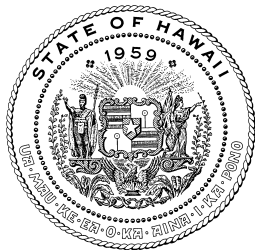


**Small Business Regulatory Review Board Meeting**

**July 20, 2023**

**10:00 a.m.**



## 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.sbrb.info@hawaii.gov](mailto:dbedt.sbrb.info@hawaii.gov)  
Website: [sbrb.hawaii.gov](http://sbrb.hawaii.gov)

Tel: 808 798-0737

### AGENDA

**Thursday, July 20, 2023 ★ 10:00 a.m.**

**Leiopapa A Kamehameha Building – State Office Tower  
235 S. Beretania Street, Conference Room 405  
Honolulu, HI 96813**

As authorized under Act 220, Session Laws of Hawaii 2021 and Chapter 92-3.7 Hawaii Revised Statutes (HRS), the public can participate in the meeting either:

**A. By attending the in-person meeting at:**

**Leiopapa A Kamehameha Building – State Office Tower 235 S. Beretania Street,  
Conference Room 405, Honolulu, HI 96813; or**

**B. Via Video-audio livestream or via Telephone - to join the Video-audio livestream meeting, go to:**

<https://us06web.zoom.us/j/88945374966?pwd=cDhqWEEzZGZHYmJLM05tMHU5Mm5HQ109>

**C. To Join via Telephone: Dial 1-669-900-6833 with  
Meeting ID 883 5814 0200 Passcode 066739**

When the Chairperson asks for public testimony during the meeting, you may indicate that you want to provide oral testimony by using the raise hand function or, if calling in by telephone, entering \* and 9 on your phone keypad. When recognized by the Chairperson, you will be unmuted. If calling in by phone, you can unmute and mute yourself by pressing \* and 6 on your keypad.

Members of the public may also submit written testimony via e-mail to:

[DBEDT.sbrb.info@hawaii.gov](mailto:DBEDT.sbrb.info@hawaii.gov) or mailed to SBRRB, No. 1 Capitol District Building, 250 S. Hotel Street, Room 506A, Honolulu, HI 96813, or P.O. Box 2359, Honolulu, HI 96804. The Board requests that written testimony be received by Wednesday, July 19, 2023 so it may be distributed to Board members prior to the meeting. Testimony received after that time will be distributed to the Board members at the meeting.

Copies of the Board Packet will be available on-line for review at: [Agendas & Minutes – Small Business Regulatory Review Board \(hawaii.gov\)](#). An electronic draft of the minutes for this meeting will also be made available at the same location when completed.

The Board may go into Executive Session under Section 92-5 (a)(4), HRS to Consult with the Board's Attorney on Questions and Issues Concerning the Board's Powers, Duties, Immunities, Privileges and Liabilities.

- I. Call to Order**
- II. Approval of June 15, 2023 Meeting Minutes**

**Josh Green, M.D.**  
*Governor*

**Sylvia Luke**  
*Lt. Governor*

**James K. Tokioka**  
*DBEDT Director*

**Dane K. Wicker**  
*DBEDT Deputy  
Director*

**Members**

Mary Albitz  
*Chairperson  
Maui*

Robert Cundiff  
*Vice Chairperson  
O'ahu*

Jonathan Shick  
*2nd Vice Chairperson  
O'ahu*

Dr. Nancy Atmospera-  
Walch  
*O'ahu*

William Lydgate  
*Kaua'i*

James (Kimo) Lee  
*Hawai'i*

Garth Yamanaka  
*Hawai'i*

Sanford Morioka  
*O'ahu*

Tessa Gomes  
*O'ahu*

Mark Ritchie for  
Director, DBEDT  
*Voting Ex Officio*

### III. Old Business

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to Hawaii Administrative Rules (HAR) Title 11 Chapter 55, **Water Pollution Control**, as follows, promulgated by Department of Health – **Discussion Leader – Sanford Morioka**
  - a. Appendix C – Discharges of Storm Water Associated with Construction Activities
  - b. Appendix J – Occasional or Unintentional Discharges from Recycled Water Systems
  - c. Appendix L – Discharges of Circulation Water from Decorative Ponds or Tanks

