X
✓ Barbara Bennett, 2nd Vice Chair <i>(E) (P)</i>	HA	Kauai	Parking Pass ✓	X
✓ Kyoko Kimura <i>(E) (P)</i>	HA	Maui	Parking Pass ✓	✓
✓ Harris Nakamoto <i>(E)</i>	NA	Oahu	Parking Pass ✓	✓
Director's ex officio Mark Richey <i>(E) (E)</i>	NA	<del>Oahu</del>	NA	✓
✓ Ashley Leahey <i>(E)</i>	HA	<del>Maui</del> <i>SICK</i>	<del>Parking Pass</del>	✓
✓ Wayne Tanaka, Vice Chair <i>(E)</i>	NA	Oahu	<del>NA Parking Pass</del>	✓
Empty Seat — House				
Empty Seat — Senate				
Need one Member from the BI				

Pre Meeting Checklist	
Conference Room #436 (Confirm each month)	X
Make 12 - 15 copies of rule packages for board packets - continuous	✓
Poll board attendance	X
Prepare TAF for Director's approval - ASAP (Linda) <i>(Barbara) (Kyoko) (Ashley)</i>	✓✓
Airline booking ASAP - Linda <i>(Barbara) (Kyoko)</i>	✓✓
Draft Agenda to Chair	✓
Post approved agenda on SBRRB website & State Calendar & Lte. Governor's Office	✓✓ <i>Done</i>
Send Agendas to those people who requested it	✓ <i>Done</i>
Mail approved agenda to board members, M. Ahn	✓
Mail board packets Mon, Tues or Wed., Jan. 20, 21 <i>Holiday</i>	✓
Don't forget to Add Agenda to State Calendar	✓

STAFF			
Margaret Ahn <i>(E)</i>			Yes
Dori Palcovich <i>(E)</i>			Yes

Post Meeting Checklist	

P = Parking Permi

Visitors Sign-in-Sheet - Small Business Regulatory Review Board - January 28, 2015

	Name	Title	Organization	Email	Phone
1	Shari Wong	<del>Deputy Attorney General</del>	Norway Office, Dept. of Attorney General		586-1150
2	Aileen Bettel	Program Specialist	DHS/MGD/PPDO		692-8078
3	HELOUQUE REGINA	ASSISTANT DIRECTOR	WYLAND BAPTIST UNIVERSITY	hREGINA@WBU.EDU	222-9407
4	Wayne Thow	Newspeak	DBED - E2/CBE	wthow@dbed.hawaii.gov	587-7772
5	Reg Baker		SOA District 9	reg.baker@pkfhi.com	753-6026
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Visitors Sign-in-Sheet - Small Business Regulatory Review Board - January 28, 2015

	Name	Title	Organization	Email	Phone
1	David Sakoda	Marine Law Fellow	DLNR / DAR	david.sakoda@hawaii.gov	587-0104
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From the Pacific Business News

:<http://www.bizjournals.com/pacific/news/2015/01/15/reg-baker-is-first-hawaii-rep-on-sba-regulatory.html>

## Reg Baker is first Hawaii rep on SBA Regulatory Fairness Board

Jan 15, 2015, 2:26pm HST



[Jason Ubay](#)

Reporter- *Pacific Business News*

[Email](#) | [Twitter](#)

Reg [Baker](#), a partner at CPA firm **PKF Pacific Hawaii** LLP and former executive vice president of the **Hawaii Medical Assurance Association**, has been appointed to the U.S. Small Business Administration Regulatory Fairness Board for Region 9.

He is the first person from Hawaii to be named to the board in the region covers Hawaii, Arizona, California, Nevada, Guam and American Samoa. The term last for three years.

The board covers all the rules and regulations affecting small businesses coming from the federal government, and monitors how they are enforced.

[Baker](#) said he was nominated to the board by [Jane Sawyer](#), district director of **SBA's** Hawaii district office.

"When I offered a few recommendations of individuals to represent Hawaii on this specific board, Reg was very interested and enthusiastic about participating with SBA's Office of the National Ombudsman and SBREFA to support small businesses," Sawyer told PBN via email. "His background in both small and larger businesses, experience as a CPA and a strong relationship with our district office all add to his exceptional qualifications for this role. I think he will provide a great resource and perspective on Hawaii's competitive business environment and the impact of federal regulations and actions."

He has only been on the board since January and will attend an annual meeting in April, but he's hoping to meet with a different stakeholders in Hawaii and be a depository on the issues that he can then take to Washington.

When asked why it's important to have someone from Hawaii on the board, [Baker](#) said it's because the state has been heard in the past. The Region 9 board has been dominated by members from California, he said.

"We may have unique situations that others may not have," he said, citing shipping as an example.

He also said that Hawaii's most powerful promoter, the late Sen. Daniel Inouye, no longer is in Washington to bring Hawaii's issues to the forefront. "Our influence may not be as strong as it used to be," he said. He noted that this is a good opportunity for the state to have a direct channel to the regional or national directors of the SBA.

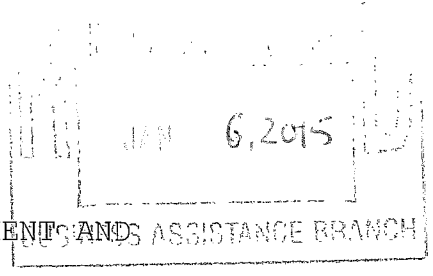
The SBA administrator is required to appoint 10 SBA Regulatory Fairness Boards. Each board is comprised of five volunteer small business owners.

The current Region 9 board chairman is [Paul C. Wright](#) of Berkeley Policy Associates in Oakland, California. Other board members include [James Settlemyer](#) of Settlemyer Ranches Incorporated in Minden, Nevada, and [Ronald Wong](#) of Imprinta Communications Groups, Inc., in Alhambra, California.

Jason Ubay covers tourism and finance for Pacific Business News.

# Exhibit 1





DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND ASSISTANCE BRANCH  
TOURISM

Rules Amending Title 15  
Hawaii Administrative Rules

1. Chapter 15-6, Hawaii Administrative Rules, entitled "Enterprise Zones", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND  
TOURISM

CHAPTER 6

ENTERPRISE ZONES

Subchapter 1 General provisions

- §15-6-1 Purpose
- §15-6-2 Definitions

Subchapter 2 Application for, Selection  
Criteria, and Termination of  
Enterprise Zone Status

- §15-6-3 Eligibility criteria for zone nomination
- §15-6-4 Procedure for zone nomination by counties
- §15-6-5 Procedure for state review of zone  
nominations
- §15-6-6 Zone selection criteria and other  
requirements

§15-6-1

§15-6-7 Procedure for amendment of zone status by counties

§15-6-8 Procedure for termination of zone designation by State or counties

Subchapter 3 Designation of a Business as a Qualified Business; Certification by the Department

§15-6-9 State criteria used to determine business qualification

§15-6-10 Business application procedure

§15-6-11 State income tax credits and general excise tax exemption available to a business that has been certified

§15-6-12 Calculation of eligibility for tax credits and exemptions; apportionment

§15-6-13 Wholesale sale of tangible personal property

§15-6-14 Sale of services

§15-6-15 Manufacturing

§15-6-16 Terms and conditions under which the tax credits and the general excise exemption may be claimed by a certified business

§15-6-16.5 Force majeure event

Subchapter 4 Administration

§15-6-17 Administration

§15-6-18 Waiver

§15-6-19 Severability

SUBCHAPTER 1

GENERAL PROVISIONS

§15-6-1 Purpose. The purpose of this chapter is to provide rules for administration of the state

enterprise zones program authorized by chapter 209E, Hawaii Revised Statutes ("HRS"). [Eff 11/3/90; comp ] (Auth: HRS §209E-8) (Imp: HRS §209E-1)

§15-6-2 Definitions. As used in this chapter, unless a different meaning clearly appears in the context:

~~["Authorized to do business in the State" means a corporation incorporated under chapter 416, HRS, a foreign corporation admitted under chapter 418, HRS, a corporation incorporated under chapter 415, HRS, or a foreign corporation admitted under chapter 415, HRS; a partnership registered under chapter 425, HRS, or 425D, HRS; or a sole proprietorship.]~~

"Average number of full-time employees" means the sum of the number of full-time employees employed at the end of each payroll period during a qualified business' taxable year divided by the number of payroll periods in the taxable year.

"Base taxable year" means the taxable year preceding the taxable year during which the business is first qualified under this program.

"County" or "counties" means the city and county of Honolulu and the counties of Hawaii, Kauai, and Maui.

"Department" means the department of business, economic development and tourism.

"Developed" means the improvements made to land through the construction, repair, or remodeling of structures to accommodate the principal use to which the land is or will be put. Improvements to land where parking is the principal use shall not constitute development except where the business purchasing or leasing the land can demonstrate to the satisfaction of the county and department that such use is necessary in order to further the purpose of the program and the local development objectives.

§15-6-2

"Director" means the director of business, economic development and tourism.

"Enterprise zone" means an area selected by a county and approved by the governor to be eligible for this program.

"Establishment" means a single physical location where business is conducted. A qualified business may include one or more establishments, at least one of which must be in an enterprise zone.

"Extended three-year cycle" means the thirty-six consecutive months during which qualified businesses engaged in the manufacturing of tangible personal property or the producing or processing of agricultural products may receive enterprise zone benefits in addition to the business' seven-year cycle.

"Full-time employee" means an [individual employed by a qualified business who works more than twenty hours a week during the business' payroll period.] employee, including a leased employee and an employee under a joint employment arrangement as defined in section 209E-2, HRS, for whom the employer is legally required to provide employee fringe benefits.

"Governing body" means the mayor or county council, or both, as provided by county ordinance.

"Gross receipts" means gross income, wherever derived, as reported on a qualified business' general excise tax return or similar computation for those businesses exempt from chapter 237, HRS.

~~[Low income person" means an individual whose income is less than eighty per cent of the median individual income of the last county in which the person lived during the twelve months immediately preceding the month in which the person was hired.]~~

"Person" means the same as defined in section 235-1, HRS.

"Program" means the state enterprise zones program authorized by chapter 209E, HRS.

"Qualification period" means the seven-year cycle, plus, if applicable, the extended three-year cycle.

~~"Qualified business" means [any corporation, partnership, or sole proprietorship authorized to do business in the State which is:~~

- ~~(1) Subject to the state corporate or individual income tax under chapter 235, HRS, the public service company tax under chapter 239, HRS, or the bank and financial corporation tax under chapter 241, HRS;~~
- ~~(2) Engaged in manufacturing, the wholesale sale of tangible personal property, or a service business or calling; and~~
- ~~(3) Qualified under section 15-6-9. A qualified business may include one or more establishments, at least one of which must be in an enterprise zone.]~~

the same as defined in section 209E-2, HRS.

~~"Service business" [or calling] means [any corporation, partnership, or sole proprietorship that acts upon or processes tangible personal property that is not owned by the service business or calling. This includes cleaning, repair, and maintenance businesses. By way of example, this does not include businesses such as brokerage, legal, accounting, architectural, engineering, consulting, contracting, real estate firms, and travel agencies.]~~ a qualified business that repairs ships, aircraft, or assisted technology equipment, provides telecommunication services, medical and health care services, or education and training services as defined in chapter 209E, HRS. Where the service business [or calling], in the same transaction, engages in both the sale of tangible property and services, the service business [or calling] shall segregate the sale of services that are exempt under chapter 209E, HRS, from the sale of tangible personal property. The service business [or



§15-6-2

calling] shall sustain the burden of proving the segregation was properly made. If the service business [~~or calling~~] fails to sustain the burden, the entire transaction shall be subject to the general excise tax.

"Seven-year cycle" means the eighty-four consecutive months during which a qualified business may receive enterprise zone benefits. The cycle begins on the first of the month following the date the department determines that a business is eligible to participate in the enterprise zones program. The cycle ends after eighty-four consecutive months or the end of the twenty-year designation for the zone in which the qualified business is located, whichever comes first.

"State" means the State of Hawaii.

"Taxable year" or "tax year" means the calendar year (or the fiscal year ending during such calendar year) on the basis of which taxes due the State are computed under the applicable tax law.

"Taxes due the State" means [~~÷~~

- ~~(1) In the case of a corporation, partnership, or sole proprietorship, income tax due under chapter 235, HRS;~~
- ~~(2) In the case of a public service company, tax due under chapter 239, HRS; and~~
- ~~(3) In the case of a financial institution, tax due under chapter 241, HRS.] income taxes due under chapter 235, HRS.~~

~~["Trade or business" means all business activity by a qualified business within an enterprise zone, whereby (1) tangible personal property is sold at wholesale and the sale takes place within the zone; (2) a qualified business engaged in a service business or calling within the zone; or (3) value is added to materials or products that are manufactured within the zone.]~~

"Wholesale" means those activities defined in section 237-4(8), HRS. [Eff 11/3/90; am and comp ] (Auth: HRS §209E-8) (Imp: HRS §209E-2)

SUBCHAPTER 2

APPLICATION FOR, SELECTION CRITERIA,  
AND TERMINATION OF ENTERPRISE ZONE STATUS

§15-6-3 Eligibility criteria for zone nomination. (a) To be designated as an enterprise zone, a proposed area shall be located within one [1980] United States census tract or two or more contiguous [1980] United States census tracts in accordance with the most recent decennial United States Census. [~~Any area designated as an enterprise zone after 1990 census data becomes available shall be located within one 1990 United States census tract or two or more contiguous 1990 United States census tracts.~~] The census tract or tracts within which each enterprise zone is located also shall meet at least one of the following requirements [~~which are based upon the most current census data~~]:

- (1) At least twenty-five per cent of the population of each census tract shall have a median family income below eighty per cent of the median family income of the county in which the census tract is located; or
- (2) The unemployment rate in each census tract shall be at least 1.5 times the state average unemployment rate. [~~Based on the 1980 state unemployment rate, the unemployment rate in each census tract within a zone must be at least 7.05 per cent.~~] [Eff 11/3/90; am and comp ] (Auth: HRS §209E-8) (Imp: HRS §209E-4)

§15-6-5

§15-6-4 Procedure for zone nomination by counties. (a) Nominations for enterprise zone designation shall be made by the governing body of each county.

(b) For each proposed enterprise zone, the governing body of the county shall submit an application which includes:

- (1) A written description of the boundaries of the proposed zone;
- (2) A map identifying the proposed enterprise zone boundaries relative to the boundaries of the census tracts that will be fully or partially included in the zone; and relative to the state land use district classifications, publicly held lands, and county general plan and/or development plan classifications; and
- (3) A statement indicating the local incentives proposed by the county. Each county may propose incentives which it will make generally available throughout the zone or available only to certain types of businesses for limited periods of time. [Eff 11/3/90; comp ] (Auth: HRS §209E-8) (Imp: HRS §§209E-4, 209E-12)

§15-6-5 Procedure for state review of zone nominations. (a) The application shall be reviewed by the department within sixty days of receipt of the completed application. Within ninety days of receipt, the director shall recommend for approval by the governor those applications which meet the requirements set forth by statute and these rules.

(b) The governor shall approve, upon recommendation of the director, enterprise zone status for a twenty-year period beginning on the date of

approval. The amendment of the zone status under section 15-6-7 shall not extend the twenty-year period.

(c) A county whose application for zone designation is denied shall be notified and provided with the reasons for denial. [Eff 11/3/90; comp ] (Auth: HRS §209E-8) (Imp: HRS §209E-5)

§15-6-6 Zone selection criteria and other requirements. (a) In its recommendations to the governor, the department shall consider the economic condition of the area, the potential benefits which may accrue to the State and counties from business and industrial development in the area, and the need and potential for job creation in the area.

(b) A maximum of six areas in each county may be designated as enterprise zones.

(c) If any portion of an area designated as a state enterprise zone is subsequently included in an area designated as an enterprise zone by an agency of the federal government, the state enterprise zone shall be enlarged to include the area designated by the federal government.

(d) Upon designation of an area as an enterprise zone, the State and any agency of a political subdivision that owns any land within the enterprise zone may make available for sale or lease, under appropriate law, all land within the zone not designated or targeted for public use with the condition that it be developed as defined in this chapter. No public land shall be sold or leased if the intended purpose of the sale or lease is real estate

§15-6-8

speculation. [Eff 11/3/90; comp ] (Auth:  
HRS §209E-8) (Imp: HRS §209E-4)

§15-6-7 Procedure for amendment of zone status by counties. (a) A county may request amendment (or termination--see following section) of ~~[approved]~~ zone applications by submitting a written notification in accordance with the procedures contained in sections 15-6-4, 15-6-5, and 15-6-6. Requests for amendments will be considered if the amendments relate to:

- (1) Changes in local program incentives;
- (2) Changes of zone boundaries; or
- (3) Termination of the zone.

(b) If the request is for expansion of a zone boundary, the expanded zone area shall meet the eligibility requirements of section 15-6-3.

(c) The request for amendment shall be reviewed by the department and forwarded to the governor. If approved by the governor, the amendment shall take effect on the date of approval. A county whose application for amendment is denied by the governor shall be notified and provided with the reasons for denial. [Eff 11/3/90; am and comp ]  
(Auth: HRS §209E-8) (Imp: HRS §209E-13)

§15-6-8 Procedure for termination of zone designation by State or counties. (a) A county shall notify the department of any inability or unwillingness to continue any approved local incentives for any zone or zones within the county's jurisdiction. This shall result in termination of any affected zone on the date notification is received by the department. The department shall advise the department of taxation that the zone has been terminated.

(b) If the department determines that a business is ~~[eligible]~~ qualified to participate in the program prior to the termination of the zone ~~[under this~~



~~section,~~ by a county, the business may be eligible for ~~[business]~~ state tax credits and the state general excise tax exemption for the remainder of the business' ~~[seven-year cycle.]~~ qualification period.

(c) In the case of a business that is located in a zone which is not terminated by the State or counties under this section, the business shall not be eligible for the ~~[business]~~ state tax credits and the state general excise tax exemption, regardless of the time remaining in the business' ~~[seven-year cycle,]~~ qualification period, from the date that a ~~[zones]~~ zone terminates at the end of its twenty-year life. [Eff 11/3/90; am and comp ] (Auth: HRS §209E-8) (Imp: HRS §209E-13)

### SUBCHAPTER 3

#### DESIGNATION OF A BUSINESS AS A QUALIFIED BUSINESS;

#### CERTIFICATION BY THE DEPARTMENT

§15-6-9 State criteria used to determine business qualification. (a) To qualify for enterprise zone benefits, a ~~[corporation, partnership, or sole proprietorship]~~ qualified business authorized to do business in the State shall satisfy the following requirements:

- (1) Be subject to ~~[the state corporate or individual income tax under]~~ chapter 235, HRS ~~[, the public service company tax under chapter 239, HRS, or the bank and financial corporation tax under chapter 241, HRS];~~
- (2) Be engaged in ~~[a trade or business,]~~ an eligible business activity, as defined in section ~~[15-6-2,]~~ 209E-2, HRS; and

§15-6-9

- (3) ~~[Be qualified]~~ Meet the requirements under either [section 15-6-9(c)] subsection (c) or (d).

(b) Where the department finds that a business becomes eligible to participate under the program during a business' taxable year, rather than at the start of the taxable year, the requirement that at least fifty per cent of the business' enterprise zone ~~[establishment's]~~ establishments' gross receipts be attributable to the active conduct of a trade or business within enterprise zones located within the same county, and the requirement that ~~[a sufficient number of low income persons be hired]~~ the business increase its average annual number of full-time employees by at least ten per cent by the end of its first tax year of participation, and the requirement that a business increase its gross sales of agricultural crops or agricultural products by two per cent annually, shall be determined by the actual number of months that it does business within ~~[the zone]~~ enterprise zones located within the same county during the taxable year.

(c) ~~[A business is qualified under section 209E-9, HRS, if the business satisfies the criteria in either this subsection or subsection (d).]~~ A business which begins operation of a trade or business in an eligible business activity within a zone after the date of zone designation shall meet the following requirements:

- (1) During each taxable year, at least fifty per cent of the business' enterprise zone ~~[establishment's]~~ establishments' gross receipts are attributable to the active conduct of a trade or business ~~[, as defined in section 15-6-2;]~~ within enterprise zones located within the same county; and
- (2) ~~[At least forty per cent of the average number of full time employees of its zone establishments shall be low income persons;~~

~~and~~] Increases its average annual number of full-time employees employed at the business' establishment or establishments within enterprise zones located within the same county by at least ten per cent by the end of its first tax year of participation, and during each subsequent taxable year at least maintains that higher level of employment; or

- (3) Increases its gross sales of agricultural crops produced, or agricultural products processed within enterprise zones located within the same county by two per cent annually.

~~[-(3)-]~~ (4) [~~if~~] If the calculation used to determine compliance with paragraph (2) results in a fractional percentage, the result should be rounded up or down to the next whole percentage.

