Small Business Regulatory Review Board Meeting

Thursday, January 17, 2019

10:00 a.m.

Leiopapa A Kamehameha Building

(State Office Tower)

Conference Room 405 – 235 South Beretania Street, Honolulu, HI 96813

SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)
No. 1 Capitol District Building, 250 S. Hotel Street, Fifth Floor, Honolulu, HI 96813
Mailing Address: P.O. Box 2359, Honolulu, HI 96804
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AGENDA

Thursday, January 17, 2019 ★ 10:00 a.m.
Leiopapa A Kamehameha Building - State Office Tower
Conference Room 405 - 235 South Beretania Street, Honolulu, HI 96813

I. Call to Order

II. Approval of December 12, 2018 Meeting Minutes

III. Old Business

AFTER PUBLIC HEARING

A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to Title 8 Chapter 101 **Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui**, promulgated by Department of Liquor Control, County of Maui - Discussion Leader –Mary Albitz

B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Repeal of Hawaii Administrative Rules (HAR) Title 11, Chapter 200 and Proposed New Chapter 200.1, **Environmental Impact Statement Rules**, promulgated by Department of Health -Back-up Discussion Leader –Nancy Atmospera-Walch and/or Garth Yamanaka

C. Discussion and Action on Correspondence from Mr. Edward Underwood, Administrator, Division of Boating and Ocean Recreation at Department of Land and Natural Resources, dated January 9, 2019, regarding HAR Title 13, Chapter 231, **Operation of Boats, Small Boat Harbors, and Use of Permits for all Navigable Waters**, Section 50 through 70 –Discussion Leader –Mary Albitz and Tony Borges

IV. Legislative Matters

A. Discussion on the Status of the Board's current budget request for fiscal years 2019 and 2020
B. Discussion and Action on Upcoming 2019 Legislation regarding "zero-based budgeting" in which state agencies would start each two-year budget cycle from scratch and justify every dollar requested
C. Update on the Legislative Proposal to Chapter 201M, Hawaii Revised Statutes (HRS) for the 2019 Hawaii Legislative Session – Clarify the powers of the Small Business Regulatory Review Board by adding that the Board may consider any request from small business owners for review of a rule that is proposed and amended as well as adopted by a state agency, and to change "ordinance" to "rules" when making recommendations to the county council or the mayor for appropriate action

V. Administrative Matters

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

VI. Next Meeting: Thursday, February 21, 2019, at 10:00 a.m., 235 S. Beretania St., Leiopapa A Kamehameha Building (State Office Tower), Conf. Room 405, Honolulu, HI

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.

II. Approval of December 12, 2018 Meeting Minutes

Approved: _____

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING - DRAFT
December 12, 2018
Conference Room 405 - Leiopapa A Kamehameha, State Office Tower, Honolulu, Hawaii

I. **CALL TO ORDER:** Chair Borge called the meeting to order at 10:05 a.m., with a quorum present.

MEMBERS PRESENT:
- Anthony Borge, Chair
- Robert Cundiff, Vice Chair
- Garth Yamanaka, Second Vice Chair
- Harris Nakamoto
- Nancy Atmospera-Walch
- Mary Albitz
- Mark Ritchie

ABSENT MEMBERS:
- William Lydgate

STAFF: DBEDT
Dori Palcovich
Ashleigh Garcia

Office of the Attorney General
Jennifer Polk-Waihee

II. APPROVAL OF OCTOBER 17, 2018 MINUTES

Vice Chair Cundiff made a motion to accept the October 17, 2018 minutes, as presented. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

III. APPROVAL OF NOVEMBER 7, 2018 PERMITTED INTERACTIONS WITH MEMBERS, UNDER SECTION 92-2.5(d), HRS

Vice Chair Cundiff made a motion to accept the November 7, 2018 permitted interactions with members, under Section 92-2.5(d), HRS. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

A. Discussion and Action on Proposed Amendments to HAR Title 16 Chapter 17 Captive Insurance Companies, promulgated by Department of Commerce and Consumer Affairs (DCCA)

Mr. Paul Yuen, Supervising Attorney at DCCA's Insurance Division, explained the history of captive insurance companies and what a captive insurance company is, which are insurance companies set up by parent companies. An example is where a business owns a fleet of automobiles, and instead of buying multiple policies for each automobile, a captive insurance company owns and oversees all the vehicles; the parent, in turn, determines a percentage of the policies to be reinvested.

Mr. Yuen further explained that to tighten up the parent company's assets should it become financially distressed, the rule amendments address this issue and ensure that the captive has enough assets to cover its surety (such as bail bonds for construction work projects). While a small business would be affected if it had a claim on a policy and it was issued by the captive insurer, small businesses would not set up a captive insurance company.

Not every state allows captive insurance companies. Hawaii, which is ranked in the top ten of captive insurance companies in the United States in terms of quality and the amount of invested money, has allowed for captive insurance companies since the 1980's. The major benefit of a captive insurance company is the parent's cost-cutting tool as it would no longer need to pay the administrative expenses that private insurance companies pay; Mr. Yuen noted that it is prudent for the captives to buy reinsurance to spread the risk. There are currently 283 captive insurance companies in Hawaii but not all them do surety.

Captives can also loan back profits to the parent, but if the parent runs into financial problems and must close, it would be holding a worthless piece of commercial paper, which DCCA does not want to happen. DCCA has been in touch with the Hawaii Captive Insurance Council regarding the proposed amendments. The council has concurred with the changes as it is within the insurance companies interest that the captive insurance industry remains financially viable.

B. Discussion and Action on Request Received through this Board's "Regulation Review Card" to Review HAR Title 13 Subtitle 11, Part 1 Small Boat Facilities and Provisions Generally Applicable to All State Navigable Waters, Chapter 231, Operation of Boats, Small Boat Harbors, and Use Permits for All Navigable Waters, Sections 50 through 70 to "Open up the Permitting Process for Small Business to Grow and Thrive and to Put Stricter Policies in Place for Current Permit Holders"

Ms. Meghan Statts, DOBOR Oahu District Manager and Mr. Todd Tashima, Legal Fellow, provided background on the permitting process by explaining how the existing rules pertain to permits, issuing of permits, and the length of time it takes to renew permits. Once a permit is issued, which is good up to twelve months, it may be revoked if a violation occurs. To maintain a permit, minimum gross receipts are required; random audits are performed to enforce this requirement.

In September of 2014, Section 13-231-67 was amended to require eleven (11) commercial rent permits. However, prior to going to the Land Board and the Governor for approval of the public hearing, a massive rush of operators requested rent permits. At the time the rule change was made, there were seventeen (17) commercial rent permits available even though the rule allowed for eleven; according to DOBOR's legal counsel, the additional six permits could not be denied. The 17 permits will eventually drop down to the required 11 permits by attrition when permittees do not renew; a business also can buy-out an entity and obtain a permit.

A $15.00 application fee for a rent permit is paid annually until a permit is offered; the cost of a permit depends on the size of a boat. Per statute, the only types of permits that can be auctioned off are thrillcraft, which pertains only to jet ski operations and parasail permits; every other permit is offered through a "wait list."

Ms. Statts noted that Mr. Wesley Moore from Kona Town Surf Adventures, who submitted a request to this Board to perform surf instructions from the ramp at Keauhou, has a commercial use permit that he pays $200 per month. Ms. Statts was unclear if Mr. Moore currently has access to a ramp or whether he can bring a boat into the water as some of the areas are restricted as to whether a motorized vessel can be used.

Overall, the rent limitations in Keauhou reduces over-crowding, which has addressed concerns from the community about the excessive commercial activity that was taking place; parking is also extremely limited at the Keauhou boating area. When public hearing was held for Section 13-231, HAR, there were no oppositions against DOBOR's restricted rental numbers. Therefore, if a new business wanted to use a boat ramp it would not legally be possible because it would need to wait for the attrition process of the permits.

Regarding whether DOBOR is planning to consider modifying the existing rules to open the permitting process to be more equitable to all businesses so that a new business may have an opportunity to "get in the door," Ms. Statts stated that can possibly be done. However, the biggest obstacle is the timing, as it must be approved by DLNR's Land Board with the knowledge that there would be heavy opposition to the request, and then proceed to public hearing. In any case, DOBOR will look into this for further consideration.

Mr. Tashima also stated that there is a similar issue currently on Kauai where businesses are requesting that the current four (4) limit permit be increased. While DOBOR is open to increasing the permit count, the stakeholders' and the communities' concerns opposing higher permit limits must be taken into consideration. Reasons for the opposition include parking concerns and the utilization of the ramps. One option for a new business to come in, pursuant to the current rules, is to buy-out another existing company. There have also been a few permits in the past that were opened to the public because the permits were revoked due to violations of the rules.

Ms. Statts and Mr. Tashima were thanked for their input and answering the questions.

ADMINISTRATIVE MATTERS

A. Discussion and Action on the Board's 2018 Draft *201M-7 Periodic Review; Evaluation Report* pursuant to Section 201M-7, HRS

DBEDT staff stated that since the last board meeting, there have been several updates: PUC provided updates on every single rule; DOT updated the rules; many of DCCA's rules were updated; and DOH has not responded. Also, Deputy Attorney General Polk-Waihee contacted the deputy AG's that oversee the departments of agriculture and budget & finance.

B. Discussion and Action on the Board's Draft 2018 *Annual Report Summary* for Submission to the Hawaii State Legislature under Section 201M-5(f)

Not applicable.

C. Update on Changes to the Board's 2019 Meeting Schedule

Due to the lack of a meeting quorum on December 5th, the next board meeting is scheduled for December 12th. DBEDT staff will look to change the meeting venue to conference room 405 at Leiopapa A Kamehameha Building, State Office Tower.

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

   a. Review of Board's Proposed Power Point Presentation for Outreach Purposes

DBEDT staff will add more statistics in Slide 2 regarding women, minorities and small businesses.

IV. OLD BUSINESS – After Public Hearing

1. Discussion and Action on Proposed Amendments to HAR Title 16 Chapter 17 Captive Insurance Companies, promulgated by Department of Commerce and Consumer Affairs (DCCA)

Discussion leader Mr. Ritchie stated that the rules are meant to give greater clarity to the captive insurance companies. Testimonies from the Legislative Committee of the Hawaii Captive Insurance Council and Iron Workers' Stabilization Fund provided support of the changes to the rules. In response to the testimonies, Vice Chair Cundiff appreciated the representation of the industry and the small businesses.

Vice Chair Cundiff made a motion to move the proposed rules to public hearing. Second Vice Chair Yamanaka seconded the motion, and the Board members unanimously agreed.

2. Discussion and Action on Request Received from this Board's "Regulation Review Card" to Review HAR Title 13 Subtitle 11, Part 1 Small Boat Facilities and Provisions Generally Applicable to All State Navigable Waters, Chapter 231, Operation of Boats, Small Boat Harbors, and Use Permits for All Navigable Waters, Section 50 through 70 to "Open Up the Permitting Process for Small businesses to Grow and Thrive and to Put Stricter Policies in Place for Current Permit Holders"

Chair Borge stated that Mr. Moore, who submitted a regulation review card to this Board, has a valid concern which is to open the permitting process so local small businesses can grow and thrive, and to put stricter policies in place for current permit holders. Chair Borge suggested a more equitable, competitive solution while keeping in line with market demands; he asked if DOBOR had alternatives to the attrition process.

In response, Mr. Underwood, DLNR's DOBOR Administrator, stated that Mr. Moore, who teaches surf lessons on the shore and who is currently on a wait list to use the ocean, can buy someone else's permit. In addition to attrition, he would be able to receive a permit through an auction, because of a statute change, or when a permit has been revoked.

Ms. Meghan Statts, DOBOR District Manager, stated that small businesses must meet the minimum gross receipts. Although there is a current discussion with the deputy attorney general's office as to how much can be charged, each commercial-use permit, of which the owners have a property interest, is charged three percent because the statute specifically states three percent.

As a recap to the discussion, it was stated that the existing rules were written and approved in 2014. Mr. Moore, who is currently on a "wait list," is claiming there is a limited number of permits per location because once a permit is received it cannot be relinquished absent certain factors.

The Board thanked Mr. Underwood and requested that DOBOR submit a written response to this Board about the permitting process that includes the options and steps Mr. Moore may take in obtaining a permit at Kailua-Kona, Hawaii.

A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 4 Chapter 186, Petroleum Products Accounting and Inspection, promulgated by Department of Agriculture (DoAg)

Discussion leader Vice Chair Cundiff stated that the rules are after the public hearing. At the hearing, one person showed up to testify and one written testimony was received. As the initial rule changes came from the petroleum industry, which represents small business, this Board should support the rule changes.

Mr. Ritchie made a motion to move the proposed rules to the Governor for adoption. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed New HAR Title 18 Chapter 237 General Excise Tax Law, Section 34-13, Persons with a Material Interest in a Tax Return, promulgated by Department of Taxation (DoTax)

Discussion leader Second Vice Chair Yamanaka stated that at the public hearing, the Tax Foundation of Hawaii testified against the rule changes. Mr. Jacob Herlitz, DoTax Administrative Rule Specialist, explained three concerns conveyed by the Tax Foundation. However, DoTax's deputy attorney general determined that the rules are legal and appropriate "as to form" despite the Tax Foundation's claims; DoTax chose to listen to the attorney general's opinion.

In response to the question as to how the public was notified of the public hearing, Mr. Herlitz responded that DoTax followed the law and minimum requirements by publishing the hearing in the various local newspapers for one day; no other forms of publication were made.

Chair Borge understood that DoTax followed the laws in posting the public hearing however he was surprised that no follow-up action was made to the various chambers of commerce. Not getting the small businesses involved is of concern and he requested that, in the future, the small business community be contacted and that the impact statement reflect concerns,

if any, of small businesses. Second Vice Chair Yamanaka attempted to reach out to other small business organizations but had not heard back before the meeting.

Mr. Thomas Yamachika, President of the Tax Foundation, testified that the statute dates to the 1980's and explained how the process works. Currently, although the rules allow tax returns to be seen by contractors, trustees, partners, owners, etc., the filings and tax returns must be appropriately confidential. Mr. Herlitz stated that Mr. Yamachika's sentiments are that the privacy laws are intended to induce candor from taxpayers and these rules are counter to inducing candor.

Chair Borge believed more input and information is needed from the businesses as he hoped there would have been more public involvement. He suggested that a letter be sent to the Governor with the Board's concerns; i.e., not enough input from the stakeholders and privacy concerns. Vice Chair Cundiff concurred, noting that once the rules leave this Board prior to public hearing, there is hope that there is public involvement from the small businesses to bring forth concerns and issues; however, it appears that the process did not allow for this. Thus, overall, this Board does not have enough information from the stakeholders to take a position on the proposal.

Vice Chair Cundiff made a motion to send a memorandum to the Governor stating that more input is needed from the stakeholders and the industry to determine the extent of impact the proposed rules have on small businesses, and that the Board has concern with privacy issues as it relates to the potential lack of confidentiality of tax return information expected by both taxpayers and tax preparers. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 18 Chapter 237D, Transient Accommodations Tax, promulgated by DoTax, as follows:

   a. Section 4-01 Certificate of Registration
   b. Section 4-02 Display of Registration Certificate
   c. Repeal Sections 4-03 through 4-07
   d. Proposed New Sections 4-08 through 4-35

Discussion leader Second Vice Chair Yamanaka stated that there were two concerns brought up at the public hearing by Tax Foundation of Hawaii. One concern suggested amending the reference to postmarks to allow for the use of private delivery services, which is consistent with Section 231-8(c), HRS. DoTax elected to follow the Tax Foundation's suggestion for consistency.

The second concern suggested providing additional standards in situations where DoTax issues fines more than $5,000. DoTax did not concur with this suggestion as it was believed that the standards under the proposed rules, as currently drafted, are sufficient because Act 204 requires fines of not less than $5,000 to third-time violators. Thus, under the proposed rules, DoTax is limited to issuing fines of merely $5,000 and not more, unless it provides an explanation for higher fines in writing.

Ms. Albitz stated there was lack of involvement and input with the industry. Mr. Ritchie expressed that this Board should be more proactive in reaching the small businesses regarding these and other rules.

Second Vice Chair Yamanaka made a motion to move the proposed rules to go to the Governor for adoption. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

D. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 12, promulgated by Department of Labor and Industrial Relations (DLIR)

a. Chapter 229 General, Administrative and Legal Provisions
b. Chapter 230.1 Elevators, Escalators, Dumbwaiters, Moving Walks, and Material Lifts and Dumbwaiters with Automatic Transfer Devices; and
c. Chapter 240 Elevator Requirements for Individuals with Disabilities

Mr. Bert Yorita, Elevator Supervisor and Mr. Julius Dacanay, Boiler & Elevator Branch Manager at DLIR, explained that the rule changes are mostly housekeeping measures that were excluded in the rule changes a few years ago. Mr. Ritchie noted that prior to public hearing there were no noted impacts to small business; Ms. Albitz concurred, and stated that the industry was in support of the rule changes.

Mr. Ritchie made a motion to move the proposed rules to the Governor for adoption. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

E. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 4 Chapter 71, Plant and Non-Domestic Animal Quarantine Non-Domestic Animal Import Rules, promulgated by DoAg

Vice Chair Cundiff reminded the members that the changes reflect amendments to the existing rules after the public hearings which prohibit the transportation of undomesticated animals and noted that DoAg's major concern relates to public safety. Mr. Jonathan Ho, Acting Manager at DoAg's Plant Quarantine Branch, explained that the first segment of the rules relating to house crickets, tilapia and housekeeping measures were previously reviewed by this Board. The second segment, which relates to prohibition of dangerous wild animals, is before this Board today.

Mr. Ho stated that one business, E.K. Fernandez (E.K.), was the sole, major business impacted by the rules; E.K. brings wild animals to Hawaii for approximately six weeks a year. Chair Borge added that there is a trickle-down effect of the impact on the small businesses.

At the public hearings, which occurred on all the islands, most of the testifiers supported the amendments. Objections included culture and tradition being lost with the banning of wild animals, financial challenges, and that there was no basis for the public welfare of the wild animals. Mr. Ho also stated that there is an overall decline in the industry because of the public's sentiment in viewing the rights of wild animals and that the permitting process is designed to operate safely and very specific to the species.

Testifier, Ms. Donna Smith, Vice President E.K. for the past 38 years, explained that the permitting process proposed in the rules is very specific as it relates to various tests for specific animals. She testified that E.K. has been successful for 115 years but has experienced exponential rising costs over the past few years; the restrictions of the regulations will continue to cut into E.K.'s revenues.

Further, no other business produces the services that E.K. provides. If the rules are adopted the business's services will be gone forever, as Hawaii's unique economic climate creates a barrier to entry in the marketplace that is intrinsic to Hawaii, and which technically makes E.K.'s business irreplaceable. She added that a lot of people enjoy watching wild animals; without the animals these consumers would not attend the shows.

In addition, Ms. Smith explained that the community and nonprofit organizations on Maui depend heavily on E.K.'s participation at the Maui Fair as well as department of education schools which have sponsored carnivals and used the money proceeds for improvements to the schools, student travel, athletic equipment, and numerous other things that the department's funds do not provide these schools.

Ms. Cathy Goeggel, President and founder of Animal Rights Hawaii since 1977, testified in support of the rules banning wild animals. Regarding the small business aspect, she noted that a few years ago Ringling Brother and Barnum & Baily Circus stopped using elephants in the acts and finally closed because it was acknowledged that the business had to change with the times. She added that there are other ways to raise monies for the schools besides animal attractions.

Mr. Tyler Ralston, testified that he witnessed the Tyke incident regarding the elephant that was killed twenty years ago in Hawaii. He questioned whether E.K. was in fact considered a "small business," and stated that there is no correlation in E.K.'s revenue between the years that the wild animals are brought into Hawaii and the years the animals are not brought in. He urged this Board to look at the positive impact the proposed rule changes would have on Hawaii and take the stance that bringing wild animals into Hawaii is not a positive attribute. Ms. Smith clarified that Fernandez Entertainment is the "main" company and is made up of several smaller businesses, of which, E.K. Fernandez is one.

Mr. Keith Dane, Hawaii Policy Advisor for the Humane Society, testified that the public's safety and health is a major concern regarding bringing dangerous, wild animals into Hawaii. Overall, the public is concerned about animal welfare. Many circuses have done away with wild animals; for example, Cirque du Soleil, which is the largest circus in the nation, does not even have animals in its act. As Governor Ige placed a ban in 2015 for permits allowing wild animals to come into Hawaii, Mr. Dane encouraged this Board to recommend approval of the rule changes.

Testifier and chair of the Humane Society, stated that in the past few years, there have not been other businesses or schools impacted by the proposed rules. She claimed there are no impacts to small business; the impact is with the negative publicity that would come from a serious incident. The Humane Society absolutely supports E.K., and it does not want to see E.K. go out of business; however, dangerous wild animals are not needed for E.K. to

thrive. She added that there is a trend where people around the world are claiming they will not come to Hawaii if wild animals are transported into Hawaii.

Mr. Cundiff appreciated the testimonies today and questioned Mr. Ho as to what thought processes were made in making the various exemptions in the rules bringing dangerous, wild animals into Hawaii. Mr. Ho responded that movie filming has an exemption to bring in wild animals as it relates to the public's safety being monumentally reduced. Zoos, however, are not exempted, but can bring in elephants, for example.

Mr. Ho stated that regarding the overall business impact, small businesses during the Maui public hearing, claimed that should E.K. not be allowed to import the animals there would be a negative financial effect on the Maui fairs. Chair Borge noted that people make the decision by buying a ticket or not buying a ticket, and as such, the public decides whether they want to view wild animal shows.

Vice Chair Cundiff stated that in the history of this Board, this is the only time when only one company appears to be impacted by the rules. Mr. Nakamoto, having been born and raised in Hawaii, sees that E.K. has endured tough economic times throughout the years. In the past, there has been competition and now with the change of times, E.K. is the only wild animal circus.

Second Vice Chair Yamanaka added that although it has been recognized that there is a negative impact of shipping in wild animals to Hawaii, there was no testimony from the travel industry. Vice Chair Cundiff stated that the public safety concern of bringing in wild animals becomes cloudy because of the exemption of using wild animals in Hawaii's filming industry, and because no testimony addressed this issue. Further, there needs to be fairness and consistency with the business impact and the animal safety concerns.

Vice Chair Cundiff made a motion to move the proposed amended rules forward to the Governor with reservations, as the Board has determined there is an impact to small businesses; Mr. Nakamoto seconded the motion. Vice Chair Cundiff, Second Vice Chair Yamanaka, Ms. Albitz, Mr. Nakamoto, Ms. Atmospera-Walch, and Mr. Ritchie approved; Chair Borge opposed. Motion carried.

V. NEW BUSINESS – Before Public Hearing

A. Discussion and Action on Proposed Amendments to Title 8 Chapter 101, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, promulgated by Department of Liquor Control, County of Maui

Ms. Albitz indicated that she reviewed the proposed amendments and did not find any ascertainable negative impact to small businesses; on the contrary, the amendments help small businesses.

Ms. Albitz made a motion to move the proposed rules to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

VI. ADMINISTRATIVE MATTERS

A. Discussion and Action on the Board's 2018 Draft *201M-7 Periodic Review; Evaluation Report* for submission to the Hawaii State Legislature under Section 201M-7, HRS

Ms. Albitz made a motion to approve the draft *201M-7 Periodic Review; Evaluation Report* to the Legislature. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on the Board's Draft 2018 *Annual Report Summary* for Submission to the Hawaii State Legislature under Section 201M-5(f), HRS

Mr. Ritchie made a motion to move the Board's Draft *2018 Annual Summary Report* to the Legislature. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

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

a. Review of Board's Proposed Power Point Presentation for Outreach Purposes

The members reviewed the proposed PowerPoint presentation. Vice Chair Cundiff recommended that the slide referencing "Recent Actions Taken by the SBRRB" be amended by omitting "animal rights" and replacing it with "public safety."

b. Update on the Board's Website Proposal

Chair Borge reminded the members that $5,000 was previously approved by DBEDT for the preliminary work of the Board's website; the SBRRB was recently budgeted another $10,000 for a total of $15,000.

Mr. Ritchie stated that DBEDT staff recently met with HIC (Hawaii Information Consortium) representatives, Ms. Rosie Warfield and Mr. Christopher Conover, who were present at today's meeting.

Ms. Warfield explained that the website's development is broken out into two phases. Phase I is currently in process and is expected to end in March 2019 when Phase II will begin. It was questioned as to how much involvement the Board wants to provide regarding updates to the website. In response, it was suggested that the website committee provide the Board with substantive updates rather than small details every month.

Vice Chair Cundiff made a motion for the website committee, on behalf of the Board, to continue with interactions with the website developer, HIC, and to provide the Board with an update on the website's development when it is 50% completed. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

c. Review of Board's 2019 Meeting Schedule

The new 2019 meeting dates were reviewed, and it was agreed that the monthly meetings, going forward, will be held on Thursdays rather than Wednesdays.

VII. LEGISLATIVE MATTERS

A. Update on the Legislative Proposal to Chapter 201M, HRS, for the 2019 Hawaii Legislative Session – Clarify the powers of the Small Business Regulatory Review Board by adding that the Board may consider any request from small business owners for review of a rule that is proposed and amended as well as adopted by a state agency, and to change "ordinance" to "rules" when making recommendations to the county council or the mayor for appropriate action

Chair Borge explained Governor Ige needs to approve this bill for the administration's package.

Also, the Board is still waiting for approval from the Governor on board member nominations from the House of Representatives.

B. Discussion and Action on the Delegation of Authority to Board Member(s) and/or Staff to Submit Testimony and/or Testify on behalf of the Board during the 2019 Hawaii State Legislative Session

Vice Chair Yamanaka made a motion to recommend that Vice Chair Cundiff, Second Vice Chair Yamanaka and Chair Borge have authority to submit testimony and/or testify on behalf of the Board during the 2019 Hawaii State legislation session. Ms. Albitz seconded the motion, and the Board members unanimously agreed.

VIII. NEXT MEETING – The next meeting is scheduled on Thursday, January 17, 2019, in Conference Room 405, 235 South Beretania Street, Leiopapa A Kamehameha Building (State Office Tower), Honolulu, Hawaii at 10:00 a.m.

IX. ADJOURNMENT – Ms. Atmospera-Walch made a motion to adjourn the meeting and Vice Chair Cundiff seconded the motion; the meeting adjourned at 1:20 p.m.

III. Old Business

A. **Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to Title 8 Chapter 101, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, promulgated by Department of Liquor Control, County of Maui**

RECEIVED
By SMALL BUSINESS REGULATORY REVIEW BOARD at 12:26 pm, Dec 14, 2018

SMALL BUSINESS STATEMENT "AFTER" PUBLIC HEARING TO THE SMALL BUSINESS REGULATORY REVIEW BOARD

(Hawaii Revised Statutes (HRS), §201M-3)

Department or Agency: Department of Liquor Control, County of Maui

Administrative Rule Title and Chapter: Title MC-08, Department of Liquor Control, Subtitle 01, Liquor Commission Chapter 101

Chapter Name: Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui

Contact Person/Title: Glenn Mukai, Director

Phone Number: 808-243-7754

E-mail Address: liquor@mauicounty.gov **Date:** December 13, 2018

A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.

B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7? Yes ☐ No ☑

(If "Yes" please provide webpage address and when and where rules may be viewed in person.)

(Please keep the proposed rules on this webpage until after the SBRRB meeting.)

I. Rule Description: New ☑ **Repeal** ☐ **Amendment** ☑ **Compilation** ☐

II. Will the proposed rule(s) affect small business? Yes ☐ **No** ☑ (If "No" you do not need to submit this form.)

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

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

III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance? Yes ☑ **No** ☐ (If "Yes" no need to submit this form.) (e.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives.) HRS §201M-2(d)

IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a)) **Yes** ☐ **No** ☐ (If "Yes" no need to submit this form.)

* * *

I. **Please explain how the agency involved small business in the development of the proposed rules.**

   a. **Were there any recommendations incorporated into the proposed rules? If yes, explain. If not, why not?**

II. **If the proposed rule(s) affect small business, and are not exempt as noted above, please provide the following information:**

1. A description of how opinions or comments from affected small businesses were solicited.

2. A summary of the public's and small businesses' comments.

3. A summary of the agency's response to those comments.

4. The number of persons who:
   (i) Attended the public hearing:

   (ii) Testified at the hearing:

   (iii) Submitted written comments:

5. Was a request made at the hearing to change the proposed rule in a way that affected small business?
   (i) If "Yes" was the change adopted? **Yes** ☐ **No** ☐

   (ii) If No, please explain the reason the change was not adopted and the problems or negative result of the change.

* * *

ALAN M. ARAKAWA
MAYOR

GLENN MUKAI
DIRECTOR

GEORGETTE C.R. TYAU
DEPUTY DIRECTOR

DEPARTMENT OF LIQUOR CONTROL
COUNTY OF MAUI

2145 KAOHU STREET, ROOM 105 • WAILUKU, MAUI, HAWAII 96793
PHONE (808) 243-7753 • FAX (808) 243-7558

MEMORANDUM

TO: Anthony Borge, Chairperson
Small Business Regulatory Review Board/DBEDT

FROM: Glenn Mukai, Director
Department of Liquor Control, County of Maui

DATE: November 13, 2018

SUBJECT: **Proposed Rule Amendments for Department of Liquor Control, County of Maui, Title 8, Chapter 101, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui**

Pursuant to Chapters 91 and 92, Hawaii Revised Statutes, the County of Maui Liquor Commission has provided notice of a public hearing for the purpose of amending certain subsections of the Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui. Enclosed are the Notice of Public Hearing and the proposed Rule Amendments for your review, comments and suggestions.

The Department of Liquor Control, County of Maui, Small Business Review and Advisory Committee met on 7/16/18 and 8/13/18 to review the proposed amendments and made the following findings:

1. The proposed rule amendments will not cause any direct or significant economic burden upon small business.

2. The proposed rule amendments will not impact or be directly related to the formation, operation or expansion of a small business.