### IV. New Business

- A. Discussion and Action on Proposed Amendments to HAR Title 19 Chapter 25, **Rules and Regulations Governing Shore Water Events**, promulgated by Department of Parks and Recreation – City and County of Honolulu – **Discussion Leader – Jonathan Shick**
- B. Discussion and Action on Proposed Amendments to HAR Title 12 Chapter 46, **Civil Rights Commission**, promulgated by Department of Labor and Industrial Relations Civil Rights Commission – **Discussion Leader – Mary Albitz**
- C. Discussion and Action on Proposed Amendments to HAR Title 16 Chapter 39, **Securities**, promulgated by Department of Commerce and Consumer Affairs – **Discussion Leader – James Kimo Lee**
- D. Discussion and Action on Proposed New HAR Title 13 Chapter 60.11, **Kipahulu Community-Based Subsistence Fishing Area, Maui**, promulgated by Department of Land and Natural Resources – **Discussion Leader – Jonathan Shick**

### 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, Hawaii Revised Statutes (HRS)
  - 1. Discussion and Action on Proposed Changes to Section 201M-5 (a) Small business regulatory review board; powers, HRS
  - 2. Presentations to Industry Associations
  - 3. Staff's Small Business Outreach
  - 4. Director Letters and Meetings with State Agencies and Counties

### VI. Next Meeting: Thursday, August 17, 2023 at 10:00 a.m., held via Zoom and at Leiopapa A Kamehameha Building – State Office Tower, Conference Room 405, Honolulu, HI 96813

### VII. Adjournment

If you need an auxiliary aid/service or other accommodation due to a disability, contact Jet'aime Ariola at 808 798-0737 and [jetaime.k.ariola@hawaii.gov](mailto:jetaime.k.ariola@hawaii.gov) as soon as possible, preferably at least three (3) working days prior to the meeting. Requests made as early as possible have a greater likelihood of being fulfilled.

Upon request, this notice is available in alternate/accessible formats.

## **II. Approval of June 15, 2023 Meeting Minutes**



## Small Business Regulatory Review Board

### MEETING MINUTES - **DRAFT**

June 15, 2023

- I. **CALL TO ORDER:** Chair Cundiff called the meeting to order at 10:01 a.m., with a quorum present.

**MEMBERS PRESENT:**

- Robert Cundiff, Chair
- Mary Albitz, Vice Chair
- James (Kimo) Lee
- Sanford Morioka
- Tessa Gomes
- Taryn Rodighiero
- Mark Ritchie

**ABSENT MEMBERS:**

- Jonathan Shick, 2<sup>nd</sup> Vice Chair
- Dr. Nancy Atmospera-Walsh
- Garth Yamanaka
- William Lydgate

**STAFF:** DBEDT

Dori Palcovich  
Jet'aime Ariola

Office of the Attorney General

Alison Kato

II. **APPROVAL OF MAY 30, 2023 MINUTES**

Mr. Morioka motioned to accept the May 30, 2023 meeting minutes, as presented. Ms. Rodighiero seconded the motion, Vice Chair Albitz abstained, and the remaining Board members agreed.

III. **OLD BUSINESS**

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 16 Chapter 115 Professional Engineers Architects Surveyors and Landscape Architect, promulgated by Department of Commerce and Consumer Affairs (DCCA)

Discussion leader Ms. Gomes reached out to the DCCA representatives who indicated that the changes should not negatively impact small businesses. Ms. Lee Ann Teshima, Executive Officer at DCCA's Professional and Vocational Licensing Division explained that the public hearing was held and no testimony was received either in writing or verbally.

Ms. Teshima explained that one of the changes allows for digital signatures for state architects. This is expected to help streamline the permitting process with the city and county which has already adopted accepting the digital signatures. Chair Cundiff noted that the proposed rules are straight-forward and that DCCA addressed the issues with the affected small business very well.