(d) A business [~~may also qualify under section 209E-9, HRS, if the business is~~] which is actively engaged in the conduct of a trade or business in an eligible business activity in a zone prior to the time of zone designation [~~and the business meets~~] shall meet the following requirements:

- (1) During each taxable year, at least fifty per cent of the business' enterprise zone [~~establishment's~~] establishments' gross receipts are attributable to the active conduct of a trade or business [~~÷~~] within enterprise zones located within the same county; and
- (2) [~~The average number of full time employees of its zone establishment, during the taxable year the zone establishment first qualifies, shall be at least five per cent greater than the average for the establishment's base taxable year;~~] Either:

- (i) Increases its average annual number of full-time employees employed at the business' establishment or establishments within enterprise zones located within the same county by at least ten per cent by the end of the first year of operation, and by at least fifteen per cent by the end of each of the fourth, fifth, sixth, and seventh years of operation, and for businesses eligible for tax credits extending past the seventh year, at least maintains that higher level of employment during each subsequent taxable year; or
  - (ii) Increases its gross sales of agricultural crops produced, or agricultural products processed within enterprise zones located within the same county by two per cent annually.
- (3) ~~[The average annual number of full time employees of its zone establishment shall remain at or above the increased level required in paragraph (2) during the remainder of the cycle;]~~ The percentage increase in paragraph (2) shall be based on the employee count at the beginning of the initial year of operation within the enterprise zone or zones.
- ~~(4) At lease forty per cent of the increase in full time zone employees, as stipulated in paragraph (2), shall be attributable to low income persons;~~
- ~~(5) The number of low income persons employed by a zone establishment shall increase by five per cent annually until at least forty per cent of a zone establishment's full-time employees are low income persons; and~~

~~[-(6)]~~(4) If the calculations used to determine compliance with ~~[either]~~ paragraph (2) ~~[, (3), (4), or (5) result]~~ results in a fractional percentage, the result should be rounded up or down to the next whole percentage.

(e) Even after the certification of a business at the end of the initial year of ~~[the seven-year cycle,]~~ qualification, a business must meet the requirements of this section in each year remaining in its ~~[seven-year cycle]~~ qualification period to receive certification for the tax credits or the exemption from the general excise tax for that year. [Eff 11/3/90; am and comp ] (Auth: HRS §209E-8) (Imp: HRS §209E-9)

§15-6-10 Business application procedure. (a) A business interested in participating in the enterprise zones program should obtain an application form from the department. The form should be completed by the business, reviewed by an independent accountant who shall be responsible for verifying the accuracy of the information in the application, and submitted to the department.

(b) The business shall submit separate applications for each zone in which it conducts trade or business.

(c) A business may participate in the program for a seven-year cycle. A business engaged in manufacturing tangible personal property or producing or processing of agricultural products may participate in the program for an additional three-year cycle. During the initial year of the seven-year cycle, the department shall determine if the applying business is eligible to participate in the enterprise zones program. The business shall be advised of the department's decision. The seven-year cycle will commence on the first of the month following the date that the department determines that the business is



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eligible to participate in the program. The business may claim the exemption from the general excise tax from the first of the month following the date the department determines that the business is eligible to participate in the program. If the business is not certified at the end of the year, however, the business shall pay all taxes, penalties, and interest normally levied by law to the department of taxation.

(d) A qualified business shall not be entitled to a credit against taxes due the State, until certified by the department. The department of taxation shall reject any claim for exemption in a return filed without the certification. At the end of each taxable year [~~of the seven year cycle,~~] of the business' qualification period, including the initial year, the department shall determine if the business should be certified to receive the state income tax credits and general excise tax exemption available under this program. For the department to make this determination, the business must submit to the department a form designated by the department [~~together with the forms verifying the status of low income employees. The form from the department shall be reviewed by an independent accountant~~].

Following its review of the forms, the department shall return the certified form to the business and notify the department of taxation if the business is certified.

(e) A business that has been certified shall:

- (1) File the applicable state tax returns;
- (2) Attach copies of the appropriate department form and department of taxation enterprise zone tax credit form to the tax return; and
- (3) Forward a copy of the certified department form to the governing body of the county in which the qualified business is located.

(f) The business tax credits may be claimed at the [~~and~~] end of each tax year of the [~~seven year cycle,~~] business' qualification period, including the

initial year, if the appropriate tax returns are filed and a credit is claimed against any taxes due the State on the tax returns. These returns need not be prepared by an accountant. The department of taxation enterprise zone tax credit form shall be attached to the tax returns filed with the department of taxation. All taxes, penalties, and interest normally levied by law shall be paid to the department of taxation for the period that the business is not certified to receive enterprise zone tax benefits. Additionally, the department of taxation, during the statutory limitations period, may audit a business to determine whether:

- (1) [~~the~~] The business is engaged in [~~a trade or business,~~] an eligible business activity, as defined in [~~this~~] chapter 209E, HRS;
- (2) [~~the~~] The business has properly allocated and apportioned income from trade or business in a zone, which is eligible for the income tax credits and the general excise tax exemption, from other income that is not eligible for the credits and exemption, including income from business activity within the zone which does not fall within the definition of [~~trade or business~~] an eligible business activity or income from business activity conducted outside the zone; and
- (3) [~~the~~] The business has properly allocated the business tax credits based upon the number of months it is qualified during the taxable year.

(g) The exemption from the general excise tax may be claimed at the time of the filing of the returns during the initial year, as provided in [~~section 15-6-10(c),~~] subsection (c), and in subsequent years of the [~~seven-year-cycle~~] business' qualification period at the time of the filing of the

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returns if the tax returns are filed as required by law. A business shall submit standard periodic tax returns (monthly, quarterly, or semiannually) as required under chapter 237, HRS, and claim an exemption from the general excise tax for trade or business in the zone. The periodic returns and the annual return need not be prepared by an accountant. These returns shall be filed, claiming the exemption, even when no tax is due. The appropriate department form shall also be attached to the annual tax return. All taxes, penalties, and interest normally levied by law shall be paid to the department of taxation for the period that the business is not certified to receive enterprise zone tax benefits. Additionally, the department of taxation, during the statutory limitations period, may audit a business to determine whether (1) the business is engaged in [~~a trade or business,~~] an eligible business activity, as defined in [~~this~~] chapter[~~7~~] 209E, HRS; (2) the business has properly allocated and apportioned income from trade or business in a zone which is eligible for the business tax credits and the general excise tax exemption, from other income that is not eligible for the credits and exemption, including income from business activity within the zone that does not fall within the definition of [~~trade or business~~] eligible business activity or income from business activity conducted outside the zone; and (3) the business has properly allocated the general excise exemption based upon the number of months it is qualified during the taxable year. [Eff 11/3/90; am and comp ]  
(Auth: HRS §209E-8) (Imp: HRS §209E-9)

§15-6-11 State income tax credits and general excise tax exemption available to a business that has been certified. (a) A business that has been certified is entitled, subject to the apportionment provisions discussed in these rules, to tax credits against any

taxes due under chapter 235, HRS to the State according to the following formula:

First year of the seven-year cycle [~~80%~~] 80 per cent of tax due  
Second year of the seven-year cycle [70%] 70 per cent of tax due  
Third year of the seven-year cycle [~~60%~~] 60 per cent of tax due  
Fourth year of the seven-year cycle [50%] 50 per cent of tax due  
Fifth year of the seven-year cycle [40%] 40 per cent of tax due  
Sixth year of the seven-year cycle [30%] 30 per cent of tax due  
Seventh year of the seven-year cycle [20%] 20 per cent of tax due  
Eighth, ninth, and tenth years (extended three-year cycle) 20 per cent of tax due for qualified businesses engaged in the manufacturing of tangible personal property or the producing or processing of agricultural products.

The business shall be eligible for a credit against any taxes due the State under chapter 235, HRS when the tax return required [~~under chapters 235, 239, and 241, HRS~~] is filed with the department of taxation, together with the certification by the department. No unusable tax credit shall carry over or carry back [~~-~~] or be refunded.

(b) A business that has been certified is entitled, subject to the apportionment provisions discussed in these rules, to tax credits against any taxes due to the State under chapter 235, HRS in an amount equal to a percentage of unemployment insurance premiums paid on the payroll of all the business' employees employed [~~in the enterprise zone, including employees who do not qualify under the definition of a low income person,~~] within enterprise zones located

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within the same county, according to the following formula:

First year of the seven-year cycle [80%] 80 per cent  
of premiums paid  
Second year of the seven-year cycle [70%] 70 per  
cent of premiums paid  
Third year of the seven-year cycle [60%] 60 per cent  
of premiums paid  
Fourth year of the seven-year cycle [50%] 50 per  
cent of premiums paid  
Fifth year of the seven-year cycle [40%] 40 per cent  
of premiums paid  
Sixth year of the seven-year cycle [30%] 30 per cent  
of premiums paid  
Seventh year of the seven-year cycle [20%] 20 per  
cent of premiums paid  
Eighth, ninth, and tenth years (extended three-year  
cycle) 20 per cent of premiums paid for qualified  
businesses engaged in the manufacturing of  
tangible personal property or the producing or  
processing of agricultural products.

Tax credits provided for in this subsection apply only to the amount of unemployment insurance premiums paid. Those premiums shall be paid by the business and the business shall be eligible for a credit against any taxes due to the State under chapter 235, HRS when the annual tax return required [~~under chapters 235, 239, and 241, HRS,~~] is filed with the department of taxation, together with the certification by the department.

No unusable tax credit may be carried over or carried back to another tax period.

(c) The tax credits allowed under subsections (a) and (b) may be combined by the business. The department of taxation, however, shall not refund any

unusable credit. The application of this provision is illustrated in the following example.

Example 1:

ABC Company's application to participate in the enterprise zones program is approved by the department shortly after ABC commences a trade or business in an eligible business activity in a zone. All of ABC's income is derived from trade or business in an eligible business activity within the zone. During the initial year of the seven-year cycle, ABC pays \$500 in unemployment insurance premiums for all employees [~~, including employees who do not qualify under the definition of low income person~~]. ABC's seven-year cycle begins on January 1. After the initial year of the seven-year cycle, it is determined that ABC owes \$1,000 in net income taxes to the State under chapter 235, HRS. When ABC files its tax returns at the end of the initial year, it is eligible for a tax credit equaling 80 per cent of the income taxes due, or \$800. ABC is also eligible for a credit of [~~\$~~] 80 per cent of unemployment insurance premiums paid, or \$400. Thus, ABC's total credits under the program against income taxes are \$1,200. As ABC's income tax liability is \$1,000, ABC tax credit [~~of~~] is limited to \$1,000 at the end of the initial year if ABC is certified by the department [,] even though the calculated maximum credit is \$1,200. The \$200 of unusable credit, however, shall not be refunded to ABC nor shall it be carried over or carried back to another tax period.

(d) A business may claim the exemption from the general excise tax on the gross receipts from all transactions eligible under this chapter from the first of the month following the date the department determines that the business is eligible to

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participate in the program. The business, however, shall file the tax returns required under chapter 237, HRS. The business shall submit standard periodic tax returns as required under chapter 237, HRS, report the gross income from the business, and [-] claim an exemption from the general excise tax for trade or business in the zone. These returns shall be filed even if no tax is due.

(e) Businesses engaged in the manufacturing of tangible personal property or the producing or processing of agricultural products are eligible to receive enterprise zone benefits for an extended three-year cycle in addition to their seven-year cycle. [Eff 11/3/90; am and comp ]  
(Auth: HRS §209E-8) (Imp: HRS §§209E-10, 209E-11)

§15-6-12 Calculation of eligibility for tax credits and exemption; apportionment. (a) This section sets forth the calculations that a business may have to complete to determine its eligibility for business tax credits and the general excise exemption and the apportionment of the credits and the exemption.

(b) During each taxable year, at least [~~fifty~~] 50 per cent of the business' enterprise zone establishment's] establishments' gross receipts must be attributable to the active conduct of a trade or business [within the zone.] in an eligible business activity within enterprise zones located within the same county.

(c) A business which has income taxable both within and without the State shall apportion and allocate the business' net income under sections 235-21 to 235-38, HRS, prior to calculating the enterprise zone tax credits.

(d) The general excise tax exemption and the enterprise zone tax credits shall apply only to the extent that a qualified business conducts trade or business [~~within the zone~~] in an eligible business

activity within enterprise zones located within the same county.

- (1) The business may claim an exemption from the general excise tax at the time of the filing of the periodic returns required under chapter 237, HRS, only for trade or business within ~~[the zone.]~~ enterprise zones located within the same county.
- (2) A business may claim an enterprise zone credit against any taxes due the State. Subject to the allocation and apportionment, if any, under subsection (c), a business with income from business activity which is taxable both within and without an enterprise zone, shall allocate and apportion the income, pursuant to this section, and apply for an enterprise zone tax credit at the end of each taxable year only for the income derived from the qualified business activities of the trade or business within [the zone] enterprise zones located within the same county. The business shall multiply the income by a fraction. The numerator of the fraction is the total gross receipts of [a] the qualified business [within the zone] activity conducted by the qualified business in an eligible business activity within enterprise zones located within the same county during the taxable year [whereby tangible personal property is sold at wholesale to business firms, a qualified business engages in a service business or calling, or value is added to materials or products that are manufactured by a qualified business]. The



denominator is the total gross receipts of the qualified business within the State during the taxable year, including sales within and without the enterprise zone.

- (A) For purposes of allocation and apportionment of income under this section, a ~~[business is taxable without the enterprise zone if the business has:]~~ business' income is earned outside of an enterprise zone if the:
- (i) Income is from business activity within the zone which does not fall within the definition of ~~[trade or business;]~~ eligible business activity; or
  - (ii) Income is from business activity conducted outside the zone. This term includes work that a business located within a zone subcontracts to a business located outside the zone and the work is delivered outside the zone.
- (3) A business may claim an enterprise zone credit against any taxes due the State under chapter 235, HRS, in an amount equal to a percentage of unemployment insurance premiums paid on the payroll of all the business' employees employed ~~[in the enterprise zone, including employees who do not qualify under the definition of a low income person.]~~ within enterprise zones located within the same county. Where the business has employees both within and without the enterprise zone, the business shall allocate and apportion the unemployment insurance premiums by multiplying the unemployment insurance premiums paid by a fraction. The numerator

of the fraction is the payroll for employees employed within [~~the zone~~] enterprise zones located within the same county during the taxable year, and the denominator is the payroll for all employees within the State.

(A) An employee is employed within the zone if:

- (i) The individual's service is performed entirely within the zone; or
- (ii) The individual's service is performed both within and without the zone, but the service performed without the zone is incidental to the individual's service within the zone.

(e) The credits, which are reduced in every year of the seven-year cycle, are apportioned over a twelve-month period. Accordingly, the credits may have to be apportioned over two taxable years if the department finds that a business is eligible to participate under the program during a taxable year, rather than at the start of a taxable year.

(f) Each partner or S corporation shareholder of a business that has been certified shall separately determine for the partner's or shareholder's taxable year within which the business' taxable year ends, the partner's or shareholder's share of the credit. The partner's or shareholder's share of the entity's net income or loss and unemployment insurance credit shall be determined in accordance with the ratio in which the partners and shareholders divide the profits and losses of the partnership or the S corporation, respectively.

(g) The application of this section is illustrated in the following examples:

Example 1:

ABC Corporation is located in an area designated as an enterprise zone. ABC submits an application to the department. The department determines that ABC is eligible to participate in the program commencing on December 27. Under section 15-6-10, ABC's seven-year cycle will commence on January 1. ABC claims the general excise tax exemption from January 1 for income from trade or business in the zone. ABC, however, pays the general excise tax for income from business activity without the zone. ABC's total income at the end of the taxable year is \$100,000. ABC pays \$500 in unemployment insurance premiums during the taxable year. ABC's net profit before taxes is \$10,000. ABC determines that seventy per cent of its income was attributable to the conduct of a trade or business in an eligible business activity in the zone. During the taxable year, ABC properly claimed the general excise exemption for \$70,000 of its income. ABC is also eligible for a tax credit against the \$440 in taxes ABC owes the State, calculated as follows: (1) 70 per cent of ABC's income is derived from sales within the zone (\$70,000 divided by \$100,000); and (2) 70 per cent multiplied by 80 per cent (the amount of the credit in the first year) multiplied by \$440 (ABC's tax liability for the taxable year before the application of the enterprise zone credit) is \$246.40. ABC is also eligible for a credit of \$400, which is 80 per cent of the \$500 unemployment insurance premiums paid. Thus, ABC's enterprise zone credits against taxes due the State are \$646.40. As ABC's tax liability is \$440, ABC may claim a tax credit of \$440. The \$206.40 of unusable credit, however, shall not be refunded to ABC nor shall it be carried over or carried back to another tax period.

Example 2:

Assume the same facts as in Example 1, except that ABC is a sole proprietorship owned by individual X who files a joint return with Y; Y has a salary of \$20,000; X and Y jointly receive dividends and interest of \$2,000; and X and Y claim personal exemptions of \$2,080 and itemized deductions of \$9,920. X and Y's adjusted gross income is \$32,000, which is calculated by adding the \$10,000 profit of ABC, Y's salary of \$20,000, and \$2,000 in dividends and interest. After subtracting the itemized deductions and personal exemptions, their taxable income is \$20,000. By applying the apportionment factor of 70 per cent to the \$10,000 of income earned by X through ABC, \$7,000 of ABC's net profit is apportioned to trade or business in an eligible business activity in the zone. X and Y are subject to a tax of \$2,000, which is calculated by multiplying X and Y's taxable income of \$20,000 by a tax rate of 10 per cent, before the application of the enterprise zone credit. The tax of \$2,000 is multiplied by 21.875 per cent (\$7,000 divided by \$32,000). This amount is \$437.50, which is then multiplied by 80 per cent to arrive at \$350, the enterprise zone income tax credit which X and Y may claim on their joint return. X and Y may also claim a credit of \$400, which is 80 per cent of the \$500 in unemployment insurance premiums paid. Thus, X and Y's credits from the program total \$750 against a tax liability of \$2,000. If no other credits are taken by X and Y, they will owe a balance of \$1,250 to the State.

Example 3:

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ABC Corporation, which is engaged in business within the State but located outside an area designated as an enterprise zone, opens XYZ, an establishment, in an area designated as an enterprise zone. XYZ is a subsidiary of ABC. The department determines that XYZ is eligible to participate in the program commencing on December 27. Under section 15-6-2, XYZ's seven-year cycle commences on January 1. XYZ may claim the general excise tax exemption from January 1 for receipts that XYZ receives for trade or business in an eligible business activity in the zone. XYZ pays \$2,000 in unemployment insurance premiums during the year for all employees employed in the enterprise zone. ABC's total receipts during the taxable year are \$100,000, including XYZ's receipts of \$10,000. \$5,000 of XYZ's receipts are derived from trade or business in an eligible business activity in the zone. Accordingly, the requirement in section 209E-9(a)(2), HRS, that at least 50 per cent of the establishment's receipts, rather than the business' receipts, be attributable to the active conduct of a trade or business in an eligible business activity, is satisfied. ABC's net profit before taxes is \$10,000. During the taxable year, ABC incorrectly claimed the general excise tax exemption on all of XYZ's receipts. At the end of the year when XYZ is certified to receive tax benefits, ABC must file the annual general excise tax return and pay the taxes and interest on the \$5,000 that was erroneously exempted from the general excise tax. ABC is entitled to a tax credit of \$17.60 against the \$440 in taxes owed the State, calculated as follows: (1) 5 per cent of its income is derived from sales within the zone (\$5,000 divided by \$100,000); and (2) 5 per cent multiplied by 80 per cent multiplied by \$440

(which is the tax liability before the enterprise zone credit) is \$17.60. ABC is also eligible for a credit for unemployment insurance premiums paid of \$1,600, calculated by multiplying the \$2,000 in unemployment insurance premiums paid (for employees located in the zone) by 80 per cent. Thus, ABC's credits under the program are \$1,617.60. As ABC's tax liability is \$440, ABC may claim a tax credit of \$440. The \$1,177.60 of unusable credit, however, shall not be refunded to ABC nor shall it carry over or carry back.

Example 4:

ABC Corporation is located in an area designated as an enterprise zone. ABC is engaged in the conduct of a trade or business in an eligible business activity for several years before ABC submits an application to the department. Under section 15-6-2, ABC's seven-year cycle commences on May 1, 1993. ABC may claim the general excise tax exemption from May 1. ABC pays \$500 in unemployment insurance premiums during 1993. At the end of 1993, ABC is certified to receive tax benefits. ABC determines that it owes \$1,000 in net income taxes to the State under chapter 235, HRS. When ABC files its income tax returns for the taxable year ending December 31, 1993, it is eligible for a tax credit of \$533.60, calculated as follows: (1) ABC is eligible for the credit for 8 months of the year, from May to December. Eight months divided by 12 months is 66.7 per cent; (2) in the first year of the seven-year cycle, ABC is eligible for a credit of [~~\$~~] 80 per cent against any taxes due the State; (3) 67 per cent multiplied by 80 per cent is 53.36 per cent; and (4) 53.36 per cent of the \$1,000 tax liability is \$533.60. ABC is also eligible for a credit of \$266.80, which is 53.36 per cent

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of the \$500 unemployment insurance premiums paid. Thus ABC may claim total credits of \$800.40 after the first year of the seven-year cycle. ABC, however, will owe a balance of \$199.60 for state income taxes.

Example 5:

Assume the same facts as in Example 4, except that at the end of 1994, year 2 of the cycle, ABC determines that it owes \$1,000 in net income taxes. ABC pays \$1,000 in unemployment insurance premiums during 1994. ABC is certified to receive tax benefits. When ABC files its income tax returns for the taxable year ending December 31, 1994, ABC is eligible for a tax credit of \$266.40, calculated as follows: (1) ABC is eligible for four more months of credit for the first year of the seven-year cycle. Four months divided by 12 months is 33 per cent; (2) 33 per cent multiplied by 80 per cent is 26.64 per cent; and (3) 26.64 per cent of \$1,000 is \$266.40. The second portion of the tax credit amounts to \$466.90, calculated as follows: (1) ABC is eligible for 8 months of credit in the second year. Eight months divided by 12 months is 66.7 per cent; (2) ABC is eligible for a credit of 70 per cent against any taxes due the State in the second year of the cycle; (3) 66.7 per cent multiplied by 70 per cent is 46.69 per cent; and (4) 46.69 per cent of \$1,000 is \$466.90. Third, ABC is eligible for a credit of \$266.40, which is 26.64 per cent of the unemployment insurance premiums paid. Fourth, ABC is eligible for a credit of \$466.90, which is 46.69 per cent of unemployment insurance premiums paid. Thus, ABC's total enterprise zone credits against income taxes are \$1,466.60 in year 2. As ABC's income tax liability is \$1,000, ABC may claim a tax credit of \$1,000 at the end of the second year.