3. The proposed rule amendments will greatly assist and not adversely affect small business.

4. All of the proposed rule amendments are necessitated by amendments to Chapter 281, H.R.S. by the State legislature.

The Department of Liquor Control, County of Maui, Small Business Review and Advisory Committee consists of individuals representing various classes of liquor licenses and Lisa Paulson, Executive Director of the Maui Hotel & Lodging Association.

Should you require further information or assistance, please do not hesitate to call me at (808) 243-7754.

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

Department or Agency: Department of Liquor Control, County of Maui

Administrative Rule Title and Chapter: Title 08, Chapter 101

Chapter Name: Rules Governing the Manufacture and Sale of Intoxication Liquor of the County of Maui

Contact Person/Title: Glenn Mukai, Director

Phone Number: 1-808-243-7754

E-mail Address: liquor@mauicounty.gov **Date:** November 13, 2018

A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.

B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7? Yes ☐ No ☑ (If **Yes**, please provide webpage address and when and where rules may be viewed in person☺
www.mauicounty.gov/1004/RulesLaws
(Please keep the proposed rules on this webpage until after the SBRRB meeting.)

I. **Rule Description: New** ☐ **Repeal** ☐ **Amendment** ☑ **Compilation** ☐

II. **Will the proposed rule(s) affect small business? Yes** ☐ **No** ☑ (If **No**, no need to submit this form.)

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

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

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

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

IV. **Is the proposed rule being adopted pursuant to emergency rulemaking?** (HRS §201M-2(a)) **Yes** ☐ **No** ☑ (If **Yes,** no need to submit this form.)

* * *

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

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

DNA

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

DNA

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

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

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

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

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

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

DNA

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

DNA

5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.

DNA

6. Consideration of creative, innovative, or flexible methods of compliance for small businesses. The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules.

DNA

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

The Department's Small Business Review and Advisory Committee worked in partnership on and creating the amendments. Committee consists of Executive Director of Maui Hotel & Lodging Associations and representatives from various classes of liquor licenses.

   a. If there were any recommendations made by small business, were the recommendations incorporated into the proposed rule? If yes, explain. If no, why not.

Recommendations were incorporated into the proposed rules.

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

DNA

If yes, please provide information comparing the costs and benefits of the proposed rules to the costs and benefits of the comparable federal, state, or county law, including the following:

a. Description of the public purposes to be served by the proposed rule.

b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.

c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.

d. A comparison of the monetary costs and benefits of the proposed rule with the costs and benefits of imposing or deferring to the related federal, state, or county law, as well as a description of the manner in which any additional fees from the proposed rule will be used.

e. A comparison of the adverse effects on small business imposed by the proposed rule with the adverse effects of the related federal, state, or county law.

* * *

Small Business Regulatory Review Board / DBEDT
Phone: (808) 586-2594
Email: dbedt.sbrrb@hawaii.gov

This Statement may be found on the
SBRRB Website at:
http://dbedt.hawaii.gov/sbrrb/small-business-impact-statements-pre-and-post-public-hearing

NOTICE OF PUBLIC HEARING

Pursuant to Section 91-3(a), Hawaii Revised Statutes, the Liquor Control Commission of the County of Maui (the "Liquor Commission") hereby provides notice of a public hearing for the purpose of amending the following sections of its Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui (the "Rules").

The entire text of the proposed rule amendments is listed below, and is further summarized as follows:

SUMMARY:

1. Section 08-101-22: Licenses, classes.

   Authorizing the issuance of new class 2 restaurant licenses before commencing operation; clarifies that class 2 licenses are transferrable; requires an applicant for a new class 2 license or a transferee to certify that the applicant or transferee intends to and shall derive no less than thirty per cent of the establishment's gross revenue from the sale of food.

   Authorizing class 4 retail dealer licensees to sell up to one half-gallon of beer, malt beverages or cider in sealed containers provided by the patron.

   Allowing social clubs holding class 10 special licenses to sell wine from the social club's inventory to club members for off-premises consumption; waiver of certain requirements for the issuance of class 10 licenses; allowing class 10 licensees to auction liquor in sealed or covered containers or services that provide liquor; requiring a current list of officers and directors, if the applicant is a nonprofit organization; and unless waived by the commission, requiring proof of liquor liability insurance.

   Permitting class 14 brewpub and class 18 small craft producer licensees to allow minors accompanied by a parent or legal guardian on to the class 14 and class 18 licensee's premises.

2. Section 08-101-24: Temporary licenses.
   Waiving hearings, fees, notarization of documents, submission of floor plans and other requirements for one-day temporary liquor licenses for fundraising events by nonprofit organizations; allowing auction of liquor in sealed or covered containers or services that provide liquor; no requirement of criminal history record checks; and providing a definition of "nonprofit organization."

3. Section 08-101-30: Application.

Eliminating the requirement that an applicant for a liquor license or a transferee of a liquor license obtain a federal tax clearance.

4. Section 08-101-31: No license issued, when.

Providing that only the officers and directors of a publicly traded corporation designated as a primary decision-maker shall be considered for disqualification as a liquor licensee, and eliminating the requirement that an applicant for a liquor license or a transferee of a liquor license obtain a federal tax clearance.

5. Section 08-101-33: Renewal of license.

Eliminating the requirement that an applicant for renewal of an existing license obtain a federal tax clearance.

PROPOSED RULE AMENDMENTS

1. Section 08-101-22, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

"§08-101-22 Licenses, classes. (a) Licenses may be granted by the commission as provided in this rule.

(b) Class 1. Manufacturer license.

(1) A license for the manufacture of liquor shall authorize the licensee to manufacture the liquor therein specified and to sell it at wholesale in original packages to any person who holds a license to resell it and to sell draught beer or wine manufactured from grapes or other fruits grown in the State in any quantity to any person for private use and consumption.

(2) Under this license, no liquor shall be consumed on the premises except as authorized by the commission.

(3) Of this class, there shall be the following kinds:

(A) Beer[;].

(B) Wine[;].

(C) Alcohol[; and].

(D) Other specified liquor.

(4) It shall be unlawful for any holder of a manufacturer license to have any interest whatsoever in the license or licensed premises of any other licensee, except as may be provided within section 08-101-106 of the rules of the commission. This subsection shall not prevent the holder of a manufacturer license under this chapter or under the law of another jurisdiction from maintaining any interest in the

license or licensed premises of a wholesale dealer licensee under this chapter.

(c) Class 2. Restaurant license.

(1) A license under this class shall authorize the licensee to sell liquor specified in this section for consumption on the premises; provided that a restaurant licensee, with commission approval, may provide off-premises catering of food and liquor by applying and obtaining approval for a catering permit while performing food catering functions; provided further that the catering activity shall be directly related to the licensee's operation as a restaurant. A license under this class shall also authorize the licensee to sell beer, malt beverages, or cider for off-premises consumption, provided that the licensee has the appropriate kind of license pursuant to paragraph (4); and provided further that the beer, malt beverage, or cider is sold in a securely sealed or covered glass, ceramic, or metal container that is sold to or provided by the patron, and each sealed or covered glass, ceramic, or metal container does not exceed a maximum capacity of one-half gallon.

(2) A licensee under this class shall be issued a license according to the category of establishment the licensee owns or operates. The categories shall be:

(A) A standard bar; or

(B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by the rules of the commission. The subcategories of this category shall be:

(i) Premises in which recorded background music is provided**[**; and**]**.

(ii) Premises in which live entertainment or recorded music is provided; provided that facilities for dancing by the patrons may be permitted as provided by the rules of the commission.

(3) If a licensee under class 2 desires to change the category of establishment the licensee owns or operates, the licensee shall apply for a new license applicable to the category of the licensee's establishment.

(4) Of this class, there shall be the following kinds:

(A) General (includes all liquor except alcohol)**[**;**]**.

(B) Beer and wine**[**; and**]**.

(C) Beer.

(5) Notwithstanding section 281-57, HRS, the commission may approve at one public hearing and without notice the change to a class 2 restaurant license of a licensee holding and operating a class 5 dispenser license who meets the requirements of a class 2 license.

(6) Restaurant license may be granted to a place, which regularly, and in a bona fide manner, is used and kept open for the serving of meals to patrons for compensation, and which has suitable State department of health and County of Maui department of fire control approved kitchen facilities within, containing the necessary equipment and supplies for cooking an assortment of foods, which may be required for ordinary meals. Additionally, the premises must have been continuously operated for one year prior to any application, and the applicant must provide a financial report of gross revenue of that year of which at least 30 percent of the establishment's gross revenue must be derived from the sale of foods.

(7) Restaurant license may be transferred to an applicant for a class 2 restaurant license, whose proposed premises is the same premises of the transferor, provided:

(A) The premises meet all requirements for a restaurant license and is the same class, kind, and category.

(B) The transferee certifies that the transferee intends to and shall derive no less than 30 percent of the establishment's gross revenue from the sale of food.

(C) The applicant shall submit, not later than the fifth day of each month for a period of one year, a financial report of food and liquor gross revenue of which 30 percent of the establishment's gross revenue must be derived from the sale of food, failure to meet this requirement, the license shall be automatically downgraded to a dispenser license of the same category and kind.

(8) A new class 2 restaurant license may be issued prior to an establishment commencing operation. An application for a new class 2 license shall include an affidavit by the applicant that the applicant intends to and shall derive no less than 30 percent of the establishment's gross revenue from the sale of food.

(A) The premises shall meet all requirements for a restaurant license.

(B) The applicant shall submit, no later than the fifth day of each month for a period of one year, a financial report of food and liquor gross revenue of which 30 percent of the establishment's gross revenue must be derived from the sale of food, failure to meet this requirement, the license shall be automatically downgraded to a dispenser license of the same category and kind.

(d) Class 3. Wholesale dealer license.

(1) A license for the sale of liquor at wholesale shall authorize the licensee to import and sell only to licensees or to others who are by law authorized to resell the liquor specified by the license but are

not by law required to hold a license provided that a class 3 licensee may sell samples of liquor back to the manufacturer.

(2) Under a class 3 license no liquor shall be consumed on the premises except as authorized by the commission.

(3) Of this class, there shall be the following kinds:

(A) General (includes all liquor except alcohol)[;].

(B) Beer and wine[; and].

(C) Alcohol.

(4) If any wholesale dealer solicits or takes any orders in any county other than that where the dealer's place of business is located, the orders may be filled only by shipment direct from the county in which the wholesale dealer holds the dealer license. Nothing in this subsection shall prevent a wholesaler from selling liquor to post exchanges, ships' service stores, army or navy officers' clubs, or like organizations located on army or navy reservations, or to any vessel other than vessels performing a regular water transportation service between any two or more ports in the State, or to aviation companies who operate an aerial transportation enterprise subject to chapter 269, HRS, and engaged in flight passenger services between any two or more airports in the State for use on aircraft, or aviation companies engaged in transpacific flight operations for use on aircraft outside the jurisdiction of the State.

(e) Class 4. Retail dealer license.

(1) A license to sell liquor at retail or to class 10 [licensees,] licensee, shall authorize the licensee to sell the liquor therein specified in their original packages. A license under this class shall also authorize the licensee to sell beer, malt beverages, or cider in non-original packages; provided that the beer, malt beverage, or cider is sold in a securely sealed or covered glass, ceramic, or metal container that is sold to or provided by the patron, and each sealed or covered glass, ceramic, or metal container does not exceed a maximum capacity of one half-gallon.

(2) Under a class 4 license, no liquor shall be consumed on the premises except as authorized by the commission.

(3) Of this class, there shall be the following kinds:

(A) General (includes all liquor except alcohol)[;].

(B) Beer and wine[; and].

(C) Alcohol.

(f) Class 5. Dispenser license.

(1) A license under this class shall authorize the licensee to sell liquor specified in this subsection for consumption on the premises.

(2) A licensee under this class shall be issued a license according to the category of establishment the licensee owns or operates. The categories shall be:

(A) A standard bar[;].

(B) Premises in which a person performs or entertains unclothed or in attire restricted to use by entertainers pursuant to the rules of the commission[;].

(C) Premises in which live entertainment or recorded music is provided. The subcategories of this category shall be:

(i) Premises in which recorded background music is provided; or

(ii) Premises in which live entertainment or recorded music is provided; provided that facilities for dancing by the patrons may be permitted as provided by the rules of the commission[; or].

(D) Premises in which employees or entertainers are compensated to sit with patrons, whether or not the employees or entertainers are consuming nonalcoholic beverages while in the company of the patrons, pursuant to the rules of the commission; provided that all employees, entertainers, or other persons or patrons therein shall be twenty-one years of age or older; and provided further that there shall be no more than twelve category D, class 5 dispenser licenses in the County.

(3) If a licensee under class 5 desires to change the category of establishment the licensee owns or operates, the licensee shall apply for a new license applicable to the category of the licensee's establishment.

(4) Of this class, there shall be the following kinds:

(A) General (includes all liquor except alcohol)[;].

(B) Beer and wine[; and].

(C) Beer.

(5) Any licensee holding a different class of license and who would otherwise come within this class with the same or downgrade of kind or category of license, or both, shall not be required to apply for a new license.

(g) Class 6. Club license.

(1) A club license shall be general only but shall exclude alcohol and shall authorize the licensee to sell liquor to members of the club, and to guests of the club enjoying the privileges of membership for consumption only on the premises kept and operated by the club; provided that the license shall also authorize any club member to keep in the member's private locker on the premises a reasonable quantity of liquor owned by the member, for the member's own personal use and not to be sold that may be consumed only on the premises. A club licensee shall be authorized to host charitable functions that are open to the general public in accordance with commission rules.

(2) Club licensees shall keep a complete list of its members, which list shall at all times be conspicuously posted and exposed to view, convenient for inspection on the licensed premises. The categories of this class shall be as follows:

(A) A standard bar; or

(B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by the rules of the commission. The subcategories of this category shall be:

(i) Premises in which recorded music is provided; or

(ii) Premises in which live entertainment or recorded music is provided.

(3) Any person enjoying the guest privileges of a club and to whom liquor may be sold must be a bona fide guest of a member of the club, and the member must be present at all times within the premises with his or her guest(s).

(4) Clubs shall keep records as to registration of guests for at least one year, which records shall be produced whenever required by the director.

(5) Licensee shall have readily available at all times a guest book on the licensed premises and shall be responsible for its member signing in his or her guest(s) at the time his or her guest(s) enter the licensed premises.

(h) Class 8. Transient vessel license.

(1) A general license may be granted to the owner of any vessel for the sale of liquor (other than alcohol) on board the vessel while en route within the jurisdictional limits of the State and within any port of the State.

(2) Sales shall be made only for consumption by passengers and their guests on board the vessel.

(3) The license shall be issuable in each county where the sales are to be made.

(4) The application for the license may be made by any agent representing the owner.

(i) Class 9. Tour or cruise vessel license.

(1) A general license may be granted to the owner of any tour or cruise vessel for the sale of liquor other than alcohol on board the vessel while in the waters of the State; provided that sales be made only for consumption by passengers on board while the vessel is in operation outside the port or dock of any island of the State, unless otherwise approved by the commission.

(2) The license shall be issuable in the county where the home port of the vessel is situated.

(3) If on any vessel for which no license has been obtained under the rules of the commission, any liquor is sold or served within three

miles off the shore of any island of the County, the same shall constitute a violation of the rules of the commission.

(4) A license under this class shall be issued a license according to the category of establishment the licensee owns or operates. The categories shall be:

(A) A standard bar; or

(B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by the rules of the commission.

(j) Class 10. Special license.

(1) A special license may be granted by the director for the sale of liquor for a period not to exceed three consecutive days at the same location for fundraising events by nonprofit organizations, political candidates, and political parties; provided that any registered educational or charitable nonprofit organization may sell liquor in its original package for off-premises consumption[.]; provided further than any social club granted tax exempt status pursuant to U.S. Internal Revenue section 501(c)(7) may sell wine from the social club's inventory to the club's members for off-premises consumption.

(2) Special licenses shall be issued only to charitable or educational nonprofit organizations, to political parties and to candidates seeking public office from which organization no person is entitled to or takes, directly or indirectly, any share of the profits thereof. Nonprofit charitable or educational organizations shall be required to attach their U.S. Internal Revenue's sections 501(c)(3), 501(c)(4), 501(c)(10), or 501(c)(19) exemption letter and political candidates shall be required to attach a copy of their organizational report filed with the State campaign spending commission, to their application. [Notwithstanding the provisions in subchapter 4, Licensing Procedures, special license applications for non-profits shall not require personal history statements or criminal history background checks, but shall be subject to the following conditions:

(A) (Applicable to individual only). The applicant is the sole owner of the nonprofit proposed to be licensed, is no less than twenty-one years of age, and is not a person who has been convicted of a felony and not pardoned.

(B) (Applicable to corporation only). The individuals indicated on the application are all the officers and directors of the corporation or stockholders who own 25 percent or more of its outstanding capital stock, and each officer, director, and stockholder is no less than twenty-one years of age, and is not a person who has been convicted of a felony and not pardoned.

(C) (Applicable to partnership or LLC only). The individuals indicated on the application are all the members of the

partnership or LLC indicated on the application, and each member is no less than twenty-one years of age, and is not a person who has been convicted of a felony and not pardoned.

(D) (Applicable to unincorporated association only). The individuals indicated on the application are all the members of the applicant association and the full names of the officers thereof, each of whom is no less than twenty-one years of age and is not a person who has been convicted of a felony and not pardoned.

(E) No person other than the applicant named herein will have any interest in the business affected by the application without prior approval of the commission.

(F) No liquor license heretofore issued to the applicant has been revoked within a term of two years preceding the date of the application.

(G) The applicant (or if the applicant is an entity, the officers and directors thereof) is familiar with the provisions of the State statutes relating to intoxicating liquor and with these rules.

(H) The applicant shall comply with all applicable State and County rules, laws, and regulations.

(I) The information submitted with the application represents a full, true, and correct statement of the applicant.]

(3) Of this class, there shall be the following kinds:

(A) General (includes all liquor except alcohol)[;]..

(B) Beer and wine[; and].

(C) Beer.

(4) Liquor sold under a class 10 license shall be consumed on the premises.

(5) Notwithstanding any other section of chapter 281, HRS, to the contrary, the commission shall waive any hearings, fees, notarization of documents, submission of floor plans, and other requirements for the issuance of a class 10 license. The class 10 license granted under this subsection for fundraising event shall include the ability to auction off, at live or silent auction, liquor in sealed or covered glass, ceramic, or metal containers or services that provide liquor. No background check under section 846-2.7, section 281-53.5, HRS, or any other section of chapter 281, HRS, shall be required. The applicant shall provide a current list of officers and directors, if the applicant is a nonprofit organization. Unless waived by the commission, proof of liquor liability insurance shall be required.

(k) Class 11. Cabaret licenses.

(1) A cabaret license shall be general only but shall exclude alcohol and shall authorize the sale of liquor for consumption on the premises.

(2) This license shall be issued only for premises where:

(A) Food is served[;].

(B) Facilities for dancing by the patrons are provided, including a dance floor of not more than one hundred square feet[; and].

(C) Live entertainment other than by a person who performs or entertains unclothed, is visible and audible to all patrons.

(3) Professional entertainment by persons who perform or entertain unclothed shall only be authorized by:

(A) A cabaret license for premises where professional entertainment by persons who perform or entertain unclothed was presented on a regular and consistent basis immediately prior to June 15, 1990; or

(B) A cabaret license that, pursuant to rules adopted by the commission, permits professional entertainment by persons who perform or entertain unclothed.

(4) A cabaret license under subparagraphs (3)(A) or (3)(B) of this subsection authorizing professional entertainment by persons who perform or entertain unclothed shall be transferable through June 30, 2000.

(5) A cabaret license under subparagraphs (3)(A) or (3)(B) authorizing professional entertainment by persons who perform or entertain unclothed shall not be transferable after June 30, 2000, except upon approval by the commission, and pursuant to rules adopted by the commission.

(6) A cabaret license in a resort area may be open for the transaction of business until 4:00 a.m. throughout the entire week.

(7) Any cabaret premises not located within a County zoned resort district shall operate only during the hours prescribed for dispenser premises.

(8) All bars in cabaret premises, in order to operate during hours prescribed for cabarets must confine liquor service to patrons within an area where live entertainment is visible and audible to all patrons. Bars in cabaret premises which do not comply with the foregoing requirements shall operate only during the hours prescribed for dispenser premises.

(l) Class 12. Hotel license.

(1) A license to sell liquor in a hotel shall authorize the licensee to provide entertainment and dancing on the hotel premises and to sell all liquor, except alcohol for consumption on the premises; provided that a hotel licensee, with commission approval, may provide off-premises catering of food and liquor if the catering activity is directly related to the licensee's food service.

(A) A hotel licensee may be granted a catering permit while performing food catering functions.

(B) No catering service for the sale of liquor will be performed off the licensee's premises unless prior written application for the service has been delivered to the department and approved by the director. The director shall not approve any catered function unless it includes a written statement signed by the owner or representative of the property that the function will be subject to the liquor laws and to inspection by investigators. Application shall be submitted at least seven days prior to the catered function.

(C) The director will not approve catering functions on premises not zoned to allow commercial activities thereon unless the catered function is requested and hosted by the owner or the lessee or its like of the property or anyone with written authorization for the use of the property.

(2) Procedures such as room service, self-service no-host, minibars, or similar service in guest rooms, and service at parties in areas that are the property of, and contiguous to the hotel are permitted subject to liquor laws, rules of the commission, and the following conditions:

(A) Except as provided in paragraph (3) of this subsection, hotel licensees are prohibited from selling liquor as authorized by retail dealers' licenses.

(B) Room service:

(i) Liquor may be sold by the individual drink, or in its original manufacturer sealed container for consumption within a registered guest's room[;].

(ii) Current prices of alcoholic beverages shall be conspicuously posted and exposed to view or within the guest's room service menu at all times within the interior of each guest room[; and].

(iii) The sale and service of liquor shall be made by an employee approved by the director.

(3) A license to sell liquor within a hotel shall, upon written approval of the commission, authorize the sale of liquor of any kind or brand to hotel guests for consumption within their respective hotel rooms, subject to the following conditions:

(A) Minibars or honor bars:

(i) Storage of any liquor authorized for sale under this rule shall be completely enclosed in a secured cabinet or other suitable container and shall be accessible by means of a key or other similar device provided to the hotel guests[;].

(ii) A written schedule of selling prices shall be conspicuously posted in a manner convenient for

inspection within the hotel rooms or selling prices shall be affixed to each bottle of liquor[;].

(iii) Retail sales shall be limited to not more than the following container sizes: distilled spirits, 50 milliliters; beer, 12 ounces; and wine, 375 milliliters[; and].

(iv) At no time nor under any circumstances shall any licensee or its employee issue the key or similar device to the enclosed liquor cabinet or other suitable liquor container to anyone under twenty-one years of age.

(B) At no time nor under any circumstances shall a licensee permit liquor to be furnished:

(i) To any person under twenty-one years of age;

(ii) To any person, who at the time, is under the influence of liquor; or

(iii) To any person when there is reasonable grounds to believe that such person is permitting any person under twenty-one years of age to consume said liquor.

(C) The licensee shall fully comply with any additional condition or restriction which the commission, in its discretion, may impose to protect the health, safety, and welfare of the public.

(4) Licensees shall be restricted from selling liquor in its original packages except via room service and in minibars installed in hotel guest rooms. Said service shall be initiated at the request of the adult guest. Minibar and room service sales shall be restricted to registered guests of the hotel of legal drinking age and consumption of liquor shall be restricted to the hotel guest room.

(5) Unless authorized by law, hotel licensees shall not sell liquor in the manner authorized by the retail dealer's licenses.

Notwithstanding section 281-57, HRS, the commission may approve at one public hearing and without notice the change to a class 2 restaurant license(s) of a licensee holding and operating a class 12 hotel license, who meets the requirements of a class 2 license.

(m) Class 13. Caterer license.

(1) A general license may be granted to any class 2 restaurant licensee, or any applicant, who is authorized to sell liquor for on-premises consumption who has on file with the department an approved one year financial report showing 30 percent of the establishment's gross revenue is derived from the sale of food that is prepared and cooked within its department of health and department of fire control approved kitchen facilities and served for consumption by patrons within its premises, and who serves food as part of their operation for the sale of liquor (other than alcohol) while performing food catering functions. At least 30 percent of the gross revenues of the catered event shall be food sales.

(2) No catering service for the sale of liquor shall be performed off the licensee's premises unless prior written application for the service has been delivered to the department and approved by the director. Off premises catering will only be authorized upon issuance by the department and the licensee receiving a class 13 caterer's license. The commission shall not approve any catered function unless it includes a written statement signed by the owner or representative of the property that the function will be subject to the liquor laws and to inspection by investigators.

(3) The commission shall not issue a caterer's license to any licensee whose original license does not authorize the licensee to sell and serve alcoholic beverages for consumption on the premises.

(4) The commission shall not approve catering functions on premises not zoned to allow commercial activities thereon unless the catered function is requested and hosted by the owner of the property or anyone authorized the use of the property. Catered functions for which the owner or the lessee or its like of the property is being compensated for the use of the property shall be limited to properly zoned property.

(5) The application for a caterer license shall be submitted to the department at least seven working days prior to the catered function and shall include, but not be limited to, a floor plan showing the boundaries of the proposed catered licensed premises; the date, times, and location of the event; a lease, rental agreement or authorization which allow the applicant the use and exclusive control of the property for the sale, service and consumption of liquor, and obtaining a statement from the licensee that all required governmental clearances were obtained for the catered function.

(6) A caterer license may be granted by the director for the sale of liquor for a period not to exceed one day for any occasion or location, provided a class 12 hotel licensee, may be granted a caterer license by the director for sale of liquor for a period not to exceed three consecutive days for any occasion or location, whose catering function is directly related to its operation and the catered group consists of permanent or transient hotel guests that registered for and provided sleeping accommodations at the licensed premises.

(7) Catered functions for which patrons are being assessed a fee is prohibited. The privilege of catering is to permit legitimate catered functions and is not intended to be utilized to circumvent the liquor laws by allowing a licensee to operate its liquor license outside of its licensed premises. Any use of property for catered events by a licensee which appears to be an extension of the licensee's premises, place the health, safety and welfare of the public at risk, or appears to be excessive where a liquor license for class 2, class 5, or a similar

class which allows consumption at its premises should be obtained, applications for use of said premises may be denied by the director.

(8) A licensee who is authorized to provide catering shall report the gross sales of liquor and pay the applicable fees pursuant to section 08-101-50 of the rules of the commission.

(n) Class 14. Brewpub license.

(1) A brewpub licensee:

(A) May sell malt beverages manufactured on the licensee's premises for consumption on the premises[;].

(B) May sell malt beverages manufactured by the licensee in brewery-sealed packages to class 3, wholesale dealer licensees pursuant to conditions imposed by the county by ordinance or rule[;].

(C) May sell intoxicating liquor purchased from a class 3 wholesale dealer licensee to consumers for consumption on the licensee's premises[;].

(D) May, subject to federal labeling and bottling requirements, sell malt beverages manufactured on the licensee's premises to consumers in brewery-sealed kegs and growlers for off-premise consumption; provided that for purposes of this paragraph, "growler" means a glass or metal container, not to exceed one half-gallon, which shall be securely sealed[;].

(E) May, subject to federal labeling and bottling requirements, sell malt beverages manufactured on the licensee's premises in recyclable containers provided by the licensee or by the consumer which do not exceed one gallon per container and are securely sealed on the licensee's premises to consumers for off-premises consumption[;].

(F) Shall comply with all regulations pertaining to class 4 retail dealer licensees when engaging in the retail sale of malt beverages[;].

(G) May, subject to federal labeling and bottling requirements, sell malt beverages manufactured on the licensee's premises in brewery-sealed containers directly to class 2 restaurant licensees, class 3 wholesale dealer licensees, class 4 retail dealer licensees, class 5 dispenser licensees, class 6 club licensees, class 8 transient vessel licensees, class 9 tour or cruise vessel licensees, class 10 special licensees, class 11 cabaret licensees, class 12 hotel licensees, class 13 caterer licensees, class 14 brewpub licensees, class 15 condominium hotel licensees, class 18 small craft producer pub licensees, and consumers pursuant to conditions imposed by the county departments of planning, public works, and environmental management and regulations governing class 1 manufacturer licensees and class 3 wholesale dealer licensees[; and].

(H) May conduct the activities under paragraphs (A) through (G) at one location other than the licensee's premises; provided that:

(i) The manufacturing takes place in Hawaii[; and].

(ii) The other location is properly licensed under the same ownership.

(I) May allow minors, who are accompanied by a parent or legal guardian of legal drinking age on the premises.

(o) Class 15. Condominium hotel license.

(1) A license to sell liquor in a condominium hotel shall authorize the licensee to provide entertainment and dancing on the condominium hotel premises and to sell all liquor except alcohol for consumption on the premises; provided that a condominium hotel licensee, with commission approval, may provide off-premises catering of food and liquor if the catering activity is directly related to the licensee's food service by applying and obtaining approval for a catering permit while performing food catering functions.

(A) A condominium hotel licensee may be granted a catering permit while performing food catering functions.

(B) No catering service for the sale of liquor will be performed off the licensee's premises unless prior written application for the service has been delivered to the department and approved by the director. The director shall not approve any catered function unless it includes a written statement signed by the owner or representative of the property that the function will be subject to the liquor laws and to inspection by investigators. Application shall be submitted at least seven days prior to the catered function.

(C) The director will not approve catering functions on premises not zoned to allow commercial activities thereon unless the catered function is requested and hosted by the owner or the lessee or its like of the property or anyone with written authorization for the use of the property.

(2) Room service, self-service no host minibars, or similar service in apartments, and service at parties in areas that are the property of and contiguous to the condominium hotel are permitted with commission approval and subject to the following conditions:

(A) Room service:

(i) Liquor may be sold by the individual drink, or in its original manufacturer-sealed container for consumption within a registered guest's apartment.

(ii) Current prices of alcoholic beverages shall be conspicuously posted and exposed to view or within the apartment's room service menu at all times within the interior of each guest apartment.

(iii) The sale and service of liquor shall be made by an employee approved by the director.

(B) Minibars or honor bars:

(i) Storage of any liquor authorized for sale under this rule shall be completely enclosed in a secured cabinet or other suitable container and shall be accessible by means of a key or other similar device provided to the hotel guests.