Mr. Lee motioned to move the proposed rules to the Governor for adoption. Mr. Morioka seconded the motion, and the Board members unanimously agreed.

#### **IV. NEW BUSINESS**

##### **A. Discussion and Action on the Proposed Amendments to HAR Title 13 Chapter 74 License and Permit Provisions and Fees for Fishing, Fish, and Fish Products, promulgated by Department of Land and Natural Resources (DLNR)**

Discussion leader Ms. Albitz stated that the main purpose of the rule proposal is to create new commercial dealer license fees and to add and update other annual fee requirements. Mr. David Sakoda, Fisheries Program Manager at DLNR's Division of Aquatic Resources (DAR), explained that the rule proposal will update a number of different licenses - the commercial dealer license, commercial dealer vessel license, and the non-resident recreational fishing license. Other license fees, which haven't been updated since the late 1990's, are also being increased with this rule proposal.

The non-residential fishing license is mandated by statute. For these licenses, the statute requires: \$20 for a one-day fishing license; \$40 for a seven-day fishing license; and \$70 for an annual non-resident fishing license. DAR is projecting approximately 50 licenses which mostly make up the one-day or seven-day licenses amounting to a rough estimate of \$1,000,000 annually.

For the vessel license, it is optional. Commercial fishers are required to have their individual commercial fishing license if they are fishing; however, the commercial fishers requested from DAR that only one license for the vessel be allowed to cover every fisher on the vessel, which DLNR concurred. The purpose of this change will allow commercial fishers to have only one license (commercial dealer vessel license) on them rather than two. The nonresident recreational marine fishing license will implement the statute, which does not require the agency to interpret the requirements of the statute.

DAR sent letters and held scoping with key stakeholders regarding the various proposed licenses. In regard to incremental fee increase changes, Vice Chair Albitz recommended that DAR review the fees every five years due to all the data required to be reviewed; this was highly received and welcomed by Mr. Sakoda.

For the nonresidential fishing licenses, one of the concerns from charter fishing boat operators was that they did not want to turn away potential clients the morning of the charter if they did not have their license. As such, DAR wanted to make available purchasing tickets for the charter boats online with a mobile phone and have it displayed right on the phone. DAR is in the process of developing this system which will be user-friendly and mobile; it is expected to be running by the end of 2023 or early 2024.

Chair Cundiff recognized and appreciated that DAR sent letters to the stakeholders prior to coming to this Board and before going out to public hearing.

Vice Chair Albitz motioned to move the proposed rules to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

## 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, Hawaii Revised Statutes

#### 1. Review and Update Board's "Discussion Leader Assignments" for the State and County Agencies' Hawaii Administrative Rules

Chair Cundiff expressed regrets that board member Ms. Rodighiero is leaving at the end of June and that the SBRRB appreciated everything she provided to the meetings, and wished her well in her upcoming endeavors.

As a result of Ms. Rodighiero's absence from the Board, the following changes to the discussion leader assignments were discussed:

- DCCA for Back-up Discussion Leader – Alphabetized rotation of board members and/or Chair
- Department of Education – Back-up Discussion Leader or Chair
- DLNR for Back-up Discussion Leader – Alphabetized rotation of board members and/or Chair
- County of Kauai for Back-up Discussion Leader – Alphabetized rotation of board members and/or Chair

Mr. Morioka motioned to adjust the discussion leader assignments to show that where Ms. Rodighiero is a discussion leader, the back-up discussion leader will take-over, and where she is a back-up discussion leader there will be an alphabetized rotation of the board members and/or the Chair; Ms. Rodighiero seconded and the Board members unanimously agreed.

#### 2. Presentations to Industry Associations

No new updates were reported.

#### 3. Staff's Small Business Outreach

Ms. Ariola performed outreach at the new Wai Kai in Ewa Beach where 40+ vendors were stationed. Chair Cundiff suggested that Ms. Ariola report back to this Board if and when any of the small businesses that she had approached contacts her in the future.