The \$466.60 of unusable credit, however, shall not be refunded to ABC nor shall it carry over or carry back.

Example 6:

ABC Company is engaged in a trade or business in an eligible business activity in an enterprise zone. Due to the difficulty of a particular job, however, ABC subcontracts a portion of the job to XYZ, which is not located in the enterprise zone. XYZ's services are not provided in the zone. ABC will have to apportion the income received from this job which is attributable to the services performed by XYZ and claim tax credits and the general excise tax exemption only for the services delivered in the zone. [Eff 11/3/90; am and comp ] (Auth: HRS §209E-8)  
(Imp: HRS §209E-9)

§15-6-13 Wholesale sale of tangible personal property. (a) Tangible personal property must be sold at wholesale by an establishment or qualified business located within an enterprise zone. [~~Both the~~] The transfer of title [and delivery] to the buyer of the tangible personal property must take place in [~~the same~~] an enterprise zone located within the same county in which the tangible personal property is sold.

(b) When title passes is dependent upon the factual circumstances of the transaction gathered from the contract of sale and invoice. Among the circumstances that are considered in making this determination are when the risk of loss transferred from the seller to the purchaser, where delivery occurs, and when title to the property sold passed



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from the seller to the purchaser under the provisions of the uniform commercial code, chapter 490, HRS. A statement in a contract that title passes at a certain time or event will not in itself create a presumption of passing of title for purposes of this section, unless title has in fact passed considering all of the facts and circumstances.

(c) The application of this section is illustrated in the following examples:

Example 1:

ABC Company is located in an area designated as an enterprise zone. ABC is a wholesaler of electronic parts and equipment. The purchasers take title and receive delivery of the parts and equipment in the zone. Accordingly, ABC will qualify for tax credits against any taxes due the State and the general excise tax exemption.

Example 2:

ABC Seafood Company is located in an area designated as an enterprise zone. ABC sells the seafood at wholesale to purchasers who take title to the seafood within the zone and receive delivery of the seafood within the zone. ABC also sells the seafood at retail to customers who come to ABC's place of business. The wholesale sales will qualify for the income tax credits and general excise tax exemption. The retail sales to customers, however, will not qualify. Accordingly, ABC will have to allocate the income received from each type of sale and claim income tax credits and the general excise tax exemption only for wholesale sales.

Example 3:

ABC Ranch is located in an area designated as an enterprise zone. ABC raises cattle and various food crops. ABC sells the cattle and crops at wholesale to purchasers who receive title and delivery within the zone. ABC will qualify for the tax credits and general excise exemption.

Example 4:

Assume the same facts as in Example 3, except that ABC also sells cattle and crops to purchasers who receive ~~[title and delivery]~~ possession of the cattle and crops in an enterprise zone ~~[other than the enterprise zone]~~ outside of the county that ABC is located in. The contract provides that title passes to the purchaser upon execution of the contract but also provides that ABC must bear the cost of delivery and any risk of loss. Under applicable law, title is deemed not to pass to the purchaser and ABC will have to apportion the income received from the sales outside the [zone] county that ABC is located in and claim income tax credits and the general excise tax exemption only for sales where the purchasers receive title [and delivery] within [the same zone.] an enterprise zone located within the same county in which the cattle and crops are sold. [Eff 11/3/90; am and comp ] (Auth: HRS §209E-8) (Imp: HRS §209E-9)

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§15-6-14 Sale of services. (a) Services must be sold ~~[by]~~ and delivered at an establishment ~~[or]~~ of a qualified business engaged in a service business ~~[or calling,]~~ as defined in this chapter, within an enterprise zone ~~[and the services must be delivered in the same enterprise zone in which the services are sold. The business must act upon or process tangible personal property]~~ within the same county. ~~[This includes business activities such as cleaning, repair, and maintenance. By way of example, this term does not include business activities such as brokerage, legal, accounting, architectural, engineering, consulting, contracting, real estate, and travel agencies.]~~ Where the service business ~~[or calling]~~, in the same transaction, engages in both the sale of tangible property and services, the service business ~~[or calling]~~ shall segregate the sale of services that are exempt under chapter 209E, HRS, from all non-exempt transactions, including the sale of services or of tangible personal property. The service business ~~[or calling]~~ shall sustain the burden of proving the segregation was properly made. If the service business ~~[or calling]~~ fails to sustain the burden, the entire transaction shall be subject to the general excise tax.

(b) The application of this section is illustrated in the following examples:

Example 1:

ABC ~~[Auto Dealer]~~ Ship Repair is located in an area designated as an enterprise zone. ABC provides servicing and repair work on ~~[automobiles.]~~ ships. ABC provides these services for customers who bring their ~~[automobiles]~~ ships to ABC's place of business. All of ABC's gross receipts are derived from services that are sold and delivered within the zone. Accordingly, ABC will qualify for the

income tax credits and general excise tax exemption.

Example 2:

~~[ABC Company is located in an area designated as an enterprise zone. ABC provides laundry services to the following persons: individual customers who bring their laundry to ABC's place of business and individual customers and hotels who offer laundry services to hotel guests where ABC collects the laundry outside the zone, cleans the laundry within the zone, and returns the laundry to the individual customers and hotels outside the zone. ABC will qualify for the income tax credits and general excise tax exemption for sales to customers who bring their laundry to ABC's business. ABC will also qualify for the income tax credits and general excise tax exemption for sales to both the individuals and the hotels where laundry is picked up.]~~

~~[Example 3:]~~ Assume the same facts as in Example [2] 1, except that ABC ~~[imposes a separate charge for goods that are picked up and delivered. As the pick up and delivery charges are not trade or business with the zone,]~~ Ship Repair also repairs ships in an area that is not in an enterprise zone in the county in which ABC is registered in. ABC will have to apportion income received from each type of sale and claim income tax credits and the general excise tax exemption only for services performed within ~~[the zone.]~~ the zones within the same county it is registered in.

Example [4:] 3:

Assume the same facts as in Example 2, except that ABC Ship Repair also rents ~~[personal~~

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~~property] tools that it owns, [including table cloths, towels and other linen,] or alternatively sells specialized tools at retail to customers [located outside the zone. ABC periodically collects soiled items from the customers, launders the items, and provides clean table cloths, towels, and linen to the customers]. ABC Ship Repair will not qualify for the income tax credits and general exercise exemption on these sales as the [cleaning of property owned by the laundry] rental of tools or the sale of tools at retail is not an eligible activity~~[7]~~ of ABC Ship Repair.~~

~~[Example 5:~~

~~ABC Company is located in an area designated as an enterprise zone. ABC leases automobiles and other equipment to customers who come to ABC's place of business. These services are sold and delivered within the zone. ABC, however, will not qualify for the income tax credits and general excise tax exemption as the lease of property is not an eligible activity. ABC does not act upon or process tangible personal property.~~

~~Example 6:~~

~~ABC is located in an area designated as an enterprise zone. ABC provides architectural and engineering advice to its customers who are located both within and outside the zone. ABC will not qualify for the income tax credits and general excise tax exemption as architectural and engineering activities are among the activities specifically excluded from the definition of a service business or calling.] [Eff 11/3/90; am and comp ] [Auth: HRS §209E-8)  
(Imp: HRS §209E-9)~~

§15-6-15 Manufacturing. To be eligible for enterprise zone benefits, value must be added to materials or products that are manufactured within the enterprise zone. [Eff 11/3/90; comp ]  
(Auth: HRS §209E-8) (Imp: HRS §209E-8)

§15-6-16 Terms and conditions under which the tax credits and the general excise exemption may be claimed by a certified business. (a) A qualified business which has received certification from the department may receive state tax credits and the general excise tax exemption for seven consecutive taxable years. A qualified business engaged in the manufacturing of tangible personal property or the producing or processing of agricultural products may receive state tax credits and the general excise tax exemption for an additional three consecutive taxable years.

[~~If~~] Except as provided in the force majeure provisions in this chapter, if a business fails to be certified for any taxable year during [~~this seven year period,~~] these qualification periods, the business shall not be entitled to the income tax credits or general excise tax exemption offered by this program. The business, however, is eligible to qualify and be certified for any remaining taxable years of its [~~seven year cycle.~~] qualification period.

(b) [~~Any~~] Except as provided in the force majeure provisions in this chapter, any business which fails to be certified for one or more taxable years during the cycle shall not be allowed to compensate by requesting certification after completion of the original seven consecutive year cycle[~~-~~] or the additional three consecutive year cycle for businesses engaged in the manufacturing of tangible personal property or the producing or processing of

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agricultural products. The application of this provision is illustrated in the following example:

Example 1:

ABC Company is certified to receive enterprise zone tax benefits by the department in the initial year of the seven-year cycle. ABC applies for and receives certification from the department in the next two years. The department, however, denies ABC certification in year four. ABC applies for and receives certification in years five, six, and seven. ABC applies for certification in year eight. ABC will not receive certification from the department in year eight as the term of the seven-year cycle has expired.

(c) When a taxpayer conducts business within two or more zones, only one return shall be filed by the taxpayer with attached schedules supporting the amount of the business tax credit or the exemption from the general excise tax.

(d) The department shall not provide certification to a business which enters into a transaction where the principal purpose of the transaction is evasion or avoidance of any taxes or unemployment insurance premiums owed the State by securing the benefit of a credit or exemption which the business would not otherwise enjoy.

(1) Where a business sells or delivers any tangible personal property or ~~[acts upon or processes tangible personal property]~~ service to or for an affiliated business or person and the consideration paid by the affiliate to the business is not indicative of economic substance or the true value of the property or services delivered, this shall be prima facie evidence ~~[of]~~ that the transaction was for the principal purpose of evasion or avoidance of any taxes or

unemployment insurance premiums owed the State.

(e) Where a business commences and completes its [~~seven year cycle,~~] qualification period, such business or any successor business shall not be eligible to participate in the enterprise zones program. Where a business commences and does not complete its [~~seven year cycle,~~] qualification period, the successor business, if any, shall continue the [~~seven year cycle,~~] qualification period of the predecessor business. "Successor business" means a business which either continues the historic business of the predecessor business or uses significant portion of the predecessor business' assets.

- (1) The continuity of business requirement is satisfied if the successor business continues the predecessor business' historic business. The historic business is the business it has conducted most recently. The fact that the successor business is in the same line of business as the predecessor business may establish the requisite continuity, but is not alone sufficient. If the predecessor business has more than one line of business, the successor business must only continue a significant line of business.
- (2) The continuity of business requirement is also satisfied if the successor business uses a significant portion of the predecessor business' historic business assets, including stock and securities and intangible operating assets such as good will, patents, and trademarks, whether or not they have a tax basis, in a business. The determination of the portion of a business' assets considered "significant" is based, generally, on the relative importance of the assets to the operation of the business. All facts and circumstances,



§15-6-17

including the net fair market value of those assets will be considered. [Eff 11/3/90; am and comp ] (Auth: HRS §209E-8) (Imp: HRS §§209E-10, 209E-11)

§15-6-16.5 Force majeure event. a) A force majeure event may be accepted by the department by:

- (1) An official announcement or declaration by a federal official or agency; or
- (2) An official announcement or declaration by a state official or agency.

(b) A business engaged in agricultural production or processing may apply annually to the department for allowable benefits under chapter 209E, HRS, during a force majeure event by completing and submitting the application form authorized by the department. The business shall also complete and submit annually to the department a department approved end-of-the-year report.

(c) If the department approves a business' annual force majeure application, the business is eligible to receive annual certification for allowable benefits under chapter 209E, HRS, without meeting the eligibility requirements under section 209E-9, HRS, for the period during which the business is prevented from maintaining these requirements or the business is interrupted by reason of the force majeure event. For the purposes of this section, a business' gross receipts, and either number of employees or gross sales, as applicable under section 209E-9, HRS, shall be compared against that which the business reported in the year prior to the first year the business' force majeure application was approved.

[Eff ] (Auth: HRS §209E-8) (Imp: HRS 209E-14)

#### SUBCHAPTER 4

ADMINISTRATION

§15-6-17 Administration. (a) The department is authorized to implement and enforce the rules of this chapter.

(b) The department shall conduct a continuing evaluation of the enterprise zones program and submit an annual report to the governor and each county within the first quarter of each subsequent year.

~~-(1) The department shall require from each county a survey of existing zone business conditions, to be submitted within sixty days of zone designation.~~

~~-(2) Within sixty days after the anniversary date of zone designation, each county shall submit a report evaluating this program's effectiveness.]~~

(c) The department shall advise each county in regard to accumulation of data, the zone nomination process, business eligibility criteria, and possible local incentives.

(d) The department shall monitor the program to assure adherence to these rules, the effectiveness of local incentives, and that the purpose of the program is upheld. [Eff 11/3/90; comp ] (Auth: HRS §209E-8) (Imp: HRS §209E-3)

§15-6-18 Waiver. The director may waive particular provisions of this chapter to conform to applicable federal requirements. [Eff 11/3/90; comp ] (Auth: HRS §209E-8) (Imp: HRS §209E-3)

§15-6-19 Severability. If any part, section, sentence, clause, or phrase of this chapter, or its application to any person, transaction, or other circumstance, is for any reason held to be

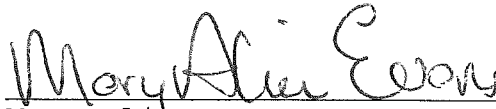
§15-6-17

unconstitutional or invalid, the remaining parts, sections, sentences, clauses, and phrases of this chapter, or its application to other persons, transactions, or circumstances shall not be affected."

[Eff 11/3/90; comp ] (Auth: HRS §209E-8)  
(Imp: HRS §209E-8)

2. Material, except source notes, to be repealed is bracketed and stricken. New material is underscored.
3. Additions to update source notes to reflect these amendments and compilation are not underscored.
4. These amendments to and compilation of chapter 15-6, 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 \_\_\_\_\_, filed with the Office of the Lieutenant Governor.



Mary Alice Evans  
Interim Director  
Department of Business,  
Economic Development and  
Tourism

APPROVED AS TO FORM:



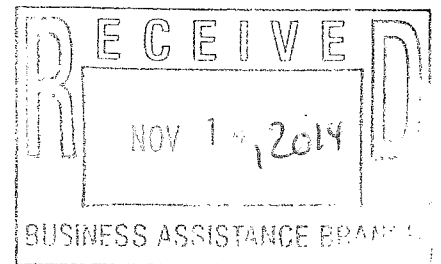
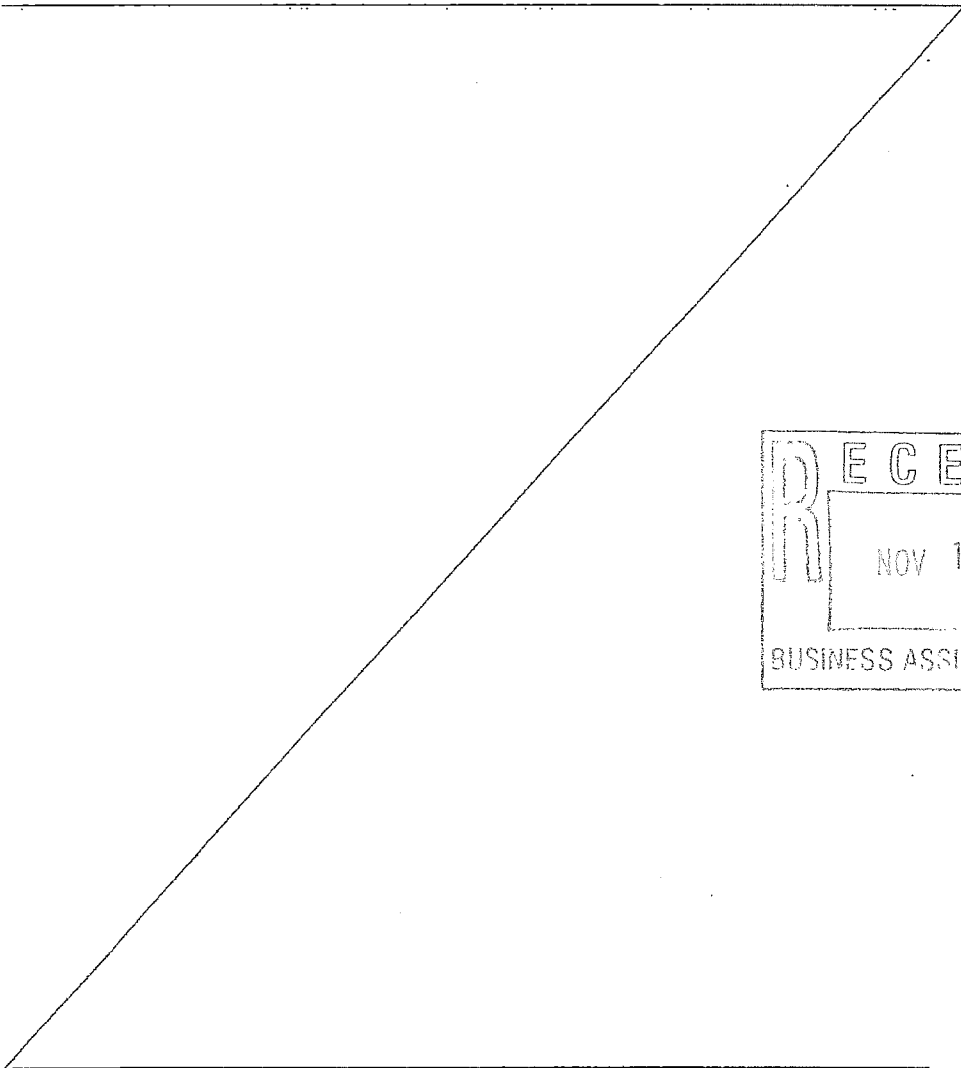
Deputy Attorney General

## Exhibit 2

DEPARTMENT OF HUMAN SERVICES

Adoption of Chapter 17-1719.1,  
Repeal of Chapter 17-1722.3 and  
Adoption of Chapter of 17-1731,  
Hawaii Administrative Rules

1. Chapter 17-1719.1, Hawaii Administrative Rules, entitled "State Funded Aged, Blind, and Disabled Program", is adopted to read as follows:



"HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 12

MED-QUEST DIVISION

CHAPTER 1719.1

STATE FUNDED AGED, BLIND, AND DISABLED PROGRAM

Subchapter 1 General Provisions

§17-1719.1-1 Purpose  
§17-1719.1-2 General requirements  
§§17-1719.1-3 to 17-1719.1-7 (Reserved)

Subchapter 2 Eligibility Requirements

§17-1719.1-8 Purpose  
§17-1719.1-9 Basic requirements  
§17-1719.1-10 Categorical requirements for an  
aged, blind, or disabled  
individual  
§17-1719.1-11 Income requirements  
§17-1719.1-12 Asset requirements  
§17-1719.1-13 Application periods  
§17-1719.1-14 Eligibility review requirements  
§§17-1719.1-15 to 17-1719.1-19 (Reserved)

Subchapter 3 Freedom of Choice, Enrollment,  
Benefits and Disenrollment

§17-1719.1-20 Purpose  
§17-1719.1-21 Freedom of choice  
§17-1719.1-22 Enrollment into a participating  
health plan  
§17-1719.1-23 Benefits  
§17-1719.1-24 Disenrollment from a health plan

§§17-1719.1-25 to 17-1719.1-29 (Reserved)

## SUBCHAPTER 1

### GENERAL PROVISIONS

§17-1719.1-1 Purpose. This chapter establishes the State Funded Aged, Blind, and Disabled Program for certain lawfully present non-pregnant adult non-citizens who are aged, blind, or disabled and ineligible under chapter 17-1719 solely due to citizenship or non-citizen status. [Eff ]  
(Auth: HRS §346-14) (Imp: HRS §346-14)

§17-1719.1-2 General requirements. (a) The confidentiality, administrative appeal, fraud, medical assistance recovery, application processing, eligibility review, and adverse action provisions described in subtitle 12 shall apply to an individual who applies or is determined eligible under this chapter. For purposes of this chapter, references to the terms "Medicaid" or "federal medical assistance" in the provisions listed above shall be replaced with "state medical assistance under chapter 17-1719.1", when applicable.

- (b) Processing of applications shall be:
- (1) In accordance with chapter 17-1711.1; however, subsections 17-1711.1-32(b)-(e) shall not apply; and
  - (2) Subject to section 17-1719.1-13.  
[Eff ] (Auth: HRS §346-14, 346-44) (Imp: HRS §§346-14, 346-44)

§§17-1719.1-3 to 17-1719.1-7 (Reserved).

## SUBCHAPTER 2

### ELIGIBILITY REQUIREMENTS

§17-1719.1-8 Purpose. This subchapter describes the basic, categorical, and financial eligibility



requirements for participation under this chapter.  
[Eff                   ] (Auth: HRS §346-14) (Imp: HRS  
§346-14)

§17-1719.1-9 Basic requirements. To be eligible under this chapter, an individual shall:

- (1) Meet the basic eligibility requirements described in chapter 17-1714.1, with the exception of citizenship or non-citizen status;
- (2) Be a qualified non-citizen, nonimmigrant, or a non-citizen paroled into the United States under section 212(d)(5) of the INA for less than one year; and
- (3) Be ineligible for Medicaid, with the exception of emergency medical assistance.  
[Eff                   ] (Auth: 8 U.S.C. §1622;  
HRS §346-14) (Imp: HRS §346-14)

§17-1719.1-10 Categorical requirements for an aged, blind, or disabled individual. To be eligible under this chapter, an aged, blind, or disabled individual shall meet the categorical requirements for being aged, blind, or disabled, respectively, as described in chapter 17-1719. [Eff                   ]  
(Auth: HRS §§346-14, 346-29) (Imp: HRS §§346-14, 346-29)

§17-1719.1-11 Income requirements. (a) The applicable standards of assistance for participation under this chapter are set forth under chapter 17-1719.