(ii) A written schedule of selling prices shall be conspicuously posted in a manner convenient for inspection within the hotel rooms or selling prices shall be affixed to each bottle of liquor.

(iii) Retail sales shall be limited to not more than the following container sizes: distilled spirits, 50 milliliters; beer, 12 ounces; and wine, 375 milliliters.

(iv) At no time or under any circumstances shall any licensee or its employee issue the key or similar device to the enclosed liquor cabinet or other suitable liquor container to anyone under twenty-one years of age.

(3) At no time or under any circumstances shall a licensee permit liquor to be furnished:

(A) To any person under twenty-one years of age;

(B) To any person, who at the time, is under the influence of liquor; or

(C) To any person when there **[is]** are reasonable grounds to believe that such person is permitting any person under twenty-one years of age to consume said liquor.

(4) The licensee shall fully comply with any additional condition or restriction which the commission, in its discretion, may impose to protect the health, safety, and welfare of the public.

(5) Licensees shall be restricted from selling liquor in its original packages except via room service and in minibars installed in condominium hotel guest rooms. Said service shall be initiated at the request of the adult guest. Minibar and room service sales shall be restricted to registered guests of the condominium hotel of legal drinking age and consumption of liquor shall be restricted to the condominium hotel guest room.

(6) Unless authorized by law, a condominium hotel licensee shall not sell liquor in the manner authorized by a class 4 retail dealer license.

(7) Any licensee who would otherwise meet the criteria for the condominium hotel license class but holds a different class of license may be required to apply for a condominium hotel license.

(p) Class 16. Winery license.

A winery licensee:

(1) Shall manufacture not more than twenty thousand barrels of wine on the licensee's premises during the license year[;].

(2) May sell wine manufactured on the licensee's premises for consumption on the premises[;].

(3) May sell wine manufactured by the licensee in winery-sealed packages to class 3 wholesale dealer licensees pursuant to conditions imposed by the county by ordinance or rule[;].

(4) May, subject to federal labeling and bottling requirements, sell wine manufactured on the licensee's premises to consumers in winery-sealed kegs and magnums to consumers for off-premises consumption; provided that for purposes of this paragraph, "magnum" means a glass container not to exceed one half-gallon, which may be securely sealed[;].

(5) May, subject to federal labeling and bottling requirements, sell wine manufactured on the licensee's premises in recyclable containers provided by the licensee or by the consumer which do not exceed one gallon per container and are securely sealed on the licensee's premises to consumers for off-premises consumption[;].

(6) Shall comply with all rules pertaining to class 4 retail dealer licensees when engaging in the retail sale of wine; [; and].

(7) May sell wine manufactured on the licensee's premises in winery-sealed containers directly to class 2 restaurant licensees, class 3 wholesale dealer licensees, class 4 retail dealer licensees, class 5 dispenser licensees, class 6 club licensees, class 8 transient vessel licensees, class 9 tour or cruise vessel licensees, class 10 special licensees, class 11 cabaret licensees, class 12 hotel licensees, class 13 caterer licensees, class 14 brewpub licensees, class 15 condominium hotel licensees, and class 18 small craft producer pub licensees, pursuant to conditions imposed by the County departments of planning, public works, and environmental management and rules governing class 3 wholesale dealer licensees.

(q) Class 18. Small craft producer pub license.

A small craft producer pub licensee:

(1) Shall manufacture not more than:

(A) Sixty thousand barrels of malt beverages;

(B) Twenty thousand barrels of wine; or

(C) Seven thousand five hundred barrels of alcohol on the licensee's premises during the license year; provided that for purposes of this paragraph, "barrel" means a container not exceeding thirty one gallons or wine gallons of liquor[;].

(2) May sell malt beverages, wine, or alcohol manufactured on the licensee's premises for consumption on the premises[;].

(3) May sell malt beverages, wine, or alcohol manufactured by the licensee in producer-sealed packages to class 3 wholesale dealer

licensees pursuant to conditions imposed by the County by ordinance or rule[;].

(4) May sell intoxicating liquor purchased from a class 3 wholesale dealer licensee to consumers for consumption on the licensee's premises. The categories of establishments shall be as follows:
   (A) A standard bar; or
   (B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules[;].

(5) May, subject to federal labeling and bottling requirements, sell malt beverages manufactured on the licensee's premises to consumers in producer-sealed kegs and growlers for off-premises consumption; provided that for purposes of this paragraph, "growler" means a glass or metal container, not to exceed one half-gallon, which shall be securely sealed[;].

(6) May, subject to federal labeling and bottling requirements, sell malt beverages, wine, or alcohol manufactured on the licensee's premises in recyclable containers provided by the licensee or by the consumer which do not exceed:
   (A) One gallon per container for malt beverages and wine[; and].
   (B) One liter for alcohol; and are securely sealed on the licensee's premises to consumers for off-premises consumption[;].

(7) Shall comply with all regulations pertaining to class 4 retail dealer licensees when engaging in the retail sale of malt beverages, wine, and alcohol[;].

(8) May, subject to federal labeling and bottling requirements, sell malt beverages, wine, and alcohol manufactured on the licensee's premises in producer-sealed containers directly to class 2 restaurant licensees, class 3 wholesale dealer licensees, class 4 retail dealer licensees, class 5 dispenser licensees, class 6 club licensees, class 8 transient vessel licensees, class 9 tour or cruise vessel licensees, class 10 special licensees, class 11 cabaret licensees, class 12 hotel licensees, class 13 caterer licensees, class 14 brewpub licensees, class 15 condominium hotel licensees, class 18 small craft producer pub licensees, and consumers pursuant to conditions imposed by county regulations governing class 1 manufacturer licensees and class 3 wholesale dealer licensees[; and].

(9) May conduct the activities under paragraphs (1) through (8) at one location other than the licensee's premises; provided that:
   (A) The manufacturing takes place in Hawaii; and
   (B) The other location is properly licensed under the same ownership.

(10) May allow minors, who are accompanied by a parent or legal guardian of legal drinking age, on the licensee's premises.

(r) Restaurants, retail dealers, dispensers, clubs, cabarets, hotels, caterers, brewpubs, condominium hotels, and small craft producer pubs licensed under class 2, class 4, class 5, class 6, class 11, class 12, class 13, class 14, class 15, and class 18 shall maintain at all times liquor liability insurance coverage in an amount not less than $1,000,000; provided that convenience minimarts holding a class 4 license shall not be required to maintain liquor liability insurance coverage in that amount. Proof of coverage shall be kept on the premises and shall be made available for inspection by the commission at any time during the licensee's regular business hours. In the event of a licensee's failure to obtain or maintain the required coverage, the commission shall refuse to issue or renew a license, or shall suspend or terminate the license as appropriate. No license shall be granted, reinstated, or renewed until after the required insurance coverage is obtained.

(s) It shall be unlawful for any licensee to utilize any liquor, acquired or purchased from a class 1 manufacturers' licensee, or a class 3 wholesale dealers' licensee, or a person authorized by the commission as a solicitor or representative of a manufacturer or for personal or private use or consumption, except as authorized by the commission. All liquor shall be sold as authorized by the license issued.

(t) A patron may remove from a class 2 restaurant licensee, class 5 dispenser licensee, class 6 club licensee, class 12 hotel licensee, class 14 brewpub licensee, class 15 condominium hotel licensee, and class 18 small craft producer pub licensee, licensed premises, who has on file with the department a current yearly approved financial report that shows at least 30 percent of establishment's gross revenue is derived from the sale of food that is prepared and cooked at the time of ordering within its State of Hawaii department of health and County of Maui, department of fire and public safety approved kitchen facilities, any portion of wine, liquor, or beer that was purchased on or brought onto the premises of the licensee, for consumption with a meal; provided that it is recorked or resealed in its original container as provided in section 281-31(u), HRS. A licensee wishing to exercise this privilege shall inform the patron of the State of Hawaii "open container" law as stated in sections 291-3.1, 291-3.2, 291-3.3 and 291-3.4 [of the Hawaii Revised Statutes], HRS. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 11/29/15; am and comp 3/4/17; am and comp 1/14/18; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)"

2. Section 08-101-24, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

"§08-101-24 Temporary licenses. (a) A temporary license of any class and kind may be granted under the following conditions:

(1) The premises shall have been operated under a license of the same class, kind, and category issued by the commission at least one year immediately prior to the date of filing of the application for

temporary license, except as otherwise approved by the commission; or to any premises that have been operated under a license of the same class, kind, and category issued by the commission at least one year prior to the license being revoked or canceled, provided that the license application must be filed within ninety days of the surrender of the previous license or the closing of business[;].

(2) The license of the same class, kind, and category then in effect for the premises shall be surrendered in such manner and at such time as the commission shall direct[;].

(3) The applicant for a temporary license shall have filed with the commission an application for a license of the same class, kind, and category currently or previously in effect for the premises[;].

(4) The application for a temporary license shall be accompanied by a license fee in such amount as may be prescribed by the commission. If the application is denied or withdrawn, the fee which accompanied the application shall become a realization of the county liquor fund;

(5) A temporary license shall be for a period of not in excess of one hundred twenty days. The license may be renewed at the discretion of the commission for not more than one additional one hundred twenty-day period upon payment of such additional fee as may be prescribed by the commission and upon compliance with all conditions required in this rule. When a temporary license has expired and no permanent license has been issued, the sale and service of liquor shall cease until the permanent license is issued; provided that, when applicable, the license shall be properly renewed[;].

(6) A temporary license shall authorize the licensee to purchase liquor only by payment in currency, check or certified check for the liquor before or at the time of delivery of the liquor to the licensee, except as otherwise provided by commission rule[;].

(7) A temporary license shall contain the same restrictions and/or conditions as placed on the previous license[;].

(8) A temporary license shall terminate upon the issuance of the transferred or new license, denial or withdrawal of the transfer or new application, or at midnight on the one hundred twentieth day on the first temporary license or midnight on the one hundred twentieth day on the second temporary license after being effected or issued.

(b) Notwithstanding any other law to the contrary, the commission shall reduce submission requirements, including the waiving of hearings, fees, notarization of documents, submission of floor plans and other requirements, to provide for the issuance of temporary licenses for the sale of liquor for period not to exceed one day for fundraising events by nonprofit organizations. The temporary license granted under this subsection to nonprofit organization for a fundraising event shall enable the nonprofit organization to auction off at live or

silent auction, liquor in sealed or covered glass, ceramic, or metal containers or services that provide liquor. No criminal history record checks under section 281-53.5, HRS, shall be required.

For purpose of this subsections, "nonprofit organization" means those charitable organizations recognized under State or federal law and exempt from federal taxes under section 501(c)(3) of the Internal Revenue Code. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 11/29/15; am and comp 3/4/17; am and comp 1/14/18; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)"

3. Section 08-101-30, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsection (b) to read as follows:

"(b) The [department of health clearance,] certificate of occupancy[,] and other clearances or executed copies of other documents, as approved by the commission, may be submitted after filing the application and hearing thereon, but must be filed before issuance of the license. State [and federal] tax [clearances] clearance shall be dated within ninety days of the acceptance of any application by the department. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 11/29/15; am and comp 3/4/17; am and comp 1/14/18; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)"

4. Section 08-101-31, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

"§08-101-31 No license issued, when. No license shall be issued:

(1) To any minor or to any person who has been convicted of a felony and not pardoned, or to any other person not deemed by the commission to be a fit and proper person to have a license; provided that the commission may grant a license under the rules of the commission to a partnership, trust, association, limited liability partnership, limited liability company, corporation, or any other person, that has been convicted of a felony where the commission finds that the partner, member, manager, organizer, or any person of a limited liability partnership, limited liability company or organization's officers, directors, and any person owning or controlling 25 percent or more of the outstanding stock are fit and proper persons to have a license;

(2) To any partner in a partnership, or a corporation, trust or association, the officers, directors, or any other person of which, or any of them, would be disqualified under subsection (1) from obtaining the license individually, or any person of which, owning or controlling 25 percent or more of the outstanding capital stock, or

any other person, would be disqualified under such subsection (1) from obtaining the license individually; provided that for publicly-traded companies or entities ultimately solely owned by a publicly traded company, only the officers and directors designated as primary decision-makers shall be considered to determine disqualification under paragraph (1);

(3) To any applicant for a license, or a renewal of a license, or in the case of a transfer of a license, where both the transferor and the transferee, failed to present to the issuing agency a tax clearance certificate from the department of taxation, [and from the Internal Revenue Service] showing that the applicant or the transferor and transferee do not owe the State [or federal governments] government any delinquent taxes, penalties, or interest; or that the applicant, or in the case of a transfer of a license, the transferor or transferee, has entered into an installment plan agreement with the department of taxation [and the Internal Revenue Service] for the payment of delinquent taxes in installments and that the applicant is or the transferor or transferee is, in the case of a transfer of a license, complying with the installment plan agreement;

(4) To any applicant who has a partner in the partnership, limited liability partnership, member, manager, agent, organizer, or any person owning or controlling 25 percent or more of a limited liability company, or any officer, director or any person owning or controlling 25 percent or more of the outstanding stock of any corporation, trust, association, or any other person, who has had any liquor license revoked less than two years previous to the date of the application for any like or other license under the rules of the commission;

(5) To any person owning or controlling 25 percent or more of the outstanding stock of the corporation, trust, or association of a licensee, who is currently delinquent in filing the gross liquor sales report of any license that was issued, or currently owing any fees or monies due to the department, or both. "Any fees or monies" shall include but not be limited to license fees, publication fees, and any assessment of a penalty imposed by the department, commission, or board. Any licensee, who has any person, or person owning or controlling 25 percent or more of the outstanding stock of a corporation, trust, or association of a licensee, who is delinquent in filing the gross liquor sales report of any other license that was issued, or currently owing any fees or monies to the department, shall not exercise its license until the gross sales report is filed and percentage fee paid;

(6) To a limited liability company, the members, managers, organizers, or any person, of which or any of them, would be disqualified under subsection (1) from obtaining the license individually, would be disqualified under that paragraph from obtaining the license individually;

(7) To a limited liability company, partnership, limited liability partnership, or corporation, that may consist of a limited liability company, partnership, limited liability partnership, corporation, or any other person or any combination thereof, the members, managers, organizers, partners, officers, directors, or any person thereof, of which any of them would be disqualified under subsection (1) from obtaining the license individually, or a person owning or controlling 25 percent or more of the outstanding stock of such corporation would be disqualified under that paragraph from obtaining the license individually; or

(8) To an applicant for a class 2, class 4 except for convenience minimarts, class 5, class 6, class 11, class 12, class 13, class 14, class 15, or class 18 license, unless the applicant for issuance of a license or renewal of a license, both the transferor and the transferee, present to the issuing agency proof of liquor liability insurance coverage in an amount of $1,000,000. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 11/29/15; am and comp 3/4/17; am and comp 1/14/18; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)"

5. Section 08-101-33, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsection (a) to read as follows:

"§08-101-33 Renewal of license. (a) Other than for good cause, the renewal of an existing license shall be granted upon the filing of a completed application, payment of the basic fee, submission of State [and federal] tax [clearances] clearance, and other required documents. State [and federal] tax clearances shall be dated within ninety days of the acceptance of the application by the department. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 11/29/15; am and comp 3/4/17; am and comp 1/14/18; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)"

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

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

8. These amendments to Chapter 101, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, shall take effect ten days after filing with the Office of the County Clerk.

Copies of the proposed amendments may be viewed or downloaded from the Department of Liquor Control web page at www.mauicounty.gov/liquor and selecting the Rules/Laws tab.

Copies of the proposed amendments will be mailed to any interested person who requests a copy and pays the required fees for copying and postage. Requests for a copy may be made at the Department of Liquor Control, 2145 Kaohu Street, Room 105, Wailuku, Hawaii 96793, or by calling (808)244-4666.

The Liquor Commission will conduct a public hearing on the proposed amendments on December 12, 2018, at 10:00 a.m. at the Department of Liquor Control Conference Room, 2145 Kaohu Street, Room 108, Wailuku, Maui, Hawaii.

Any interested person may submit oral or written testimony on the proposed amendments at the public hearing. Also, written testimony may be submitted by mail to: Liquor Commission, 2145 Kaohu Street, Room 105, Wailuku, Maui, Hawaii 96793. Written testimony must be received by the Liquor Commission before the public hearing closes on December 12, 2018.

Any person requesting accommodations due to disabilities must call (808) 244-4666 at least six (6) days before the date of the scheduled public hearing.

Please contact the Commission Secretary at (808)244-4666 if further information is needed.

By: _____
ROBERT TANAKA
Chair
Liquor Commission

2016-1770
2018-10-27 Notice of Public Hearing

Amendments to Title 08, Chapter 101,
Rules Governing the Manufacture and Sale
of Intoxicating Liquor of the County of Maui

1. Section 08-101-22, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

"§08-101-22 Licenses, classes. (a) Licenses may be granted by the commission as provided in this rule.

(b) Class 1. Manufacturer license.

(1) A license for the manufacture of liquor shall authorize the licensee to manufacture the liquor therein specified and to sell it at wholesale in original packages to any person who holds a license to resell it and to sell draught beer or wine manufactured from grapes or other fruits grown in the State in any quantity to any person for private use and consumption.

(2) Under this license, no liquor shall be consumed on the premises except as authorized by the commission.

(3) Of this class, there shall be the following kinds:

(A) Beer[;].

(B) Wine[;].

(C) Alcohol[; and].

(D) Other specified liquor.

(4) It shall be unlawful for any holder of a manufacturer license to have any interest whatsoever in the license or licensed premises of any other licensee, except as may be provided within section 08-101-106 of the rules of the commission. This subsection shall not prevent the holder of a manufacturer license under this chapter or under the law of another jurisdiction from maintaining any interest in the license or licensed premises of a wholesale dealer licensee under this chapter.

(c) Class 2. Restaurant license.

(1) A license under this class shall authorize the licensee to sell liquor specified in this section for consumption on the premises; provided that a restaurant licensee, with commission approval, may provide off-premises catering of food and liquor by applying and obtaining approval for a catering permit while performing food catering functions; provided further that the catering activity shall be directly related to the licensee's operation as a restaurant. A license under this class shall also authorize the licensee to sell beer, malt beverages, or cider for off-premises consumption, provided that the licensee has the appropriate kind of license pursuant to paragraph (4); and provided further that the beer, malt beverage, or cider is sold in a securely sealed or covered glass, ceramic, or metal container that is sold to or provided by the patron, and each sealed

or covered glass, ceramic, or metal container does not exceed a maximum capacity of one-half gallon.

(2) A licensee under this class shall be issued a license according to the category of establishment the licensee owns or operates. The categories shall be:
   (A) A standard bar; or
   (B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by the rules of the commission. The subcategories of this category shall be:
      (i) Premises in which recorded background music is provided[; and].
      (ii) Premises in which live entertainment or recorded music is provided; provided that facilities for dancing by the patrons may be permitted as provided by the rules of the commission.

(3) If a licensee under class 2 desires to change the category of establishment the licensee owns or operates, the licensee shall apply for a new license applicable to the category of the licensee's establishment.

(4) Of this class, there shall be the following kinds:
   (A) General (includes all liquor except alcohol)[;].
   (B) Beer and wine[; and].
   (C) Beer.

(5) Notwithstanding section 281-57, HRS, the commission may approve at one public hearing and without notice the change to a class 2 restaurant license of a licensee holding and operating a class 5 dispenser license who meets the requirements of a class 2 license.

(6) Restaurant license may be granted to a place, which regularly, and in a bona fide manner, is used and kept open for the serving of meals to patrons for compensation, and which has suitable State department of health and County of Maui department of fire control approved kitchen facilities within, containing the necessary equipment and supplies for cooking an assortment of foods, which may be required for ordinary meals. Additionally, the premises must have been continuously operated for one year prior to any application, and the applicant must provide a financial report of gross revenue of that year of which at least 30 percent of the establishment's gross revenue must be derived from the sale of foods.

(7) Restaurant license may be transferred to an applicant for a class 2 restaurant license, whose proposed premises is the same premises of the transferor, provided:
   (A) The premises meet all requirements for a restaurant license and is the same class, kind, and category.

(B) The transferee certifies that the transferee intends to and shall derive no less than 30 percent of the establishment's gross revenue from the sale of food.

(C) The applicant shall submit, not later than the fifth day of each month for a period of one year, a financial report of food and liquor gross revenue of which 30 percent of the establishment's gross revenue must be derived from the sale of food, failure to meet this requirement, the license shall be automatically downgraded to a dispenser license of the same category and kind.

(8) A new class 2 restaurant license may be issued prior to an establishment commencing operation. An application for a new class 2 license shall include an affidavit by the applicant that the applicant intends to and shall derive no less than 30 percent of the establishment's gross revenue from the sale of food.

(A) The premises shall meet all requirements for a restaurant license.

(B) The applicant shall submit, no later than the fifth day of each month for a period of one year, a financial report of food and liquor gross revenue of which 30 percent of the establishment's gross revenue must be derived from the sale of food, failure to meet this requirement, the license shall be automatically downgraded to a dispenser license of the same category and kind.

(d) Class 3. Wholesale dealer license.

(1) A license for the sale of liquor at wholesale shall authorize the licensee to import and sell only to licensees or to others who are by law authorized to resell the liquor specified by the license but are not by law required to hold a license provided that a class 3 licensee may sell samples of liquor back to the manufacturer.

(2) Under a class 3 license no liquor shall be consumed on the premises except as authorized by the commission.

(3) Of this class, there shall be the following kinds:

(A) General (includes all liquor except alcohol)[;].

(B) Beer and wine[; and].

(C) Alcohol.

(4) If any wholesale dealer solicits or takes any orders in any county other than that where the dealer's place of business is located, the orders may be filled only by shipment direct from the county in which the wholesale dealer holds the dealer license. Nothing in this subsection shall prevent a wholesaler from selling liquor to post exchanges, ships' service stores, army or navy officers' clubs, or like organizations located on army or navy reservations, or to any vessel other than vessels performing a regular water transportation service between any two or more ports in the State, or to aviation companies who operate an aerial transportation enterprise subject to chapter

269, HRS, and engaged in flight passenger services between any two or more airports in the State for use on aircraft, or aviation companies engaged in transpacific flight operations for use on aircraft outside the jurisdiction of the State.

(e) Class 4. Retail dealer license.

(1) A license to sell liquor at retail or to class 10 [licensees,] licensee, shall authorize the licensee to sell the liquor therein specified in their original packages. A license under this class shall also authorize the licensee to sell beer, malt beverages, or cider in non-original packages; provided that the beer, malt beverage, or cider is sold in a securely sealed or covered glass, ceramic, or metal container that is sold to or provided by the patron, and each sealed or covered glass, ceramic, or metal container does not exceed a maximum capacity of one half-gallon.

(2) Under a class 4 license, no liquor shall be consumed on the premises except as authorized by the commission.

(3) Of this class, there shall be the following kinds:

(A) General (includes all liquor except alcohol)[;].

(B) Beer and wine[; and].

(C) Alcohol.

(f) Class 5. Dispenser license.

(1) A license under this class shall authorize the licensee to sell liquor specified in this subsection for consumption on the premises.

(2) A licensee under this class shall be issued a license according to the category of establishment the licensee owns or operates. The categories shall be:

(A) A standard bar[;].

(B) Premises in which a person performs or entertains unclothed or in attire restricted to use by entertainers pursuant to the rules of the commission[;].

(C) Premises in which live entertainment or recorded music is provided. The subcategories of this category shall be:

(i) Premises in which recorded background music is provided; or

(ii) Premises in which live entertainment or recorded music is provided; provided that facilities for dancing by the patrons may be permitted as provided by the rules of the commission[; or].

(D) Premises in which employees or entertainers are compensated to sit with patrons, whether or not the employees or entertainers are consuming nonalcoholic beverages while in the company of the patrons, pursuant to the rules of the commission; provided that all employees, entertainers, or other persons or patrons therein shall be twenty-one years of age or older; and provided further that there shall be no more

than twelve category D, class 5 dispenser licenses in the County.

(3) If a licensee under class 5 desires to change the category of establishment the licensee owns or operates, the licensee shall apply for a new license applicable to the category of the licensee's establishment.

(4) Of this class, there shall be the following kinds:

(A) General (includes all liquor except alcohol)[;].

(B) Beer and wine[; and].

(C) Beer.

(5) Any licensee holding a different class of license and who would otherwise come within this class with the same or downgrade of kind or category of license, or both, shall not be required to apply for a new license.

(g) Class 6. Club license.

(1) A club license shall be general only but shall exclude alcohol and shall authorize the licensee to sell liquor to members of the club, and to guests of the club enjoying the privileges of membership for consumption only on the premises kept and operated by the club; provided that the license shall also authorize any club member to keep in the member's private locker on the premises a reasonable quantity of liquor owned by the member, for the member's own personal use and not to be sold that may be consumed only on the premises. A club licensee shall be authorized to host charitable functions that are open to the general public in accordance with commission rules.

(2) Club licensees shall keep a complete list of its members, which list shall at all times be conspicuously posted and exposed to view, convenient for inspection on the licensed premises. The categories of this class shall be as follows:

(A) A standard bar; or

(B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by the rules of the commission. The subcategories of this category shall be:

(i) Premises in which recorded music is provided; or

(ii) Premises in which live entertainment or recorded music is provided.

(3) Any person enjoying the guest privileges of a club and to whom liquor may be sold must be a bona fide guest of a member of the club, and the member must be present at all times within the premises with his or her guest(s).

(4) Clubs shall keep records as to registration of guests for at least one year, which records shall be produced whenever required by the director.

(5) Licensee shall have readily available at all times a guest book on the licensed premises and shall be responsible for its member signing in his or her guest(s) at the time his or her guest(s) enter the licensed premises.

(h) Class 8. Transient vessel license.

(1) A general license may be granted to the owner of any vessel for the sale of liquor (other than alcohol) on board the vessel while en route within the jurisdictional limits of the State and within any port of the State.

(2) Sales shall be made only for consumption by passengers and their guests on board the vessel.

(3) The license shall be issuable in each county where the sales are to be made.

(4) The application for the license may be made by any agent representing the owner.

(i) Class 9. Tour or cruise vessel license.

(1) A general license may be granted to the owner of any tour or cruise vessel for the sale of liquor other than alcohol on board the vessel while in the waters of the State; provided that sales be made only for consumption by passengers on board while the vessel is in operation outside the port or dock of any island of the State, unless otherwise approved by the commission.

(2) The license shall be issuable in the county where the home port of the vessel is situated.

(3) If on any vessel for which no license has been obtained under the rules of the commission, any liquor is sold or served within three miles off the shore of any island of the County, the same shall constitute a violation of the rules of the commission.

(4) A license under this class shall be issued a license according to the category of establishment the licensee owns or operates. The categories shall be:

(A) A standard bar; or

(B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by the rules of the commission.

(j) Class 10. Special license.

(1) A special license may be granted by the director for the sale of liquor for a period not to exceed three consecutive days at the same location for fundraising events by nonprofit organizations, political candidates, and political parties; provided that any registered educational or charitable nonprofit organization may sell liquor in its original package for off-premises consumption[.]; provided further than any social club granted tax exempt status pursuant to U.S. Internal Revenue section 501(c)(7) may sell wine from the social club's inventory to the club's members for off-premises consumption.

(2) Special licenses shall be issued only to charitable or educational nonprofit organizations, to political parties and to candidates seeking public office from which organization no person is entitled to or takes, directly or indirectly, any share of the profits thereof. Nonprofit charitable or educational organizations shall be required to attach their U.S. Internal Revenue's sections 501(c)(3), 501(c)(4), 501(c)(10), or 501(c)(19) exemption letter and political candidates shall be required to attach a copy of their organizational report filed with the State campaign spending commission, to their application. [Notwithstanding the provisions in subchapter 4, Licensing Procedures, special license applications for non-profits shall not require personal history statements or criminal history background checks, but shall be subject to the following conditions:

(A) (Applicable to individual only). The applicant is the sole owner of the nonprofit proposed to be licensed, is no less than twenty-one years of age, and is not a person who has been convicted of a felony and not pardoned.

(B) (Applicable to corporation only). The individuals indicated on the application are all the officers and directors of the corporation or stockholders who own 25 percent or more of its outstanding capital stock, and each officer, director, and stockholder is no less than twenty-one years of age, and is not a person who has been convicted of a felony and not pardoned.

(C) (Applicable to partnership or LLC only). The individuals indicated on the application are all the members of the partnership or LLC indicated on the application, and each member is no less than twenty-one years of age, and is not a person who has been convicted of a felony and not pardoned.

(D) (Applicable to unincorporated association only). The individuals indicated on the application are all the members of the applicant association and the full names of the officers thereof, each of whom is no less than twenty-one years of age and is not a person who has been convicted of a felony and not pardoned.

(E) No person other than the applicant named herein will have any interest in the business affected by the application without prior approval of the commission.

(F) No liquor license heretofore issued to the applicant has been revoked within a term of two years preceding the date of the application.

(G) The applicant (or if the applicant is an entity, the officers and directors thereof) is familiar with the provisions of the State statutes relating to intoxicating liquor and with these rules.

(H) The applicant shall comply with all applicable State and County rules, laws, and regulations.

(I) The information submitted with the application represents a full, true, and correct statement of the applicant.]

(3) Of this class, there shall be the following kinds:
(A) General (includes all liquor except alcohol)[;].
(B) Beer and wine[; and].
(C) Beer.

(4) Liquor sold under a class 10 license shall be consumed on the premises.

(5) Notwithstanding any other section of chapter 281, HRS, to the contrary, the commission shall waive any hearings, fees, notarization of documents, submission of floor plans, and other requirements for the issuance of a class 10 license. The class 10 license granted under this subsection for fundraising event shall include the ability to auction off, at live or silent auction, liquor in sealed or covered glass, ceramic, or metal containers or services that provide liquor. No background check under section 846-2.7, section 281-53.5, HRS, or any other section of chapter 281, HRS, shall be required. The applicant shall provide a current list of officers and directors, if the applicant is a nonprofit organization. Unless waived by the commission, proof of liquor liability insurance shall be required.

(k) Class 11. Cabaret licenses.

(1) A cabaret license shall be general only but shall exclude alcohol and shall authorize the sale of liquor for consumption on the premises.