Mr. Ritchie added that another outreach event, the Small Business Fair located at Leeward Community College, which was also held last year, is scheduled for Saturday, September 16<sup>th</sup>. DBEDT will again have a table at the event; Ms. Ariola is planning to be at DBEDT's table for outreach purposes.

Vice Chair Albitz mentioned that she was contacted by a small business owner who attended the SBRRB's presentation in May sponsored by the Maui

Economic Development Board. The business owner had voiced concerns about the Department of Labor and Industrial Relations' Boiler rules that were reviewed by this Board a few years ago. More information will be coming forth in order for this Board to review the business owner's regulatory concerns.

4. Director Letters and Meetings with State Agencies and Counties

No new updates were reported.

**VI. ELECTION OF BOARD OFFICERS**

A. Discussion and Action on the following:

1. Chairperson, pursuant to Section 201M-5(c), HRS  
Chair Cundiff motioned to nominate Ms. Mary Albitz as Chair of the Board under Section 201M-5 (c), HRS, for fiscal year 2024; Mr. Lee seconded the motion and the Board members unanimously agreed.
2. Vice Chair  
Mr. Ritchie motioned to nominate Mr. Robert Cundiff as Vice Chair of the Board for fiscal year 2024; Vice Chair Albitz seconded the motion and the Board members unanimously agreed.
3. Second Vice Chair  
Vice Chair Albitz motioned to nominate Mr. Jonathan Shick as Second Vice Chair of the Board for fiscal year 2024; Mr. Ritchie seconded the motion and the Board members unanimously agreed.

**VII. NEXT MEETING** - Thursday, July 20, 2023 at 10:00 a.m. in conference room 405 at Leiopapa A Kamehameha Building – State Office Tower – 235 S. Beretania Street, Honolulu, HI 96813.

**VIII. ADJOURNMENT** – Mr. Morioka motioned to adjourn the meeting and Ms. Rodighiero seconded the motion; the meeting adjourned at 10:57 a.m.

### **III. OLD BUSINESS**

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 11 Chapter 55, **Water Pollution Control**, as follows, promulgated by DOH
  - a. Appendix C – Discharges of Storm Water Associated with Construction Activities
  - b. Appendix J – Occasional or Unintentional Discharges from Recycled Water Systems
  - c. Appendix L – Discharges of Circulation Water from Decorative Ponds or Tanks

**SMALL BUSINESS STATEMENT**  
**"AFTER" PUBLIC HEARING TO THE**  
**SMALL BUSINESS REGULATORY REVIEW BOARD**  
(Hawaii Revised Statutes (HRS), §201M-3)

**Department or Agency:** Hawaii Department of Health, Clean Water Branch

**Administrative Rule Title and Chapter:** HAR 11-55, Appendices C, J, and L

**Chapter Name:** Water Pollution Control

**Contact Person/Title:** Darryl Lum/Engineering Section Supervisor

**Phone Number:** (808) 586-4309

**E-mail Address:** darryl.lum@doh.hawaii.gov **Date:** 07/11/2023

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.)

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

The Clean Water Branch provided notice of the public hearing in the newspaper and on our website soliciting comments for 30 days prior to the public hearing. All comments received (including from any affected small businesses) were considered.

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

Please see the attached Response to Comments document.

**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.

The Clean Water Branch provided notice of the public hearing in the newspaper and on our website soliciting comments for 30 days prior to the public hearing. The Clean Water Branch also mentioned the upcoming rule amendment to participants at a monthly General Contractor's Association Environmental Committee meeting.

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

Please see the attached Response to Comments document.

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

Please see the attached Response to Comments document.

4. The number of persons who:

(i) Attended the public hearing: 7

(ii) Testified at the hearing: 0

(iii) Submitted written comments: 2

5. Was a request made at the hearing to change the proposed rule in a way that affected small business?

☐ Yes ☒ No

(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.