(b) An individual who meets the requirements of more than one standard of assistance shall have eligibility determined based on the standard of assistance that would be most beneficial to the individual.

(c) Countable income, as set forth in chapter 17-1724.1, after allowable disregards and exemptions, shall be compared to the standards of assistance set forth under chapter 17-1719.

(d) An individual applying for medical assistance under this chapter shall not be required to apply for or receive SSI.

(e) If an individual's income exceeds the applicable standards of assistance set forth under chapter 17-1719, the provisions relating to an individual with excess income described in chapter 1730.1 shall apply.

(f) An individual who is requesting or receiving coverage of long-term care services shall be subject to chapter 17-1724.1, subchapter 8.

[Eff ] (Auth: HRS §§346-14, 346-53)  
(Imp: HRS §346-53)

§17-1719.1-12 Asset requirements. (a) The personal reserve standards are the maximum amount of countable assets, as set forth in chapter 17-1719, that may be held by the household while establishing or maintaining eligibility for medical assistance under this chapter and are equal to the resource limits employed by the SSI program.

(b) An individual or household whose equity in non-exempt assets as determined in chapter 17-1725.1 exceeds the personal reserve standard for medical assistance for a household of applicable size shall be ineligible for medical assistance under this chapter.

(c) An individual who is requesting or receiving coverage of long-term care services shall be subject to the requirements of chapter 17-1725.1, subchapter 7.

[Eff ] (Auth: HRS §346-14) (Imp: HRS §346-14)

§17-1719.1-13 Application periods. (a) The department shall begin receiving applications for state medical assistance under this chapter starting on the effective date of this chapter, and may stop accepting applications pursuant to subsection (d).

(b) After the initial application period under subsection (a) is closed, the department shall accept applications under this chapter only during an announced open application period.

(c) Prior to the start of an open application period, the department shall issue a public notice at least once statewide announcing the start of an open application period.

(d) The department may close the initial application period, or any subsequent open application

period, by issuing a public notice once statewide at least thirty days prior to the date the application period will be closed. Applications received by the department after the open application period has ended shall be denied.

(e) The restriction on submission of an application under subsection (b) shall not apply to an individual who loses eligibility under the Children Group as a result of reaching age nineteen years or under the Pregnant Women Group as a result of reaching the end of the post-partum period, and who is eligible under this chapter.

(f) Upon adoption of this chapter, an individual receiving state medical assistance as an aged, blind or disabled individual shall be deemed eligible under this chapter. [Eff \_\_\_\_\_ ] (Auth: HRS §346-14)  
(Imp: HRS §346-14)

§17-1719.1-14 Eligibility review requirements.

(a) An eligible individual shall receive an eligibility review every twelve months.

(b) Eligibility shall be redetermined in accordance with chapter 17-1712.1 and chapter 17-1714.1, subchapter 5. [Eff \_\_\_\_\_ ] (Auth: HRS §346-14) (Imp: HRS §346-14)

§§17-1719.1-15 to 17-1719.1-19 (Reserved).

SUBCHAPTER 3  
FREEDOM OF CHOICE, ENROLLMENT, BENEFITS AND  
DISENROLLMENT

§17-1719.1-20 Purpose. This subchapter addresses freedom of choice, enrollment, benefits and disenrollment for an individual who is eligible under this chapter. [Eff \_\_\_\_\_ ] (Auth: HRS §§346-14, 346-29) (Imp: HRS §346-29)

§17-1719.1-21 Freedom of choice. (a) An individual eligible under this chapter, with the

exception of an individual identified in section 17-1735.1-2(a), shall be provided a choice of a health plan and a provider as described in chapter 17-1720.1.

(b) An individual eligible under this chapter identified in section 17-1735.1-2(a) shall choose a department approved provider as described in section 17-1736-3. [Eff ] (Auth: HRS §346-14) (Imp: HRS §346-14)

§17-1719.1-22 Enrollment into a participating health plan. (a) An individual eligible under this chapter, with the exception of an individual identified in section 17-1735.1-2(a), shall be enrolled in a health plan as described in chapter 17-1720.1, subchapter 2.

(b) An individual eligible under this chapter identified in section 17-1735.1-2(a) shall not be enrolled into a plan, and services shall be provided on a fee-for-service basis. [Eff ] (Auth: HRS §§346-14, 346-29) (Imp: HRS §346-29)

§17-1719.1-23 Benefits. (a) An individual eligible under this chapter shall be provided a standard benefits package by a participating health plan and other services when appropriate as described in chapter 17-1720.

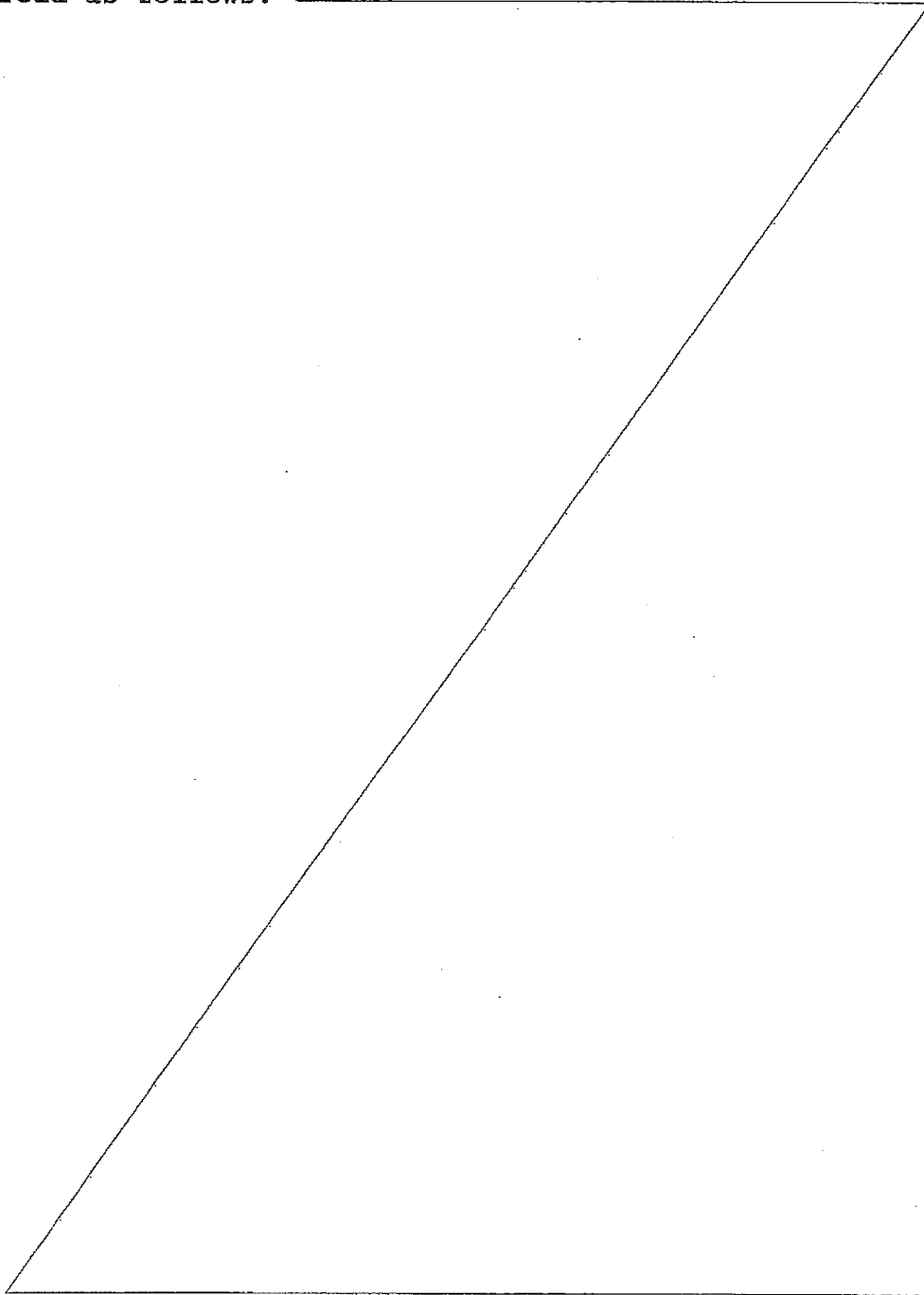
(b) An aged, blind or disabled individual identified in section 17-1735.1-2(a) shall be provided coverage under the fee-for-service provisions described in chapter 17-1737. [Eff ] (Auth: HRS §§346-14, 346-29) (Imp: HRS §346-29)

§17-1719.1-24 Disenrollment from a health plan. An enrollee shall be disenrolled from a health plan under the provisions described in chapter 17-1720.1. [Eff ] (Auth: HRS §346-14) (Imp: HRS §346-14)

§§17-1719.1-25 to 17-1719.1-29 (Reserved)."

2. Chapter 17-1722.3, Hawaii Administrative Rules, entitled "Basic Health Hawaii", is repealed.

3. Chapter 17-1731, Hawaii Administrative Rules, entitled "Premium Assistance Program", is adopted to read as follows: \_\_\_\_\_





"Qualified health plan" means a qualified health plan or a qualified health plan issuer, as those terms are defined in 45 C.F.R. §155.20, and as the context may dictate. [Eff ] (Auth: HRS §346.14)  
(Imp: HRS §346.14)

§17-1731-3 Eligibility requirements. To be eligible for the premium assistance described in this chapter, an individual shall:

- (1) Have selected or be enrolled in a 94% actuarial value silver level qualified health plan through the Exchange;
- (2) Be determined eligible for advanced premium tax credit (APTC) and the maximum cost-sharing reduction (CSR) by the Exchange;
- (3) Have household income of less than one hundred percent of the federal poverty level for the applicable household size as determined by the Exchange and communicated by the Exchange to the qualified health plan selected by the individual.
- (4) If the Exchange does not communicate this information to the qualified health plan, then the qualified health plan may contact the individual to obtain information necessary for the qualified health plan to determine whether the individual's household income is less than one hundred percent of the federal poverty level for the applicable household size. [Eff ] (Auth: HRS §346.14) (Imp: HRS §346.14)

§17-1731-4 Benefits. (a) The department shall, upon presentation of an invoice by a qualified health plan to the department, pay the share of premium that the eligible individual is required to pay to the qualified health plan to receive coverage.

- (b) Benefit limitations:
  - (1) The department shall pay an eligible individual's share of premium to the qualified health plan only upon receipt of an



invoice submitted by the qualified health plan to the department;

- (2) The department shall not make any payments directly to eligible individuals; and
- (3) The department shall not pay and the eligible individual shall be responsible for, any cost-sharing including, but not limited to, deductibles, co-payments or co-insurance.

(c) The department is not responsible for ensuring that the qualified health plan timely submits an invoice for an eligible individual's share of premium to the department. [Eff: \_\_\_\_\_] (Auth: HRS §346-14) (Imp: HRS §346-14)

§17-1731-5 Termination of premium assistance. Premium assistance payable under this chapter on behalf of an eligible individual shall be terminated at any time for any of the following reasons:

- (1) The individual fails to meet the eligibility requirements set forth in section 17-1731-3;
  - (2) The individual voluntarily terminates participation in the premium assistance program;
  - (3) The individual no longer resides in the State;
  - (4) Death of the individual;
  - (5) The individual's whereabouts are unknown;
  - (6) Insufficient State funds; or
  - (7) The premium assistance program is terminated.
- [Eff: \_\_\_\_\_] (Auth: HRS §346-14)  
(Imp: HRS §346-14)

§17-1731-6 Administration of the premium assistance program. (a) The department may contract with a third party or parties to administer any component of this program, including, but not limited to, payment, auditing, and recovery.

(b) The department's provision of premium assistance under this chapter shall be administered at no cost to the eligible individual.

[Eff: \_\_\_\_\_] (Auth: HRS §346-14) (Imp: HRS §346-14)

17-1731-7 Appeal process. (a) An eligible individual may appeal the department's failure to pay the benefit described in section 17-1731-4 only as provided in this section.

(b) Issues relating to the determination of an individual's household income by:

- (1) The Exchange under section 17-1731-3(3) must be directed to the Exchange.
- (2) A qualified health plan under section 17-1731-3(4) must be directed to that qualified health plan.

(c) Issues relating to a qualified health plan requiring premium payment from an eligible individual must be directed to the qualified health plan before requesting informal review or an administrative hearing under this section.

(d) Requests for an informal review or administrative hearing under this chapter may be submitted by an eligible individual or the individual's authorized representative only when:

- (1) The qualified health plan is requiring premium payment from the eligible individual; and
- (2) The qualified health plan states in writing that the reason for requiring premium payment is because the department did not timely pay an invoice that was submitted by the individual's health plan to the department.

(e) An eligible individual or the individual's authorized representative may request an informal review.

(1) A request for an informal review must:

- (A) Be submitted in writing and received by the department within thirty (30) calendar days after the date of the bill sent by the qualified health plan to the individual.
- (B) Include both a copy of the bill sent by the qualified health plan to the individual and a copy of the notice from the qualified health plan stating that the individual was sent a bill because



4. The adoption of chapter 17-1719.1, repeal of chapter 17-1722.3, and the adoption of chapter 17-1731, 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 Hawaii Administrative Rules, drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on November 5, 2014 and filed with the Office of the Lieutenant Governor.



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PATRICIA McMANAMAN  
Director  
Department of Human Services

APPROVED AS TO FORM:

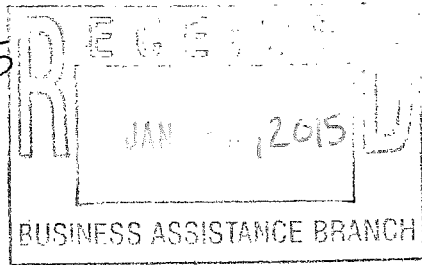


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Deputy Attorney General

## Exhibit 3

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NEIL ABERCROMBIE  
GOVERNOR

SHAN S. TSUTSUI  
LT. GOVERNOR

STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
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P.O. Box 541  
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KEALI'I S. LOPEZ  
DIRECTOR

DIRECTOR'S OFFICE  
COMMERCE AND  
CONSUMER AFFAIRS  
JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

October 6, 2014

**MEMORANDUM**

**TO:** The Honorable Neil Abercrombie  
Governor

**FROM:** Keali'i S. Lopez, Director   
Department of Commerce and Consumer Affairs

**SUBJECT:** Request for Approval to Conduct Public Hearing on the Proposed Amendments to Chapter 110, Title 16, Hawaii Administrative Rules, Physical Therapy

We respectfully request your approval to conduct a public hearing on proposed amendments to Chapter 16-110, HAR, Physical Therapy.

The proposed rules have been reviewed by the Small Business Regulatory Review Board of the Department of Business, Economic Development and Tourism, and approved on July 16, 2014.

Attached for your review, is the proposal to amend Chapter 16-110, HAR, Physical Therapy.

I. Proposed Rules:

The proposed rules implement Chapter 461J, HRS.

The reasons for the changes are as follows:

Section 16-110-1 Objective.

The objective of the section is amended to implement Act 220, SLH 2013 which established licensure for physical therapist assistants ("PTAs"). Prior to Act 220, PTAs were not regulated, licensed or certified in Hawaii.

Section 16-110-2 Definitions.

The definition of "encumbered" is amended by inserting language to allow all disciplinary action to be covered.

The definition of "evaluation" is amended by removing the term "dynamic" because it does not add anything to the definition.

The definition of "licensure examination" is amended to implement Act 220, SLH 2013, which established licensure for PTAs. The amended definition incorporates PTAs as PTAs will now be required to take the licensure examination.

The definition of "physical therapist assistant" or "PTA" is repealed. Act 220, SLH 2013 changed the definition of "physical therapist assistant" and clarified that a PTA must be licensed in the state. Therefore, the Board believes the definition should be repealed to remove the duplicate definition.

The definition of "support or auxiliary personnel" is amended to remove the reference to physical therapy assistant because there is a new definition in the statute.

Other non-substantive grammatical amendments are made for clarity and style.

Section 16-110-4 Duties and minimum standards of a supervising physical therapist.

The term "physical therapy assistants" is added because it has its own new separate definition and is no longer included in the "support or auxiliary personnel" definition.

Other non-substantive grammatical amendments are made for clarity and style.

Section 16-110-5 Duties and physical therapist assistants, and support or auxiliary personnel.

The term "physical therapy assistants" is added because it has its own new separate definition and is no longer included in the "support or auxiliary personnel" definition.

Other non-substantive grammatical amendments are made for clarity and style.

Section 16-110-6 Identification for licensure.

The term "physical therapy assistants" is added because it has its own new separate definition and is no longer included in the "support or auxiliary personnel" definition.

Other non-substantive grammatical amendments are made for clarity and style.

Section 16-110-20 Requirements for permanent physical therapist or physical therapy assistant license.

The title of the section is amended to implement Act 220, SLH 2013 which required licensure for PTAs.

The current subsection (b)(2)(A) is amended to address the change to Federation of State Boards of Physical Therapy's ("FSBPT") Test of English as a Foreign Language ("TOEFL") policy. FSBPT is the owner of the national physical therapist and physical therapist assistant licensure examination. At the FSBPT's 2013 annual meeting, the delegate assembly adopted a motion which states that the licensure candidates have to meet the "then current" TOEFL requirements as defined by FSBPT. FSBPT then went on to change the required scores for passage of the TOEFL. The proposed amendment to subsection (b)(2)(A) effectively allows FSBPT to periodically change the TOEFL requirements in the future without necessitating the Board to commence the rule making process to implement FSBPT's TOEFL future changes.

A new subsection is proposed to enumerate the requirements for PTA licensure. The new section replaced the current subsection (c). This proposed subsection implements Act 220, SLH 2013 which requires licensure for PTAs. The requirements for PTA licensure are substantially mirrored after physical therapist licensure requirements and FSBPT's model rules, which are enumerated in subsection (b).

The current subsection (c) is changed to (d) and the remaining subsections are re-lettered accordingly.

Subsection (g) is repealed. The Board felt that requiring applicants, who initially obtained licensure before November 1994, to meet the Board's requirement of "one standard deviation below the national mean" is a substantial barrier of entry of the physical therapy profession in Hawaii. The Board's requirement of "one standard deviation below the national mean" is one of the highest standards when compared to other states and U.S. territories. Applicants that were licensed in 1994 or before would have at least twenty (20) years of experience as a physical therapist or physical



therapist assistant and would bring a wealth of knowledge to the physical therapy profession in Hawaii. With the removal of this requirement, applicants who took the examination prior to November 1994 will need to have passed a physical therapist licensure examination. The removal of the subsection places these aforementioned applicants on par with applicant's whom took the physical therapy licensure examination after November 1994.

Subsection (h) is amended for clarity purposes and includes PTAs for the implementation of Act 220, SLH 2013. The proposed provision, (h)(2), was included to clarify Act 220, SLH 2013's Physical therapist assistant license without necessity of examination section. This proposed provision clarifies how and when the required five years of experience must be obtained. The Board feels the proposed language of "five years of experience within the last eight years" allows for applicants that have taken time off to care for family members, to qualify for the examination waiver, compared to a "continuous five years of experience" requirement. The proposed provision also includes the required documentation that the physical therapist assistant applicant must submit for the examination waiver.

Other non-substantive grammatical amendments are made for clarity and style.

Section 16-110-40 Requirements for temporary physical therapist license.

This section is amended to implement Act 220, SLH 2013 which required licensure for PTAs. The amendment clearly sets forth that PTAs may request a temporary license.

Other non-substantive grammatical amendments are made for clarity and style.

Section 16-110-80 Fees.

Non-substantive grammatical amendments are made for clarity and style.

II. Affect on the agency's internal and external responsibilities, programs, functions, operations, activities, and inter-relationships:

These requirements will allow the department to comply with Chapter 461J, HRS.

III. Final result expected by instituting the proposal (e.g., a program improvement/clarification of the statute):

These amendments will allow the rules to conform to the statute.

IV. Program and financial impacts on the State that will arise upon the implementation of the proposal:

A. Long and short range program impacts:

These requirements will allow the department to comply with Chapter 461J, HRS.

V. Long and Short-Term Impacts:

A. On the Public:

The public should be positively impacted in the long and short term because physical therapy assistants will be licensed by the department.

B. On the Economy of the State:

The proposed rules will not impede economic growth in any way.

VI. Other Alternatives in Lieu of Proposed Rules:

There appears to be no other way to implement and clarify the statutory requirements.

VII. Rules do affect Small Business:

A. Have we considered the availability and practicability of less restrictive alternative that could be implemented in lieu of adopting the proposed rules:

The department has determined that adopting the proposed rules is the most readily available and practical means by which to accomplish its goal.

B. Have we considered creative, innovative, or flexible methods of compliance for a small business in lieu of adopting the proposed rules:

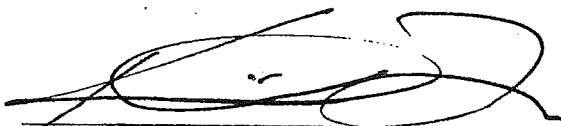
Again, after considering potential alternatives, the department believes that adopting the proposed rules is the best approach to achieving its goal.