(2) This license shall be issued only for premises where:
(A) Food is served[;].
(B) Facilities for dancing by the patrons are provided, including a dance floor of not more than one hundred square feet[; and].
(C) Live entertainment other than by a person who performs or entertains unclothed, is visible and audible to all patrons.

(3) Professional entertainment by persons who perform or entertain unclothed shall only be authorized by:
(A) A cabaret license for premises where professional entertainment by persons who perform or entertain unclothed was presented on a regular and consistent basis immediately prior to June 15, 1990; or
(B) A cabaret license that, pursuant to rules adopted by the commission, permits professional entertainment by persons who perform or entertain unclothed.

(4) A cabaret license under subparagraphs (3)(A) or (3)(B) of this subsection authorizing professional entertainment by persons who perform or entertain unclothed shall be transferable through June 30, 2000.

(5) A cabaret license under subparagraphs (3)(A) or (3)(B) authorizing professional entertainment by persons who perform or entertain unclothed shall not be transferable after June 30, 2000, except upon

approval by the commission, and pursuant to rules adopted by the commission.

(6) A cabaret license in a resort area may be open for the transaction of business until 4:00 a.m. throughout the entire week.

(7) Any cabaret premises not located within a County zoned resort district shall operate only during the hours prescribed for dispenser premises.

(8) All bars in cabaret premises, in order to operate during hours prescribed for cabarets must confine liquor service to patrons within an area where live entertainment is visible and audible to all patrons. Bars in cabaret premises which do not comply with the foregoing requirements shall operate only during the hours prescribed for dispenser premises.

(l) Class 12. Hotel license.

(1) A license to sell liquor in a hotel shall authorize the licensee to provide entertainment and dancing on the hotel premises and to sell all liquor, except alcohol for consumption on the premises; provided that a hotel licensee, with commission approval, may provide off-premises catering of food and liquor if the catering activity is directly related to the licensee's food service.

(A) A hotel licensee may be granted a catering permit while performing food catering functions.

(B) No catering service for the sale of liquor will be performed off the licensee's premises unless prior written application for the service has been delivered to the department and approved by the director. The director shall not approve any catered function unless it includes a written statement signed by the owner or representative of the property that the function will be subject to the liquor laws and to inspection by investigators. Application shall be submitted at least seven days prior to the catered function.

(C) The director will not approve catering functions on premises not zoned to allow commercial activities thereon unless the catered function is requested and hosted by the owner or the lessee or its like of the property or anyone with written authorization for the use of the property.

(2) Procedures such as room service, self-service no-host, minibars, or similar service in guest rooms, and service at parties in areas that are the property of, and contiguous to the hotel are permitted subject to liquor laws, rules of the commission, and the following conditions:

(A) Except as provided in paragraph (3) of this subsection, hotel licensees are prohibited from selling liquor as authorized by retail dealers' licenses.

(B) Room service:

(i) Liquor may be sold by the individual drink, or in its original manufacturer sealed container for consumption within a registered guest's room[;].

(ii) Current prices of alcoholic beverages shall be conspicuously posted and exposed to view or within the guest's room service menu at all times within the interior of each guest room[; and].

(iii) The sale and service of liquor shall be made by an employee approved by the director.

(3) A license to sell liquor within a hotel shall, upon written approval of the commission, authorize the sale of liquor of any kind or brand to hotel guests for consumption within their respective hotel rooms, subject to the following conditions:

(A) Minibars or honor bars:

(i) Storage of any liquor authorized for sale under this rule shall be completely enclosed in a secured cabinet or other suitable container and shall be accessible by means of a key or other similar device provided to the hotel guests[;].

(ii) A written schedule of selling prices shall be conspicuously posted in a manner convenient for inspection within the hotel rooms or selling prices shall be affixed to each bottle of liquor[;].

(iii) Retail sales shall be limited to not more than the following container sizes: distilled spirits, 50 milliliters; beer, 12 ounces; and wine, 375 milliliters[; and].

(iv) At no time nor under any circumstances shall any licensee or its employee issue the key or similar device to the enclosed liquor cabinet or other suitable liquor container to anyone under twenty-one years of age.

(B) At no time nor under any circumstances shall a licensee permit liquor to be furnished:

(i) To any person under twenty-one years of age;

(ii) To any person, who at the time, is under the influence of liquor; or

(iii) To any person when there is reasonable grounds to believe that such person is permitting any person under twenty-one years of age to consume said liquor.

(C) The licensee shall fully comply with any additional condition or restriction which the commission, in its discretion, may impose to protect the health, safety, and welfare of the public.

(4) Licensees shall be restricted from selling liquor in its original packages except via room service and in minibars installed in hotel guest rooms. Said service shall be initiated at the request of the adult guest. Minibar and room service sales shall be restricted to

registered guests of the hotel of legal drinking age and consumption of liquor shall be restricted to the hotel guest room.

(5) Unless authorized by law, hotel licensees shall not sell liquor in the manner authorized by the retail dealer's licenses.

Notwithstanding section 281-57, HRS, the commission may approve at one public hearing and without notice the change to a class 2 restaurant license(s) of a licensee holding and operating a class 12 hotel license, who meets the requirements of a class 2 license.

(m) Class 13. Caterer license.

(1) A general license may be granted to any class 2 restaurant licensee, or any applicant, who is authorized to sell liquor for on-premises consumption who has on file with the department an approved one year financial report showing 30 percent of the establishment's gross revenue is derived from the sale of food that is prepared and cooked within its department of health and department of fire control approved kitchen facilities and served for consumption by patrons within its premises, and who serves food as part of their operation for the sale of liquor (other than alcohol) while performing food catering functions. At least 30 percent of the gross revenues of the catered event shall be food sales.

(2) No catering service for the sale of liquor shall be performed off the licensee's premises unless prior written application for the service has been delivered to the department and approved by the director. Off premises catering will only be authorized upon issuance by the department and the licensee receiving a class 13 caterer's license. The commission shall not approve any catered function unless it includes a written statement signed by the owner or representative of the property that the function will be subject to the liquor laws and to inspection by investigators.

(3) The commission shall not issue a caterer's license to any licensee whose original license does not authorize the licensee to sell and serve alcoholic beverages for consumption on the premises.

(4) The commission shall not approve catering functions on premises not zoned to allow commercial activities thereon unless the catered function is requested and hosted by the owner of the property or anyone authorized the use of the property. Catered functions for which the owner or the lessee or its like of the property is being compensated for the use of the property shall be limited to properly zoned property.

(5) The application for a caterer license shall be submitted to the department at least seven working days prior to the catered function and shall include, but not be limited to, a floor plan showing the boundaries of the proposed catered licensed premises; the date, times, and location of the event; a lease, rental agreement or authorization which allow the applicant the use and exclusive control of the property for the sale, service and consumption of

liquor, and obtaining a statement from the licensee that all required governmental clearances were obtained for the catered function.

(6) A caterer license may be granted by the director for the sale of liquor for a period not to exceed one day for any occasion or location, provided a class 12 hotel licensee, may be granted a caterer license by the director for sale of liquor for a period not to exceed three consecutive days for any occasion or location, whose catering function is directly related to its operation and the catered group consists of permanent or transient hotel guests that registered for and provided sleeping accommodations at the licensed premises.

(7) Catered functions for which patrons are being assessed a fee is prohibited. The privilege of catering is to permit legitimate catered functions and is not intended to be utilized to circumvent the liquor laws by allowing a licensee to operate its liquor license outside of its licensed premises. Any use of property for catered events by a licensee which appears to be an extension of the licensee's premises, place the health, safety and welfare of the public at risk, or appears to be excessive where a liquor license for class 2, class 5, or a similar class which allows consumption at its premises should be obtained, applications for use of said premises may be denied by the director.

(8) A licensee who is authorized to provide catering shall report the gross sales of liquor and pay the applicable fees pursuant to section 08-101-50 of the rules of the commission.

(n) Class 14. Brewpub license.

(1) A brewpub licensee:

(A) May sell malt beverages manufactured on the licensee's premises for consumption on the premises[;].

(B) May sell malt beverages manufactured by the licensee in brewery-sealed packages to class 3, wholesale dealer licensees pursuant to conditions imposed by the county by ordinance or rule[;].

(C) May sell intoxicating liquor purchased from a class 3 wholesale dealer licensee to consumers for consumption on the licensee's premises[;].

(D) May, subject to federal labeling and bottling requirements, sell malt beverages manufactured on the licensee's premises to consumers in brewery-sealed kegs and growlers for off-premise consumption; provided that for purposes of this paragraph, "growler" means a glass or metal container, not to exceed one half-gallon, which shall be securely sealed[;].

(E) May, subject to federal labeling and bottling requirements, sell malt beverages manufactured on the licensee's premises in recyclable containers provided by the licensee or by the consumer which do not exceed one gallon per container and are securely sealed on the licensee's premises to consumers for off-premises consumption[;].

(F) Shall comply with all regulations pertaining to class 4 retail dealer licensees when engaging in the retail sale of malt beverages[;].

(G) May, subject to federal labeling and bottling requirements, sell malt beverages manufactured on the licensee's premises in brewery-sealed containers directly to class 2 restaurant licensees, class 3 wholesale dealer licensees, class 4 retail dealer licensees, class 5 dispenser licensees, class 6 club licensees, class 8 transient vessel licensees, class 9 tour or cruise vessel licensees, class 10 special licensees, class 11 cabaret licensees, class 12 hotel licensees, class 13 caterer licensees, class 14 brewpub licensees, class 15 condominium hotel licensees, class 18 small craft producer pub licensees, and consumers pursuant to conditions imposed by the county departments of planning, public works, and environmental management and regulations governing class 1 manufacturer licensees and class 3 wholesale dealer licensees[; and].

(H) May conduct the activities under paragraphs (A) through (G) at one location other than the licensee's premises; provided that:

(i) The manufacturing takes place in Hawaii[; and].

(ii) The other location is properly licensed under the same ownership.

(I) May allow minors, who are accompanied by a parent or legal guardian of legal drinking age on the premises.

(o) Class 15. Condominium hotel license.

(1) A license to sell liquor in a condominium hotel shall authorize the licensee to provide entertainment and dancing on the condominium hotel premises and to sell all liquor except alcohol for consumption on the premises; provided that a condominium hotel licensee, with commission approval, may provide off-premises catering of food and liquor if the catering activity is directly related to the licensee's food service by applying and obtaining approval for a catering permit while performing food catering functions.

(A) A condominium hotel licensee may be granted a catering permit while performing food catering functions.

(B) No catering service for the sale of liquor will be performed off the licensee's premises unless prior written application for the service has been delivered to the department and approved by the director. The director shall not approve any catered function unless it includes a written statement signed by the owner or representative of the property that the function will be subject to the liquor laws and to inspection by investigators. Application shall be submitted at least seven days prior to the catered function.

(C) The director will not approve catering functions on premises not zoned to allow commercial activities thereon unless the catered function is requested and hosted by the owner or the lessee or its like of the property or anyone with written authorization for the use of the property.

(2) Room service, self-service no host minibars, or similar service in apartments, and service at parties in areas that are the property of and contiguous to the condominium hotel are permitted with commission approval and subject to the following conditions:

(A) Room service:

(i) Liquor may be sold by the individual drink, or in its original manufacturer-sealed container for consumption within a registered guest's apartment.

(ii) Current prices of alcoholic beverages shall be conspicuously posted and exposed to view or within the apartment's room service menu at all times within the interior of each guest apartment.

(iii) The sale and service of liquor shall be made by an employee approved by the director.

(B) Minibars or honor bars:

(i) Storage of any liquor authorized for sale under this rule shall be completely enclosed in a secured cabinet or other suitable container and shall be accessible by means of a key or other similar device provided to the hotel guests.

(ii) A written schedule of selling prices shall be conspicuously posted in a manner convenient for inspection within the hotel rooms or selling prices shall be affixed to each bottle of liquor.

(iii) Retail sales shall be limited to not more than the following container sizes: distilled spirits, 50 milliliters; beer, 12 ounces; and wine, 375 milliliters.

(iv) At no time or under any circumstances shall any licensee or its employee issue the key or similar device to the enclosed liquor cabinet or other suitable liquor container to anyone under twenty-one years of age.

(3) At no time or under any circumstances shall a licensee permit liquor to be furnished:

(A) To any person under twenty-one years of age;

(B) To any person, who at the time, is under the influence of liquor; or

(C) To any person when there [is] are reasonable grounds to believe that such person is permitting any person under twenty-one years of age to consume said liquor.

(4) The licensee shall fully comply with any additional condition or restriction which the commission, in its discretion, may impose to protect the health, safety, and welfare of the public.

(5) Licensees shall be restricted from selling liquor in its original packages except via room service and in minibars installed in condominium hotel guest rooms. Said service shall be initiated at the request of the adult guest. Minibar and room service sales shall be restricted to registered guests of the condominium hotel of legal drinking age and consumption of liquor shall be restricted to the condominium hotel guest room.

(6) Unless authorized by law, a condominium hotel licensee shall not sell liquor in the manner authorized by a class 4 retail dealer license.

(7) Any licensee who would otherwise meet the criteria for the condominium hotel license class but holds a different class of license may be required to apply for a condominium hotel license.

(p) Class 16. Winery license.

A winery licensee:

(1) Shall manufacture not more than twenty thousand barrels of wine on the licensee's premises during the license year**[;]**.

(2) May sell wine manufactured on the licensee's premises for consumption on the premises**[;]**.

(3) May sell wine manufactured by the licensee in winery-sealed packages to class 3 wholesale dealer licensees pursuant to conditions imposed by the county by ordinance or rule**[;]**.

(4) May, subject to federal labeling and bottling requirements, sell wine manufactured on the licensee's premises to consumers in winery-sealed kegs and magnums to consumers for off-premises consumption; provided that for purposes of this paragraph, "magnum" means a glass container not to exceed one half-gallon, which may be securely sealed**[;]**.

(5) May, subject to federal labeling and bottling requirements, sell wine manufactured on the licensee's premises in recyclable containers provided by the licensee or by the consumer which do not exceed one gallon per container and are securely sealed on the licensee's premises to consumers for off-premises consumption**[;]**.

(6) Shall comply with all rules pertaining to class 4 retail dealer licensees when engaging in the retail sale of wine; **[**; and**]**.

(7) May sell wine manufactured on the licensee's premises in winery-sealed containers directly to class 2 restaurant licensees, class 3 wholesale dealer licensees, class 4 retail dealer licensees, class 5 dispenser licensees, class 6 club licensees, class 8 transient vessel licensees, class 9 tour or cruise vessel licensees, class 10 special licensees, class 11 cabaret licensees, class 12 hotel licensees, class 13 caterer licensees, class 14 brewpub licensees, class 15 condominium hotel licensees, and class 18 small craft producer pub licensees, pursuant to conditions imposed by the County

departments of planning, public works, and environmental management and rules governing class 3 wholesale dealer licensees.

(q) Class 18. Small craft producer pub license.

A small craft producer pub licensee:

(1) Shall manufacture not more than:
   (A) Sixty thousand barrels of malt beverages;
   (B) Twenty thousand barrels of wine; or
   (C) Seven thousand five hundred barrels of alcohol on the licensee's premises during the license year; provided that for purposes of this paragraph, "barrel" means a container not exceeding thirty one gallons or wine gallons of liquor[;].

(2) May sell malt beverages, wine, or alcohol manufactured on the licensee's premises for consumption on the premises[;].

(3) May sell malt beverages, wine, or alcohol manufactured by the licensee in producer-sealed packages to class 3 wholesale dealer licensees pursuant to conditions imposed by the County by ordinance or rule[;].

(4) May sell intoxicating liquor purchased from a class 3 wholesale dealer licensee to consumers for consumption on the licensee's premises. The categories of establishments shall be as follows:
   (A) A standard bar; or
   (B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules[;].

(5) May, subject to federal labeling and bottling requirements, sell malt beverages manufactured on the licensee's premises to consumers in producer-sealed kegs and growlers for off-premises consumption; provided that for purposes of this paragraph, "growler" means a glass or metal container, not to exceed one half-gallon, which shall be securely sealed[;].

(6) May, subject to federal labeling and bottling requirements, sell malt beverages, wine, or alcohol manufactured on the licensee's premises in recyclable containers provided by the licensee or by the consumer which do not exceed:
   (A) One gallon per container for malt beverages and wine[; and].
   (B) One liter for alcohol; and are securely sealed on the licensee's premises to consumers for off-premises consumption[;].

(7) Shall comply with all regulations pertaining to class 4 retail dealer licensees when engaging in the retail sale of malt beverages, wine, and alcohol[;].

(8) May, subject to federal labeling and bottling requirements, sell malt beverages, wine, and alcohol manufactured on the licensee's premises in producer-sealed containers directly to class 2 restaurant licensees, class 3 wholesale dealer licensees, class 4 retail dealer licensees, class 5 dispenser licensees, class 6 club licensees, class 8 transient vessel licensees, class 9 tour or cruise

vessel licensees, class 10 special licensees, class 11 cabaret licensees, class 12 hotel licensees, class 13 caterer licensees, class 14 brewpub licensees, class 15 condominium hotel licensees, class 18 small craft producer pub licensees, and consumers pursuant to conditions imposed by county regulations governing class 1 manufacturer licensees and class 3 wholesale dealer licensees[; and].

(9) May conduct the activities under paragraphs (1) through (8) at one location other than the licensee's premises; provided that:

(A) The manufacturing takes place in Hawaii; and

(B) The other location is properly licensed under the same ownership.

(10) May allow minors, who are accompanied by a parent or legal guardian of legal drinking age, on the licensee's premises.

(r) Restaurants, retail dealers, dispensers, clubs, cabarets, hotels, caterers, brewpubs, condominium hotels, and small craft producer pubs licensed under class 2, class 4, class 5, class 6, class 11, class 12, class 13, class 14, class 15, and class 18 shall maintain at all times liquor liability insurance coverage in an amount not less than $1,000,000; provided that convenience minimarts holding a class 4 license shall not be required to maintain liquor liability insurance coverage in that amount. Proof of coverage shall be kept on the premises and shall be made available for inspection by the commission at any time during the licensee's regular business hours. In the event of a licensee's failure to obtain or maintain the required coverage, the commission shall refuse to issue or renew a license, or shall suspend or terminate the license as appropriate. No license shall be granted, reinstated, or renewed until after the required insurance coverage is obtained.

(s) It shall be unlawful for any licensee to utilize any liquor, acquired or purchased from a class 1 manufacturers' licensee, or a class 3 wholesale dealers' licensee, or a person authorized by the commission as a solicitor or representative of a manufacturer or for personal or private use or consumption, except as authorized by the commission. All liquor shall be sold as authorized by the license issued.

(t) A patron may remove from a class 2 restaurant licensee, class 5 dispenser licensee, class 6 club licensee, class 12 hotel licensee, class 14 brewpub licensee, class 15 condominium hotel licensee, and class 18 small craft producer pub licensee, licensed premises, who has on file with the department a current yearly approved financial report that shows at least 30 percent of establishment's gross revenue is derived from the sale of food that is prepared and cooked at the time of ordering within its State of Hawaii department of health and County of Maui, department of fire and public safety approved kitchen facilities, any portion of wine, liquor, or beer that was purchased on or brought onto the premises of the licensee, for consumption with a meal; provided that it is recorked or resealed in its original container as provided in section 281-31(u), HRS. A licensee wishing to exercise this privilege shall inform the patron of the State of Hawaii "open container" law as stated in sections 291-3.1, 291-3.2, 291-

3.3 and 291-3.4 [of the Hawaii Revised Statutes], HRS. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 11/29/15; am and comp 3/4/17; am and comp 1/14/18; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)"

2. Section 08-101-24, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

"§08-101-24 Temporary licenses. (a) A temporary license of any class and kind may be granted under the following conditions:

(1) The premises shall have been operated under a license of the same class, kind, and category issued by the commission at least one year immediately prior to the date of filing of the application for temporary license, except as otherwise approved by the commission; or to any premises that have been operated under a license of the same class, kind, and category issued by the commission at least one year prior to the license being revoked or canceled, provided that the license application must be filed within ninety days of the surrender of the previous license or the closing of business[;].

(2) The license of the same class, kind, and category then in effect for the premises shall be surrendered in such manner and at such time as the commission shall direct[;].

(3) The applicant for a temporary license shall have filed with the commission an application for a license of the same class, kind, and category currently or previously in effect for the premises[;].

(4) The application for a temporary license shall be accompanied by a license fee in such amount as may be prescribed by the commission. If the application is denied or withdrawn, the fee which accompanied the application shall become a realization of the county liquor fund;

(5) A temporary license shall be for a period of not in excess of one hundred twenty days. The license may be renewed at the discretion of the commission for not more than one additional one hundred twenty-day period upon payment of such additional fee as may be prescribed by the commission and upon compliance with all conditions required in this rule. When a temporary license has expired and no permanent license has been issued, the sale and service of liquor shall cease until the permanent license is issued; provided that, when applicable, the license shall be properly renewed[;].

(6) A temporary license shall authorize the licensee to purchase liquor only by payment in currency, check or certified check for the liquor before or at the time of delivery of the liquor to the licensee, except as otherwise provided by commission rule[;].

(7) A temporary license shall contain the same restrictions and/or conditions as placed on the previous license[;].

(8) A temporary license shall terminate upon the issuance of the transferred or new license, denial or withdrawal of the transfer or new application, or at midnight on the one hundred twentieth day on the first temporary license or midnight on the one hundred twentieth day on the second temporary license after being effected or issued.

(b) Notwithstanding any other law to the contrary, the commission shall reduce submission requirements, including the waiving of hearings, fees, notarization of documents, submission of floor plans and other requirements, to provide for the issuance of temporary licenses for the sale of liquor for period not to exceed one day for fundraising events by nonprofit organizations. The temporary license granted under this subsection to nonprofit organization for a fundraising event shall enable the nonprofit organization to auction off at live or silent auction, liquor in sealed or covered glass, ceramic, or metal containers or services that provide liquor. No criminal history record checks under section 281-53.5, HRS, shall be required.

For purpose of this subsections, "nonprofit organization" means those charitable organizations recognized under State or federal law and exempt from federal taxes under section 501(c)(3) of the Internal Revenue Code. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 11/29/15; am and comp 3/4/17; am and comp 1/14/18; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)"

3. Section 08-101-30, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsection (b) to read as follows:

"(b) The [department of health clearance,] certificate of occupancy[,] and other clearances or executed copies of other documents, as approved by the commission, may be submitted after filing the application and hearing thereon, but must be filed before issuance of the license. State [and federal] tax [clearances] clearance shall be dated within ninety days of the acceptance of any application by the department. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 11/29/15; am and comp 3/4/17; am and comp 1/14/18; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)"

4. Section 08-101-31, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

"§08-101-31 No license issued, when. No license shall be issued:

(1) To any minor or to any person who has been convicted of a felony and not pardoned, or to any other person not deemed by the commission to be a fit and proper person to have a license; provided that the commission may grant a license under the rules of the commission to a partnership, trust, association, limited liability

partnership, limited liability company, corporation, or any other person, that has been convicted of a felony where the commission finds that the partner, member, manager, organizer, or any person of a limited liability partnership, limited liability company or organization's officers, directors, and any person owning or controlling 25 percent or more of the outstanding stock are fit and proper persons to have a license;

(2) To any partner in a partnership, or a corporation, trust or association, the officers, directors, or any other person of which, or any of them, would be disqualified under subsection (1) from obtaining the license individually, or any person of which, owning or controlling 25 percent or more of the outstanding capital stock, or any other person, would be disqualified under such subsection (1) from obtaining the license individually; provided that for publicly-traded companies or entities ultimately solely owned by a publicly traded company, only the officers and directors designated as primary decision-makers shall be considered to determine disqualification under paragraph (1);

(3) To any applicant for a license, or a renewal of a license, or in the case of a transfer of a license, where both the transferor and the transferee, failed to present to the issuing agency a tax clearance certificate from the department of taxation, [and from the Internal Revenue Service] showing that the applicant or the transferor and transferee do not owe the State [or federal governments] government any delinquent taxes, penalties, or interest; or that the applicant, or in the case of a transfer of a license, the transferor or transferee, has entered into an installment plan agreement with the department of taxation [and the Internal Revenue Service] for the payment of delinquent taxes in installments and that the applicant is or the transferor or transferee is, in the case of a transfer of a license, complying with the installment plan agreement;

(4) To any applicant who has a partner in the partnership, limited liability partnership, member, manager, agent, organizer, or any person owning or controlling 25 percent or more of a limited liability company, or any officer, director or any person owning or controlling 25 percent or more of the outstanding stock of any corporation, trust, association, or any other person, who has had any liquor license revoked less than two years previous to the date of the application for any like or other license under the rules of the commission;

(5) To any person owning or controlling 25 percent or more of the outstanding stock of the corporation, trust, or association of a licensee, who is currently delinquent in filing the gross liquor sales report of any license that was issued, or currently owing any fees or monies due to the department, or both. "Any fees or monies" shall include but not be limited to license fees, publication fees, and any

assessment of a penalty imposed by the department, commission, or board. Any licensee, who has any person, or person owning or controlling 25 percent or more of the outstanding stock of a corporation, trust, or association of a licensee, who is delinquent in filing the gross liquor sales report of any other license that was issued, or currently owing any fees or monies to the department, shall not exercise its license until the gross sales report is filed and percentage fee paid;

(6) To a limited liability company, the members, managers, organizers, or any person, of which or any of them, would be disqualified under subsection (1) from obtaining the license individually, would be disqualified under that paragraph from obtaining the license individually;

(7) To a limited liability company, partnership, limited liability partnership, or corporation, that may consist of a limited liability company, partnership, limited liability partnership, corporation, or any other person or any combination thereof, the members, managers, organizers, partners, officers, directors, or any person thereof, of which any of them would be disqualified under subsection (1) from obtaining the license individually, or a person owning or controlling 25 percent or more of the outstanding stock of such corporation would be disqualified under that paragraph from obtaining the license individually; or

(8) To an applicant for a class 2, class 4 except for convenience minimarts, class 5, class 6, class 11, class 12, class 13, class 14, class 15, or class 18 license, unless the applicant for issuance of a license or renewal of a license, both the transferor and the transferee, present to the issuing agency proof of liquor liability insurance coverage in an amount of $1,000,000. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 11/29/15; am and comp 3/4/17; am and comp 1/14/18; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)"

5. Section 08-101-33, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsection (a) to read as follows:

"§08-101-33 Renewal of license. (a) Other than for good cause, the renewal of an existing license shall be granted upon the filing of a completed application, payment of the basic fee, submission of State [and federal] tax [clearances] clearance, and other required documents. State [and federal] tax clearances shall be dated within ninety days of the acceptance of the application by the department. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 11/29/15; am and comp 3/4/17; am and

comp 1/14/18; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)"

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

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

8. These amendments to Chapter 101, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, shall take effect ten days after filing with the Office of the County Clerk.

2016-1770
2018-10-27 Admin Rules Chapter 101 - Ramseyer

Adopted this _____ day of _____, 2018, at Wailuku, Maui, Hawaii.

By_____
ROBERT TANAKA
Chairperson
LIQUOR COMMISSION

Approved this ____ day of
_____, 2018.

_____
ALAN M. ARAKAWA
Mayor, County of Maui

APPROVED AS TO FORM
AND LEGALITY:

_____
EDWARD S. KUSHI, JR.
Deputy Corporation Counsel
County of Maui

Received this _____ day of

_____, 2018.

_____
Clerk, County of Maui

CERTIFICATION

I, ROBERT TANAKA, Chairperson of the Liquor Commission of the Department of Liquor Control, County of Maui, do hereby certify:

1. That the foregoing is a copy of the amendments to the Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, drafted in Ramseyer format, pursuant to the requirements of Section 91-4.1, Hawaii Revised Statutes, which were adopted on the _____ day of _____, 2018, by affirmative vote of the proper majority following a public hearing on _____, and filed with the Office of the County Clerk.

2. That the notice of public hearing on the foregoing amendments to the rules was published in The Maui News on the _____ day of _____, 2018.

COUNTY OF MAUI

_____
ROBERT TANAKA
Chairperson
LIQUOR COMMISSION

III. Old Business

B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Repeal of HAR Title 11, Chapter 200 and Proposed New Chapter 200.1, Environmental Impact Statement Rules, promulgated by Department of Health

SMALL BUSINESS STATEMENT
"AFTER" PUBLIC HEARING TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD

(Hawaii Revised Statutes (HRS), §201M-3)

Department or Agency: Health/Environmental Council

Administrative Rule Title and Chapter: 11-200 Repeal; 11-200.1 Promulgate

Chapter Name: Environmental Impact Statement Rules

Contact Person/Title: Scott Glenn, Director, Office of Environmental Quality Control

Phone Number: 586-4185

E-mail Address: scott.glenn@doh.hawaii.gov **Date:** 1/10/19

A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.

B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7?

☐ **Yes** ☑ **No**

(If "Yes," please provide webpage address and when and where rules may be viewed in person. Please keep the proposed rules on this webpage until after the SBRRB meeting.)

I. Rule Description: ☑ **New** ☑ **Repeal** ☐ **Amendment** ☐ **Compilation**

II. Will the proposed rule(s) affect small business?

☐ **Yes** ☐ **No** (If "No," no need to submit this form.)

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

* "Small business" is defined as a "for-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that: (1) Is domiciled and authorized to do business in Hawaii; (2) Is independently owned and operated; and (3) Employs fewer than one hundred full-time or part-time employees in Hawaii." HRS §201M-1

III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance?

☐ **Yes** ☑ **No**

(If "Yes" no need to submit this form. E.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives. HRS §201M-2(d))

IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a))

☐ **Yes** ☑ **No**

(If "Yes" no need to submit this form.)

* * *

RECEIVED

By Small Business Regulatory Review Board at 6:00 am, Jan 11, 2019

V. Please explain how the agency involved small business in the development of the proposed rules.

Please see the attached narrative.

a. **Were there any recommendations incorporated into the proposed rules? If yes, explain. If not, why not?**

Please see the attached narrative.

VI. If the proposed rule(s) affect small business, and are not exempt as noted above, please provide the following information:

1. A description of how opinions or comments from affected small businesses were solicited.

Please see the attached narrative.