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

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

Mr. Nakamoto motioned to forward the proposed amendments to the Governor for adoption. Dr. Atmospera-Walch seconded the motion, and the Board members unanimously agreed.

**IV. NEW BUSINESS** – Before Public Hearing

**A. Discussion and Action on the Proposed Amendments to HAR Title 11 Chapter 55, Water Pollution Control, as follows, promulgated by DOH**

- a. Appendix B, Multi-Sector General Permit (MSGP)
- b. Appendix E, Authorizing Discharges of Once Through Cooling Water Less Than One (1) Million Gallons Per Day
- c. Appendix F, Authorizing Discharges of Hydrotesting Water
- d. Appendix G, Authorizing Discharges Associated with Construction Activity Dewatering
- e. Appendix K, Small Municipal Separate Storm Sewer Systems

Discussion leader Mr. Nakamoto explained that one of the changes connected to these proposals is a new expiration date; he requested that DOH representatives provide additional changes to the rules.

Mr. Darryl Lum, Supervisor at DOH's Clean Water Branch Engineering Section, explained that the biggest change to Appendix B, MSGP, is that Hawaii is switching to and following the EPA's approach for handling storm water discharge. The prior industrial storm water permit was handled in such a way that the storm water was hard to assess compliance. The EPA now requires numerous measures with benchmark monitoring and corrective actions, which is believed to be a more effective method and approach to protecting the state's water quality; also, commentary received from the outreach efforts of stakeholders regarding this approach was positive.

The biggest change for Appendix E, Authorizing Discharges of Once Through Cooling Water Less than One (1) Million Gallons Per Day, allows for field test kits for chlorine testing. This will help resolve an issue with the chlorine testing times. Currently, federal regulations require 15 minutes which means that when a sample of water is taken it will need to be prepared and go through the chain of custody to the lab within 15 minutes. Thus, the proposed field test kits will help ease the present time crunch to comply with the rules.

The biggest change for Appendix F, Authorizing Discharges of Hydrotesting Water and for Appendix G, Authorizing Discharges Associated with Construction Activity Dewatering is to the affluent limitations. This is expected to simplify compliance requirements and help the dischargers with their on-site personnel when there are no online narrative requirements so that someone on-site will immediately see there is a problem and will not have to wait for the samples to come back from the laboratories. This change will also help to make things much simpler for enforcement personnel in terms of reporting requirements.

The biggest change for Appendix K, Small Municipal Separate Storm Sewer Systems, which came about because of a federal court case, requires the permitting agencies to follow a two-step process. The first process is comprehensive and includes all the permit requirements. The second is a two-step process whereby requirements must be done



through public notice. Mr. Lum added that stakeholder outreach was held for this proposal a number of years ago and everyone preferred the two-step process.

Mr. Alex Wong, Program Manager, added that every five years DOH's Clean Water Branch will come back to this Board for approval, which is meant to streamline the overall processes. Chair Cundiff commented that the fact sheets provided by DOH outlining the reasons and rationale for the changes were very helpful.

Mr. Lee motioned to move the proposed amendments to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

## **V. LEGISLATIVE MATTERS**

### **A. Discussion on the following Legislative Matters**

#### **a. Senate Bill 1034, SD1, HD2, CD1**

This measure authorizes boards to use interactive conference technology to remotely conduct meetings under the State's open meetings law. It also amends the requirements for public notices of board meetings and for in-person board meetings held by interactive conference technology.

Chair Cundiff explained that this measure was tracked throughout the legislative process and passed. In summary, it will allow this Board to use interactive technology, such as Zoom, to conduct board meetings. While the changes allow board members to be present at meetings through interactive conference technology, the location is not needed to be disclosed on the agenda nor is it required to be made available to the meetings' attendees.

While the Governor has yet to sign this measure, it does not take effect until January 1, 2022. Therefore, this Board will continue to conduct its monthly meetings as it has been for the remaining of the year under the presumption that the Governor's proclamations will continue to suspend the Sunshine Law.