C. Have we prepared a "Small Business Impact Statement" which has been submitted to the Small Business Regulatory Review Board for consideration:

The Honorable Neil Abercrombie  
October 6, 2014  
Page 6

Yes, a memo dated July 3, 2014 was sent to the Small Business Regulatory Review Board ("SBRRB"). On July 18, 2014, we received a response from the SBRRB recommending that these rules proceed to public hearing.

The proposed rules have been reviewed by the Legislative Reference Bureau and the Department of the Attorney General has approved the proposed rules as to form.



KEALI'I S. LOPEZ  
Director

Approved

Disapproved



NEIL ABERCROMBIE  
Governor, State of Hawaii

10.21.14  
Date

KSL:AT/jf

Attachment

cc: Kalbert Young, Director, Department of Budget and Finance  
Richard Lim, Director, Department of Business, Economic Development & Tourism  
Alan Taniguchi, Executive Officer

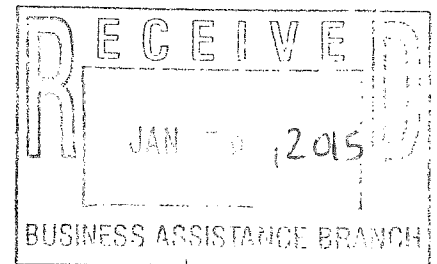
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendments and Compilation of Chapter 16-110  
Hawaii Administrative Rules

December 2, 2014

SUMMARY

1. §§16-110-1 through 16-110-2 are amended.
2. §§16-110-4 through 16-110-6 are amended.
3. §§16-110-20 through 16-110-50 are amended.
4. Chapter 16-110 is compiled.





HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 110

PHYSICAL THERAPY

Subchapter 1 General Provisions

- §16-110-1 Objective
- §16-110-2 Definitions
- §16-110-3 When referrals required
- §16-110-4 Duties and minimum standards of a supervising physical therapist
- §16-110-5 Duties of physical therapist assistants, and support or auxiliary personnel
- §16-110-6 Identification of personnel

Subchapter 2 Applications

- §16-110-10 Application for licensure

Subchapter 3 Permanent License

- §16-110-20 Requirements for a permanent physical therapist or physical therapist assistant license

Subchapter 4 Repealed

- §16-110-30 Repealed

Subchapter 5 Temporary License

- §16-110-40 Requirements for temporary physical therapist or physical therapist assistant license
- §16-110-41 Repealed
- §16-110-42 Repealed

§16-110-1

Subchapter 6 Professional Misconduct

§16-110-50 Professional misconduct, gross carelessness, manifest incapacity defined

Subchapter 7 Practice and Procedure

§16-110-60 Administrative practice and procedure

Subchapter 8 Oral Testimony

§16-110-70 Oral testimony

Subchapter 9 Fees

§16-110-80 Fees

SUBCHAPTER 1

GENERAL PROVISIONS

§16-110-1 Objective. The objective of this chapter is to establish licensing requirements for physical therapists and physical therapist assistants in the interest of safeguarding life and health. [Eff 6/5/87; comp 12/4/92; comp 10/13/94; comp 12/9/10; am and comp ] (Auth: HRS §461J-5) (Imp: HRS §461J-5)

§16-110-2 Definitions. As used in this chapter:

"Accredited physical therapist assistant program" means a post-secondary physical therapist assistant program that is accredited by the Commission on Accreditation in Physical Therapy Education, its predecessor organization, or its successor organization.

"Accredited physical therapy program" means a post-secondary physical therapy program that is accredited by the Commission on Accreditation in Physical Therapy Education, its predecessor organization, or its successor organization.

"APTA" means the American Physical Therapy Association, which is the primary, voluntary, national professional organization of physical therapists and physical therapist assistants.

"Commission on Accreditation in Physical Therapy Education" or "CAPTE" means an independent accrediting body that is recognized by the United States Department of Education and by the Commission on Recognition of Postsecondary Accreditation, or their successor organizations as the entity in the United States that is responsible for accrediting education programs for the preparation of physical therapists and physical therapist assistants.

"Department" means the department of commerce and consumer affairs, unless otherwise identified.

"Director" means the director of the department of commerce and consumer affairs or the director's departmental representative.

"Encumbered" means a license issued by any state or territory of the United States for the practice of physical therapy that is revoked, suspended, made probationary or conditional, or otherwise disciplined by the licensing or registering authority in that state or territory.

"Evaluation" means the process in which the physical therapist makes clinical judgments based on data gathered during the physical therapy examination. Findings from the physical therapy examination are integrated to establish a diagnostic classification, prognosis, and plan of care. This process may identify problems that require consultation with or referral to another provider.

"Federation of State Boards of Physical Therapy" or "FSBPT" means the not-for-profit organization established on February 12, 1987, under the laws of the State of Alabama. The FSBPT develops and administers the National Physical Therapy Examination and also works towards reasonable uniformity in regulation and standards through ongoing communications between it and the states and territories of the United States.

"Licensure examination" means a national physical therapy exam approved by the board for the licensure of a physical therapist or physical therapist assistant.

"Patient" means an individual who is the recipient of physical therapy examination, evaluation, diagnosis, prognosis, and intervention and who has a disease, disorder, condition, impairment, functional limitation, or disability and also includes a person who may engage the services of a physical therapist, who can benefit from the physical therapist's consultation, interventions, professional advice, prevention services, or services promoting health, wellness, and fitness.

"Physical therapy examination" means the process of obtaining a history, a systems review, and selecting and administering tests and measures to gather data about the patient. The initial physical therapy examination is a comprehensive screening and specific testing process. Tests and measurements may include, but are not limited to:

- (1) Muscle strength, force, endurance, and tone;
- (2) Joint motion, mobility, and stability;



- (3) Reflexes and automatic reaction;
- (4) Movement skill and accuracy;
- (5) Sensation and perception;
- (6) Peripheral nerve integrity;
- (7) Locomotor skill, stability, and endurance;
- (8) Activities of daily living;
- (9) Cardiac, pulmonary, and vascular functions;
- (10) The fit, function, and comfort of prosthetic, orthotic, and other assistive devices;
- (11) Posture and body mechanics;
- (12) Limb length, circumference, and volume;
- (13) Thoracic excursion and breathing patterns;
- (14) Vital signs;
- (15) The nature and locus of pain and conditions under which pain varies;
- (16) Photosensitivity; and
- (17) Home, community, and work physical environments.

"Student" means an individual who is currently enrolled in an accredited physical therapist assistant program or in an accredited physical therapy program.

"Support or auxiliary personnel" means a temporary physical therapist licensee or a physical therapy student who performs duties delegated by a supervising physical therapist.

"Temporary physical therapist licensee" means a person who meets the applicable requirements set forth in section 16-110-40.

"Treatment" or "intervention" means purposeful and skilled interaction between the physical therapist, PTA, temporary physical therapist licensee or student and the patient in the care of the patient using various physical therapy methods and techniques to produce changes in the patient's condition that are consistent with the diagnosis and treatment. A physical therapy treatment or intervention may consist of the following components:

- (1) Air;
- (2) Sound;
- (3) Compression;
- (4) Light;
- (5) Mechanical stimulation;
- (6) Biofeedback;
- (7) Positioning;
- (8) Therapeutic heat and cold;
- (9) Therapeutic exercise;
- (10) Gait training;
- (11) Activities of daily living and functional training;

- (12) Therapeutic electric current;
- (13) Therapeutic massage;
- (14) Ultrasound;
- (15) Behavior modification;
- (16) Traction;
- (17) Hydrotherapy;
- (18) Pulmonary therapy;
- (19) Wound care and external dressings;
- (20) Orthoses and external supports;
- (21) Assistive/adaptive devices;
- (22) Therapeutic equipment;
- (23) Neurodevelopmental activities;
- (24) Mobilization and manipulation;
- (25) Posture training;
- (26) Prosthetic management;
- (27) Cardiopulmonary rehabilitation;
- (28) Coordination, communication and documentation;
- (29) Patient-related instruction; and
- (30) Procedural interactions including but not limited to:
  - (A) Therapeutic exercise;
  - (B) Functional training in self-care and home management, including activities of daily living and instrumental activities of daily living;
  - (C) Functional training in work, including school and play, community and leisure integration or reintegration, including instrumental activities of daily living, work hardening, and work conditioning;
  - (D) Manual therapy techniques, including mobilization or manipulation;
  - (E) Prescription, application, and, as appropriate, fabrication of devices, and assistive, adaptive, orthotic, protective, supportive, and prosthetic equipment;
  - (F) Airway clearance techniques;
  - (G) Integumentary repair and protection techniques;
  - (H) Electrotherapeutic modalities;
  - (I) Physical agents; and
  - (J) Mechanical modalities. [Eff 6/5/87; am and comp 12/4/92; am and comp 10/13/94; am and comp 12/9/10; am and comp ] (Auth: HRS §461J-5) (Imp: HRS §§461J-1, 461J-3, 461J-5, 461J-9)

§16-110-3

§16-110-3 When referrals required. A licensed physical therapist may perform an evaluation of any person without a referral. A physical therapist may treat a patient with or without a referral unless the physical therapist has reasonable cause to believe that the patient has a symptom or condition that is either beyond the physical therapist's scope of practice, or for which physical therapy is contraindicated, in which case the physical therapist shall refer that patient to an appropriate healthcare provider. [Eff 6/5/87; comp 12/4/92; am and comp 10/13/94; am and comp 12/9/10; comp ] (Auth: HRS §461J-5) (Imp: HRS §§461J-1, 461J-2, 461J-5)

§16-110-4 Duties and minimum standards of a supervising physical therapist. (a) A physical therapist shall supervise all physical therapy care provided by physical therapist assistants, and support or auxiliary personnel.

(b) A supervising physical therapist shall be responsible for managing all aspects of the physical therapy care of each patient. A licensed physical therapist shall utilize only the assistance of physical therapist assistants, or support or auxiliary personnel in the practice of physical therapy. A supervising physical therapist shall provide:

- (1) An interpretation of referrals when available;
- (2) An initial physical therapy examination, evaluation, diagnosis and prognosis of the patient;
- (3) The development or implementation of a plan of care based on the initial physical therapy examination or physical therapy reexamination, and which includes the physical therapy goals and anticipated outcomes;
- (4) A determination of the components and the intervention that shall be provided by a physical therapist and the components that may be delegated to physical therapist assistants; or support or auxiliary personnel;
- (5) Direct one-on-one reexamination of the patient and revision of the plan of care when indicated;
- (6) The establishment of the discharge plan and documentation of the patient's discharge status;
- (7) Oversight of all services rendered to each patient, including the applicable documentation in accordance with APTA guidelines; and
- (8) Telecommunications accessibility at all times when the supervising physical therapist is not on site and the ability to be on site within two hours if the supervising physical therapist's physical presence is needed.

(c) A supervising physical therapist shall assure that the physical therapist assistants, and support or auxiliary personnel under the physical therapist's supervision are competent and able to safely complete all delegated activities.

(d) A supervising physical therapist may supervise a maximum of three persons, which may include any combination of the following:

- (1) A temporary physical therapist licensee;
- (2) A student; or
- (3) A physical therapist assistant. [Eff and comp 12/4/92; comp 10/13/94; am and comp 12/9/10; comp ]  
(Auth: HRS §461J-5) (Imp: HRS §§461J-3, 461J-5, 461J-9)

§16-110-5 Duties of physical therapist assistants, and support or auxiliary personnel. Physical therapist assistants, and support or auxiliary personnel may perform the following treatment or intervention components that they are qualified to perform and as delegated by the supervising physical therapist:

- (1) A physical therapist assistant, temporary physical therapist licensee, and a physical therapy student may perform:
  - (A) Coordination, communication, and documentation;
  - (B) Patient-related instruction;
  - (C) Procedural interactions including but not limited to:
    - (i) Therapeutic exercise;
    - (ii) Functional training in self-care and home management, including activities of daily living and instrumental activities of daily living;
    - (iii) Functional training in work, including school and play, community and leisure integration or reintegration, including instrumental activities of daily living, work hardening, and work conditioning;
    - (iv) Prescription, application, and, as appropriate, fabrication of devices, and assistive, adaptive, orthotic, protective, supportive, and prosthetic equipment;
    - (v) Airway clearance techniques;
    - (vi) Integumentary repair and protection techniques;
    - (vii) Electrotherapeutic modalities;
    - (viii) Physical agents; and
    - (ix) Mechanical modalities;

§16-110-5

- (2) A physical therapist assistant may perform manual therapy, excluding thrust joint mobilization and spinal and peripheral joint mobilization or manipulation; and
- (3) A temporary physical therapist licensee or a physical therapy student may perform manual therapy techniques, including mobilization or manipulation.  
[Eff and comp 12/9/10; comp \_\_\_\_\_] (Auth: HRS §§461J-3, 461J-5) (Imp: HRS §§461J-3, 461J-5)

§16-110-6 Identification of personnel. (a) A licensed physical therapist shall wear a conspicuously placed name tag stating, at a minimum, the person's name and the title "physical therapist" or "PT".

(b) The supervising physical therapist shall ensure that all physical therapist assistants, and support or auxiliary personnel wear a conspicuously placed name tag identifying the individual's name and professional designation at the time of care. [Eff and comp 12/9/10; comp \_\_\_\_\_] (Auth: HRS §461J-5) (Imp: HRS §§461J-2, 461J-5)

## SUBCHAPTER 2

### APPLICATIONS

§16-110-10 Application for licensure. (a) All applicants for licensure shall apply on a form or forms prescribed by the board.

(b) The proper documentation and fee shall accompany the application forms.

(c) It shall be the applicant's responsibility to submit all evidence of qualifications, including the passage of any required licensure examination and payment of any applicable fee, within one year of the application date.

(d) If a license is not issued within one year of the application date as a result of the applicant's failure to complete licensure requirements, take the required licensure examination, if required, or to submit the required documentation and evidence of qualifications, the applicant shall submit a new application form, documentation of qualifications, and applicable fees in addition to meeting licensure requirements that are in effect at the time of filing the new application. [Eff 6/5/87; am and comp 12/4/92; comp 10/13/94; am and comp 12/9/10; comp \_\_\_\_\_] (Auth: HRS §461J-5) (Imp: HRS §§461J-5, 461J-6, 461J-7, 461J-9, 461J-10)

SUBCHAPTER 3

PERMANENT LICENSE

§16-110-20 Requirements for a permanent physical therapist or physical therapist assistant license. (a) A person seeking a permanent license to practice as a physical therapist or physical therapist assistant in the State shall submit an application for the license on forms provided by the board.

(b) An applicant for licensure as a physical therapist shall provide the board with:

- (1) A certified transcript indicating graduation from a physical therapy education program from a school or college accredited by CAPTE; or
- (2) In the case of a person who is a graduate of a school or college of physical therapy located outside the United States that is not accredited by CAPTE, a certified credentials evaluation indicating successful completion of a program or programs, including education and training, equivalent to programs in the United States accredited pursuant to paragraph (b)(1). That evaluation shall be prepared within one year from the date of the application's submission and shall be performed by a credentials evaluation agency approved by the board. Additionally, the applicant shall take and pass one of the following English language proficiency tests if the school or college is in a country, state, or province where the official language is other than English:
  - (A) The Test of English as a Foreign Language (TOEFL) with the passing score for each exam as recommended by the FSBPT; or
  - (B) The TOEFL internet based test with a passing score as recommended by the FSBPT.

(c) An applicant for licensure as a physical therapist assistant shall provide the board with:

- (1) A certified transcript indicating graduation from a physical therapist assistant program or a physical therapy program accredited by CAPTE; or
- (2) In the case of a person who is a graduate of a school or college of physical therapy or physical therapist assistant program located outside the United States that is not accredited by CAPTE, a certified credentials evaluation indicating successful completion of a program or programs, including education and training, equivalent to

programs in the United States accredited pursuant to paragraph (c)(1). That evaluation shall be prepared within one year from the date of the application's submission and shall be performed by a credentials evaluation agency approved by the board. Additionally, the applicant shall take and pass one of the following English language proficiency tests if the school or college is in a country, state, or province where the official language is other than English:

(A) The Test of English as a Foreign Language (TOEFL) with the passing score for each exam as recommended by the FSBPT; or

(B) The TOEFL internet based test with a passing score as recommended by the FSBPT.

(d) Each applicant for licensure shall be required to take the physical therapist or physical therapist assistant licensure examination, as applicable, scheduled and administered by the board's designated licensing examination service;

(e) The passing score for the licensure examination shall be the criterion-referenced passing score recommended by the FSBPT.

(f) Each applicant shall ensure that after each administration of the licensure examination, the licensing examination service reports the applicant's examination score directly to the board. The FSBPT shall notify the applicant directly of the applicant's licensure examination score.

(g) Any applicant who fails to achieve a passing score on the licensure examination may be entitled to re-take the examination;

(h) An applicant may apply for an examination waiver as follows:

(1) The board may waive the licensure examination for a physical therapist applicant if the applicant:

(A) Submits proof that the applicant previously passed the same physical therapist licensure examination required by the board in another jurisdiction approved by the board, and received an examination score that meets or exceeds the passing score specified in this chapter; and

(B) Submits verification on the status of the applicant's license in the other jurisdiction, including but not limited to whether the license is or has been encumbered, whether disciplinary action has been taken against the applicant or is currently pending, and whether the applicant is being investigated for any licensing violations in that jurisdiction.

(2) The board may waive the licensure examination for a physical therapist assistant applicant if the applicant:

- (A) Graduated from an accredited physical therapist assistant program, or an accredited physical therapy program recognized by the United States Department of Education; and has five years of experience within the last eight years as a physical therapist assistant by December 31, 2014; provided that:
  - (i) The applicant shall provide written verification from each place of employment as a physical therapist assistant during the aforementioned five-year period; and
  - (ii) Employment verification shall include documentation of employment dates, job titles, job descriptions, employment status, names of all supervisors, and any other documentation requested by the board to verify employment; or
- (B) Submits proof that the applicant previously passed the same physical therapist assistant licensure examination required by the board in another jurisdiction approved by the board, and received an examination score that meets or exceeds the passing score specified in this chapter.

(i) An applicant may submit a letter of completion by the licensure examination date from the appropriate college authority which states that the student is in the final year of that physical therapy program and has completed the physical therapy program which at the time of graduation was accredited by CAPTE to be accepted in lieu of the final transcript to sit for the licensure examination. However, the license shall not be issued, even if the applicant has passed the licensure examination for physical therapists, until the final transcript is submitted showing graduation from the physical therapy program. [Eff 6/5/87; am and comp 12/4/92; am and comp 10/13/94; am and comp 12/9/10; am and comp ]  
 (Auth: HRS §461J-5) (Imp: HRS §§461J-2, 461J-5, 461J-6, 461J-7)

SUBCHAPTER 4 - REPEALED

§16-110-30 Repealed. [R 12/9/10]



SUBCHAPTER 5

TEMPORARY LICENSE

§16-110-40 Requirements for temporary physical therapist or physical therapist assistant license. (a) An applicant for a temporary license who has applied for a permanent license, shall provide the board with:

- (1) The documents and evidence of qualifications as set forth in subsection 16-110-20(b) or 16-110-20(c); and
- (2) Evidence that the applicant has submitted to the board either an application to take the licensure examination within six months or evidence showing that the applicant has taken the licensure examination and is awaiting its results; or
- (3) For examination waiver, evidence that the applicant has fulfilled the requirements of section 16-110-20(h).

(b) The applicant shall submit to the board a completed Statement of Supervising Licensed Physical Therapist, on a form prescribed by the board, from each proposed supervising physical therapist, verifying that the supervising physical therapist agrees to supervise the applicant. The Statement of Supervising Licensed Physical Therapist shall indicate the name of the applicant, the name and license number of each supervising physical therapist, the date when the supervision shall commence, and shall be signed by each supervising physical therapist. The temporary licensee shall be supervised throughout the period of temporary licensure by a physical therapist holding a permanent active license.

(c) An applicant may submit a written request to the board for a change in supervising physical therapist. The request shall include the reason for the change, the date of change, and a Statement of Supervising Physical Therapist from the new proposed supervising physical therapist. The request shall be signed by the applicant, new proposed supervising physical therapist, and the immediate prior supervising physical therapist, unless the applicant can provide adequate documentation to establish that the immediate prior supervising physical therapist cannot be contacted after reasonable attempts by the applicant.