2. A summary of the public's and small businesses' comments.

Please see the attached narrative.

3. A summary of the agency's response to those comments.

Please see the attached narrative.

4. The number of persons who:
   (i) Attended the public hearing: 91 total for all 9 hearings
   (ii) Testified at the hearing: 28 total for all 9 hearings
   (iii)Submitted written comments: 36 comment letters

5. Was a request made at the hearing to change the proposed rule in a way that affected small business?
   (i) If "Yes," was the change adopted? ☐ **Yes** ☑ **No**
   (ii) If No, please explain the reason the change was not adopted and the problems or negative result of the change.

   Please see the attached narrative. Some requests were adopted and some were not.

Final Environmental Impact Statement Rules Small Business Impact Statement Narrative

1) Proposed Repeal of Hawai'i Administrative Rules Title 11, Department of Health Chapter 200, "Environmental Impact Statement Rules" and

2) Proposed Promulgation of Hawai'i Administrative Rules Title 11, Department of Health Chapter 200.1, "Environmental Impact Statement Rules"

Prepared by Scott Glenn, Office of Environmental Quality Control (OEQC) Director, on behalf of the Environmental Council (Council) for the Small Business Regulatory Review Board meeting to be held on January 17, 2019. This Narrative provides responses to questions in the Small Business Statement "After" Public Hearing to the Small Business Regulatory Review Board.

Summary

The Council believes that on balance the Final Proposed Rules benefit all stakeholders in the EIS process. Commenters raised several concerns that proposed changes could affect businesses, including small businesses. Among the concerns, seven (7) main ones are presented here along with the Council responses. Briefly, these are:

1. Concerns that language in the purpose section set a subjective standard and may increase litigation. The Council adopted commenters' recommendation.
2. Concerns that changes to the definition of an environmental assessment (EA) would make EAs more expensive and easier to litigate. The Council retained its language and clarified that it believes the language is clarifying, not changing the standard.
3. Concerns that the statutory triggers are not defined in the rules. The Council chose to not define the triggers further because the Legislature changes the triggers often.
4. Concerns that the exemption for the demolition of buildings would not be possible for buildings eligible for the historic register. The Council adopted the commenters' recommendation.
5. Support for the inclusion of the exemption for new construction of affordable housing that meet certain criteria. The Council retained this language with minor adjustments for clarity.
6. Concerns about the audio recording requirement for EIS public scoping meetings. The Council retained its language, added clarifying language in its Rationale document, and requested the OEQC to develop guidance for practitioners.
7. Concerns about the inclusion of the phrase "reasonably foreseeable" is a subjective standard. The Council retained its language as its aligns Hawai'i's process with the federal process and can draw on federal case law.

Background

The purpose of Chapter 343, Hawai'i Revised Statutes (HRS), Environmental Impact Statements (EISs), is to balance environmental with economic and technical considerations to inform agency decisions prior to a project's implementation. To do this, Chapter 343, HRS, establishes a process for integrating environmental concerns into existing planning processes to alert agency decision makers to potential significant effects resulting from the implementation of certain projects.

Chapter 343, HRS, authorizes the Council to adopt, amend, or repeal rules necessary for the purposes of the chapter. The Council last amended and compiled Title 11, Chapter 200 in 1996 and made a minor amendment without compilation in 2007. The OEQC provides administrative support to the Council.

The Council proposes to repeal Chapter 11-200, entitled "Environmental Impact Statement Rules" (the "1996 Rules"), and promulgate Chapter 11-200.1, entitled "Environmental Impact Statement Rules" (the "Final Proposed Rules").

The Council proposal is a comprehensive reorganization of the sections and paragraphs of the existing rules as well as substantive changes to the implementation of Chapter 343, HRS. One of the overriding goals of the rule changes is to better align the state process with the federal process so that businesses can more efficiently satisfy both laws when both are applicable. The proposed changes may have an impact on small businesses, both beneficial and adverse. On balance, the Council believes these rules will provide overall a better process for everyone, making the process more effective and less burdensome.

Attachment 1 to this narrative is an excerpt from the Council's draft final 2018 Annual Report on the rules update. This excerpt describes the Council's process for the rules, including the Council's activities following the public hearings.

Question V. Please explain how the agency involved small business in the development of the proposed rules.

The Council has 15 members, 14 of whom the Governor appoints directly (the OEQC Director serves as an *ex officio* voting member of the Council). While one seat is currently empty, among the 14 appointees, four (4) are small business owners, one (1) works for a company that is occasionally required to prepare EAs and EISs, and one (1) is a land use attorney hired by companies that are required to prepare EAs and EISs.

In addition to the perspective of the Council members engaged in small business, the Council members and the OEQC met with stakeholders, including organizations that represent small businesses, to discuss the proposed changes. These meetings occurred throughout the drafting

process, during the formal public hearing period, as well as afterward, as the Council considered amendments to the draft rules based on feedback from agencies, applicants including small businesses, and the general public.

Furthermore, following the conclusion of the public hearings in late May 2018, the Council continued to meet publicly monthly or twice a month to discuss the rules. These meetings provided the public and small businesses the opportunity to engage the Council. When the Council felt ready to move to decision making on the Final Proposed Rules, it held three meetings in November and December 2018 and posted its proposed amendments for the public to review and comment on.

Va. Were there any recommendations incorporated into the proposed rules? If yes, explain. If not, why not?

Organizations that represent the interests of small businesses (e.g., chambers of commerce) raised a common set of concerns about proposed changes in the Draft Proposed Rules. The Council agreed with some of these recommendations and amended the draft language, although not necessarily in the way a commenter suggested. For other recommendations, the Council chose to retain its draft language in the final. Table 1 on the next page lists the main comments by rules section and how the Council responded to them.

Table 1. Main comments on the draft rules regarding business costs and Council responses

Section	Comments and Recommendations	Council Action
11-200.1-1(c)	Concerned that the purpose section adds the language: "Conduct any required consultation as mutual, open and direct, two-way communication, in good faith, to secure the meaningful participation of agencies and the public in the environmental review process." The use of "shall" could be construed as a litigation point and the standard for conduct is subjective.	The Council adopted the recommendation to clarify language by rewording the section to remove the "shall" and include the phrase "to make every effort" to conduct the required consultation, acknowledging that mutual communication by its nature requires cooperation from parties that may not always occur. The Council believes that the aspirational language in this section is important for setting the tone of the process and understands the concerns with aspirational language. The Council's intent is that this language be aspirational.
11-200.1-2; other sections referencing "analysis" and "evidence"	Concerned that the amended definition of "environmental assessment" broadens the requirements for an EA, possibly exceeds the statutory standard for an EA, raises the standard for what content to include, and lowers the standard for the basis for legal challenge on the adequacy of the analysis. In particular, commenters raised concerns about the words "analysis" and "evidence." Commenters requested the Council to be clear to applicants what is expected for an EA. Commenters believed "analysis" is subjective in comparison to the existing word "identify." The word "evidence" implies a legal standard that requires more effort, and therefore cost, to prepare an EA.	The Council chose to retain its proposed language in the final. This language is intended to show that there must be enough information in the EA for a determination to be made by the approving agency about whether or not there is "significant environmental effect." The Council believes that this language does not broaden what is required in an EA and does not create a new standard. Rather, the new language clarifies what type of information is needed in the EA, versus simply requiring a determination by the preparer. The use of "evidence" in the rules is a general term and is not meant to be evidence in the sense used by the courts. Changing the word to "facts" does not solve the issue intended to be addressed by the Council. The "evidence" supporting the analysis in an EA should be scientific or other evidence such that an analysis of whether or not a project requires an EIS or not can be made. The Council interprets the existing 1996 rules as already implicitly including an analysis of evidence. The language used in the proposed rules serve to clarify the existing requirements.

Section	Comments and Recommendations	Council Action
§ 11-200.1-8 and § 11-200.1-9	Concerned that the rules omit the triggers that are stated in the statute. Commenters requested definitions that would clarify or narrow the statutory terms.	The Council chose to retain its proposed language in the final. The Council chose to not define the triggers separate from their use and definition in Chapter 343, HRS, as the Legislature has a propensity to amend the triggers, which would make the rules inconsistent.
§ 11-200.1-15(c)(6)	Concerned that the addition of language to the exemption category for the demolition of structures would add cost and money. The language added "except those structures that are listed on, or that meet the criteria for listing on, the national register or Hawaii register". This would effectively prohibit an exemption for the demolition of any structure built before 1968, based on a claim that the structure "meets the criteria" for listing on the national register or Hawai'i Register. The proposed language may be outside the jurisdiction of the Council as it involves the State Historic Preservation Division (SHPD). The proposed rule would have unintended negative consequences, such as causing significant delays and obstacles in demolition of older structures because agency staff would likely defer to SHPD for the determination, thus slowing down the process and giving decision making authority to a different agency than what the statute contemplates.	The Council adopted the recommendation to remove the proposed language, acknowledging that the way to definitively know whether a structure is an "eligible" property--even if only under Criterion D for information content--is to have a qualified professional conduct a Chapter 6E/Section 106 survey/study and have it concurred with by the State Historic Preservation Division (SHPD). For public resources, Chapter 6E, HRS, applies independently of Chapter 343, HRS, and the Council finds no reason why the Chapter 6E and Chapter 343, HRS, requirements should be duplicated. This can add unnecessary time and cost for to seek a determination about eligibility and concurrence from SHPD, the agency that is tasked with making such determinations. The Council is also wary of imposing requirements on agencies that may not have the expertise to make such determinations. Accordingly, the Council revised the language of this section to remove the phrase "or that meet the criteria for listing on" and retain only "that are listed on", which is a clear, objective standard.
§ 11-200.1-15(c)(10)	Support the inclusion of the exemption for new construction of affordable housing that meet certain criteria.	The Council chose to retain its language as supported by small business-oriented commenters, with minor adjustments for clarity.
§ 11-200.1-23(d)	Concerned about the audio recording requirement for the newly required EIS public scoping meeting. Commenters questioned whether this was inconsistent	The Council chose to retain its proposed language in the final. The requirement to record the portion of the meeting dedicated to oral comments stands

Section	Comments and Recommendations	Council Action
	with the statutory focus on written comments. It is unclear how to handle multiple people speaking at once or if there are no oral comments. Commenters suggested language clarifying what to do in the case no oral comments are made.	regardless of whether or not anyone actually speaks. The recording would clearly show that the proponents had a section of the meeting devoted to accepting oral comments. If no oral comments are made, the recording will reflect that. The Council requested the OEQC to prepare guidance to assist consultants and applicants with this rule.
§ 11-200.1-24 and 11-200.1-27	Concerned that "reasonably foreseeable" consequences is a subjective standard and will lead to challenges over whether the requirement has been met.	The Council chose to retain its proposed language in the final. This language is drawn from the federal process, called the National Environmental Policy Act or NEPA, and is intended to align standards with NEPA. To the extent it is perceived as subjective, there are boundaries based on the rule of reason and NEPA court case precedent.

Question VI. If the proposed rule(s) affect small business, and are not exempt as noted above, please provide the following information:

1. A description of how opinions or comments from small businesses were solicited.
2. A summary of the public's and small businesses' comments.
3. A summary of the agency's response to those comments.

In drafting the rules, Council members or the OEQC Director or staff contacted stakeholders and representatives of small businesses for input on the draft language. The Council prepared four working drafts for public comment before settling on language to use in its draft for public hearing, as the OEQC Director presented to the Small Business Regulatory Review Board in March 2018 for the draft rules. In addition to directly contacting stakeholders, the Council held numerous public meetings over the last two years discussing the changes to the rules and soliciting comments from the public. All meeting agendas and the most current version of the rules were posted to the OEQC's Rules Update page, which also allowed interested parties to comment online via CiviComment and sign up for notifications.

Following the public hearings, Council members or the OEQC Director or staff contacted commenters to better understand the comment and explore ways of resolving it. Following Council discussion and determination at a Council meeting, the OEQC Director would follow up with small business representatives.

Table 1 above summarizes the comments from the public and small businesses regarding the potential impact to small businesses and the agency's responses.

For a complete set of comments and responses to comments, please refer to these two documents available from the OEQC website:

- All oral and written comments submitted during the public hearings period. http://oeqc2.doh.hawaii.gov/Laws/v1.0-Proposed-HAR-11-200.1-All-Comments-2018-10-02.pdf
- The Council's responses to all oral and written comments submitted during the public hearings period. http://oeqc2.doh.hawaii.gov/Laws/v1.1-EC-Responses-to-Public-Comments-on-v1.0.pdf

Links to Additional Resources

All documents used during rule-making are available at the OEQC SharePoint site:

http://oeqc2.doh.hawaii.gov/Laws

Documents of particular interest:

- All oral and written comments submitted during the public hearings period. http://oeqc2.doh.hawaii.gov/Laws/v1.0-Proposed-HAR-11-200.1-All-Comments-2018-10-02.pdf
- The Council's responses to all oral and written comments submitted during the public hearings period. http://oeqc2.doh.hawaii.gov/Laws/v1.1-EC-Responses-to-Public-Comments-on-v1.0.pdf
- The Rationale Document, explaining the Council's process, global changes to the rules, and changes by section. http://oeqc2.doh.hawaii.gov/Laws/v1.1-Proposed-HAR-11-200.1-Rules-Rationale_Draft-Final.pdf
- An "unofficial Ramseyer" format of the rules that shows the 1996 Rules, the Draft Proposed Rules, and the Final Proposed Rules. http://oeqc2.doh.hawaii.gov/Laws/v1.1-Proposed-HAR-11-200.1-Rationale-App-1-Ramseyer-Unofficial_96-1.0-1.1.pdf
- An "unofficial Ramseyer" format of the rules that shows the 1996 Rules and only the Final Proposed Rules. http://oeqc2.doh.hawaii.gov/Laws/v1.1-Proposed-HAR-11-200.1-Rationale-App-2-Ramseyer-Unofficial_96-1.1.pdf

The OEQC webpage for the rules update includes a timeline with links to meeting agendas and minutes: http://health.hawaii.gov/oeqc/rules-update.

Attachment 1: Modernizing Hawai'i's EIS Rules

By Scott Glenn, OEQC Director for the Council 2018 Annual Report

This year, the Environmental Council completed its proposed revisions to the administrative rules for the EIS process. To reach this point, the Council conducted a two-year outreach that involved multiple working drafts released for public comment, holding nine public hearings with at least one on each major island, and revising the draft rules based on the feedback received.

The purpose of the EIS process, as stated in its enabling statute, Chapter 343, Hawai'i Revised Statutes:

> *". . . [t]hat the quality of humanity's environment is critical to humanity's well being, that humanity's activities have broad and profound effects upon the interrelations of all components of the environment, and that an environmental review process will integrate the review of environmental concerns with existing planning processes of the State and Counties and alert decision makers to significant environmental effects which may result from the implementation of certain actions. The legislature further finds that the process of reviewing environmental effects is desirable because environmental consciousness is enhanced, cooperation and coordination are encouraged, and public participation during the review process benefits all parties involved and society as a whole."* (Section 343-1, HRS, Purpose)

The process also requires public participation and as such points the way for how agencies in general can involve the public in decision making about public trust resources. The EIS process requires notice of the action and public comment periods and responses to comments for both EISs and EAs. Oftentimes, the environmental review process is the only or main opportunity for the public to weigh in on proposed developments or agency use of public resources. The information gathered helps agencies make informed decisions about the impacts of a proposed action on the environment, defined broadly to include all the physical, economic, cultural, and social conditions that exist within the area affected by a proposed action, including land, human and animal communities, air, water, minerals, flora, fauna, ambient noise, and objects of historic, cultural, or aesthetic significance. Given the expansive definition of "environment," in many ways the EIS process is a process to help us become more sustainable before "sustainability" became a buzzword.

One of the Environmental Council's foremost responsibilities is to develop and update implementing regulations (referred to as "the Rules") for Chapter 343, Hawai'i Revised Statutes (HRS). It has been 22 years since the Rules were last amended and compiled. The Council's updated proposed rules modernize the process and bring the Rules into better alignment with the statute, case law, and practice.

A Brief History of the EIS Statute and Rules

In 1974, Governor John Burns signed Act 246 into law, establishing the Environmental Impact Statement process, modeled after the National Environmental Policy Act. In 1983, the State Environmental Council was established and tasked with rule making authority for Chapter 343, HRS. In 1985, the Council promulgated Chapter 200, Title 11 of the Hawai'i Administrative Rules, implementing Chapter 343, HRS.

The Rules have only been amended twice since 1985. In 1996, the Council amended the Rules to incorporate a 30-day public comment for actions that an approving agency anticipates will result in a Finding of No Significant Impact (then referred to as a "Negative Declaration"). In 2007, the Rules were amended to add an exemption class for the acquisition of land for affordable housing, but the amendment was not compiled with the rest of the Rules.

Since at least 2007, the Council has sought to update the Rules. The Council traces its current effort to revisions first considered in 2011, when the public formally petitioned the Council to update the Rules. The Council initiated consultation with state and county agencies for recommendations on issues to address and language to revise and, in 2012, released a preliminary draft of revisions (Version 1) incorporating proposed revisions from previous Council efforts and issues raised by agencies and the public. The Council also distributed an Excel file called a "comment matrix" to receive feedback on Version 1. Agencies and the public (including applicants, consultants, and nonprofit organizations) submitted comments via the comment matrix. The Council organized the feedback into a master comment matrix and tasked the Rules Committee with addressing the feedback and revising the language. The Rules Committee met regularly over the course of 2012-2014 to revise Version 1. However, due to various administrative challenges, including maintaining quorum, the Council was not able to complete its work.

Public Outreach – Going Above and Beyond

In February 2016, following Governor Ige's appointment of seven members to the Council, the Council resolved its quorum challenges and moved forward on revisions to the Rules. The Council considered the potentially controversial nature of changing the EIS process, the number and scale of issues to be addressed, and the high bar of the formal rulemaking process. To improve the process and outcome, the Council decided at the beginning to enhance public engagement in the rulemaking effort, including actively seeking public input in ways unprecedented in state rulemaking.

First, the Council chose to prepare working drafts of proposed language changes. This approach was the Council's way of "thinking out loud in public." To emphasize the "working draft" nature of the documents, the Council approached this phase the way the software industry approaches initial software development, using rapid iteration. The working drafts follow the

rapid iteration paradigm: prototype using mock-ups, issue identification, and explanations; review from stakeholders and the public on whether the proposed change addresses the issue; and refine based on feedback. Even the naming convention for the working drafts reflected the rapid iteration convention – Version 0.1, 0.2, etc. This approach gave stakeholders comfort that they would have ample input and notice when the Council would decide to go to a formal draft of proposed changes to be used for public hearings.

The Council included footnotes to give the reader a brief explanation of the Council's reasoning for the proposed changes. These working drafts assisted the Council to:

- Engage stakeholders on the reasoning of the Council and solicit feedback on how the Council was approaching an issue.
- Show stakeholders and the public how potential language could look in the rules.
- Prompt stakeholders and the public to provide better language.
- Open up a space for discussion on alternative approaches to addressing the issue.

Second, the Council adopted a modified Ramseyer format to show proposed changes. The standard approach to Ramseyer is to show new language using an underline and [~~language to be deleted using a strikethrough and enclosed in brackets~~]. This is useful for showing changes between two documents. However, it becomes more difficult to track changes in a rapid iteration approach. The Council wanted to help stakeholders follow the Council's thinking as it moved through multiple working drafts to show what was retained in a previous working draft, what was new to the latest iteration, and what was removed from the original language or previously proposed language. The Council developed a color-coded scheme that showed the differences across multiple working drafts and even continued to use this approach for the draft and final proposed rules. Also, based on public feedback, the Council bolded defined terms to alert the reader to when a word is being used in its technical meaning.

Once the Council decided to reorganize the sections and, because of the number of changes proposed, to repeal Chapter 11-200 and promulgate a new Chapter 11-200.1, the official Ramseyer format became less helpful for stakeholders and the public. This is because the Ramseyer format is to show the new chapter enclosed in quote marks but otherwise to not use strikethrough or underlining, according to the Legislative Reference Bureau. To help stakeholders and the public, the Council prepared "unofficial Ramseyer" versions that followed the Council's modified Ramseyer format and effectively served as guidance on what the actual proposed changes are. This approach was highly effective as most commenters on the draft proposed rules referred to the unofficial Ramseyer document in their comments more often than the official standard version.

Third, the Council wanted to enable the public to comment directly on proposed language without having to write letters or attend meetings. After researching online commenting

platforms, the Council used the CiviComment platform (http://oeqc.civicomment.org/). CiviComment enabled the public to view the proposed rules and comment directly on them without having to write emails or letters. Note: CiviComment will be discontinued at the end of January. OEQC will archive the comments on its website.

The Council also created a page on its website dedicated to the Rules update (http://health.hawaii.gov/oeqc/rules-update/), including a timeline (see below for timeline of major milestones), instructions for commenting, and a sign-up box to receive updates on the Rules process. Public comments were also accepted at all Council meetings. In addition, Council members spoke on local radio shows, gave presentations to community, environmental business and agency groups, and spread the word through social media.

Fourth, the Council prepared a "Rational Document" which served as an explanation of the rules, a roadmap to changes from the existing 1996 Rules to the draft and final proposed rules, and a history of the process. The Council introduced the Rationale Document with Version 0.4 once the footnotes became too complex and much of the reasoning had reached consensus. The Rationale Document is divided into three main sections. The first section, the Introduction, describes the history of the review process as well as the process moving forward. The second section, Global Discussion Points, describe the general changes between the 1996 Rules and the proposed rules. The third section, Section-Specific Changes, specifically addresses the proposed changes in each subsection.

Fifth, the Council decided to hold more public hearings than required. The Council already has a different standard for public hearings on rulemaking than is usual. Chapter 91, HRS, requires one statewide hearing on draft rules. Chapter 343, HRS, imposes a higher standard, which is to conduct one hearing in each county (for a total of four hearings). However, the Council wanted to ensure people on each island had an opportunity to participate. In total, the Council held nine (9) public hearings with at least one on each of the major islands: O'ahu (2), Hawai'i (2), Maui (2), Moloka'i, Lāna'i, and Kaua'i.

Finally, by doing this extensive documentation and outreach, the Council intends for this material to serve as administrative history for future agency decision makers, the courts, OEQC staff, and Council members. In the future, should these rules be adopted into law, a question might arise about what was meant by a particular phrase in the updated rules. The decision maker can review these working drafts and supporting documents to better understand the intent of the Council.

Drafting the Rules: 1996 Language -> Working Drafts -> Draft -> Final

To assist the Council in moving from the 1996 Rules to final proposed language, the Council made use of permitted interaction groups (PIGs) and committee meetings. The following is a brief description of each major step in the update.

2016 Permitted Interaction Group

At the beginning of the current rulemaking effort, the Council wanted to recognize the extensive outreach and drafting that started in 2011. To do this, the Council established a PIG (referred to as the "2016 PIG") in February 2016 to draft revisions to the Rules for the Rules Committee of the Council to review, based primarily on the previous effort.

The 2016 PIG's revisions were presented to the Council for discussion in the summer of 2017, and referred to as Version 0.1. The Council requested both agency comment and public input. During this time, the OEQC also contracted the UH William S. Richardson School of Law to assist the OEQC with drafting proposed language for the Council.

Rules Update Version 0.1

At the July 2017 meeting, the 2016 PIG presented Version 0.1 to the Council for consideration (refer to Version 0.1 for additional background information) and public review. At the August 2017 meeting, the Council approved Version 0.1 as the baseline document for further edits and to serve as a foundation for early consulting with affected agencies, citizen groups, and the general public. The Council's approval of Version 0.1 concluded the work of the 2016 PIG.

Rules Update Version 0.2

In September 2017, the Council released Version 0.2, incorporating Council discussions to date, and public and agency input. Version 0.2 updated almost every section of the 1996 Rules. The Council again requested input from the public and agencies. Version 0.2 incorporated public and agency comments, as well as comments submitted by Council members.

Rules Update Version 0.3

In October 2017, the Council released Version 0.3, which refined several sections based on public feedback. Most notably, Version 0.3 reorganized, added, and deleted sections of the 1996 Rules. The purpose of the reorganization was to ensure that the structure of the rules more closely followed the sequence of steps in the environmental review process.

Rules Update Version 0.4

The Council released Version 0.4 in February 2018. This version was voted on by the Council to go to a formal public comment period, including public hearings in each county (and each island). The Council prepared Version 0.4a to incorporate additional "housekeeping" updates (i.e., spelling/grammatical corrections) and other minor corrections. The Council considered Version 0.4a at the March 6, 2018 Council meeting and voted 13-0-0 (with two excused) to approve Version 0.4a, as amended (referred to as the "Proposed Rules") to be the draft to use for public hearings.

Rules Update Version 1.0 – Official Proposed Draft Rules

The Council finalized Version 0.4a as Version 1.0 and published it for formal public hearings. Version 1.0 served as the basis for public comments. Included in the package of documents for

Version 1.0 was the Rationale Document explaining the Council's process to-date and the proposed changes. The Council also released an "unofficial Ramseyer" format of the proposed changes using the formatting approach it had developed for the working drafts.

2018 Permitted Interaction Group

Following the public hearings conducted in May 2018, the Council created another PIG (2018 PIG) in June 2018. The Council charged the 2018 PIG to: (1) review and respond to the written and oral comments received at the public hearings and during the comment period; and (2) prepare a report to the Council on changes to the Proposed Rules recommended by the 2018 PIG.

In October 2018, the 2018 PIG published the Report of the Environmental Council Permitted Interaction Group (2018 PIG Report). The PIG Report provided discussion points for the Council in considering whether to modify the proposed rules based on the oral and written comments received during the public comment period.

Rules Update Version 1.1

The Council held two meetings in November 2018 to amend Version 1.0 based on oral and written comments and informed by the 2018 PIG report. The Council finalized these changes in December 2018 with additional minor amendments and approved the motion to recommend to the Governor to repeal Chapter 11-200, HAR, and promulgate the proposed Chapter 11-200.1, HAR.

Rules Update Version 2.0 – Official Final Proposed Rules (TBD)

Any technical changes as recommended by the Legislative Reference Bureau or the Attorney General would be incorporated and finalized as Version 2.0 to be presented to the Small Business Regulatory Review Board and the Governor.

Major Themes in the Revisions

The Council adopted the following principles to guide its work:

- Be consistent with the intent and language of chapter 343, HRS;
- Align statutes, case law, and practice wherever feasible;
- Increase clarity of the process and legal requirements; and
- Align with the National Environmental Policy Act (NEPA) where applicable.

The major change to the Rules is a reorganization of the current Chapter 11-200, HAR, to more closely reflect the steps that agencies and private citizens follow when preparing EAs or EISs.

Other changes are legislatively driven. In 2012, the legislature passed Act 50, requiring a cultural assessment as part of an EA or EIS. The proposed rules insert "cultural" into in the

definition of environment and in several other places within the Rules as mandated by the Act. The proposed Rules also introduce a public scoping meeting requirement prior to preparation of a draft EIS to help balance the new legislatively created direct-to-EIS pathway, that allows applicants and agencies to prepare an EIS without first preparing an EA. The Council also integrated the state sea level rise exposure area into the significance criteria so that agencies would have to consider it in deciding whether to issue an exemption notices or require an EA or EIS for a particular action.

The proposed Rules also offer definitions of "project" and "program," encouraging the preparation of programmatic EAs and EISs when appropriate by more clearly distinguishing what level of information needs to be included in an EA or EIS prepared for a project from what needs to be included in an EA or EIS for a program.

The Council introduced new rules on tracking an action's compliance with Chapter 343, HRS, as it moves through the permitting process. This process, referred to as the "green sheet" based on the City and County of Honolulu Department of Planning and Permitting practice of using their form on a green sheet, is for agencies to examine: (1) whether a proposed activity is covered by an existing environmental review document; (2) the level of review necessary for a proposed action; and (3) whether a proposed action requires additional review. Agencies have the option to publish this in *The Environmental Notice* to notify the public.

Further, the Rules require electronic submittal for publication in *The Environmental Notice*, and its distribution as well as for distributing exemption notices, EAs, and EISs. The Rules also propose changes to the exemption process and what agencies are required to do to notify the public of exemption determinations.

In addition to the above, the rules update addressed the following:

- "Housekeeping" (i.e., spelling/grammatical corrections);
- Clarifying definitions and aligning them with statutory definitions, including distinguishing between a program and a project;
- Updating requirements and procedures to publish in the OEQC periodic bulletin (i.e., *The Environmental Notice*), including republication for unusual situations;
- Modernizing submittals, deadlines, comment and response, and distribution to recognize electronic communication;
- Clarifying roles and responsibilities of proposing agencies, approving agencies, and accepting authorities in the environmental review process;
- Clarifying the environmental review process as it applies to states of emergency and emergency actions;

- Clarifying significance criteria thresholds for determining whether to issue an exemption notice, FONSI, or EISPN, including incorporating consideration of the impacts of sea level rise and greenhouse gases as significance criteria;
- Requiring agency exemption lists to be categorized into two parts: (1) allowing for agencies to designate certain activities as *de minimis* and therefore not requiring exemption documentation; and (2) those activities requiring exemption documentation and publication in the periodic bulletin.
- Revising the requirements and procedures for creating exemption lists and exempting actions from further environmental review, setting clearer thresholds for exemptions and the role of exemption lists, and publishing lists of exemption notices monthly
- Clarifying style standards and content requirements for EAs and EISs;
- Clarifying when and how to proceed directly to preparing an EIS instead of an EA;
- Revising requirements for conducting scoping meetings following an EISPN, including submission to OEQC of an audio recording of oral comments received at the public scoping meeting(s);
- Revising the response requirements and procedures for EAs and EISs, including responding to form letters and petitions and grouping responses to like comments;
- Revising procedures for joint federal-state environmental review;
- Clarifying acceptance criteria;
- Clarifying procedures for appealing non-acceptance to the Council;
- Consolidating into one section the requirements and procedures for determining when to do a supplemental EIS, and aligning the requirements with statute and case law; and
- Adding a retroactivity section for actions that have already completed environmental review or are undergoing review at the time the rules would be enacted.