(d) Except as provided herein, a temporary license shall expire within six months of its effective date or be terminated at an earlier date upon any of the following:

- (1) Termination of the supervisory relationship between the applicant and the supervising physical therapist verifying the supervision of the applicant;
- (2) The applicant's failure to pass the applicable physical therapy licensure examination identified in subsection (a)(2);

- (3) Determination by the board that the applicant's qualifications for licensure are not as represented by the applicant at the time of application;
- (4) If the board determines that there is cause for termination due to the temporary licensee committing any act specified in section 461J-12 or 436B-19, HRS, or section 16-110-50; or
- (5) The person has received a permanent license.
- (e) The six month period for a temporary license may be extended to one year by the board for good cause. Only one temporary license shall be issued per applicant.
- (f) A temporary license shall not be issued to a person who is not authorized to work in the United States. [Eff 6/5/87; am and comp 12/4/92; am and comp 10/13/94; am and comp 12/9/10; am and comp \_\_\_\_\_ ] (Auth: HRS §461J-5) (Imp: HRS §§461J-5, 461J-6, 461J-7, 461J-9)

§16-110-41 Repealed. [R 12/9/10]

§16-110-42 Repealed. [R 12/9/10]

## SUBCHAPTER 6

### PROFESSIONAL MISCONDUCT

§16-110-50 Professional misconduct, gross carelessness, manifest incapacity defined. For purposes of section 461J-12(8), HRS, "professional misconduct, gross carelessness, or manifest incapacity in the practice of physical therapy" includes, but shall not be limited to:

- (1) Administering treatments or evaluation in a negligent manner;
- (2) Falsifying or otherwise altering patient records;
- (3) Misappropriating drugs, money, supplies, or equipment;
- (4) Aiding or abetting, or both, the practice of physical therapy by any person not licensed to practice as defined by chapter 461J, HRS;
- (5) Accepting fees for services not provided;
- (6) Improper delegation to or supervision of physical therapist assistants, or support or auxiliary personnel;
- (7) Practicing physical therapy outside the scope of this chapter;

§16-110-50

- (8) Failure to abide by the APTA Guidelines for Physical Therapy Documentation, the APTA Code of Ethics, or the APTA Guide to Professional Conduct; or
- (9) Failing to immediately refer any patient to an appropriate healthcare provider if there is reasonable cause to believe that the patient's condition is beyond the physical therapist's scope of practice or is a condition for which physical therapy is contraindicated. [Eff 6/5/87; am and comp 12/4/92; am and comp 10/13/94; am and comp 12/9/10; comp ] (Auth: HRS §461J-5)  
(Imp: HRS §§461J-5, 461J-12)

SUBCHAPTER 7

PRACTICE AND PROCEDURE

§16-110-60 Administrative practice and procedure. The rules of practice and procedure for physical therapists shall be as provided in chapter 16-201, the rules of administrative practice and procedure of the department of commerce and consumer affairs, as adopted and as may subsequently be amended, which are incorporated by reference and made a part of this chapter. [Eff 6/5/87; comp 12/4/92; am and comp 10/13/94; am and comp 12/9/10; comp ]  
(Auth: HRS §§91-2, 461J-5) (Imp: HRS §§91-2, 461J-5)

SUBCHAPTER 8

ORAL TESTIMONY

§16-110-70 Oral testimony. (a) The board shall accept oral testimony on any item which is on the agenda, provided that the testimony shall be subject to the following conditions:

- (1) Each person seeking to present oral testimony is requested to notify the board not later than forty-eight hours before the meeting, and at that time, to state the item on which testimony is to be presented;
- (2) The board may request that any person providing oral testimony submit the remarks, or a summary of the remarks, in writing to the board;

- (3) The board may rearrange the items on the agenda for the purpose of providing for the most efficient and convenient presentation of oral testimony;
  - (4) Persons presenting oral testimony at the beginning of the testimony shall identify themselves and the organization, if any, that they represent;
  - (5) The board may limit oral testimony to a specified time period but in no case shall the period be less than five minutes, and the person testifying shall be informed prior to the commencement of the testimony of the time constraints to be imposed; and
  - (6) The board may refuse to hear any testimony which is irrelevant, immaterial, or unduly repetitious to the agenda item on which it is presented.
- (b) Nothing in this section shall require the board to hear or receive any oral or documentary evidence from a person on any matter which is the subject of another proceeding pending subject to the hearings relief, declaratory relief, or rule relief provisions of chapter 16-201.
- (c) Nothing in this section shall prevent the board from soliciting oral remarks from persons present at the meeting or from inviting persons to make presentations to the board on any particular matter on the board's agenda. [Eff 6/5/87; am and comp 12/4/92; am and comp 10/13/94; comp 12/9/10; comp ] (Auth: HRS §461J-5) (Imp: HRS §§92-3, 461J-5)

## SUBCHAPTER 9

### FEES

§16-110-80 Fees. (a) The fees for the board of physical therapy shall be as adopted by the director in chapter 16-53, after hearing, pursuant to chapter 91, HRS.

(b) The dishonoring of any check upon first deposit shall be considered a failure to meet the requirements of this chapter. [Eff and comp 12/4/92; comp 10/13/94; am and comp 12/9/10; comp ] (Auth: HRS §461J-5) (Imp: HRS §§436B-15, 461J-5)

Amendments to and compilation of Chapter 16-110, Hawaii Administrative Rules, on the Summary page dated December 2, 2014, were adopted on December 2, 2014, following a public hearing held on December 2, 2014, after public notices were given in the Honolulu Star-Advertiser, The Garden Island, Hawaii Tribune-Herald, West Hawaii Today, and The Maui News on November 1, 2014.

These amendments shall take effect ten days after filing with the Office of the Lieutenant Governor.



NEIL SHIMABUKURO, Chairperson  
Board of Physical Therapy

APPROVED AS TO FORM:                      Date DEC 12 2014



Deputy Attorney General

APPROVED:                                      Date DEC 17 2014



KEALI'I S. LOPEZ, Director  
Department of Commerce and Consumer Affairs

APPROVED:                                      Date \_\_\_\_\_

DAVID Y. IGE  
Governor  
State of Hawaii

Filed

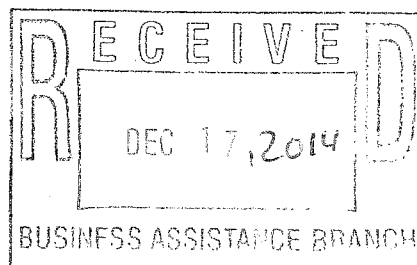
## Exhibit 4

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-60.8  
Hawaii Administrative Rules

October 24, 2014

Chapter 13-60.8, Hawaii Administrative Rules,  
entitled "Hā'ena Community-Based Subsistence Fishing  
Area, Kaua'i", is adopted.







HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART II MARINE FISHERIES MANAGEMENT AREAS

CHAPTER 60.8

HĀ'ENA COMMUNITY-BASED SUBSISTENCE FISHING AREA, KAUA'I

§13-60.8-1	Purpose
§13-60.8-2	Definitions
§13-60.8-3	Boundaries
§13-60.8-4	Management plan and review
§13-60.8-5	Permitted and prohibited activities
§13-60.8-6	Prohibited activities, Makua Pu'uhonua
§13-60.8-7	Penalty
§13-60.8-8	Severability

§13-60.8-1 Purpose. The purpose of this chapter regarding the Hā'ena Community-Based Subsistence Fishing Area is to:

- (1) Sustainably support the consumptive needs of the Hā'ena ahupua'a through culturally-rooted community-based management;
- (2) Ensure the sustainability of nearshore ocean resources in the area through effective management practices, including the establishment of limits on the harvest of aquatic life;
- (3) Establish the Makua Pu'uhonua (Marine Refuge) for the preservation and protection of this nursery habitat for juvenile reef fishes;
- (4) Recognize and protect customary and traditional native Hawaiian fishing

practices that are exercised for subsistence, cultural, and religious purposes in the area; and

- (5) Facilitate the substantive involvement of the community in resource management decisions for the area through dialogue with community residents and resource users.

[Eff \_\_\_\_\_ ] (Auth: HRS §§188-22.9, 188-53, 190-3) (Imp: HRS §§188-22.9, 188-53, 190-3)

§13-60.8-2 Definitions. As used in this chapter:

"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.

"Area" means the Hā'ena Community-Based Subsistence Fishing Area (Hā'ena CBSFA), as encompassed within the boundaries described in section 13-60.8-3(a).

"Day" means a twenty-four hour period.

"Department" means the department of land and natural resources.

"Deploy" means to place the specified gear in the water, whether in whole or in part.

"Fish" means any species of aquatic life with a backbone, gills, and with limbs that are fins, if any.

"Gill net" means a panel or curtain of net made of various materials, that is suspended vertically in the water with the aid of a net float line that supports the top edge of the net up towards the ocean surface and parallel to a net lead line that keeps the lower edge of the net down towards the ocean bottom. The gill net is usually made of transparent or semi-transparent materials to make the net seem invisible underwater, with mesh openings generally large enough to permit the heads of fish to pass through, ensnaring

them around the gills, fins, spines, or mid-section when they attempt to escape.

"Hand-harvest" means to gather directly with the hands only, and without the use of any net, spear, trap, rake, or any other tool or implement.

"He'e" means any cephalopod mollusk known as *Octopus cyanea*, *Octopus ornatus*, or any recognized synonym.

"Hook-and-line" means a fishing line to which one or more hooks or other tackle are attached. A hook-and-line may include a fishing rod or reel or both to cast and retrieve the line.

"Kūpe'e" means any marine snail known as *Nerita polita* or any recognized synonym.

"Limu" means any marine alga including algae in the intertidal zone.

"Lobster" means any crustacean in the family Palinuridae or in the family Scyllaridae. Lobsters are also known as ula (spiny lobster) or ula pāpapa (slipper lobster).

"Marine life" means any type or species of saltwater fish, shellfish, mollusks, crustaceans, coral, algae, or other marine animals, including any part, product, egg, or offspring thereof; or any type or species of seaweeds or other marine plants or algae, including any part, product, seed, holdfast, or root thereof.

"Noncommercial purposes" means for personal, cultural, recreational, or subsistence use, and not for compensation of any kind, regardless of whether the compensation is received inside or outside of the boundaries of the area.

"Ōpihi" means any mollusk of the genus *Cellana* or any recognized synonym. 'Ōpihi are also known as kō'ele, 'ālinalina, makaiauli, or limpets.

"Pa'ipa'i net fishing" means a technique of fishing where a person or persons engage or attempt to engage in the act of deploying a gill net in the water in a specific location in a straight line or semi-circular configuration, and a person or persons chase aquatic life into the net.

"Pipipi" means any marine snail known as *Theodoxus neglectus*, *Nerita picea*, *Neripteron neglectum*, or any recognized synonym.

"Pole spear" means a spear consisting of a straight shaft terminating in up to three pointed prongs, and to which up to two elastic bands may be attached. A pole spear is released solely by hand and without the aid of any trigger mechanism as characteristic of a speargun or hinge gun.

"Pūpū" means any marine or terrestrial species belonging to the order Gastropoda or Bivalvia. Unless otherwise specified, as used in this chapter, pūpū refers to the live mollusk as a whole, not just the hard outer shell.

"Scoop net" means a hand net consisting of a bag of mesh material attached to a frame to hold the bag open, which may be attached to a single handle no more than three feet in length.

"Snorkel" means an underwater breathing apparatus consisting of a tube no more than two feet in length, which extends from a person's mouth to the surface of the water, through which a person is able to breathe air using only the lungs and without the aid of a compressor.

"Subsistence" means the customary and traditional native Hawaiian uses of renewable ocean resources for direct personal or family consumption or sharing.

"Surround gill net fishing" means a fishing technique where any person deploys or attempts to deploy a gill net in the water to encircle aquatic life. Aquatic life may entangle within the net mesh as the aquatic life swim or move into the net. Surround gill net fishing involves a closed net configuration, a moving net, a person or persons chasing aquatic life into the net, and only entangled aquatic life are captured.

"Take" means to fish for, catch, injure, kill, remove, capture, confine, or harvest, or to attempt to fish for, catch, injure, kill, remove, capture, confine, or harvest.

"Throw net" means a circular net with a weighted outer perimeter designed to be deployed by manually

casting or throwing the net over fish or other aquatic life.

"Underwater breathing apparatus" means any apparatus that allows a person to breathe while below the surface of the water.

"Urchin" means any invertebrate in the class Echinoidea. Urchins are also known as wana, hālula, hā'uke'uke, hāwa'e, 'ina, or sea urchin.

"Vessel" means any craft used or capable of being used as a means of transportation on or in the water. [Eff ] (Auth: HRS §§187A-5, 188-22.9, 188-53, 190-3) (Imp: HRS §§187A-5, 188-22.9, 190-3)

§13-60.8-3 Boundaries. (a) The Hā'ena Community-Based Subsistence Fishing Area includes that portion of the northwestern coast of Kaua'i consisting of all State waters and submerged lands bounded by a line drawn along the shoreline; a straight line that extends seaward from the shoreline at the boundary between Hā'ena State Park and Na Pali State Park, as drawn through the points 22°12'42.50"N, 159°35'44.50"W and 22°13'21.62"N, 159°36'22.27"W; a line that follows the contours of the shoreline at a distance of one mile seaward from the shoreline; and a straight line that extends seaward from the shoreline at the boundary between Hā'ena and Wainiha, as drawn through the points 22°13'28.00"N, 159°33'13.50"W and 22°14'19.91"N, 159°33'6.21"W; as shown on Exhibit A entitled "Map of the Hā'ena Community-Based Subsistence Fishing Area, Kaua'i", dated 4/16/14, located at the end of this chapter.

(b) The following subzones are established within the Hā'ena Community-Based Subsistence Fishing Area:

- (1) The "Ōpihi Management Area," which includes all State waters and submerged lands within 300 feet from the shoreline between a line that extends seaward from the shoreline at the boundary between Hā'ena State Park and Nā

Pali State Park, as drawn through the points 22°12'42.50"N, 159°35'44.50"W and 22°13'21.62"N, 159°36'22.27"W; and a line that extends seaward from the shoreline at the western edge of Kē'ē Beach, as drawn through the points 22°13'13.61"N, 159°35'5.11"W and 22°13'15.75"N, 159°35'7.34"W; as shown on Exhibit B entitled "Map of the 'Ōpihi Management Area", dated 4/16/14, located at the end of this chapter;

- (2) The "Makua Pu'uhonua," which includes all State waters and submerged lands located within the fringing reef of Makua lagoon, bounded by a line drawn starting from a point located at 22°13'33.88"N, 159°33'42.41"W, to a point located at 22°13'41.15"N, 159°33'44.67"W; then to a point located at 22°13'44.57"N, 159°33'34.71"W; then to a point located at 22°13'38.26"N, 159°33'31.56"W; then back to the starting point; as shown on Exhibit C entitled "Map of the Makua Pu'uhonua", dated 4/16/14, located at the end of this chapter;
- (3) The "Vessel Transit Boundary," which includes all State waters and submerged lands bounded by a line drawn starting from the shoreline at the boundary between Hā'ena State Park and Na Pali State Park, located at 22°12'42.50"N, 159°35'44.50"W, to a point approximately 1,000 feet seaward, located at 22°12'49.98"N, 159°35'51.79"W; then eastward to a point approximately 1,300 feet from shore, located at 22°13'35.57"N, 159°34'59.73"W; then to a point approximately 2,300 feet from shore, located at 22°13'55.42"N, 159°33'42.00"W; then to a point located approximately 2,100 feet from shore, located at 22°13'48.84"N, 159°33'10.76"W; then to a point on the shoreline at the boundary between Hā'ena and

Wainiha, located at 22°13'28.00"N, 159°33'13.50"W; as identified in the map shown on Exhibit A entitled "Map of the Hā'ena Community-Based Subsistence Fishing Area, Kaua'i", dated 4/16/14, located at the end of this chapter;

(c) For the purposes of this chapter, the shoreline shall be determined by the upper reaches of the wash of the waves on shore. Should there be a stream or river flowing into the ocean, the shoreline shall be determined by an imaginary straight line drawn between the upper reaches of the wash of the waves on either side of the stream or river. [Eff ] (Auth: HRS §§188-22.9, 188-53, 190-3) (Imp: HRS §§187A-1.5, 188-22.9, 190-3)

\$13-60.8-4 Management plan and review. (a) The department shall consult with inhabitants of the Hā'ena ahupua'a and other interested parties to provide for a management plan, which describes:

- (1) Existing marine activities permitted by the department within the area;
- (2) Specific activities to be conducted in the area;
- (3) Processes for community-based monitoring and evaluation of the area; and
- (4) Methods of funding and enforcement.

The management plan shall serve as a framework to assist the department and the community in monitoring, evaluating, and managing the area.

(b) Five, ten, and twenty years beginning from the effective date of this chapter, the department shall hold at least one meeting within the Hā'ena ahupua'a to:

- (1) Review the effectiveness of the Hā'ena Community-Based Subsistence Fishing Area;
- (2) Revise the management plan as needed; and
- (3) Consider whether the area should be expanded to include other ahupua'a.

The meeting shall be publicly noticed at least two weeks prior to the meeting date, by posting the date, time, location, and subject matter of the meeting in a newspaper of general circulation within the Hā'ena ahupua'a. [Eff \_\_\_\_\_] (Auth: HRS §§188-22.9, 188-53) (Imp: HRS §§187A-2, 188-22.9)

§13-60.8-5 Permitted and prohibited activities.

(a) Nothing in this chapter shall be construed as allowing within the Hā'ena Community-Based Subsistence Fishing Area any activity or fishing gear otherwise prohibited by law or rules adopted by the department of land and natural resources or any other department of the State.

(b) It is unlawful for any person to sell or offer for sale any marine life taken from within the area, or to otherwise take marine life from within the area for commercial purposes.

(c) Unless otherwise allowed in subsection (d) of this section, it is unlawful for any person to engage in or attempt to engage in the following activities within the Hā'ena Community-Based Subsistence Fishing Area:

- (1) Take or possess any marine life;
- (2) Take, alter, deface, destroy, possess, or remove any sand, coral, rock, or other geological feature or specimen;
- (3) Possess, deploy, or use any fishing gear or device that is designed or may be used for the taking, injuring, or killing of marine life, or the altering of any geological feature or specimen; or
- (4) Deliberately introduce into the water any food material, substance, or device used as an attractant for marine life, for any purpose other than the taking of marine life as may be allowed under subsection (d) of this section.

(d) Except while within the Makua Pu'uhonua, an individual within the Hā'ena CBSFA may:



- (1) Take and possess any empty pūpū shell, provided that empty pūpū shells may not be taken or possessed while using any underwater breathing apparatus other than a snorkel;
- (2) At any time after November 30, 2017, take up to twenty total living 'ōpihi, pipipi, kūpe'e, or pūpū per person per day from the 'Ōpihi Management Area only, and possess up to twenty total living 'ōpihi, pipipi, kūpe'e, or pūpū at any one time;
- (3) Take and possess any limu by hand-harvest only; provided further that the following species of invasive or introduced algae may be taken and possessed for any purpose, including a commercial purpose: *Gracilaria salicornia*, *Acanthophora spicifera*, *Avrainvillea amadelpha*, *Kappaphycus* (any species), *Eucheuma* (any species), or *Hypnea musciformis*;
- (4) Take up to two lobsters per day by hand-harvest only, and possess up to two lobsters at any one time;
- (5) Take up to five urchins per species per day, and possess up to five urchins per species at any one time;
- (6) Take up to two he'e per day, and possess up to two he'e at any one time, provided that he'e may only be taken by hand-harvest or with the use of a stick no longer than two feet in length;
- (7) Take and possess any fish in compliance with this chapter and all other state law;
- (8) Subject to paragraphs (1)-(7), above:
  - (A) Possess and use up to two hook-and-lines with up to two hooks per hook-and-line;
  - (B) Possess and use a pole spear to take fish between 6:00 a.m. and 6:00 p.m., provided that the pole spear shall be

no greater than eight feet in total length;

- (C) Possess and use a throw net;
- (D) Use pa'ipa'i net or surround gill net fishing methods, provided that nets may only be deployed from the shore, or from a vessel less than fourteen feet long, and provided further that at least two people must be within five feet of the net at all times while it is deployed; and
- (E) Possess and use a scoop net between 6:00 a.m. and 6:00 p.m., provided that a scoop net may not be used to take greater than three specimens of marine life per day; and

- (9) Possess any fishing gear while on a vessel in active transit seaward of the Vessel Transit Boundary, as described in section 13-60.8-3(b)(3) of this chapter.

(e) Native Hawaiian traditional and customary rights recognized under article XII, section 7, of the Hawaii State Constitution shall not be abridged. [Eff  
] (Auth: HRS §§187A-5, 188-22.9, 188-53, 190-3) (Imp: HRS §§187A-5, 188-22.9, 188-53, 190-3)

§13-60.8-6 Prohibited activities, Makua Pu'uhonua. In addition to the prohibitions described in section 13-60.8-5(c), it is unlawful for any person to enter the Makua Pu'uhonua except with a special activity permit issued by the board under section 187A-6, HRS, under such terms and conditions allowing such entry and as deemed necessary for educational, scientific, or other purposes not inconsistent with sections 187A-6 and 188-53, HRS, provided that:

- (1) The board may revoke any permit for any infraction of the terms and conditions of the permit; and
- (2) A person whose permit was revoked shall not be eligible to apply for another permit

until one year after the date of revocation.  
 [Eff ] (Auth: HRS §§187A-6, 188-22.9, 188-53, 190-3) (Imp: HRS §§187A-6, 188-22.9, 188-53, 190-3)

§13-60.8-7 Penalty. (a) Any person who violates any provision of this chapter, or the terms and conditions of any permit issued applicable to this chapter, shall be subject to administrative fines of:

- (1) Not less than \$100 and not more than \$1,000 for a first violation;
- (2) Not less than \$200 and not more than \$2,000 for a second violation within five years of any prior violation; and
- (3) Not less than \$500 and not more than \$3,000 for a third or subsequent violation within a five year period of any prior violation.

(b) In addition to subsection (a), a fine of up to \$1,000 may be levied for each specimen of aquatic life taken, killed, or damaged in violation of this chapter.

(c) Any administrative fine imposed under this section for any violation of a provision of this chapter shall not preclude the imposition of criminal penalties pursuant to section 188-70, HRS, or as may be otherwise provided by law. [Eff ]  
 (Auth: HRS §§187A-5, 188-22.9, 188-53, 190-3) (Imp: HRS §§187A-5, 187A-12.5, 188-22.9, 188-53, 188-70, 190-5)

§13-60.8-8 Severability. If any provision of this chapter, or the application thereof, to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications 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

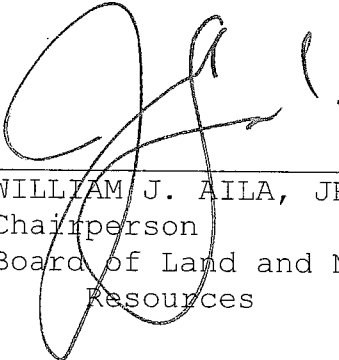
] (Auth: HRS §§187A-5, 188-22.9, 188-53, 190-3) (Imp: HRS §§1-23, 187A-5, 188-22.9, 188-53, 190-3)



DEPARTMENT OF LAND AND NATURAL RESOURCES

Chapter 13-60.8, Hawaii Administrative Rules, on the Summary Page dated October 24, 2014, was adopted on October 24, 2014, following a public hearing held on October 3, 2014, after public notice was given in the Honolulu Star-Advertiser and The Garden Island News on August 31, 2014.

The adoption of chapter 13-60.8 shall take effect ten days after filing with the Office of the Lieutenant Governor.



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WILLIAM J. AILA, JR.  
Chairperson  
Board of Land and Natural  
Resources

APPROVED AS TO FORM:



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Deputy Attorney General

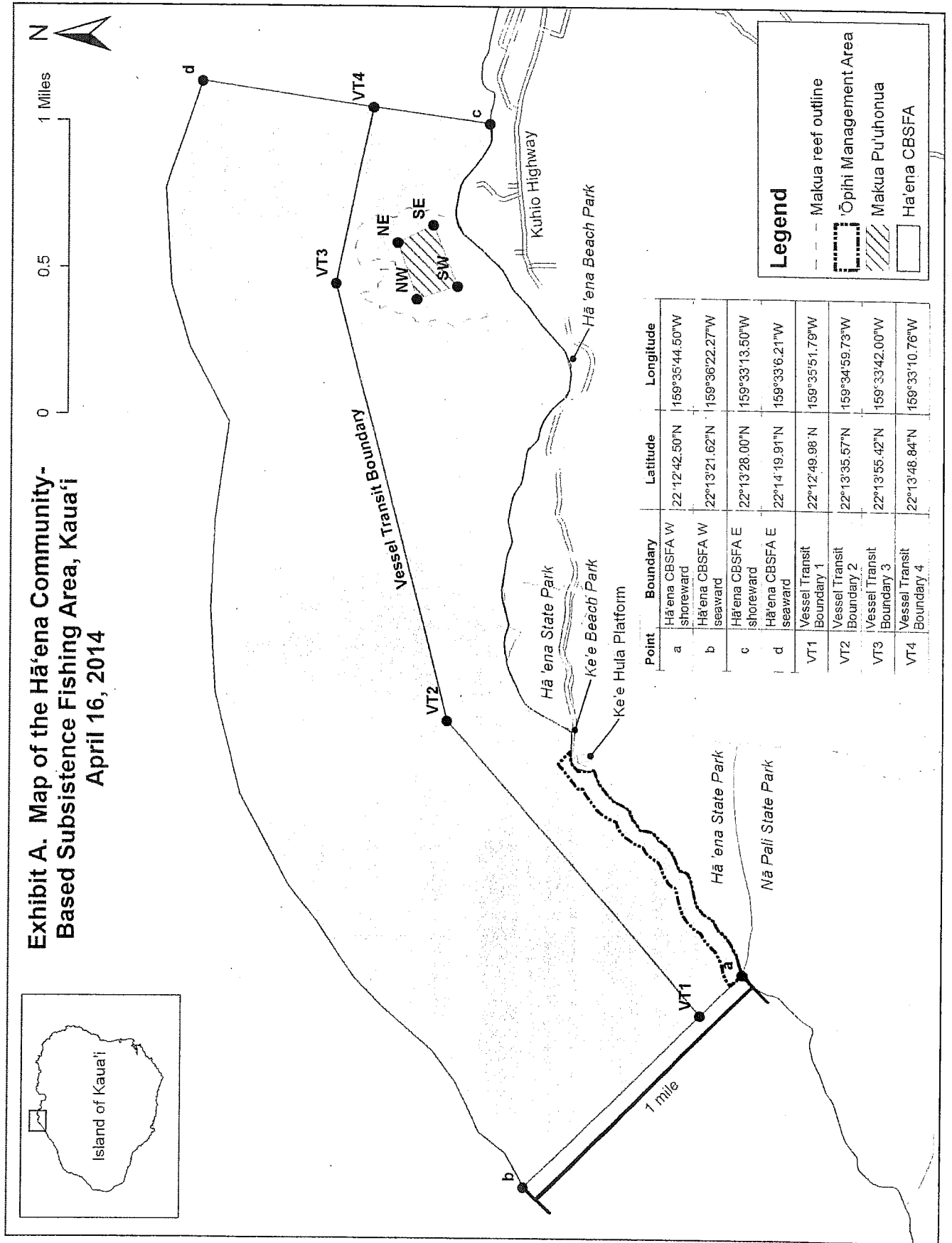
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DAVID Y. IGE  
Governor  
State of Hawaii

Date:

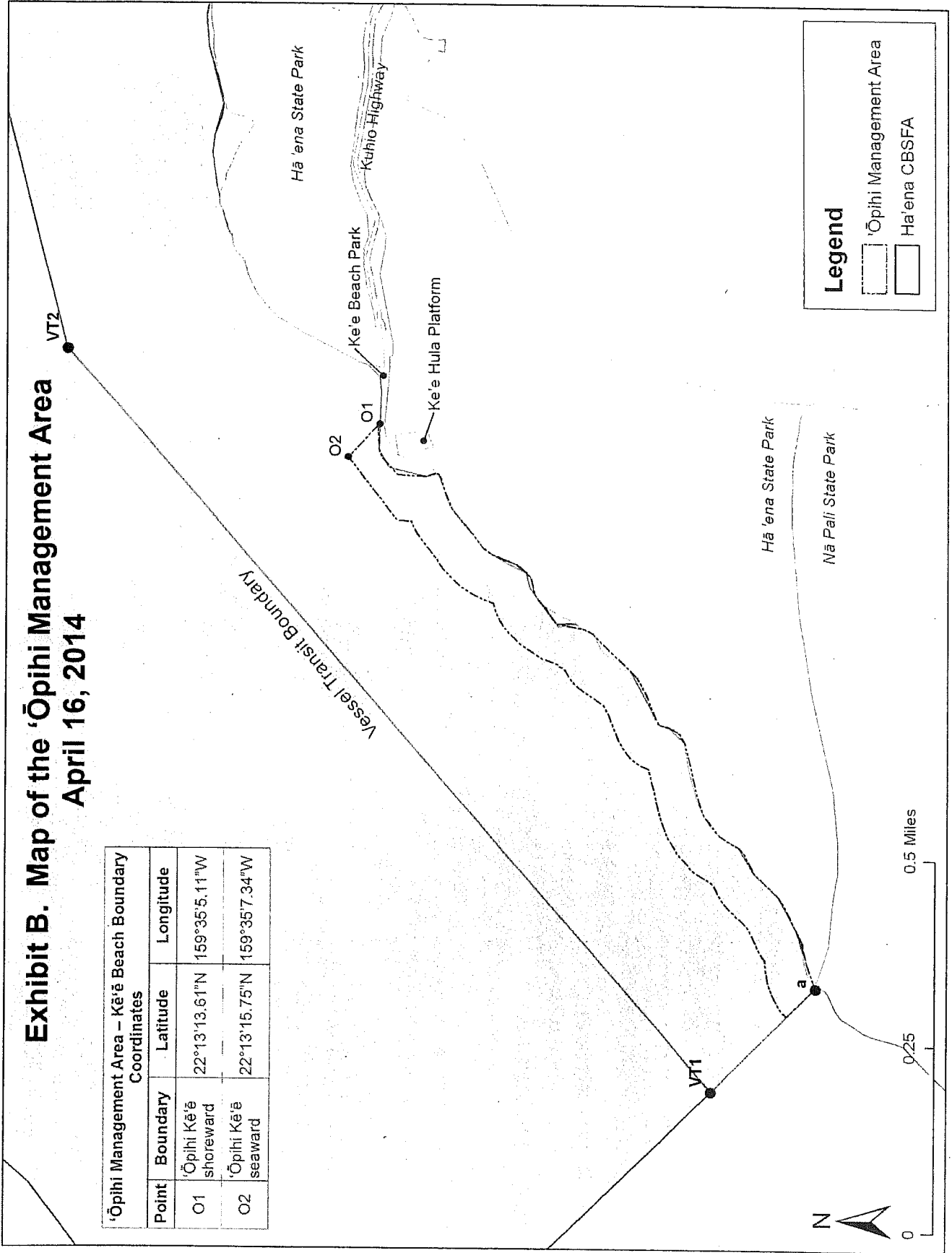
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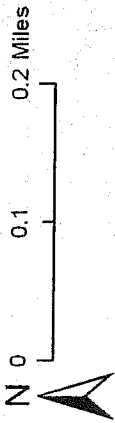


## Exhibit B. Map of the 'Ōpihi Management Area April 16, 2014

'Ōpihi Management Area – Kē'e Beach Boundary Coordinates			
Point	Boundary	Latitude	Longitude
O1	'Ōpihi Kē'e shoreward	22°13'13.61"N	159°35'5.11"W
O2	'Ōpihi Kē'e seaward	22°13'15.75"N	159°35'7.34"W



# Exhibit C. Map of the Makua Pu'uuhonua April 16, 2014



Makua Pu'uuhonua Boundary Coordinates			
Point	Boundary	Latitude	Longitude
SW	Makua Pu'uuhonua SW	22°13'33.88"N	159°33'42.41"W
NW	Makua Pu'uuhonua NW	22°13'41.15"N	159°33'44.67"W
NE	Makua Pu'uuhonua NE	22°13'44.57"N	159°33'34.71"W
SE	Makua Pu'uuhonua SE	22°13'38.26"N	159°33'31.56"W

Vessel Transit Boundary

VT4

VT3

NW

NE

SE

SW

C

Kuhio Highway

Hā'ena Beach Park

### Legend

- - - Makua reef outline
- ▨ Makua Pu'uuhonua
- Hā'ena CBSFA



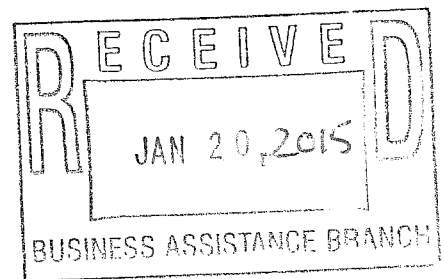
## Exhibit 5

DEPARTMENT OF THE ATTORNEY GENERAL

Amendment and Compilation of Chapter 5-11  
Hawaii Administrative Rules  
January 15, 2015

SUMMARY

1. §§5-11-9 to 5-11-10 are amended.
2. §§5-11-17 to 5-11-18 are amended.
3. §5-11-32 is amended.
4. §5-11-46 is amended.
5. Chapter 11 is compiled.



HAWAII ADMINISTRATIVE RULES

TITLE 5

DEPARTMENT OF THE ATTORNEY GENERAL

CHAPTER 11

NOTARIES PUBLIC

Subchapter 1 General Provisions

- §5-11-1 Purpose
- §5-11-2 Commission required to act as a notary public
- §5-11-3 Conduct
- §5-11-4 Powers
- §5-11-5 Official seal
- §5-11-6 Official signature
- §5-11-7 Acceptable forms of identification of signers
- §5-11-8 Acknowledgments; jurats
- §5-11-9 Record book; suspension for failure to deposit
- §5-11-10 Notification and filing of names, addresses, and changes; failure to notify
- §5-11-11 Display of commission; hours of business
- §5-11-12 Term of commission
- §5-11-13 Forfeited commission
- §5-11-14 Suspended commission
- §5-11-15 Revoked commission
- §5-11-16 Resignation of commission
- §5-11-17 Surrender of notary public commission certificate, seal, and record book; failure to comply
- §5-11-18 Loss, misplacement, or theft of notary public certificate, seal, or record book

Subchapter 2 Applications

- §5-11-21 Application for notary public commission
- §5-11-22 Action on application
- §5-11-23 Application for renewal of notary public commission

§5-11-1

Subchapter 3 Examinations

§5-11-32 Examination  
§5-11-33 Examination subject matter

Subchapter 4 Disciplinary Sanctions

§5-11-39 Grounds for refusal to renew, reinstate, or restore, and for revocation, suspension, denial, or condition of commissions

Subchapter 5 Fees and Administrative Fines

§5-11-46 Fees and administrative fines

Subchapter 6 Practice and Procedure

§5-11-51 Administrative practice and procedure  
§5-11-52 Notification of denial of application for commission or renewal, or of proposed disciplinary action  
§5-11-53 Demand for a hearing  
§5-11-54 Proceedings upon demand for a hearing  
§5-11-55 Exceptions

SUBCHAPTER 1

GENERAL PROVISIONS

§5-11-1 Purpose. This chapter is intended to clarify and implement chapter 456, Hawaii Revised Statutes (HRS), as amended, to the end that the provision thereunder, for the protection of the general public, may best be effectuated and the public interest most effectively served. [Eff 5/5/08; comp ] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)

§5-11-2 Commission required to act as a notary public. No person shall act as a notary public, or advertise or represent oneself as a notary public,

without a current commission previously obtained from the attorney general. [Eff 5/5/08; comp ]  
(Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)

§5-11-3 Conduct. Every notary public shall perform notary public duties in accordance with chapter 456, HRS, this chapter, and the notary public code of professional responsibility as adopted by the National Notary Association, and as any of these may be amended. [Eff 5/5/08; comp ] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-7)

§5-11-4 Powers. Every notary public shall take acknowledgments, administer oaths and affirmations, witness the signing of documents, attest to the identity of the signer of a document, note protests, and perform any other act permitted by chapter 456, HRS. [Eff 5/5/08; comp ] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §§456-10, 456-11, 456-13, 456-14, 456-17, 456-18, 456-19)

§5-11-5 Official seal. (a) A notary public shall obtain and keep an official seal of one type, either an engraved seal or a rubber stamp facsimile seal, on which shall be inscribed the name of the notary public, the commission number of the notary public, and the words "notary public" and "State of Hawaii."

(b) The notary public shall authenticate all of the notary public's official acts, attestations, certifications, and instruments with the notary public's official seal.

(c) The official seal of every notary public shall be affixed by either an engraved seal or a rubber stamp facsimile seal which shall be circular, not over two inches in diameter, with a serrated or milled edge border and shall include the required wording and information specified in subsection (a).

(d) The notary public shall surrender the notary public's seal to the attorney general within ninety days of resignation, removal from office, or the expiration of a term of office without renewal. Failure to comply with this requirement may result in a fine not more than \$200. [Eff 5/5/08; am and comp

§5-11-5

] (Auth: HRS §§28-10.8, 456-8) (Imp:  
HRS §§456-3)

§5-11-6 Official signature. (a) A notary public shall sign on every notarial certificate, at the time of notarization, the notary public's official signature as filed with the clerk of the circuit court in the circuit in which the notary public resides and as the notary public's name appears on the notary public's seal.

(b) The notary public shall always add to the notary public's official signature the typed or printed name of the notary public and a statement indicating the date of expiration of the notary public's commission. [Eff 5/5/08; comp ]  
(Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-3)

§5-11-7 Acceptable forms of identification of signers. No acknowledgment, jurat, or other instrument shall be taken, unless the person offering to make the acknowledgment, jurat, or instrument is personally known to the notary public to be the person whose name is subscribed to the acknowledgment, jurat, or instrument as a party thereto, or is proved to be such by the oath or affirmation of a credible witness known to the notary public, or by production of a current identification card or document issued by the United States, this State, any other state, or a national government that contains the bearer's photograph and signature. [Eff 5/5/08; comp ]  
(Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-15)

§5-11-8 Acknowledgments; jurats. Every acknowledgment or jurat shall be evidenced by a certificate signed and dated by a notary public. The certificate shall include the printed name of the notary public, the official stamp or seal of the notary public, identification of the jurisdiction in which the notarial act is performed, identification or description of the document being notarized, which shall be close in proximity to the acknowledgment or jurat, and the number of pages and date of such

document. [Eff 5/5/08; comp ] (Auth:  
HRS §§28-10.3, 456-8) (Imp: HRS §456-15)

§5-11-9 Record book; suspension for failure to deposit. (a) A notary public shall record all of the notary public's transactions, as prescribed in chapter 456, HRS.

(b) The record book shall be bound with a soft cover and shall not exceed eleven inches in height and sixteen and one-half inches in width when fully opened.

(c) The pages of the record book shall be consecutively numbered.

(d) The notary public shall always provide and print legibly on the information page of each record book the notary public's name, business address, commission number, and commission expiration date, the book number, and the beginning and ending dates of the notarial acts recorded in that book.

(e) The notary public shall always print legibly the notary public's name on the top left corner and the notary public's commission number on the top right corner of each set of pages of transactions in each record book.

(f) The notary public shall deposit the notary public's record book with the attorney general within ninety days of the end date of the notary public's commission. Failure to comply with this requirement, after notice to the notary and opportunity to be heard, shall cause the notary's commission to be suspended until the attorney general receives the notary record books for the prior commission term. In addition, the failure to deposit notary record books may result in a fine of no less than \$50 and no more than \$500. [Eff 5/5/08; am and comp ]  
(Auth: HRS §§28-10.8, 456-8) (Imp: HRS §§456-15, 456-16)

§5-11-10 Notification and filing of names, addresses, and changes; failure to notify. (a) Each notary public shall file the notary public's name, employer, residence and business addresses and telephone numbers, and occupation with the attorney general, and shall notify the attorney general of any change, in writing, within thirty days of the change.

§5-11-10

(b) The notice from the notary public of the notary public's name change shall state the old and new names and the effective date of the notary public's name change, and shall include a copy of the legal documentation recording the name change and the new signature of the notary public.

(c) The notice from the notary public of the notary public's address change shall state the old and new addresses of the notary public's residence, if there is a change in the notary public's residence address, the old and new addresses of the notary public's business, if there is a change in the notary public's business address, and the effective date of the notary public's address change. (d) Failure to provide written timely notification to the attorney general of any change shall subject the notary to a \$25 administrative fine. Failure to provide written timely notification to the attorney general of any change of address that results in renewal forms being mailed to an incorrect address shall subject the notary to a \$50 administrative fine. [Eff 5/5/08; am and comp ] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)

§5-11-11 Display of commission; hours of business. (a) A sign, no smaller than three inches by five inches, bearing the words "notary public" shall be conspicuously displayed within the premises of the place of business where the notary public is employed.

(b) A notary public shall provide notarial services to the public during all normal business hours of operation where the notary public is employed.

(c) This section shall not apply to notaries in government service. [Eff 5/5/08; comp ] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)

§5-11-12 Term of commission. The term of office of a notary public shall be four years from the date of the notary public's commission, unless sooner terminated by the notary public's resignation, death, or abandonment of office, or revoked or suspended by action of the attorney general. Any notarial act performed after the termination, revocation, or suspension of a commission shall be invalid. [Eff



5/5/08; comp ] (Auth: HRS §§28-10.8,  
456-8) (Imp: HRS §456-1)

§5-11-13 Forfeited commission. (a) The commission of a notary public is forfeited if the notary public knowingly fails to submit a completed renewal application, pay the renewal fee, or complete the processing and filing of a commission for renewal by the date of expiration of the notary public's commission. A failure to renew shall be deemed knowingly if notice of renewal is sent to the last address on file for the notary public and the notary public fails to complete all the requirements of this subsection.

(b) Any person seeking to restore the person's forfeited commission more than one year from the date of expiration of the commission shall reapply as a new applicant for a notary public commission. [Eff 5/5/08; comp ] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)

§5-11-14 Suspended commission. No commission shall be suspended by the attorney general for a period exceeding five years. A person whose commission has been suspended may apply for reinstatement of the commission upon complete compliance with all terms and conditions imposed by the order of suspension. The application for reinstatement shall be accompanied by all applicable fees. If the person fails to file for reinstatement within thirty days after the end of suspension, the person's commission shall be forfeited. [Eff 5/5/08; comp ] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)

§5-11-15 Revoked commission. A person may apply for a new commission after five years from the effective date of the revocation of the commission by filing an application and complying with all current requirements for new applicants. [Eff 5/5/08; comp ] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)

§5-11-16

§5-11-16 Resignation of commission. (a) A notary public may resign the notary public's commission, and shall:

(1) Surrender the notary public's commission certificate, seal, and notarial record books as provided in section 5-11-17(a); and

(2) Cease conducting all notarial services.

(b) The resignation or surrender shall not bar jurisdiction by the attorney general to proceed with any investigation, action, or proceeding to revoke, suspend, condition, or limit the notary public's commission or fine the notary public.

(c) A person may obtain a new commission by applying as a new applicant should the person desire to engage in any notarial services. [Eff 5/5/08; comp ] (Auth: HRS §§28-10.8, 456-8) (Imp:

HRS §456-1)

§5-11-17 Surrender of notary public commission certificate, seal, and record book; failure to comply.

(a) Within ninety days of resignation, removal from office, or the expiration of a term of office without renewal, the notary public shall:

(1) Surrender the notary public's commission certificate to the attorney general for the purpose of destruction;

(2) Surrender the notary public's seal to the attorney general for the purpose of defacement; and

(3) Deposit the notary public's record book with the attorney general.

(b) Upon the death of the notary public, the notary public's employer or personal representative shall within ninety days fulfill the requirements of subsection (a).