Moving Forward

The next steps for the rules update are to present the Final Proposed Rules to the Small Business Regulatory Review Board and, pending that outcome, to the Governor for signing into law. The OEQC will assist agencies with preparing for the implementation of the new aspects of the rules by preparing guidance. The OEQC will also update its guidebook for practitioners and the citizen's guide to help the public participate in the environmental review process.

The Council will continue to work with stakeholders, including small businesses, to provide clarity to the effective and practical implemental of the rules.

Timeline of Major Milestones

Date	Milestone
July 2017	Council announces the EIS Rules update Council releases Version 0.1
August 2017	Council adopts Version 0.1 as its baseline working draft for rulemaking
September 2017	Council releases Version 0.2
November 2017	Council releases Version 0.3
February 2018	Council releases Version 0.4
March 2018	Council releases Version 0.4a Council adopts Version 0.4a as its official draft Version 1.0 Small Business Regulatory Review Board recommends to Governor to authorize the Council to take the rules to public hearing Governor authorizes the Council to go to public hearing
April 2018	Council notifies the public of public hearings for the proposed draft rules
May 2018	Council conducts nine (9) public hearings: O'ahu (2), Hawai'i (2), Maui (2), Moloka'i, Lāna'i, Kaua'i
June 2018	Deadline to submit written comments on the draft proposed rules Council establishes the 2018 PIG to review the oral and written comments and prepare discussion points for Council consideration
October 2018	Council releases all written and oral comments to the public for public review The 2018 PIG submits its report on discussion points to the Council
November 2018	Council adopts amendments to Version 1.0, which becomes Version 1.1
December 2018	Council approves Version 1.1 with amendments Council adopts official responses to comments Council requests Governor to repeal Chapter 11-200, HAR, and promulgate the proposed Chapter 11-200.1, HAR
Early 2019	Present Version 2.0 to the Small Business Regulatory Review Board
Spring 2019	Assist the public, agencies, and applicants with preparing for the new rules Adoption into law (if Governor approves)

RECEIVED
By Small Business Regulatory Review Board at 6:02 am, Jan 11, 2019

DEPARTMENT OF HEALTH

Repeal of Chapter 11-200 and Adoption of
Chapter 11-200.1
Hawaii Administrative Rules

Month Date, Year

SUMMARY

1. Chapter 11-200, Hawaii Administrative Rules, entitled "Environmental Impact Statement Rules", is repealed.

2. Chapter 11-200.1, Hawaii Administrative Rules, entitled "Environmental Impact Statement Rules", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 200

ENVIRONMENTAL IMPACT STATEMENT RULES

REPEALED

§§11-200-1 to 11-200-30 Repealed. [R]

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 200.1

ENVIRONMENTAL IMPACT STATEMENT RULES

Historical note: This chapter is based substantially upon chapter 11-200. [Eff 12/6/85; am and comp 8/31/96; am 12/17/2007; R]

SUBCHAPTER 1

PURPOSE

§11-200.1-1 Purpose. (a) Chapter 343, Hawaii Revised Statutes (HRS), establishes a system of environmental review at the state and county levels that shall ensure that environmental concerns are given appropriate consideration in decision-making along with economic and technical considerations. The purpose of this chapter is to provide agencies and persons with procedures, specifications regarding the contents of exemption notices, environmental assessments (EAs), and environmental impact statements (EISs), and criteria and definitions of statewide application.

(b) Agencies and applicants shall ensure that exemption notices, EAs, and EISs are prepared at the earliest practicable time. This shall assure an early, open forum for discussion of adverse effects and available

alternatives, and that the decision-makers will be enlightened to any environmental consequences of the proposed action prior to decision-making.

(c) Exemption notices, EAs, and EISs are meaningless without the conscientious application of the environmental review process as a whole, and shall not be merely a self-serving recitation of benefits and a rationalization of the proposed action. In preparing any exemption notice, EA, or EIS, proposing agencies and applicants are to make every effort to:

(1) Convey the required information succinctly in a form easily understood, both by members of the public and by government decision-makers, giving attention to the substance of the information conveyed rather than to the particular form or length of the document;

(2) Concentrate on important issues and to ensure that the document remains essentially self-contained, capable of being understood by the reader without the need for undue cross-reference; and

(3) Conduct any required consultation as mutual, open and direct, two-way communication, in good faith, to secure the meaningful participation of agencies and the public in the environmental review process. [Eff] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-1, 343-6)

SUBCHAPTER 2

DEFINITIONS

§11-200.1-2 Definitions. As used in this chapter:

"Acceptance" means a formal determination that the document required to be filed pursuant to chapter 343, HRS, fulfills the requirements of an EIS, as prescribed by section 11-200.1-28. Acceptance does not mean that the action is environmentally sound or unsound, but only that the document complies with chapter 343, HRS, and this chapter.

"Accepting authority" means, in the case of agency actions, the respective governor or mayor, or their

authorized representative, and in the case of applicant actions, the agency that initially received and agreed to process the request for an approval, that makes the determination that the EIS fulfills the requirements for acceptance.

"Action" means any program or project to be initiated by an agency or applicant.

"Addendum" means an attachment to a draft EA or draft EIS, prepared at the discretion of the proposing agency, applicant, accepting authority, or approving agency, and distinct from a supplemental EIS, for the purpose of disclosing and addressing clerical errors such as inadvertent omissions, corrections, or clarifications to information already contained in the draft EA or the draft EIS filed with the office.

"Agency" means any department, office, board, or commission of the state or county government that is part of the executive branch of that government.

"Applicant" means any person that, pursuant to statute, ordinance, or rule, officially requests approval from an agency for a proposed action.

"Approval" means a discretionary consent required from an agency prior to implementation of an action.

"Approving agency" means an agency that issues an approval prior to implementation of an applicant action.

"Council" means the environmental council.

"Cumulative impact" means the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes the other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

"Discretionary consent" means a consent, sanction, or recommendation from an agency for which judgment and free will may be exercised by the issuing agency, as distinguished from a ministerial consent. Ministerial consent means a consent, sanction, or recommendation from an agency based upon a given set of facts, as prescribed by law without the use of judgment or discretion.

"Draft environmental assessment" means the EA submitted by a proposing agency or an approving agency for public review and comment when that agency anticipates a finding of no significant impact (FONSI).

"Effects" or "impacts" as used in this chapter are synonymous. Effects may include ecological effects (such

as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic effects, historic effects, cultural effects, economic effects, social effects, or health effects, whether primary, secondary, or cumulative, whether immediate or delayed. Effects may also include those effects resulting from actions that may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

"EIS preparation notice", "EISPN", or "preparation notice" means a determination that an action may have a significant effect on the environment and, therefore, will require the preparation of an EIS, based on either an EA or an agency's judgment and experience that the proposed action may have a significant effect on the environment.

"EIS public scoping meeting" means a meeting in which agencies, citizen groups, and the general public assist the proposing agency or applicant in determining the range of actions, alternatives, impacts, and proposed mitigation measures to be considered in the draft EIS and the significant issues to be analyzed in depth in the draft EIS.

"Emergency action" means an action to prevent or mitigate loss or damage to life, health, property, or essential public services in response to a sudden unexpected occurrence demanding the immediate action.

"Environment" means humanity's surroundings, inclusive of all the physical, economic, cultural, and social conditions that exist within the area affected by a proposed action, including land, human and animal communities, health, air, water, minerals, flora, fauna, ambient noise, and objects of historic, cultural, or aesthetic significance.

"Environmental assessment" or "EA" means a written evaluation that serves to provide sufficient evidence and analysis to determine whether an action may have a significant effect.

"Environmental impact statement", "statement", or "EIS" means an informational document prepared in compliance with chapter 343, HRS. The initial EIS filed for public review shall be referred to as the draft EIS and shall be distinguished from the final EIS, which is the document that has incorporated the public's comments and the responses to those comments. The final EIS is the document that shall be evaluated for acceptability by the accepting authority.

"Exemption list" means a list prepared by an agency pursuant to subchapter 8. The list may contain in part one the types of routine activities and ordinary functions within the jurisdiction or expertise of the agency that by their nature do not have the potential to individually or cumulatively adversely affect the environment more than negligibly and that the agency considers to not rise to the level of requiring further chapter 343, HRS, environmental review. In part two, the list may contain the types of actions the agency finds fit into the general types of action enumerated in section 11-200.1-15.

"Exemption notice" means a notice produced in accordance with subchapter 8 for an action that a proposing agency or approving agency on behalf of an applicant determines to be exempt from preparation of an EA.

"Final environmental assessment" means either the EA submitted by a proposing agency or an approving agency following the public review and comment period for the draft EA and in support of either a FONSI or an EISPN.

"Finding of no significant impact" or "FONSI" means a determination by an agency based on an EA that an action not otherwise exempt will not have a significant effect on the environment and therefore does not require the preparation of an EIS.

"Impacts" means the same as "effects".

"Issue date" means the date imprinted on the periodic bulletin required by section 343-3, HRS.

"National Environmental Policy Act" or "NEPA" means the National Environmental Policy Act of 1969, Public Law 91-190, 42 U.S.C. sections 4321-4347, as amended.

"Office" means the office of environmental quality control.

"Periodic bulletin" or "bulletin" means the document required by section 343-3, HRS, and published by the office.

"Person" includes any individual, partnership, firm, association, trust, estate, private corporation, or other legal entity other than an agency.

"Primary impact", "primary effect", "direct impact", or "direct effect" means effects that are caused by the action and occur at the same time and place.

"Program" means a series of one of more projects to be carried out concurrently or in phases within a general timeline, that may include multiple sites or geographic areas, and is undertaken for a broad goal or purpose. A program may include: a number of separate projects in a

given geographic area which, if considered singly, may have minor impacts, but if considered together, may have significant impacts; separate projects having generic or common impacts; an entire plan having wide application or restricting the range of future alternative policies or actions, including new significant changes to existing land use plans, development plans, zoning regulations, or agency comprehensive resource management plans; implementation of multiple projects over a long time frame; or implementation of a single project over a large geographic area.

"Project" means a discrete, planned undertaking that is site and time specific, has a specific goal or purpose, and has potential impact to the environment.

"Proposing agency" means any state or county agency that proposes an action under chapter 343, HRS.

"Secondary impact", "secondary effect", "indirect impact", or "indirect effect" means an effect that is caused by the action and is later in time or farther removed in distance, but is still reasonably foreseeable. An indirect effect may include a growth-inducing effect and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air, water, and other natural systems, including ecosystems.

"Significant effect" or "significant impact" means the sum of effects on the quality of the environment, including actions that irrevocably commit a natural resource, curtail the range of beneficial uses of the environment, are contrary to the State's environmental policies or long-term environmental goals and guidelines as established by law, adversely affect the economic welfare, social welfare, or cultural practices of the community and State, or are otherwise set forth in section 11-200.1-13.

"Supplemental EIS" means an updated EIS prepared for an action for which an EIS was previously accepted, but which has since changed substantively in size, scope, intensity, use, location, or timing, among other things.

"Trigger" means any use or activity listed in section 343-5(a), HRS, requiring environmental review.

Unless defined in this section, elsewhere within this chapter, or in chapter 343, HRS, a proposing agency or approving agency may use its administrative rules or statutes that they implement to interpret undefined terms. [Eff] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-2, 343-6)

SUBCHAPTER 3

COMPUTATION OF TIME

§11-200.1-3 Computation of time. The time in which any act prescribed or allowed by this chapter, order of the council, or by applicable statute, is computed by excluding the first day and including the last. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or state holiday, in which case the last day shall be the next business day. [Eff] (Auth: HRS §§1-29, 8-1, 343-6) (Imp: HRS §§1-29, 8-1, 343-6)

SUBCHAPTER 4

FILING AND PUBLICATION IN THE PERIODIC BULLETIN

§11-200.1-4 Periodic bulletin. (a) The periodic bulletin shall be issued electronically on the eighth and twenty-third days of each month.

(b) When filed in accordance with section 11-200.1-5, the office shall publish the following in the periodic bulletin to inform the public of actions undergoing chapter 343, HRS, environmental review and the associated public comment periods provided here or elsewhere by statute:

(1) Determinations that an existing exemption, FONSI, or accepted EIS satisfies chapter 343, HRS, for a proposed action;
(2) Exemption notices and lists of actions an agency has determined to be exempt;
(3) Draft EAs and appropriate addendum documents for public review and thirty-day comment period, including notice of an anticipated FONSI;
(4) Final EAs, including notice of a FONSI, or an EISPN with thirty-day comment period and notice of EIS public scoping meeting, and appropriate addendum documents;

(5) Notice of an EISPN with thirty-day comment period and notice of EIS public scoping meeting, and appropriate addendum documents;
(6) Evaluations and determinations that supplemental EISs are required or not required;
(7) Draft EISs, draft supplemental EISs, and appropriate addendum documents for public review and forty-five day comment period;
(8) Final EISs, final supplemental EISs, and appropriate addendum documents;
(9) Notice of acceptance or non-acceptance of EISs and supplemental EISs;
(10) Republication of any chapter 343, HRS, notices, documents, or determinations;
(11) Notices of withdrawal of any chapter 343, HRS, notices, documents, or determinations; and
(12) Other notices required by the rules of the council.

(c) When filed in accordance with this subchapter, the office shall publish other notices required by statute or rules, including those not specifically related to chapter 343, HRS.

(d) The office may, on a space or time available basis, publish other notices not specifically related to chapter 343, HRS. [Eff] (Auth: HRS §§341-3, 343-5, 343-6) (Imp: HRS §§341-3, 343-3, 343-6)

§11-200.1-5 Filing requirements for publication and withdrawal. (a) Anything required to be published in the bulletin shall be submitted electronically to the office before the close of business five business days prior to the issue date, which shall be the issue date deadline.

(b) All submittals to the office for publication in the bulletin shall be accompanied by a completed informational form that provides whatever information the office needs to properly notify the public. The information requested may include the following: the title of the action; the islands affected by the proposed action; tax map key numbers; street addresses; nearest geographical landmarks; latitudinal and longitudinal coordinates or other geographic data; applicable permits, including for applicants, the approval requiring chapter 343, HRS, environmental review; whether the proposed action is an agency or an applicant action; a citation to the applicable

federal or state statutes requiring preparation of the document; the type of document prepared; the names, addresses, email addresses, phone numbers and contact persons as applicable of the accepting authority, the proposing agency, the approving agency, the applicant, and the consultant; and a brief narrative summary of the proposed action that provides sufficient detail to convey the impact of the proposed action to the public.

(c) The office shall not accept untimely submittals or revisions thereto after the issue date deadline for which the submittal was originally filed has passed.

(d) In accordance with the agency's rules or, in the case of an applicant EA or EIS, the applicant's judgment, anything filed with the office may be withdrawn by the agency or applicant that filed the submittal with the office. To withdraw a submittal, the agency or applicant shall submit to the office a written letter informing the office of the withdrawal. The office shall publish notice of withdrawals and the rationale in accordance with this subchapter.

(e) To be published in the bulletin, all submittals to the office shall meet the filing requirements in subsections (a) to (c) and be prepared in accordance with this chapter and chapter 343, HRS, as appropriate. The following shall meet additional filing requirements:

(1) When the document is a draft EA with an anticipated FONSI, the proposing agency or approving agency shall:
    (A) File the document and determination with the office;
    (B) Deposit, or require the applicant to deposit, concurrently with the filing to the office, one paper copy of the draft EA at the nearest state library in each county in which the proposed action is to occur and one paper copy with the Hawaii Documents Center; and
    (C) Distribute, or require the applicant to distribute, concurrently with its publication, the draft EA to other agencies having jurisdiction or expertise as well as citizen groups and individuals that the proposing agency or approving agency reasonably believes to be affected;
(2) When the document is a final EA with a FONSI, the proposing agency or approving agency shall:

(A) Incorporate, or require the applicant to incorporate, the FONSI into the contents of the final EA, as prescribed in sections 11-200.1-21 and 11-200.1-22;
(B) File the final EA and the incorporated FONSI with the office; and
(C) Deposit, or require the applicant to deposit, concurrently with the filing to the office, one paper copy of the final EA with the Hawaii Documents Center;

(3) When the document is a final EA with an EISPN, the proposing agency or approving agency shall:
(A) Incorporate, or require the applicant to incorporate, the EISPN into the contents of the final EA, as prescribed in sections 11-200.1-21, 11-200.1-22, and 11-200.1-23;
(B) File the incorporated EISPN with the final EA with the office; and
(C) Deposit, or require the applicant to deposit, concurrently with the filing to the office, one paper copy of the final EA with the Hawaii Documents Center;

(4) When the notice is an EISPN without the preparation of an EA, the proposing agency or approving agency shall:
(A) File the EISPN with the office; and
(B) Deposit, or require the applicant to deposit, concurrently with the filing to the office, one paper copy of the EISPN at the nearest state library in each county in which the proposed action is to occur and one paper copy with the Hawaii Documents Center;

(5) When the document is a draft EIS, the proposing agency or applicant shall:
(A) Sign and date the draft EIS;
(B) Indicate that the draft EIS and all ancillary documents were prepared under the signatory's direction or supervision and that the information submitted, to the best of the signatory's knowledge fully addresses document content requirements as set forth in subchapter 10;
(C) File the draft EIS with the accepting authority and the office simultaneously;

(D) Deposit, or require the applicant to deposit, concurrently with the filing to the office, one paper copy of the draft EIS at the nearest state library in each county in which the proposed action is to occur and one paper copy with the Hawaii Documents Center; and

(E) Submit to the office one true and correct copy of the original audio file, at standard quality, of all oral comments received at the time designated within any EIS public scoping meeting for receiving oral comments;

(6) When the document is a final EIS, the proposing agency or applicant shall:

(A) Sign and date the final EIS;

(B) Indicate that the final EIS and all ancillary documents were prepared under the signatory's direction or supervision and that the information submitted, to the best of the signatory's knowledge fully addresses document content requirements as set forth in subchapter 10; and

(C) File the final EIS with the accepting authority and the office simultaneously;

(7) When the notice is an acceptance or non-acceptance of a final EIS, the accepting authority shall:

(A) File the notice of acceptance or non-acceptance of a final EIS with the office; and

(B) Simultaneously transmit the notice to the proposing agency or applicant;

(8) When the notice is of the withdrawal of an anticipated FONSI, FONSI, or EISPN, the proposing agency or approving agency shall include a rationale of the withdrawal specifying any associated documents to be withdrawn;

(9) When the notice is of the withdrawal of a draft EIS or final EIS, the proposing agency or applicant shall simultaneously file the notice with the office and submit the notice with the accepting authority; and

(10) When the submittal is a changed version of a notice, document, or determination previously published and withdrawn, the submittal shall be

filed as the "second" submittal, or "third" or "fourth", as appropriate. Example: A draft EIS is withdrawn and changed. It is then filed with the office for publication as the "second draft EIS" for the particular action.
[Eff] (Auth: HRS §§343-3, 343-5, 343-6) (Imp: HRS §§341-3, 343-3, 343-6)

§11-200.1-6 Republication of notices, documents, and determinations. (a) An agency or applicant responsible for filing a chapter 343, HRS, notice, document, or determination may file an unchanged, previously published submittal in the bulletin provided that the filing requirements of this subchapter and any other publication requirements set forth in this chapter or chapter 343, HRS, are satisfied.

(b) When the publication of a previously published chapter 343, HRS, notice, document, or determination involves a public comment period under this chapter or chapter 343, HRS:

(1) The public comment period shall be as required for that notice, document, or determination pursuant to this chapter or chapter 343, HRS, or as otherwise statutorily mandated (for example, publication of an unchanged draft EIS initiates a forty-five day public comment period upon publication in the bulletin); and

(2) Any comments received during the comment period must be considered in the same manner as set forth in this chapter and chapter 343, HRS, for that notice, document, or determination type, in addition to comments received in any other comment period associated with the publication of the notice, document, or determination.

[Eff] (Auth: HRS §§341-3, 343-5, 343-6) (Imp: HRS §§341-3, 343-3, 343-5, 343-6)

SUBCHAPTER 5

RESPONSIBILITIES

§11-200.1-7 Identification of approving agency and accepting authority. (a) Whenever an agency proposes an action, the authority to accept an EIS shall rest with:

(1) The governor, or the governor's authorized representative, whenever an action proposes the use of state lands or state funds or whenever a state agency proposes an action under section 11-200.1-8; or

(2) The mayor, or the mayor's authorized representative, of the respective county whenever an action proposes only the use of county lands or county funds.

(b) For agency actions involving state and county lands, state and county funds, or both state and county lands and funds, the governor or the governor's authorized representative shall have final authority to accept the EIS. In cases involving only county funds or lands, the mayor of the respective county or the mayor's authorized representative shall have final authority to accept the EIS.

(c) Whenever an applicant proposes an action, the authority for requiring an EA or EIS, making a determination regarding any required EA, and accepting any required EIS shall rest with the approving agency that initially received and agreed to process the request for an approval. With respect to EISs, this approving agency is also called the accepting authority.

(d) If more than one agency is proposing the action or, in the case of applicants, more than one agency has jurisdiction over the action, and these agencies are unable to agree as to which agency has the responsibility for complying with chapter 343, HRS, the agencies involved shall consult with one another to determine which agency is responsible for compliance. In making the decision, the agencies shall take into consideration, including but not limited to, the following factors:

(1) Which agency has the greatest responsibility for supervising or approving the action as a whole;

(2) Which agency can most adequately fulfill the requirements of chapter 343, HRS, and this chapter;

(3) Which agency has special expertise or greatest access to information relevant to the action's implementation and impacts;

(4) The extent of participation of each agency in the action; and

(5) In the case of an action with proposed use of state or county lands or funds, which agency has the most land or funds involved in the action.

(e) If there is more than one agency that is proposing the action, or in the case of applicants, more than one agency has jurisdiction over the action, and after applying the criteria in subsection (d) these agencies are unable to agree as to which agency has the responsibility for complying with chapter 343, HRS, the office, after consultation with the agencies involved, shall apply the same considerations in subsection (d) to decide which agency is responsible for compliance.

(f) The office shall not serve as the accepting authority for any agency or applicant action.

(g) The office may provide recommendations to the agency or applicant responsible for the EA or EIS regarding any applicable administrative content requirements set forth in this chapter. [Eff] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

SUBCHAPTER 6

APPLICABILITY

§11-200.1-8 Applicability of chapter 343, HRS, to agency actions. (a) Chapter 343, HRS, environmental review shall be required for any agency action that includes one or more triggers as identified in section 343-5(a), HRS.

(1) Under section 343-5(a), HRS, use of state or county funds shall include any form of funding assistance flowing from the State or a county, and use of state or county lands includes any use (title, lease, permit, easement, license, etc.) or entitlement to those lands.

(2) Under section 343-5(a), HRS, any feasibility or planning study for possible future programs or projects that the agency has not approved, adopted, or funded are exempted from chapter 343, HRS, environmental review. Nevertheless, if an agency is studying the feasibility of a proposal, it shall consider environmental factors and

available alternatives and disclose these in any future EA or EIS.

(b) When an agency proposes an action during a governor-declared state of emergency, the proposing agency shall document in its records that the emergency action was undertaken pursuant to a specific emergency proclamation. If the emergency action has not substantially commenced within sixty days of the emergency proclamation, the action will be subject to chapter 343, HRS.

(c) In the event of a sudden unexpected emergency causing or likely to cause loss or damage to life, health, property, or essential public service, but for which a declaration of a state of emergency has not been made, a proposing agency undertaking an emergency action shall document in its records that the emergency action was undertaken pursuant to a specific emergency and shall include the emergency action on its list of exemption notices for publication by the office in the bulletin pursuant to section 11-200.1-17(d) and subchapter 4. [Eff] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

§11-200.1-9 Applicability of chapter 343, HRS, to applicant actions. (a) Chapter 343, HRS, environmental review shall be required for any applicant action that:

(1) Requires one or more approvals prior to implementation; and

(2) Includes one or more triggers identified in section 343-5(a), HRS.

(A) Under section 343-5(a), HRS, use of state or county funds shall include any form of funding assistance flowing from the State or a county, and use of state or county lands includes any use (title, lease, permit, easement, license, etc.) or entitlement to those lands.

(B) Under section 343-5(a)(1), HRS, actions involving agricultural tourism under section 205-2(d)(11) or section 205-4.5(a)(13), HRS, are subject to environmental review when the respective county requires environmental review under an ordinance adopted pursuant to section 205-5(b), HRS.

(b) Chapter 343, HRS, does not require environmental review for applicant actions when:

(1) Notwithstanding any other law to the contrary, for any primary action that requires a permit or approval that is not subject to a discretionary consent and that involves a secondary action that is ancillary and limited to the installation, improvement, renovation, construction, or development of infrastructure within an existing public right-of-way or highway, that secondary action shall be exempt from this chapter; provided that the applicant for the primary action shall submit documentation from the appropriate agency confirming that no further discretionary approvals are required.

(2) As used in this subsection:
"Discretionary consent" means an action as defined in section 343-2, HRS; or an approval from a decision-making authority in an agency, which approval is subject to a public hearing.
"Infrastructure" includes waterlines and water facilities, wastewater lines and wastewater facilities, gas lines and gas facilities, drainage facilities, electrical, communications, telephone, and cable television utilities, and highway, roadway, and driveway improvements.
"Primary action" means an action outside of the highway or public right-of-way that is on private property.
"Secondary action" means an action involving infrastructure within the highway or public right-of-way. [Eff] (Auth: HRS §§343-5, 343-5.5, 343-6) (Imp: HRS §§343-5, 343.5.5, 343-6)

§11-200.1-10 Multiple or phased actions. A group of actions shall be treated as a single action when:

(1) The component actions are phases or increments of a larger total program;

(2) An individual action is a necessary precedent to a larger action;

(3) An individual action represents a commitment to a larger action; or

(4) The actions in question are essentially identical and a single EA or EIS will adequately address the impacts of each individual action and those of the group of actions as a whole.

[Eff] (Auth: HRS §§343-5, 343-6) (Imp: HRS §343-6)

§11-200.1-11 Use of prior exemptions, findings of no significant impact, or accepted environmental impact statements to satisfy chapter 343, HRS, for proposed actions. (a) When an agency is considering whether a prior exemption, FONSI, or an accepted EIS satisfies chapter 343, HRS, for a proposed action, the agency may determine that additional environmental review is not required because:

(1) The proposed action was a component of, or is substantially similar to, an action that received an exemption, FONSI, or an accepted EIS (for example, a project that was analyzed in a program EIS);

(2) The proposed action is anticipated to have direct, indirect, and cumulative effects similar to those analyzed in a prior exemption, final EA, or accepted EIS; and

(3) In the case of a final EA or an accepted EIS, the proposed action was analyzed within the range of alternatives.

(b) When an agency determines that a prior exemption, FONSI, or an accepted EIS satisfies chapter 343, HRS, for a proposed action, the agency may submit a brief written determination explaining its rationale to the office for publication pursuant to section 11-200.1-4 and the proposed action may proceed without further chapter 343, HRS, environmental review.

(c) When an agency determines that the proposed action warrants environmental review, the agency may submit a brief written determination explaining its rationale to the office for publication pursuant to section 11-200.1-4 and the agency shall proceed to comply with subchapter 7.

(d) Agencies shall not, without careful examination and comparison, use past determinations and previous EISs to apply to the action at hand. The action for which a determination is sought shall be thoroughly reviewed prior to the use of previous determinations and previously

accepted EISs. Further, when previous determinations and previous EISs are considered or incorporated by reference, they shall be substantially relevant to the action being considered. [Eff] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

SUBCHAPTER 7

DETERMINATION OF SIGNIFICANCE

§11-200.1-12 Consideration of previous determinations and accepted statements. A proposing agency or applicant may incorporate information or analysis from a relevant prior exemption notice, final EA, or accepted EIS into an exemption notice, EA, EISPN, or EIS, for a proposed action whenever the information or analysis is pertinent and has logical relevancy and bearing to the proposed action (for example, a project that was broadly considered as part of an accepted program EIS may incorporate relevant portions from the accepted program EIS by reference). [Eff] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

§11-200.1-13 Significance criteria. (a) In considering the significance of potential environmental effects, agencies shall consider and evaluate the sum of effects of the proposed action on the quality of the environment.

(b) In determining whether an action may have a significant effect on the environment, the agency shall consider every phase of a proposed action, the expected impacts, and the proposed mitigation measures. In most instances, an action shall be determined to have a significant effect on the environment if it may:

(1) Irrevocably commit a natural, cultural, or historic resource;

(2) Curtail the range of beneficial uses of the environment;

(3) Conflict with the State's environmental policies or long-term environmental goals established by law;
(4) Have a substantial adverse effect on the economic welfare, social welfare, or cultural practices of the community and State;
(5) Have a substantial adverse effect on public health;
(6) Involve adverse secondary impacts, such as population changes or effects on public facilities;
(7) Involve a substantial degradation of environmental quality;
(8) Be individually limited but cumulatively have substantial adverse effect upon the environment or involves a commitment for larger actions;
(9) Have a substantial adverse effect on a rare, threatened, or endangered species, or its habitat;
(10) Have a substantial adverse effect on air or water quality or ambient noise levels;
(11) Have a substantial adverse effect on or be likely to suffer damage by being located in an environmentally sensitive area such as a flood plain, tsunami zone, sea level rise exposure area, beach, erosion-prone area, geologically hazardous land, estuary, fresh water, or coastal waters;
(12) Have a substantial adverse effect on scenic vistas and viewplanes, during day or night, identified in county or state plans or studies; or
(13) Require substantial energy consumption or emit substantial greenhouse gases.

[Eff] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-2, 343-6)

§11-200.1-14 Determination of level of environmental review. (a) For an agency action, through its judgment and experience, a proposing agency shall assess the significance of the potential impacts of the action to determine the level of environmental review necessary for the action.

(b) For an applicant action, within thirty days from the receipt of the applicant's complete request for approval to the approving agency, through its judgment and experience, an approving agency shall assess the significance of the potential impacts of the action to determine the level of environmental review necessary for the action.

(c) If the proposing agency or approving agency determines, through its judgment and experience, that the action will individually and cumulatively probably have minimal or no significant effects, and the action is one that is eligible for exemption under subchapter 8, then the proposing agency or the approving agency in the case of an applicant may prepare an exemption notice in accordance with subchapter 8.