(c) Failure to comply with subsection (a)(2) may result in a fine not more than \$200. Failure to comply with subsection (a)(3) may result in a fine not less than \$50 nor more than \$500. Failure to comply with any paragraph of subsection (a) shall preclude the reissuance of a notary public's commission.

Complete compliance with subsection (a) shall be a condition for the reissuance of a notary public's commission. [Eff 5/5/08; am and comp ]

(Auth: HRS §§28-10.8, 456-8) (Imp: HRS §§456-1, 456-3, 456-7, 456-16)

§5-11-18 Loss, misplacement, or theft of notary public certificate, seal, or record book. Within ten days after loss, misplacement, or theft of the notary public's official seal or notarial record book or both, a notary public shall deliver written notification to the attorney general of the loss, misplacement, or theft. The notary public also shall inform the appropriate law enforcement agency in the case of theft and deliver a copy of the law enforcement agency's report of the theft to the attorney general. Failure to comply with this section shall result in a \$25 administrative fine. [Eff 5/5/08; am and comp ] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §§456-3, 456-16)

SUBCHAPTER 2

APPLICATIONS

§5-11-21 Application for notary public commission. (a) Each applicant for a notary public commission shall complete and file an application with the attorney general. A completed application shall include:

- (1) A non-refundable application fee;
- (2) A letter of character recommendation from a person residing in this State, who is not a relative or an employer of the applicant and who can attest to the applicant's honesty, trustworthiness, financial integrity, and moral character; and
- (3) A letter of justification from the applicant's employer, or if the applicant is self-employed, from the applicant, explaining in detail the reasons why the commission is being sought. The letter shall also contain a statement by the employer or applicant, if the applicant is self-employed, acknowledging that a notary public is a public officer and that the applicant would be permitted to serve the general public in such capacity during the employer's or applicant's normal business hours.

(b) The application may require the applicant to provide the following:

- (1) The applicant's legal name;
- (2) Verification that the applicant is at least eighteen years of age;
- (3) The applicant's current residence, business, and mailing addresses;
- (4) The date and place of any conviction of a penal crime;
- (5) Proof that the applicant is a United States citizen, a United States national, or an alien authorized to work in the United States; and
- (6) Any other information the attorney general may require to investigate the applicant's qualifications for a notary public commission.

(c) When an application is made for a commission as a government notary public, the application shall be accompanied by a letter of justification from the head of every department (which includes any department, board, commission, bureau, or establishment of the United States, the State, or any political subdivision thereof) where the applicant is employed and shall designate the applicant to perform, without charge, the services of a notary public in all matters of business pertaining to the business of the governmental entity employing the applicant.

(d) Each applicant shall have the application properly notarized by a notary public currently commissioned in this State. [Eff 5/5/08; comp ] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §§456-1, 456-2, 456-9, 456-18)

§5-11-22 Action on application. (a) Unless otherwise provided by law, the attorney general shall take the following actions within one year after the filing of a complete application for a commission:

- (1) If the attorney general deems appropriate, conduct an investigation of the applicant; and
- (2) After completing any necessary investigation, provide written notification to the applicant of the decision regarding the application for a commission. If the application is denied, written notification of the denial shall state the reason for denying the application and shall inform the applicant of the right to a hearing in

accordance with chapter 91, HRS, and chapter 5-1.

(b) An application may be considered abandoned if the application is not completed and the required documents and other information are not submitted to the attorney general within ninety days from the date the application is first filed with the attorney general. The attorney general shall not be required to act on any abandoned application, and the abandoned application may be destroyed by the attorney general. [Eff 5/5/08; comp ] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §§28-10.8, 91-13.5, 456-8)

§5-11-23 Application for renewal of notary public commission. (a) Each notary public shall be responsible for timely renewing the notary public's commission and satisfying the renewal requirements provided by law. A completed renewal application received by the attorney general before or on the notary public's current date of expiration of commission shall be considered timely filed.

(b) At the time of commission renewal, each notary public shall submit a completed renewal application, pay all applicable fees, and comply with any other requirement provided by law.

(c) The failure to timely renew a commission, the failure to pay all applicable fees, the dishonoring of any check upon first deposit, or the failure to comply with any other requirement may cause the commission to be automatically forfeited.

(d) Each applicant shall have the renewal application properly notarized by a notary public, other than the applicant, currently commissioned in this State. [Eff 5/5/08; comp ] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §§456-1, 456-2, 456-9, 456-18)

### SUBCHAPTER 3

### EXAMINATIONS

§5-11-32 Examination. (a) No notary public commission shall be issued to any person unless the person pays the examination fee, and takes and passes a written examination as prescribed by the attorney

general. The minimum passing score is eighty per cent. Failure to obtain a passing score shall result in failure of examination, and no commission shall be issued.

(b) The applicant shall take the examination on the date specified on the notification of approval of the application for a commission and of the scheduled examination date. Failure to take the notary examination on the scheduled examination date without advance notice, as follows, to the attorney general to reschedule the examination shall require that the applicant submit a new application for a notary public commission with updated supporting letters and also pay a \$25 no-show examination fee. The fee to reschedule an examination shall be \$15 if an applicant requests to reschedule more than forty-eight hours before the examination. The fee to reschedule an examination shall be \$20 if the applicant requests to reschedule less than forty-eight hours before the examination.

(c) The attorney general shall designate the locations and times of the examination.

(d) The attorney general shall notify an applicant in writing of the examination result within thirty calendar days of the examination.

(e) An applicant who fails to attain a passing score may take a reexamination without submitting a new application, provided that the applicant requests, pays the examination fee, and reschedules a reexamination within fourteen calendar days from the date of the notification of the applicant's failure to attain a passing score on the first examination. If the applicant fails to request, pay for, and reschedule a reexamination within the fourteen calendar days, the applicant shall submit a new application and pay the applicable application and examination fees.

(f) An applicant who fails the examination twice shall wait ninety days from the date of the last examination to reapply for a notary public commission.  
[Eff 5/5/08; am and comp ] (Auth: HRS  
§§28-10.8, 456-8 ) (Imp: HRS §§456-1, 456-7, 456-8)

§5-11-33 Examination subject matter. The examination shall test whether applicants have a reasonable knowledge of the general principles and practices of notary public duties, and the laws and

rules pertaining to notaries public, including chapter 456, HRS, sections 502-41 to 502-74, HRS, and this chapter. [Eff 5/5/08; comp ] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1, 456-7)

SUBCHAPTER 4

DISCIPLINARY SANCTIONS

§5-11-39 Grounds for refusal to renew, reinstate, or restore, and for revocation, suspension, denial, or condition of commissions. [(a)] In addition to any other acts or conditions provided by law, the attorney general may refuse to renew, reinstate, or restore, or may revoke, suspend, deny, or condition, a commission of any applicant or notary public who violates any of the provisions of chapter 456, HRS, and this chapter, and to seek fines or to otherwise discipline a notary public for any cause authorized by law, including but not limited to the following:

- (1) Failing to meet and sustain the conditions and requirements necessary to maintain a commission;
- (2) Submitting an application for a new commission, renewed commission, restoration of a forfeited commission, or reinstatement of a suspended commission that contains a false statement, an omission of fact, or a substantial misstatement;
- (3) Failing to complete the processing of the notary public's commission by filing the notary public's commission with the clerk of the circuit court of the judicial circuit in which the notary public resides;
- (4) Failing to maintain a business or residence address in the State while practicing as a notary public in the State;
- (5) Being incapable of reading, writing, or speaking the English language with understanding;
- (6) Allowing the notary public's name or title to be used deceptively, fraudulently, or in false or misleading advertising, or making untruthful or improbable statements;
- (7) Being addicted to, dependent on, or a

- habitual user of a narcotic, barbiturate, amphetamine, hallucinogen, opium, or cocaine, or other drugs or derivatives of a similar nature;
- (8) Practicing as a notary public while the ability to practice is impaired by alcohol, drugs, or mental instability, or substantially impaired by physical disability;
  - (9) Procuring a commission through fraud, misrepresentation, or deceit;
  - (10) Professional misconduct, incompetence, gross negligence, or manifest incapacity in the practice of a notary public;
  - (11) Failure to maintain a record or history of competency, trustworthiness, fair dealing, and financial integrity;
  - (12) Conduct or practice contrary to the notary public code of professional responsibility as adopted by the National Notary Association;
  - (13) Violating any condition or limitation upon which a conditional or temporary commission was issued;
  - (14) Engaging in business under a past or present commission issued pursuant to the notary public laws, in a manner causing injury to one or more members of the public;
  - (15) Failure to comply with, observe, or adhere to any law in a manner such that the attorney general deems the holder of a notary public commission to be unfit or an improper person to hold a commission;
  - (16) Revocation, suspension, restriction, or denial of a professional license or notary public commission if that action was for misconduct, dishonesty, or any cause that relates to the duties or responsibilities of a notary public;
  - (17) Criminal conviction, whether by nolo contendere or otherwise, of a crime related to the qualifications, functions, or duties of a notary public, or involving theft, fraud, dishonesty, or false statement;
  - (18) Failure to report in writing to the attorney general any disciplinary decision issued against the notary public or the applicant in another jurisdiction within thirty days of the disciplinary decision; and



- (19) Violating this chapter, the applicable laws governing notaries public, or any rule or order of the attorney general. [Eff 5/5/08; comp ] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)

SUBCHAPTER 5

FEEES AND ADMINISTRATIVE FINES

§5-11-46 Fees and administrative fines. (a) Notwithstanding any law to the contrary, the attorney general shall charge and collect the following fees, and administrative fines, which shall be nonrefundable:

- (1) Application for commission of notary public commission, \$20;
- (2) Application for renewal of notary commission, \$20;
- (3) Application for restoration of forfeited commission, \$10;
- (4) Application for reinstatement of suspended commission, \$10;
- (5) Issuance of notary public commission, \$100;
- (6) Renewal of notary public commission, \$100;
- (7) Each examination, \$10;
- (8) Administrative fee to process and catalogue notary record books, \$10;
- (9) Restoration of forfeited commission, \$80;
- (10) Change in name, employer, residential, or business address, telephone number, or judicial circuit, \$10;
- (11) Failure to timely notify attorney general of change of any item specified in paragraph (10), \$25 per occurrence;
- (12) Failure to timely notify attorney general of change of address that results in mailing of renewal forms to incorrect address, \$50;
- (13) Failure to timely notify attorney general of loss, misplacement, or theft of the notary public's official seal or record book, \$25;
- (14) Notary public manual, \$3 if the manual is picked up at the notary public office or \$5.00 if the manual is to be mailed;

- (15) Certification of each notarial transaction from a notary public's record book in the disposition of the attorney general, \$5 per notarial transaction;
  - (16) Copying, per printed page, 25 cents;
  - (17) Replacement commission certificate, \$10;
  - (18) Request to reschedule examination more than forty-eight hours before the examination, \$15;
  - (19) Request to reschedule examination less than forty-eight hours before the examination, \$20;
  - (20) Failure to appear at the examination without request or notification to reschedule examination received prior to the time of the examination, \$25; and
  - (21) Failure to pick-up commission certificate from the attorney general within sixty days of notification from the attorney general of the availability of the certificate, \$40;
- (b) All fees prescribed by this chapter shall be deposited to the credit of the department of the attorney general's notaries public revolving fund.  
[Eff 5/5/08; am and comp ] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-9)

## SUBCHAPTER 6

### PRACTICE AND PROCEDURE

§5-11-51 Administrative practice and procedure.  
The rules of practice and procedure for notaries public shall be as provided in chapter 5-1, the rules of practice and procedure for administrative process of the department of the attorney general. [Eff 5/5/08; comp ] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)

§5-11-52 Notification of denial of application for commission or renewal, or of proposed disciplinary action. In the event an application for commission or renewal is denied, or a notary public is to be disciplined, the attorney general shall provide

written notification to the applicant or notary public of the attorney general's intended action, which shall include a concise statement of the reasons therefor and a statement informing the applicant or notary public of the right to a hearing if the applicant or notary public so desires. [Eff 5/5/08; comp ] (Auth: HRS §§456-1) (Imp: HRS §456-1)

§5-11-53 Demand for a hearing. Any person whose application is denied, or notary public who is to be disciplined by the attorney general, shall be entitled to a hearing if a demand for hearing is filed with attorney general within sixty days of the date of the letter informing the applicant or notary public of the denial of application, or intent to discipline the notary public, respectively. [Eff 5/5/08; comp ] (Auth: HRS §§28-10.8, 91-9, 456-8) (Imp: HRS §456-1)

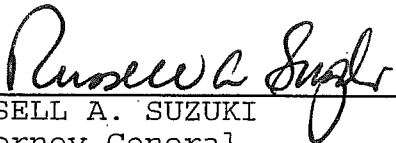
§5-11-54 Proceedings upon demand for a hearing. If a demand for a hearing is filed within sixty days of the date of the denial or intent to discipline, the attorney general shall order a hearing pursuant to chapter 91, HRS, and chapter 5-1. [Eff 5/5/08; comp ] (Auth: HRS §§28-10.8, 91-9, 456-8) (Imp: HRS §§91-13.1, 456-1)

§5-11-55 Exceptions. If any requirement of this chapter results in undue hardship for the applicant or notary public, the attorney general may, upon written request from the applicant or notary public, grant an exception to that requirement if the attorney general determines such action to be in the best interest of the State." [Eff ] (Auth HRS §§28-10.8, 456-6) (Imp: HRS §456-1)

Amendments to and compilation of chapter 5-11, Hawaii Administrative Rules, on the Summary Page dated January 15, 2015, were adopted on January 15, 2015 following a public hearing held on December 29, 2014, after public notice was given in the Honolulu Star-Advertiser, Hawaii Tribune-Herald, West Hawaii Today,

The Maui News, and The Garden Isle on November 22,  
2014.

They take effect ten days after filing with the  
Office of the Lieutenant Governor.


  
\_\_\_\_\_  
RUSSELL A. SUZUKI  
Attorney General

\_\_\_\_\_  
DAVID Y. IGE  
Governor  
State of Hawaii

Dated: \_\_\_\_\_

\_\_\_\_\_  
Filed

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy Attorney General

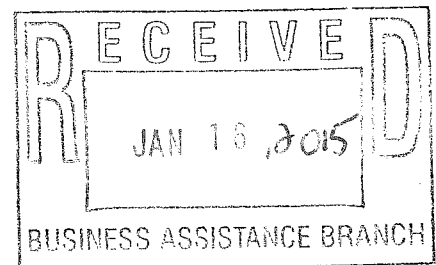
## Exhibit 6

Department of Agriculture  
Amendments to Chapter 4-60  
Hawaii Administrative Rules

November 25, 2014

SUMMARY

1. §4-60-9(a) is amended.



§4-60-9 Minimum prices in the Honolulu milk shed. (a) Minimum prices to be paid by distributors or producer-distributors to producers or producer-distributors for fresh milk produced for sale in the Honolulu milk shed are established on the basis of the utilization for class I milk, class I skim milk, and class II milk as provided in this section. Upon petition by a producer or producer-distributor, the board may grant a waiver allowing the producer or producer-distributor to sell its milk at less than the minimum price if it is demonstrated that the lower price takes into consideration the standards for determining the minimum prices for milk set forth in section 157-32, Hawaii Revised Statutes.

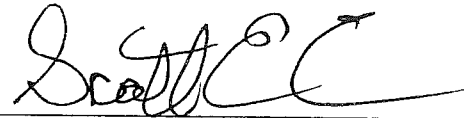
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[Eff 7/16/80; am 2/1/81; am and comp 12/1/85; am and comp 5/1/87; am 7/1/91; am 4/14/97; am 12/26/97; am 8/7/06; am JAN 08 2015 ] (Auth: HRS §§, 157-13, 157-31) (Imp: HRS §§157-31, 157-33)

DEPARTMENT OF AGRICULTURE

Amendment to Chapter 4-60, Hawaii Administrative Rules, was adopted by the Board of Agriculture on November 25, 2014, following public hearings held on July 14 and 15, 2014, after public notice was given in the Star-Advertiser, Hawaii Tribune-Herald, West Hawaii Today, Maui News, and Garden Island newspapers on June 6, 2014.

This amendment shall take effect ten days after filing with the Office of the Lieutenant Governor.



SCOTT E. ENRIGHT  
Chairperson  
Board of Agriculture

APPROVED AS TO FORM:

  
Deputy Attorney General



DAVID Y. IGE  
Governor  
State of Hawaii

Date:

LIEUTENANT GOVERNOR'S  
OFFICE

'14 DEC 29 P 3:46

Filed

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Department of Agriculture

Amendments to Chapter 4-60  
Hawaii Administrative Rules

November 25, 2014

1. Section 4-60-9, Hawaii Administrative Rules, is amended by amending subsection (a) to read as follows:

"(a) Minimum prices to be paid by distributors or producer-distributors to producers or producer-distributors for fresh milk produced for sale in the Honolulu milk shed are established on the basis of the utilization for class I milk, class I skim milk, and class II milk as provided in this section. Upon petition by a producer or producer-distributor, the board may grant a waiver allowing the producer or producer-distributor to sell its milk at less than the minimum price if it is demonstrated that the lower price takes into consideration the standards for determining the minimum prices for milk set forth in section 157-32, Hawaii Revised Statutes." [Eff 7/16/80; am 2/1/81; am and comp 12/1/85; am and comp 5/1/87; am 7/1/91; am 4/14/97; am 12/26/97; am 8/7/06; am ] (Auth: HRS §§157-13, 157-31)  
(Imp: HRS §§157-31, 157-33)

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

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

4. This amendment to chapter 4-60, Hawaii Administrative rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on November 25, 2014, and filed with the Office of the Lieutenant Governor.



SCOTT E. ENRIGHT  
Chairperson  
Board of Agriculture

APPROVED AS TO FORM:

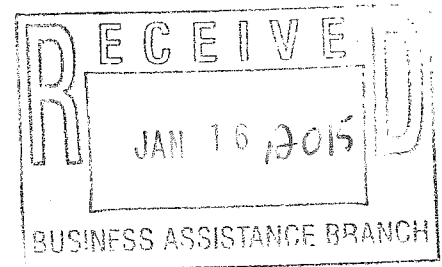
  
Deputy Attorney General

Department of Agriculture  
Amendments to Chapter 4-60  
Hawaii Administrative Rules

December 29, 2014

SUMMARY

1. §4-60-10(a) is amended.



§4-60-10 Minimum prices in the Hawaii milk shed.

(a) Minimum prices to be paid by distributors or producer-distributors to producers or producer-distributors for fresh milk produced for sale in the Hawaii milk shed are established on the basis of the utilization for class I milk, class I skim milk, and class II milk as provided in this section. Upon petition by a producer or producer-distributor, the board may grant a waiver allowing the producer or producer-distributor to sell its milk at less than the minimum price if it is demonstrated that the lower price takes into consideration the standards for determining the minimum prices for milk set forth in section 157-32, Hawaii Revised Statutes.

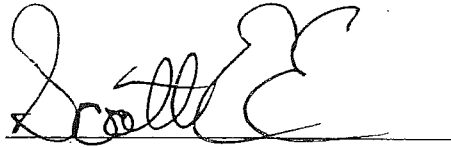
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[Eff 7/16/80; am 2/1/81; am and comp 12/1/85; am and comp 5/1/87; am 7/1/91; am 4/14/97; am 12/26/97; am 8/7/06; am JAN 08 2015 ] (Auth: HRS §§, 157-13, 157-31) (Imp: HRS §§157-31, 157-33)

DEPARTMENT OF AGRICULTURE

Amendment to Chapter 4-60, Hawaii Administrative Rules, was adopted by the Board of Agriculture on December 29, 2014, following public hearings held on July 14 and 15, 2014, after public notice was given in the Star-Advertiser, Hawaii Tribune-Herald, West Hawaii Today, Maui News, and Garden Island newspapers on June 6, 2014.

This amendment shall take effect ten days after filing with the Office of the Lieutenant Governor.



SCOTT E. ENRIGHT  
Chairperson  
Board of Agriculture

APPROVED AS TO FORM:

  
Deputy Attorney General

LIEUTENANT GOVERNOR'S  
OFFICE

'14 DEC 29 P 3:46



DAVID Y. IGE  
Governor  
State of Hawaii

Date:

Filed

Department of Agriculture

Amendments to Chapter 4-60  
Hawaii Administrative Rules

December 29, 2014

1. Section 4-60-10, Hawaii Administrative Rules, is amended by amending subsection (a) to read as follows:

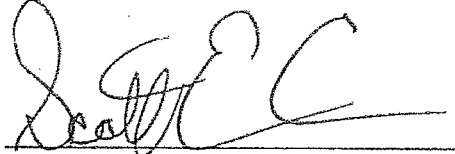
"(a) Minimum prices to be paid by distributors or producer-distributors to producers or producer-distributors for fresh milk produced for sale in the Hawaii milk shed are established on the basis of the utilization for class I milk, class I skim milk, and class II milk as provided in this section. Upon petition by a producer or producer-distributor, the board may grant a waiver allowing the producer or producer-distributor to sell its milk at less than the minimum price if it is demonstrated that the lower price takes into consideration the standards for determining the minimum prices for milk set forth in section 157-32, Hawaii Revised Statutes." [Eff 7/16/80; am 2/1/81; am and comp 12/1/85; am and comp 5/1/87; am 7/1/91; am 4/14/97; am 12/26/97; am 8/7/06; am ] (Auth: HRS §§157-13, 157-31)  
(Imp: HRS §§157-31, 157-33)

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

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

4. This amendment to chapter 4-60, 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 December 29, 2014, and filed with the Office of the Lieutenant Governor.



SCOTT E. ENRIGHT  
Chairperson  
Board of Agriculture

APPROVED AS TO FORM:

  
Deputy Attorney General