(d) If the proposing agency or approving agency determines, through its judgment and experience that the action is not eligible for an exemption, then the proposing agency shall prepare, or the approving agency shall require the applicant to prepare, an EA beginning with a draft EA in accordance with subchapter 9, unless:

(1) In the course of preparing the draft EA, the proposing agency or approving agency determines, through its judgment and experience that the action may have a significant effect and therefore require preparation of an EIS, then the proposing agency may prepare, or the approving agency may authorize the applicant to prepare, an EA as a final EA to support the determination prior to preparing or requiring preparation of an EIS in accordance with subchapter 10; or

(2) The proposing agency or approving agency determines, through its judgment and experience that an EIS is likely to be required, then the proposing agency may choose to prepare, or an approving agency may authorize an applicant to prepare, an EIS in accordance with subchapter 10, beginning with preparation of an EISPN.

[Eff] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

SUBCHAPTER 8

EXEMPT ACTIONS, LIST, AND NOTICE REQUIREMENTS

§11-200.1-15 General types of actions eligible for exemption. (a) Some actions, because they will individually and cumulatively probably have minimal or no significant effects, can be declared exempt from the preparation of an EA.

(b) Actions declared exempt from the preparation of an EA under this subchapter are not exempt from complying with any other applicable statute or rule.

(c) The following general types of actions are eligible for exemption:

(1) Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing;

(2) Replacement or reconstruction of existing structures and facilities where the new structure will be located generally on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced;

(3) Construction and location of single, new, small facilities or structures and the alteration and modification of the facilities or structures and installation of new, small equipment or facilities and the alteration and modification of the equipment or facilities, including, but not limited to:

(A) Single-family residences less than 3,500 square feet, as measured by the controlling law under which the proposed action is being considered, if not in conjunction with the building of two or more such units;

(B) Multi-unit structures designed for not more than four dwelling units if not in conjunction with the building of two or more such structures;

(C) Stores, offices, and restaurants designed for total occupant load of twenty individuals or fewer per structure, if not in conjunction with the building of two or more such structures; and

(D) Water, sewage, electrical, gas, telephone, and other essential public utility services extensions to serve such structures or facilities; accessory or appurtenant structures including garages, carports, patios, swimming pools, and fences; and, acquisition of utility easements;

(4) Minor alterations in the conditions of land, water, or vegetation;

(5) Basic data collection, research, experimental management, and resource and infrastructure testing and evaluation activities that do not result in a serious or major disturbance to an environmental resource;

(6) Demolition of structures, except those structures that are listed on the national register or Hawaii Register of Historic Places;

(7) Zoning variances except shoreline setback variances;

(8) Continuing administrative activities;

(9) Acquisition of land and existing structures, including single or multi-unit dwelling units, for the provision of affordable housing, involving no material change of use beyond previously existing uses, and for which the legislature has appropriated or otherwise authorized funding; and

(10) New construction of affordable housing, where affordable housing is defined by the controlling law applicable for the state or county proposing agency or approving agency, that meets the following:

(A) Has the use of state or county lands or funds or is within Waikiki as the sole triggers for compliance with chapter 343, HRS;

(B) As proposed conforms with the existing state urban land use classification;

(C) As proposed is consistent with the existing county zoning classification that allows housing; and

(D) As proposed does not require variances for shoreline setbacks or siting in an environmentally sensitive area, as stated in section 11-200.1-13(b)(11).

(d) All exemptions under subchapter 8 are inapplicable when the cumulative impact of planned successive actions in the same place, over time, is significant, or when an action that is normally insignificant in its impact on the environment may be significant in a particularly sensitive environment.

(e) Any agency, at any time, may request that a new exemption type be added, or that an existing one be amended or deleted. The request shall be submitted to the council, in writing, and contain detailed information to support the request as set forth in section 11-201-16, HAR, environmental council rules. [Eff] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

§11-200.1-16 Exemption lists. (a) Each agency, through time and experience, may develop its own exemption list consistent with both the letter and intent expressed in this subchapter and in chapter 343, HRS, of:

(1) Routine activities and ordinary functions within the jurisdiction or expertise of the agency that by their nature do not have the potential to individually or cumulatively adversely affect the environment more than negligibly and that the agency considers to not rise to the level of requiring chapter 343, HRS, environmental review. Examples of routine activities and ordinary functions may include, among others: routine repair, routine maintenance, purchase of supplies, and continuing administrative activities involving personnel only, nondestructive data collection, installation of routine signs and markers, financial transactions, personnel-related matters, construction or placement of minor structures accessory to existing facilities; interior alterations involving things such as partitions, plumbing, and electrical conveyances; and

(2) Types of actions that the agency considers to be included within the exempt general types listed in section 11-200.1-15.

(b) An agency may use part one of its exemption list, developed pursuant to subsection (a)(1), to exempt a specific activity from preparation of an EA and the

requirements of section 11-200.1-17 because the agency considers the specific activity to be de minimis.

(c) An agency may use part two of its exemption list, developed pursuant to subsection (a)(2), to exempt from preparation of an EA a specific action that the agency determines to be included under the types of actions in its exemption list, provided that the agency fulfills the exemption notice requirements set forth in section 11-200.1-17 and chapter 343, HRS.

(d) These exemption lists and any amendments to the exemption lists shall be submitted to the council for review and concurrence no later than seven years after the previous concurrence; provided that in the event the council is unable to meet due to quorum when a concurrence for an agency exemption list is seven years or older, the agency may submit a letter to the council acknowledging that the existing exemption list is still valid. Upon attaining quorum, the council shall review the exemption list for concurrence. The council may review agency exemption lists periodically. [Eff] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

§11-200.1-17 Exemption notices. (a) Each agency shall create an exemption notice for an action that it has found to be exempt from the requirements for preparation of an EA pursuant to section 11-200.1-16(a)(2) or that an agency considers to be included within a general type of action pursuant to section 11-200.1-15. An agency may create an exemption notice for an action that it has found to be exempt from the requirements for preparation of an EA pursuant to section 11-200.1-16(a)(1) or that an agency considers to be a routine activity and ordinary function within the jurisdiction or expertise of the agency that by its nature does not have the potential to individually or cumulatively adversely affect the environment more than negligibly.

(b) To declare an exemption prior to implementing an action, an agency shall undertake an analysis to determine whether the action merits exemption pursuant to section 11-200.1-15 and is consistent with one or several of the general types listed in section 11-200.1-15 or the agency's exemption list produced in accordance with section 11-200.1-16, and whether significant cumulative impacts or particularly sensitive environments would make the

exemption inapplicable. An agency shall obtain the advice of other outside agencies or individuals having jurisdiction or expertise on the propriety of the exemption. This analysis and consultation shall be documented in an exemption notice.

(c) Each agency shall electronically provide its exemption notices for review upon request by the public or an agency, and shall submit a list of exemption notices that the agency has created to the office for publication in the bulletin on the eighth day of each month pursuant to subchapter 4. [Eff] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

SUBCHAPTER 9

PREPARATION OF ENVIRONMENTAL ASSESSMENTS

§11-200.1-18 Preparation and contents of a draft environmental assessment. (a) A proposing agency shall conduct, or an approving agency shall require an applicant to conduct, early consultation seeking, at the earliest practicable time, the advice and input of the county agency responsible for implementing the county's general plan for each county in which the proposed action is to occur, and consult with other agencies having jurisdiction or expertise as well as those citizen groups and individuals that the proposing agency or approving agency reasonably believes may be affected.

(b) The scope of the draft EA may vary with the scope of the proposed action and its impact, taking into consideration whether the action is a project or a program. Data and analyses in a draft EA shall be commensurate with the importance of the impact, and less important material may be summarized, consolidated, or simply referenced. A draft EA shall indicate at appropriate points in the text any underlying studies, reports, and other information obtained and considered in preparing the draft EA, including cost-benefit analyses and reports required under other legal authorities.

(c) The level of detail in a draft EA may be more broad for programs or components of a program for which site-specific impacts are not discernible, and shall be

more specific for components of the program for which site-specific, project-level impacts are discernible. A draft EA for a program may, where necessary, omit evaluating issues that are not yet ready for decision at the project level. Analysis of the program may discuss in general terms the constraints and sequences of events likely to result in any narrowing of future options. It may present and analyze in general terms hypothetical scenarios that are likely to occur.

(d) A draft EA shall contain, but not be limited to, the following information:

(1) Identification of the applicant or proposing agency;

(2) For applicant actions, identification of the approving agency;

(3) List of all required permits and approvals (state, federal, and county) and, for applicants, identification of which approval necessitates chapter 343, HRS, environmental review;

(4) Identification of agencies, citizen groups, and individuals consulted in preparing the draft EA;

(5) General description of the action's technical, economic, social, cultural, historical, and environmental characteristics;

(6) Summary description of the affected environment, including suitable and adequate regional, location, and site maps such as Flood Insurance Rate Maps, Floodway Boundary Maps, United States Geological Survey topographic maps, or state sea level rise exposure area maps;

(7) Identification and analysis of impacts and alternatives considered;

(8) Proposed mitigation measures;

(9) Proposing agency or approving agency anticipated determination, including findings and reasons supporting the anticipated FONSI, if applicable; and

(10) Written comments, if any, and responses to the comments received, if any, and made pursuant to the early consultation provisions of subsection (a) and statutorily prescribed public review periods. [Eff] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

§11-200.1-19 Notice of determination for draft environmental assessments. (a) After:

(1) Preparing, or causing to be prepared, a draft EA;

(2) Reviewing any public and agency comments; and

(3) Applying the significance criteria in section 11-200.1-13,

if the proposing agency or the approving agency anticipates that the proposed action is not likely to have a significant effect, the proposing agency or approving agency shall issue a notice of an anticipated FONSI subject to the public review provisions of section 11-200.1-20.

(b) The proposing agency or approving agency shall file the notice of anticipated FONSI and supporting draft EA with the office as early as possible in accordance with subchapter 4 after the determination is made pursuant to and in accordance with this subchapter and the requirements in subsection (c). For applicant actions, the approving agency shall also send the anticipated FONSI to the applicant.

(c) The notice of an anticipated FONSI shall include in a concise manner:

(1) Identification of the proposing agency or applicant;

(2) For applicant actions, identification of the approving agency;

(3) A brief description of the action;

(4) The anticipated FONSI;

(5) Reasons supporting the anticipated FONSI; and

(6) The name, title, email address, physical address, and phone number of an individual representative of the proposing agency or approving agency who may be contacted for further information.

[Eff] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

§11-200.1-20 Public review and response requirements for draft environmental assessments. (a) This section shall apply only if a proposing agency or an approving agency anticipates a FONSI determination for a proposed action and the proposing agency or the applicant has completed the draft EA requirements of sections 11-200.1-18 and 11-200-19.

(b) Unless mandated otherwise by statute, the period for public review and for submitting written comments shall

be thirty days from the date of publication of the draft EA in the bulletin. Written comments shall be received by or postmarked to the proposing agency, or in the case of applicants, to either the approving agency or applicant within the thirty-day period. Any comments outside of the thirty-day period need not be responded to nor considered in the final EA.

(c) For agency actions, the proposing agency shall, and for applicant actions, the applicant shall: respond in the final EA in the manner prescribed in this section to all substantive comments received or postmarked during the statutorily mandated review period, incorporate comments into the final EA as appropriate, and include the comments and responses in the final EA. In deciding whether a written comment is substantive, the proposing agency or applicant shall give careful consideration to the validity, significance, and relevance of the comment to the scope, analysis, or process of the EA, bearing in mind the purpose of this chapter and chapter 343, HRS. Written comments deemed by the proposing agency or applicant as non-substantive and to which no response was provided shall be clearly indicated.

(d) Proposing agencies and applicants shall respond in the final EA to all substantive comments in one of two ways, or a combination of both, so long as each substantive comment has clearly received a response:

(1) By grouping comment responses under topic headings and addressing each substantive comment raised by an individual commenter under that topic heading by issue. When grouping comments by topic and issue, the names of commenters who raised an issue under a topic heading shall be clearly identified in a distinctly labeled section with that topic heading. All substantive comments within a single comment letter must be addressed, but may be addressed throughout the applicable topic areas with the commenter identified in each applicable topic area. All comments, except those described in subsection (e), must be appended in full to the final EA; or

(2) By providing a separate and distinct response to each comment clearly identifying the commenter and the comment receiving a response for each comment letter submitted. All comments, except those described in subsection (e), must either be

included with the response or appended in full to the final EA.

(e) For comments that are form letters or petitions, that contain identical or near-identical language, and that raise the same issues on the same topic:

(1) The response may be grouped under subsection (d)(1) with the response to other comments under the same topic and issue with all commenters identified in the distinctly labeled section identifying commenters by topic; or

(2) A single response may be provided that addresses all substantive comments within the form letter or petition and that includes a distinct section listing the individual commenters who submitted the form letter or petition. At least one representative sample of the form letter or petition shall be appended to the final EA;

provided that, if a commenter adds a distinct substantive comment to a form letter or petition, that comment must be responded to pursuant to subsection (d).

(f) In responding to substantive written comments, proposing agencies and applicants shall endeavor to resolve conflicts or inconsistencies in information and address specific environmental concerns identified by the commenter, providing a response that is commensurate with the substantive content of those comments. The response shall describe the disposition of significant environmental issues raised (for example, the response may point to revisions to the proposed action to mitigate anticipated impacts or objections raised in the comment, or may refute all or part of the comment). In particular, the issues raised when the proposing agency's or applicant's position is at variance with recommendations and objections raised in the comments shall be addressed in detail, giving reasons why specific comments and suggestions were not accepted, and factors of overriding importance warranting an override of the suggestions. The response shall indicate changes that have been made to the text of the draft EA.

(g) An addendum document to a draft EA shall reference the original draft EA it attaches to and shall comply with all applicable filing, public review, and comment requirements set forth in subchapters 4 and 9.

[Eff] (Auth: HRS §§343-3, 343-5, 343-6) (Imp: HRS §§343-3, 343-5, 343-6)

§11-200.1-21 Contents of a final environmental assessment. A final EA shall contain, but not be limited to, the following information:

(1) Identification of applicant or proposing agency;
(2) For applicant actions, identification of the approving agency;
(3) Identification of agencies, citizen groups, and individuals consulted in preparing the EA;
(4) General description of the action's technical, economic, social, cultural, historical, and environmental characteristics;
(5) Summary description of the affected environment, including suitable and adequate regional, location, and site maps such as Flood Insurance Rate Maps, Floodway Boundary Maps, United States Geological Survey topographic maps, or state sea level rise exposure area maps;
(6) Identification and analysis of impacts and alternatives considered;
(7) Proposed mitigation measures;
(8) The agency determination and the findings and reasons supporting the determination;
(9) List of all required permits and approvals (state, federal, and county) and, for applicants, identification of which approval necessitates chapter 343, HRS, environmental review; and
(10) Written comments, if any, and responses to the comments received, if any, pursuant to the early consultation provisions of section 11-200.1-18(a), and statutorily prescribed public review periods in accordance with section 11-200.1-20.

[Eff] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

§11-200.1-22 Notice of determination for final environmental assessments. (a) After:

(1) Preparing, or causing to be prepared, a final EA;
(2) Reviewing any public and agency comments; and
(3) Applying the significance criteria in section 11-200.1-13,

the proposing agency or the approving agency shall issue a notice of a FONSI or EISPN in accordance with subchapter 9,

and file the notice with the office in accordance with subchapter 4. For applicant actions, the approving agency shall issue a determination within thirty days of receiving the final EA.

(b) If the proposing agency or approving agency determines that a proposed action is not likely to have a significant effect, it shall issue a notice of a FONSI.

(c) If the proposing agency or approving agency determines that a proposed action may have a significant effect, it shall issue an EISPN.

(d) The proposing agency or approving agency shall file in accordance with subchapter 4 the notice and the supporting final EA with the office as early as possible after the determination is made, addressing the requirements in subsection (e). For applicant actions, the approving agency shall send the notice of determination for an EISPN or FONSI to the applicant.

(e) The notice of a FONSI shall indicate in a concise manner:

(1) Identification of the proposing agency or applicant;

(2) For applicant actions, identification of the approving agency;

(3) A brief description of the proposed action;

(4) The determination;

(5) Reasons supporting the determination; and

(6) The name, title, email address, physical address, and phone number of an individual representative of the proposing agency or approving agency who may be contacted for further information.

(f) The notice of determination for an EISPN shall be prepared pursuant to section 11-200.1-23.

[Eff] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

SUBCHAPTER 10

PREPARATION OF ENVIRONMENTAL IMPACT STATEMENTS

§11-200.1-23 Consultation prior to filing a draft environmental impact statement. (a) An EISPN, including one resulting from an agency authorizing the preparation of

an EIS without first requiring an EA, shall indicate in a concise manner:

(1) Identification of the proposing agency or applicant;
(2) Identification of the accepting authority;
(3) List of all required permits and approvals (state, federal, and county) and, for applicants, identification of which approval necessitates chapter 343, HRS, environmental review;
(4) The determination to prepare an EIS;
(5) Reasons supporting the determination to prepare an EIS;
(6) A description of the proposed action and its location;
(7) A description of the affected environment, including regional, location, and site maps;
(8) Possible alternatives to the proposed action;
(9) The proposing agency's or applicant's proposed scoping process, including when and where any EIS public scoping meeting will be held; and
(10) The name, title, email address, physical address, and phone number of an individual representative of the proposing agency or applicant who may be contacted for further information.

(b) In the preparation of a draft EIS, proposing agencies and applicants shall consult all appropriate agencies, including the county agency responsible for implementing the county's general plan for each county in which the proposed action is to occur and agencies having jurisdiction or expertise, as well as those citizen groups, and concerned individuals that the accepting authority reasonably believes to be affected. To this end, agencies and applicants shall endeavor to develop a fully acceptable draft EIS prior to the time the draft EIS is filed with the office, through a full and complete consultation process, and shall not rely solely upon the review process to expose environmental concerns.

(c) Upon publication of an EISPN in the periodic bulletin, agencies, citizen groups, or individuals shall have a period of thirty days from the initial publication date to make written comments regarding the environmental effects of the proposed action. With explanation, the accepting authority may extend the period for comments for a period not to exceed thirty additional days. Written comments and responses to the substantive comments shall be included in the draft EIS pursuant to section 11-200.1-24.

For purposes of the EIS public scoping meeting, substantive comments shall be those pertaining to the scope of the EIS.

(d) No fewer than one EIS public scoping meeting addressing the scope of the draft EIS shall be held on the island or islands most affected by the proposed action, within the public review and comment period in subsection (c). The EIS public scoping meeting shall include a separate portion reserved for oral public comments and that portion of the EIS public scoping meeting shall be audio recorded. [Eff] (Auth: HRS §§343-5, 343-6) (Imp: HRS §343-6)

§11-200.1-24 Content requirements; draft environmental impact statement. (a) The draft EIS, at a minimum, shall contain the information required in this section. The contents shall fully declare the environmental implications of the proposed action and shall discuss all reasonably foreseeable consequences of the action. In order that the public can be fully informed and that the accepting authority can make a sound decision based upon the full range of responsible opinion on environmental effects, an EIS shall include responsible opposing views, if any, on significant environmental issues raised by the proposal.

(b) The scope of the draft EIS may vary with the scope of the proposed action and its impact, taking into consideration whether the action is a project or a program. Data and analyses in a draft EIS shall be commensurate with the importance of the impact, and less important material may be summarized, consolidated, or simply referenced. A draft EIS shall indicate at appropriate points in the text any underlying studies, reports, and other information obtained and considered in preparing the draft EIS, including cost-benefit analyses and reports required under other legal authorities.

(c) The level of detail in a draft EIS may be more broad for programs or components of a program for which site-specific impacts are not discernible, and shall be more specific for components of the program for which site-specific, project-level impacts are discernible. A draft EIS for a program may, where necessary, omit evaluating issues that are not yet ready for decision at the project level. Analysis of the program may discuss in general terms the constraints and sequences of events likely to

result in any narrowing of future options. It may present and analyze in general terms hypothetical scenarios that are likely to occur.

(d) The draft EIS shall contain a summary that concisely discusses the following:

(1) Brief description of the action;
(2) Significant beneficial and adverse impacts;
(3) Proposed mitigation measures;
(4) Alternatives considered;
(5) Unresolved issues;
(6) Compatibility with land use plans and policies, and a list of permits or approvals; and
(7) A list of relevant EAs and EISs considered in the analysis of the preparation of the EIS.

(e) The draft EIS shall contain a table of contents.

(f) The draft EIS shall contain a separate and distinct section that includes the purpose and need for the proposed action.

(g) The draft EIS shall contain a description of the action that shall include the following information, but need not supply extensive detail beyond that needed for evaluation and review of the environmental impact:

(1) A detailed map (such as a United States Geological Survey topographic map, Flood Insurance Rate Maps, Floodway Boundary Maps, or state sea level rise exposure area maps, as applicable) and a related regional map;
(2) Objectives of the proposed action;
(3) General description of the action's technical, economic, social, cultural, and environmental characteristics;
(4) Use of state or county funds or lands for the action;
(5) Phasing and timing of the action;
(6) Summary technical data, diagrams, and other information necessary to enable an evaluation of potential environmental impact by commenting agencies and the public; and
(7) Historic perspective.

(h) The draft EIS shall describe in a separate and distinct section discussion of the alternative of no action as well as reasonable alternatives that could attain the objectives of the action. The section shall include a rigorous exploration and objective evaluation of the environmental impacts of all such alternative actions. Particular attention shall be given to alternatives that

might enhance environmental quality or avoid, reduce, or minimize some or all of the adverse environmental effects, costs, and risks of the action. Examples of alternatives include:

(1) Alternatives requiring actions of a significantly different nature that would provide similar benefits with different environmental impacts;

(2) Alternatives related to different designs or details of the proposed action that would present different environmental impacts; and

(3) Alternative locations for the proposed action.

In each case, the analysis shall be sufficiently detailed to allow the comparative evaluation of the environmental benefits, costs, and risks of the proposed action and each reasonable alternative. For alternatives that were eliminated from detailed study, the section shall contain a brief discussion of the reasons for not studying those alternatives in detail. For any agency actions, the discussion of alternatives shall include, where relevant, those alternatives not within the existing authority of the agency.

(i) The draft EIS shall include a description of the environmental setting, including a description of the environment in the vicinity of the action, as it exists before commencement of the action, from both a local and regional perspective. Special emphasis shall be placed on environmental resources that are rare or unique to the region and the action site (including natural or human-made resources of historic, cultural, archaeological, or aesthetic significance); specific reference to related actions, public and private, existent or planned in the region shall also be included for purposes of examining the possible overall cumulative impacts of such actions. Proposing agencies and applicants shall also identify, where appropriate, population and growth characteristics of the affected area, any population and growth assumptions used to justify the proposed action, and any secondary population and growth impacts resulting from the proposed action and its alternatives. The draft EIS shall expressly note the sources of data used to identify, qualify, or evaluate any and all environmental consequences.

(j) The draft EIS shall include a description of the relationship of the proposed action to land use and natural or cultural resource plans, policies, and controls for the affected area. Discussion of how the proposed action may conform or conflict with objectives and specific terms of

approved or proposed land use and resource plans, policies, and controls, if any, for the affected area shall be included. Where a conflict or inconsistency exists, the draft EIS shall describe the extent to which the agency or applicant has reconciled its proposed action with the plan, policy, or control, and the reasons why the agency or applicant has decided to proceed, notwithstanding the absence of full reconciliation.

(k) The draft EIS shall also contain a list of necessary approvals required for the action from governmental agencies, boards, or commissions or other similar groups having jurisdiction. The status of each identified approval shall also be described.

(l) The draft EIS shall include an analysis of the probable impact of the proposed action on the environment, and impacts of the natural or human environment on the action. This analysis shall include consideration of all phases of the action and consideration of all consequences on the environment, including direct and indirect effects. The interrelationships and cumulative environmental impacts of the proposed action and other related actions shall be discussed in the draft EIS. The draft EIS should recognize that several actions, in particular those that involve the construction of public facilities or structures (e.g., highways, airports, sewer systems, water resource actions, etc.) may well stimulate or induce secondary effects. These secondary effects may be equally important as, or more important than, primary effects, and shall be thoroughly discussed to fully describe the probable impact of the proposed action on the environment. The population and growth impacts of an action shall be estimated if expected to be significant, and an evaluation shall be made of the effects of any possible change in population patterns or growth upon the resource base, including but not limited to land use, water, and public services, of the area in question. Also, if the proposed action constitutes a direct or indirect source of pollution as determined by any governmental agency, necessary data regarding these impacts shall be incorporated into the EIS. The significance of the impacts shall be discussed in terms of subsections (m), (n), (o), and (p).

(m) The draft EIS shall include in a separate and distinct section a description of the relationship between local short-term uses of humanity's environment and the maintenance and enhancement of long-term productivity. The extent to which the proposed action involves trade-offs

among short-term and long-term gains and losses shall be discussed. The discussion shall include the extent to which the proposed action forecloses future options, narrows the range of beneficial uses of the environment, or poses long-term risks to health or safety. In this context, short-term and long-term do not necessarily refer to any fixed time periods, but shall be viewed in terms of the environmentally significant consequences of the proposed action.

(n) The draft EIS shall include in a separate and distinct section a description of all irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented. Identification of unavoidable impacts and the extent to which the action makes use of non-renewable resources during the phases of the action, or irreversibly curtails the range of potential uses of the environment, shall also be included. The possibility of environmental accidents resulting from any phase of the action shall also be considered.

(o) The draft EIS shall address all probable adverse environmental effects that cannot be avoided. Any adverse effects such as water or air pollution, urban congestion, threats to public health, or other consequences adverse to environmental goals and guidelines established by environmental response laws, coastal zone management laws, pollution control and abatement laws, and environmental policy including those found in chapters 128D (Environmental Response Law), 205A (Coastal Zone Management), 342B (Air Pollution Control), 342C (Ozone Layer Protection), 342D (Water Pollution), 342E (Nonpoint Source Pollution Management and Control), 342F (Noise Pollution), 342G (Integrated Solid Waste Management), 342H (Solid Waste Recycling), 342I (Special Wastes Recycling), 342J (Hazardous Waste, including Used Oil), 342L (Underground Storage Tanks), 342P (Asbestos and Lead), and 344 (State Environmental Policy), HRS, and those effects discussed in this section that are adverse and unavoidable under the proposed action must be addressed in the draft EIS. Also, the rationale for proceeding with a proposed action, notwithstanding unavoidable effects, shall be clearly set forth in this section. The draft EIS shall indicate what other interests and considerations of governmental policies are thought to offset the adverse environmental effects of the proposed action. The draft EIS shall also indicate the extent to which these stated

countervailing benefits could be realized by following reasonable alternatives to the proposed action that would avoid some or all of the adverse environmental effects.

(p) The draft EIS shall consider mitigation measures proposed to avoid, minimize, rectify, or reduce impacts, including provision for compensation for losses of cultural, community, historical, archaeological, and fish and wildlife resources, including the acquisition of land, waters, and interests therein. Description of any mitigation measures included in the action plan to reduce significant, unavoidable, adverse impacts to insignificant levels, and the basis for considering these levels acceptable shall be included. Where a particular mitigation measure has been chosen from among several alternatives, the measures shall be discussed and reasons given for the choice made. The draft EIS shall include, where possible, specific reference to the timing of each step proposed to be taken in any mitigation process, what performance bonds, if any, may be posted, and what other provisions are proposed to ensure that the mitigation measures will in fact be taken in the event the action is implemented.

(q) The draft EIS shall include a separate and distinct section that summarizes unresolved issues and contains either a discussion of how such issues will be resolved prior to commencement of the action, or what overriding reasons there are for proceeding without resolving the issues.

(r) The draft EIS shall include a separate and distinct section that contains a list identifying all governmental agencies, other organizations and private individuals consulted in preparing the draft EIS, and shall disclose the identity of the persons, firms, or agency preparing the draft EIS, by contract or other authorization.

(s) The draft EIS shall include a separate and distinct section that contains:

(1) Reproductions of all written comments submitted during the consultation period required in section 11-200.1-23;

(2) Responses to all substantive written comments made during the consultation period required in section 11-200.1-23. Proposing agencies and applicants shall respond in the draft EIS to all substantive written comments in one of two ways, or a combination of both, so long as each

substantive comment has clearly received a response:

(A) By grouping comment responses under topic headings and addressing each substantive comment raised by an individual commenter under that topic heading by issue. When grouping comments by topic and issue, the names of commenters who raised an issue under a topic heading shall be clearly identified in a distinctly labeled section with that topic heading. All substantive comments within a single comment letter must be addressed, but may be addressed throughout the applicable different topic areas with the commenter identified in each applicable topic area. All comments, except those described in paragraph (3), must be appended in full to the final document; or

(B) By providing a separate and distinct response to each comment clearly identifying the commenter and the comment receiving a response being responded to for each comment letter submitted. All comments, except those described in paragraph (3), must either be included with the response, or appended in full to the final document;

(3) For comments that are form letters or petitions, that contain identical or near-identical language, and that raise the same issues on the same topic:

(A) The response may be grouped under paragraph (2)(A) with the response to other comments under the same topic and issue with all commenters identified in the distinctly labeled section identifying commenters by topic; or

(B) A single response may be provided that addresses all substantive comments within the form letter or petition and that includes a distinct section listing the individual commenters who submitted the form letter or petition. At least one representative sample of the form letter or

petition shall be appended to the final document; and

(C) Provided that, if a commenter adds a distinct substantive comment to a form letter or petition, then that comment must be responded to pursuant to paragraph (2);

(4) A summary of any EIS public scoping meetings, including a written general summary of the oral comments made, and a representative sample of any handout provided by the proposing agency or applicant related to the action provided at any EIS public scoping meeting;

(5) A list of those persons or agencies who were consulted and had no comment in a manner indicating that no comment was provided; and

(6) A representative sample of the consultation request letter.

(t) An addendum to a draft EIS shall reference the original draft EIS to which it attaches and comply with all applicable filing, public review, and comment requirements set forth in subchapter 10. [Eff] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-2, 343-5, 343-6)

§11-200.1-25 Public review requirements for draft environmental impact statements. (a) Public review shall not substitute for early and open discussion with interested persons and agencies concerning the environmental impacts of a proposed action. Review of the draft EIS shall serve to provide the public and other agencies an opportunity to discover the extent to which a proposing agency or applicant has examined environmental concerns and available alternatives.

(b) The period for public review and for submitting written comments shall commence from the date that notice of availability of the draft EIS is initially published in the periodic bulletin and shall continue for a period of forty-five days, unless mandated otherwise by statute. Written comments shall be received by or postmarked to the accepting authority, and in the case of applicants, to either the accepting authority or the applicant, within the forty-five-day comment period. Any comments outside of the forty-five-day comment period need not be responded to nor considered. [Eff] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

§11-200.1-26 Comment response requirements for draft environmental impact statements. (a) In accordance with the content requirements of section 11-200.1-27, the proposing agency or applicant shall respond within the final EIS to all substantive written comments received pursuant to section 11-200.1-25. In deciding whether a written comment is substantive, the proposing agency or applicant shall give careful consideration to the validity, significance, and relevance of the comment to the scope, analysis, or process of the EIS, bearing in mind the purpose of this chapter and chapter 343, HRS. Written comments deemed by the proposing agency or applicant as non-substantive and to which no response was provided shall be clearly indicated.

(b) Proposing agencies and applicants shall respond in the final EIS to all substantive written comments in one of two ways, or a combination of both, so long as each substantive comment has clearly received a response:

(1) By grouping comment responses under topic headings and addressing each substantive comment raised by an individual commenter under that topic heading by issue. When grouping comments by topic and issue, the names of commenters who raised an issue under a topic heading shall be clearly identified in a distinctly labeled section with that topic heading. All substantive comments within a single comment letter must be addressed, but may be addressed throughout the applicable topic areas with the commenter identified in each applicable topic area. All comments, except those described in subsection (c), must be appended in full to the final document; or

(2) By providing a separate and distinct response to each comment clearly identifying the commenter and the comment receiving a response for each comment letter submitted. All comments, except those described in subsection (c), must either be included with the response or appended in full to the final document.

(c) For comments that are form letters or petitions, that contain identical or near-identical language, and that raise the same issues on the same topic:

(1) The response may be grouped under subsection (b)(1) with the response to other comments under the same topic and issue with all commenters identified in the distinctly labeled section identifying commenters by topic; or

(2) A single response may be provided that addresses all substantive comments within the form letter or petition and that includes a distinct section listing the individual commenters who submitted the form letter or petition. At least one representative sample of the form letter or petition shall be appended to the final document;

provided that if a commenter adds a distinct substantive comment to a form letter or petition, then that comment must be responded to pursuant to subsection (d).

(d) In responding to substantive written comments, proposing agencies and applicants shall endeavor to resolve conflicts or inconsistencies in information and address specific environmental concerns identified by the commenter, providing a response that is commensurate with the substantive content of those comments. The response shall describe the disposition of significant environmental issues raised (for example, the response may point to revisions to the proposed action to mitigate anticipated impacts or objections raised in the comment). In particular, the issues raised when the proposing agency's or applicant's position is at variance with recommendations and objections raised in the comments shall be addressed in detail, giving reasons why specific comments and suggestions were not accepted, and factors of overriding importance warranting an override of the suggestions. The response shall indicate changes that have been made to the text of the draft EIS. [Eff] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

§11-200.1-27 Content requirements; final environmental impact statement. (a) The final EIS, at a minimum, shall contain the information required in this section. The contents shall fully declare the environmental implications of the proposed action and shall discuss all reasonably foreseeable consequences of the action. In order that the public can be fully informed and the accepting authority can make a sound decision based upon the full range of responsible opinion on environmental

effects, an EIS shall include responsible opposing views, if any, on significant environmental issues raised by the proposal.

(b) The final EIS shall consist of:

(1) The draft EIS prepared in compliance with this subchapter, as revised to incorporate substantive comments received during the review processes in conformity with section 11-200.1-26, including reproduction of all comments and responses to substantive written comments;

(2) A list of persons, organizations, and public agencies commenting on the draft EIS;

(3) A list of those persons or agencies who were consulted in preparing the final EIS and those who had no comment shall be included in a manner indicating that no comment was provided;

(4) A written general summary of oral comments made at any EIS public scoping meeting; and

(5) The text of the final EIS written in a format that allows the reader to easily distinguish changes made to the text of the draft EIS.

[Eff] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-2, 343-5, 343-6)

§11-200.1-28 Acceptability. (a) Acceptability of a final EIS shall be evaluated on the basis of whether the final EIS, in its completed form, represents an informational instrument that fulfills the intent and provisions of chapter 343, HRS, and adequately discloses and describes all identifiable environmental impacts and satisfactorily responds to review comments.

(b) A final EIS shall be deemed to be an acceptable document by the accepting authority only if all of the following criteria are satisfied:

(1) The procedures for assessment, consultation process, review, and the preparation and submission of the EIS, from proposal of the action to publication of the final EIS, have all been completed satisfactorily as specified in this chapter;

(2) The content requirements described in this chapter have been satisfied; and

(3) Comments submitted during the review process have received responses satisfactory to the accepting

authority, including properly identifying comments as substantive and responding in a way commensurate to the comment, and have been appropriately incorporated into the final EIS.

(c) The proposing agency, applicant, or accepting authority may request the office to make a recommendation regarding the acceptability or non-acceptability of the EIS. If the office decides to make a recommendation, it shall submit the recommendation to the proposing agency, applicant, and accepting authority, as applicable. For applicant actions, the office shall submit the recommendation to the applicant and the accepting authority within the period for the accepting authority to determine the acceptability of the final EIS.

(d) The accepting authority shall take prompt measures to determine the acceptability or non-acceptability of the proposing agency's EIS.

(e) Upon acceptance or non-acceptance of the EIS:

(1) For agency actions, a notice shall be filed by the accepting authority with both the proposing agency and the office. For any non-accepted EIS, the notice shall contain specific findings and reasons for non-acceptance. The office shall publish notice of the determination of acceptance or non-acceptance in the periodic bulletin in accordance with subchapter 4. Acceptance of a required statement shall be a condition precedent to the use of state or county lands or funds in implementing the proposed action.

(2) For applicant actions, the accepting authority shall:

(A) Notify the applicant of its determination, and provide specific findings and reasons. The accepting authority shall also provide a copy of this determination to the office for publication in the periodic bulletin. Acceptance of the required EIS shall be a condition precedent to approval of the request and commencement of the proposed action.

(B) Notify the applicant and the office of the acceptance or non-acceptance of the final EIS within thirty days of the final EIS submission to the agency; provided that the thirty-day period may, at the request of the applicant, be extended for a period not

to exceed fifteen days. The request shall be made to the accepting authority in writing. Upon receipt of an applicant's written request for an extension of the thirty-day acceptance period, the accepting authority shall notify the office and applicant in writing of its decision to grant or deny the request. The notice shall be accompanied by a copy of the applicant's request. An extension of the thirty-day acceptance period shall not be granted merely for the convenience of the accepting authority. If the accepting authority fails to make a determination of acceptance or non-acceptance of the EIS within thirty days of the receipt of the final EIS, then the statement shall be deemed accepted.

(f) A non-accepted EIS may be revised by a proposing agency or applicant. The revision shall take the form of a revised draft EIS which shall fully address the inadequacies of the non-accepted EIS and shall completely and thoroughly discuss the changes made. The requirements for filing, distribution, publication of availability for review, acceptance or non-acceptance, and notification and publication of acceptability shall be the same as the requirements prescribed by subchapters 4 and 10 for an EIS submitted for acceptance. In addition, the subsequent revised final EIS shall be evaluated for acceptability on the basis of whether it satisfactorily addresses the findings and reasons for non-acceptance.

(g) A proposing agency or applicant may withdraw an EIS by simultaneously sending a written notification to the office and to the accepting authority informing the office of the proposing agency's or applicant's withdrawal. Subsequent resubmittal of the EIS shall meet all requirements for filing, distribution, publication, review, acceptance, and notification as a draft EIS.
[Eff] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

§11-200.1-29 Appeals to the council. An applicant, within sixty days after a non-acceptance determination by the accepting authority under section 11-200.1-28 of a

final EIS, may appeal the non-acceptance to the council, which within the statutorily mandated period after receipt of the appeal, shall notify the applicant appealing of its determination to affirm the accepting authority's non-acceptance or to reverse it. The council chairperson shall include the appeal on the agenda of the next council meeting following receipt of the appeal. In any affirmation or reversal of an appealed non-acceptance, the council shall provide the applicant and the accepting authority with specific findings and reasons for its determination. The accepting authority shall abide by the council's decision. [Eff] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

§11-200.1-30 Supplemental environmental impact statements. (a) An EIS that is accepted with respect to a particular action is usually qualified by the size, scope, location, intensity, use, and timing of the action, among other things. An EIS that is accepted with respect to a particular action shall satisfy the requirements of this chapter and no supplemental EIS for that proposed action shall be required, to the extent that the action has not changed substantively in size, scope, intensity, use, location, or timing, among other things. If there is any change in any of these characteristics which may have a significant effect, the original EIS that was changed shall no longer be valid because an essentially different action would be under consideration and a supplemental EIS shall be prepared and reviewed as provided by this chapter. As long as there is no change in a proposed action resulting in individual or cumulative impacts not originally disclosed, the EIS associated with that action shall be deemed to comply with this chapter.

(b) The accepting authority or approving agency in coordination with the original accepting authority shall be responsible for determining whether a supplemental EIS is required. This determination will be submitted to the office for publication in the periodic bulletin. Proposing agencies or applicants shall prepare for public review supplemental EISs whenever the proposed action for which an EIS was accepted has been modified to the extent that new or different environmental impacts are anticipated. A supplemental EIS shall be warranted when the scope of an action has been substantially increased, when the intensity

of environmental impacts will be increased, when the mitigating measures originally planned will not be implemented, or where new circumstances or evidence have brought to light different or likely increased environmental impacts not previously dealt with.

(c) The contents of the supplemental EIS shall be the same as required by this chapter for the EIS and may incorporate by reference unchanged material from the same; however, in addition, it shall fully document the proposed changes from the original EIS, including changes in ambient conditions or available information that have a bearing on a proposed action or its impacts, the positive and negative aspects of these changes, and shall comply with the content requirements of subchapter 10 as they relate to the changes.

(d) The requirements of the thirty-day consultation, public notice filing, distribution, the forty-five-day public review, comments and response, and acceptance procedures, shall be the same for the supplemental EIS as is prescribed by this chapter for an EIS.

[Eff] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

SUBCHAPTER 11

NATIONAL ENVIRONMENTAL POLICY ACT

§11-200.1-31 National environmental policy act actions: applicability to chapter 343, HRS. When a certain action will be subject both to the National Environmental Policy Act of 1969 (NEPA), as amended (P.L. 91-190, 42 U.S.C. sections 4321-4347, as amended by P.L. 94-52, July 3, 1975, P.L. 94-83, Aug. 9, 1975, and P.L. 97-258 section 4(b), Sept. 13, 1982) and chapter 343, HRS, the following shall occur:

(1) The applicant or agency, upon discovery of its proposed action being subject to both chapter 343, HRS, and the NEPA, shall notify the responsible federal entity, the office, and any agency with a definite interest in the action (as prescribed by chapter 343, HRS).

(2) When a federal entity determines that the proposed action is exempt from review under the NEPA, this determination does not automatically constitute an exemption for the purposes of this chapter. In these cases, state and county agencies remain responsible for compliance with this chapter. However, the federal exemption may be considered in the state or county agency determination.

(3) When a federal entity issues a FONSI and concludes that an EIS is not required under the NEPA, this determination does not automatically constitute compliance with this chapter. In these cases, state and county agencies remain responsible for compliance with this chapter. However, the federal FONSI may be considered in the state or county agency determination.

(4) The NEPA requires that EISs be prepared by the responsible federal entity. In the case of actions for which an EIS pursuant to the NEPA has been prepared by the responsible federal entity, the draft and final federal EIS may be submitted to comply with this chapter, so long as the federal EIS satisfies the EIS content requirements of this chapter, including cultural impacts, and is not found to be inadequate under the NEPA: by a court; by the Council on Environmental Quality (or is at issue in pre-decision referral to Council on Environmental Quality) under the NEPA regulations; or by the administrator of the United States Environmental Protection Agency under section 309 of the Clean Air Act, title 41 United States Code section 7609.

(5) When the responsibility of preparing an EIS is delegated to a state or county agency, this chapter shall apply in addition to federal requirements under the NEPA. The office and state or county agencies shall cooperate with federal entities to the fullest extent possible to reduce duplication between federal and state requirements. This cooperation, to the fullest extent possible, shall include joint EISs with concurrent public review and processing at both levels of government. Where federal law has EIS requirements in addition to but not in conflict

with this chapter, the office and agencies shall cooperate in fulfilling the requirements so that one document shall comply with all applicable laws.

(6) Where the NEPA process requires earlier or more stringent public review, filing, and distribution than under this chapter, that NEPA process shall satisfy this chapter so that duplicative consultation or review does not occur. The responsible federal entity's supplemental EIS requirements shall apply in these cases in place of this chapter's supplemental EIS requirements.

(7) In all actions where the use of state land or funds is proposed, the final EIS shall be submitted to the governor or an authorized representative. In all actions when the use of county land or funds is proposed and no use of state land or funds is proposed, the final EIS shall be submitted to the mayor, or the authorized representative. The final EIS in these instances shall first be accepted by the governor or mayor (or the authorized representative), prior to the submission of the same to the responsible federal entity.

(8) Any acceptance obtained pursuant to this section shall satisfy chapter 343, HRS, and no other EIS for the proposed action shall be required.

[Eff] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-5, 343-6)

SUBCHAPTER 12

RETROACTIVITY AND SEVERABILITY

§11-200.1-32 Retroactivity. (a) This chapter shall apply immediately upon taking effect, except as otherwise provided below.

(b) Chapter 11-200 shall continue to apply to environmental review of agency and applicant actions which began prior to the adoption of chapter 11-200.1, provided that:

(1) For EAs, if the draft EA was published by the office prior to the adoption of this chapter and has not received a determination within a period of five years from the implementation of this chapter, then the proposing agency or applicant must comply with the requirements of this chapter. All subsequent environmental review, including an EISPN must comply with this chapter.

(2) For EISs, if the EISPN was published by the office prior to the adoption of this chapter and the final EIS has not been accepted within five years from the implementation of this chapter, then the proposing agency or applicant must comply with the requirements of this chapter.

(3) A judicial proceeding pursuant to section 343-7, HRS, shall not count towards the five-year time period.

(c) Exemption lists that have received concurrence under chapter 11-200 may be used for a period of seven years after the adoption of this chapter, during which time the agency must revise its list and obtain concurrence from the council in conformance with this chapter. [Eff] (Auth: HRS §343-6) (Imp: HRS §343-6)

§11-200.1-33 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 declared to be severable. [Eff] (Auth: HRS §§343-5, 343-6) (Imp: HRS §§343-6, 343-8)

DEPARTMENT OF HEALTH

The repeal of chapter 11-200 and the adoption of chapter 11-200.1, Hawaii Administrative Rules, on the Summary page dated MONTH DATE, YEAR, was adopted on MONTH DATE, YEAR, following public hearings held on MONTH DATE, YEAR, after public notice was given in the NEWSPAPER (published MONTH DATE, YEAR), NEWSPAPER (published MONTH DATE, YEAR), NEWSPAPER (published MONTH DATE, YEAR), NEWSPAPER (published MONTH DATE, YEAR), and NEWSPAPER (published MONTH DATE, YEAR).

The repeal of chapter 11-200 and the adoption of chapter 11-200.1 shall take effect ten days after filing with the Office of the Lieutenant Governor.

_____
(Name), Director

APPROVED:

_____
(Name)
Governor
State of Hawaii

Dated: _____

APPROVED AS TO FORM:

_____
Deputy Attorney General

_____
Filed

III. Old Business

C. Discussion and Action on Correspondence from Mr. Edward Underwood, Administrator, DOBOR at DLNR regarding HAR Title 13, Chapter 231, Operation of Boats, Small Business Harbors, and Use of Permits for all Navigable Waters, Section 50 through 70

DAVID Y. IGE
GOVERNOR OF HAWAII

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

DEAN D. UYENO
ACTING DEPUTY DIRECTOR - WATER

EDWARD R. UNDERWOOD
ADMINISTRATOR
DIVISION OF BOATING AND OCEAN RECREATION

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION
4 SAND ISLAND ACCESS ROAD
HONOLULU, HI 96819

January 9, 2019

BOR-013.01.19

Small Business Regulatory Review Board
c/o DBEDT
P.O. Box 2359
Honolulu, HI 96804

RECEIVED
By Small Business Regulatory Review Board at 7:28 am, Jan 10, 2019

Dear Chair Borge and Members of the Small Business Regulatory Review Board (SBRRB):

Thank you for bringing Mr. Wesley Moore's commercial use permit (CUP) concerns to our attention and providing the Division of Boating and Ocean Recreation (DOBOR) the opportunity to testify before SBRRB at its December 12, 2018 meeting. This letter is in response to SBRRB's December 14, 2018 letter requesting additional information about CUPs.

Mr. Moore raised concerns with the limit on the number of CUPs that can be issued for the Keauhou boat launching ramp. He also requested that DOBOR "open up the permitting process" and take efforts to prevent CUP holders from "sitting on" permits to increase their value.

The primary mission of the Department of Land and Natural Resources is the protection of Hawai'i's natural resources. The CUP system is intended to balance the primary mission with public safety and, as much as possible, commercial interests. CUP limits were implemented in September 2014 through the rulemaking process, during which time there were no objections.

Regarding the first comment in your December 14, 2018 letter concerning the permitting process and steps to take towards amending HAR provisions, increasing or removing CUP limits will require an amendment to Hawaii Administrative Rules (HAR). Pursuant to HAR § 13-1-26(a), Mr. Moore may petition the Board of Land and Natural Resources (BLNR) to begin the amendment process for HAR Chapter 13-231, the HAR chapter containing the CUP limits.

If Mr. Moore submits a rule amendment petition, he must comply with the requirements of HAR § 13-1-26(b) as follows:

> Petitions for proposed rulemaking shall set forth the text of any proposed rule or amendment desired or specifying the rule the repeal of which is desired and stating concisely the nature of the petitioner's

> interest in the subject matter and the reasons for seeking the adoption, amendment, or repeal of the rule and shall include any facts, views, arguments, and data deemed relevant by petitioner. The board may require the petitioner to notify persons or governmental agencies known to be interested in the proposed rulemaking of the existence of the filed petitions. No request for the issuance, amendment, or repeal of a rule which does not conform to the requirements set forth above shall be considered by the board.

DOBOR staff will consider potential natural resource impacts and testimony from all stakeholder groups. The current permit count for the Keauhou boat launching ramp is already higher than HAR limits, and therefore already over capacity, because some operators obtained their CUPs before the limits were implemented.

Commercial operators must renew their CUPs once per year, at which time DOBOR staff evaluate the operator for any violations. Pursuant to HAR § 13-231-61(a), commercial operators must maintain a minimum level of gross revenues derived from the vessel named in a CUP to remain eligible to renew their CUP. CUPs also specify the accepted method for reporting gross revenues to DOBOR. Any operators who may be "sitting on" a CUP would likely improperly report gross revenues and not meet the gross revenue minimum, in turn losing their permit.

DOBOR's Auditor conducts random audits of commercial operators to ensure compliance with gross revenue requirements. If an operator commits violations, including violating state law and/or administrative rules, DOBOR staff will take one of two options, both of which result in the operator losing their CUP: (1) DOBOR staff does not renew the operator's CUP and the permit expires; (2) DOBOR staff requests BLNR to immediately revoke the operator's CUP.

Regarding the second comment in your December 14, 2018 letter, Mr. Moore's additional options are to: (1) sign up on the CUP waitlist or (2) purchase a company holding a CUP.

If Mr. Moore suspects a commercial operator may be "sitting on" their permit or is otherwise violating HRS or HAR restrictions, DOBOR recommends that Mr. Moore contact the Division of Conservation and Resources Enforcement at (808) 643-3567 or Stephen Schmelz, DOBOR Hawai'i District Manager, at:

Honokōhau Small Boat Harbor
74-380 Kealakehe Parkway
Kailua-Kona, Hawai'i 96740
(808) 327-3690

If you have any questions or would like to discuss this matter further, please feel free to contact me at (808) 587-1966.

Sincerely,

Edward R. Underwood
Administrator

SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)
No. 1 Capitol District Building, 250 S. Hotel Street, Fifth Floor, Honolulu, HI 96813
Mailing Address: P.O. Box 2359, Honolulu, HI 96804
Email: dbedt.SBRRB.info@hawaii.gov
Website: dbedt.hawaii.gov/SBRRB
Tel: 808 586-2594

MEMORANDUM

TO: Edward Underwood, Administrator
Division of Boating and Ocean Recreation (DOBOR)
Department of Land and Natural Resources (DLNR)

FROM: Anthony Borge, Chair *Anthony Borge*
Small Business Regulatory Review Board

DATE: December 14, 2018

SUBJECT: Hawaii Administrative Rules Title 13, Chapter 231, "Operation of Boats, Small Boat Harbors, and Use Permits for All Navigable Waters" - Sections 50 through 70

Thank you for attending the SBRRB's board meeting on December 12, 2018 to continue discussions regarding Mr. Wesley Moore's concerns of the existing permitting process and the limited number of permits for small businesses to grow and thrive in Hawaii.

In addition to noting some of the options Mr. Moore may take such as requesting a change to the existing statute to the State legislators, the Board requested that DOBOR provide us with the following:

1) A written response about the existing permitting process, and potential steps to undertake; for example:
    a) Submitting a formal request to the Land Board for a change to the current Statute to provide for a "equitable, level playing field" for all new and existing small businesses desiring to obtain the limited permits issued per location;
    b) Steps to take if a current permit holder is "sitting" on the permit and not fulfilling the performance requirements set forth in the existing rules;
2) Additional options Mr. Moore may have to obtain a permit;

Thank you, again, for discussing Mr. Moore's concerns with us and your anticipated response.

Happy holidays to you and your staff.

c: Governor David Y. Ige
Meghan Statts, District Manager, DOBOR, DLNR
Mary Albitz, SBRRB Discussion Leader

IV. Legislative Matters

A. Discussion on the status of the Board's current budget request for fiscal years 2019 and 2020

Any handouts may be distributed at the meeting

IV. Legislative Matters

B. Discussion and Action on the Upcoming 2019 Legislation regarding "zero-based budgeting" in which state agencies would start each two-year budget cycle from scratch and justify every dollar requested

Hawaii

Sylvia Luke Wants To Change The Way The State Spends Money

Agencies should have to justify every penny they ask for, says the House Finance Committee chair.

2

By Stewart Yerton / About 9 hours ago

Reading time: 4 minutes.

The leader of a key legislative committee overseeing the state budget is calling for major reforms in the way the Legislature spends money.

Lawmakers should have more oversight in crafting performance measures the executive branch use to show how effectively it's

using taxpayer money, said House Finance Committee chair Sylvia Luke.

State agencies currently set the measures and report how well they're meeting them, typically with no independent review.

Luke also wants to implement "zero-based budgeting" in which agencies would start each two-year budget cycle from scratch and justify every dollar they're requesting.

"We cannot continue to provide these services just because we've been doing it," Luke said. "We need measurables."

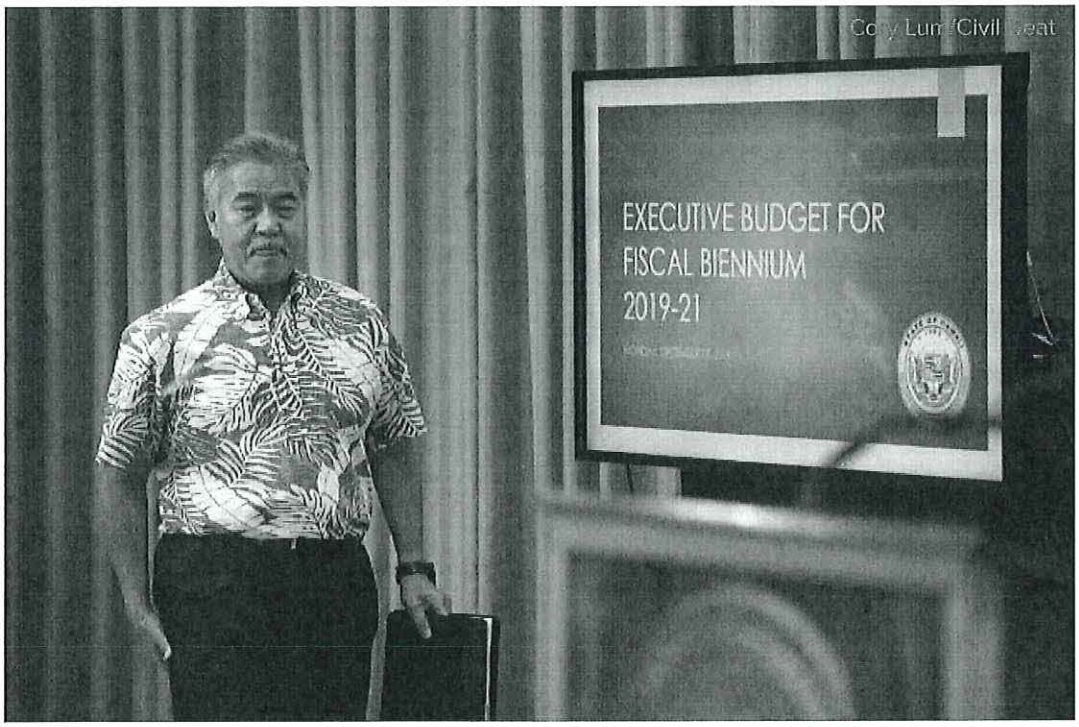
House Finance Committee Chair Sylvia Luke plans to push for major changes in the state budgeting process.

It would probably be 2020 before lawmakers could begin pushing through the sweeping changes, said Luke. But she hopes to begin laying the groundwork during the 2019 session that starts Jan. 16.

Luke's call for greater accountability comes as Gov. David Ige presented his proposed budget for 2019 through 2021. And it presages a battle between lawmakers and the executive branch heading into the session.

Luke's Senate counterpart, Ways and Means Committee Chairman Donovan Dela Cruz, did not return calls for comment. However, Luke said she had spoken to Dela Cruz and that he generally supports the ideas.

Ige was also unavailable for comment Monday, a spokeswoman said.



Gov. David Ige arrives at a press conference Monday to unveil his two-year budget plan. Luke wants to reform the system so that legislators have more spending oversight.

Luke has repeatedly pushed to get a better handle on government spending that bypasses the Legislature.

For example, in 2013 she helped push through legislation to stop the proliferation of special and revolving funds, which allow money to be steered straight to executive agencies without approval by the Legislature. State special funds, along with federal money, make up about half of the roughly $14 billion the state spends every year.

Luke also has been working to monitor tax credits and exemptions, which are in essence another form of expenditures that bypass the legislative budget process.

But attaching funding to meaningful performance measures may be the most ambitious change Luke has proposed. In theory, executive agencies already track how well they're achieving performance goals in documents known as variance reports.

Critics say the system is full of holes.

Rachel Hibbard, a former Hawaii state budget analyst and government auditor, noted that the agencies set their own performance measures, the results of which they report themselves without third-party verification.

"Her idea certainly has merit in improving accountability," said Hibbard, who now works for the California state auditor.

Marion Higa, a former longtime Hawaii state auditor, echoed the criticism of the current system.

"So many of the documents are just paper exercises," Higa said of the variance reports.

Luke said she would like the Legislature to be more involved in setting the measures and verifying that the departments are

meeting their goals as a condition of giving the agencies more money.

She pointed to early education. Ige on Monday proposed $200,000 in additional funding to staff the state's pre-kindergarten program, and some $14.3 million for capital improvements to pre-kindergarten classrooms.

The governor said that research shows such programs produce better outcomes for students and save the state money in the long run. But he acknowledged the administration doesn't have data on students now in the program.

The administration's current measures of effectiveness focus more on how many students are participating and the number of qualified teachers than how well the program is educating children.

Luke noted the first group of students to go through the program will be in third grade this year and will take standardized tests. How well they perform, she said, will be a meaningful measure the state should look at when deciding whether to expand the program.

"I'm so rooting for those kids," she said. "I just want the (Department of Education) to identify those kids."

But challenging individual budget requests may be easier than making a sweeping reform to the process.

Higa, who was state auditor for more than 20 years, said the Legislature now has little "capacity to challenge what the executive puts forth as a measure of itself."

To build that capacity would require funding and experienced people, Higa said. And it would have to be rolled out in phases.

"It's too much to gobble up all at once," she said.

About the Author

Stewart Yerton

Stewart Yerton is the senior business writer for Honolulu Civil Beat. You can reach him at syerton@civilbeat.org.

IV. Legislative Matters

C. Update on the Legislative Proposal to Chapter 201M, HRS, for the 2019 Hawaii Legislative Session

__.B. NO._____

A BILL FOR AN ACT

RELATING TO THE SMALL BUSINESS REGULATORY REVIEW BOARD.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 201M-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There shall be established within the department of business, economic development, and tourism, for administrative purposes, a small business regulatory review board to review any proposed new or amended rule. If the board determines that a proposed rule will not have a significant economic impact on a substantial number of small businesses, the board shall submit a statement to that effect to the agency that sets forth the reason for the board's decision. If the board determines that the proposed rule will have a significant economic impact on a substantial number of small businesses, the board may submit to the agency suggested changes in the proposed rule to minimize the economic impact of the proposed rule, or may recommend the withdrawal of the proposed rule. The board may also consider any request from small business owners for review of any rule proposed, amended, or adopted by a state agency and to make recommendations to the agency or the legislature regarding the

need for a rule change or legislation. For requests regarding county [~~ordinances,~~] rules, the board may make recommendations to the county council or the mayor for appropriate action."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

INTRODUCED BY: _____

BY REQUEST

__.B. NO._____

Report Title:
Small Business Regulatory Review Board

Description:
Clarifies the intent of the Small Business Regulatory Review Board's powers when reviewing state and county administrative rules that impact small business.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

V. Administrative Matters

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

Any handouts may be distributed at the meeting