## **VI. 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**

#### **a. Discussion of a proposed digital orientation manual for the board**

Chair Cundiff reminded the members that DBEDT staff emailed to the board members a link with four sections depicting a draft of the Board's proposed digital orientation manual. He appreciated staff for putting this together and noted that it is an incredible resource for new members coming on board through the orientation process as well as serving as a great tool for existing board members. Mr. Ritchie concurred and stated that this manual would be a model for other boards and commissions.

RECEIVED

By SBRRB at 12:35 pm, Jul 12, 2023

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
HEARINGS OFFICE

RECEIVED  
OFFICE OF THE DIRECTOR  
DEPT OF HEALTH

RE  
OFFICE OF  
DEPT.

'23 JUN 27 A10:19

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REPORT OF THE HEARINGS OFFICER

Comment Period and Virtual Public Hearing on Proposed Amendments to Chapter 11-55  
of the Hawaii Administrative Rules (HAR) and Readoption of HAR Chapter 11-55  
Appendixes C, J and L

Pursuant to HRS § 91-3, and in accordance with other applicable laws and regulations, notice of a public comment period and advance notice of a virtual public hearing on the above-described matters was timely published statewide on May 19, 2023, in the Honolulu Star-Advertiser, the Hawaii Tribune Herald, West Hawaii Today, the Garden Isle, and the Maui News.

The notice advised that there would be a public comment period on the above matters from May 19, 2013 until 4:30 pm on Friday, June 23, 2023, and a virtual public hearing thereon would be held on Friday, June 23, 2023, at 10:00am HST. It advised all persons interested in commenting and/or participating or observing the hearing how to do so.

The undersigned Hearings Officer called the public hearing to order on June 23, 2023 at approximately 10:00am. Nine (9) staff members of the Department of Health were present in person or virtually. Seven (7) members of the public were virtually present.

After a brief introduction by the Hearings Officer, all persons who wished to testify were allowed an opportunity to do so. No one chose to do so. After that, the Hearings Officer held the hearing open for ten (10) minutes and again asked if anyone wanted to speak but no one did.

The Hearings Officer then reminded everyone virtually or physically present that comments on any of the above-described matters could still be offered until 4:30pm that day, and of how to do so. He then closed the hearing at approximately 10:12am.

The Hearings Officer hereby certifies that the comment period and public hearing were conducted in accordance with all applicable requirements established by law.

DATED: Honolulu, Hawaii, June 27, 2023.

  
Steven Jacobson  
DOH Hearings Officer

**HAWAII ADMINISTRATIVE RULES  
TITLE 11 CHAPTER 55  
WATER POLLUTION CONTROL  
PROPOSED AMENDMENTS TO APPENDICES C, J, AND L  
DOCKET NO. CWB-1-23  
RESPONSE TO COMMENTS**

**DEPARTMENT OF HEALTH  
ENVIRONMENTAL MANAGEMENT DIVISION  
CLEAN WATER BRANCH  
PEARL CITY, HAWAII  
JULY 2023**

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## **I. BACKGROUND**

Water pollution permits in Hawaii are part of the federal Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES). The NPDES is a permit system required by Section 402 of the CWA that authorizes certain types of point source discharges, as well as some storm water discharges, to state waters such as streams, lakes, or coastal waters. The Department of Health has been authorized by the U.S. Environmental Protection Agency (EPA) to issue NPDES permits in Hawaii. NPDES permits in Hawaii are governed by Hawaii Revised Statutes, Chapter 342D Water Pollution, and Hawaii Administrative Rules (HAR), Chapter 11-55 titled “Water Pollution Control.”

HAR Chapter 11-55 describes the policies and requirements for the NPDES program. The NPDES general permits are incorporated into the HAR Chapter 11-55 as appendices. General permits are issued as rules in the HAR and not specifically to any individual owner or operator. Each general permit authorizes a category of discharges for a group of similar types of activities or facilities (e.g., once-through cooling water for air-conditioning systems or storm water discharges from construction activities) and contain requirements to minimize pollutants from being discharged to state waters. If eligible, an owner or operator may request to be covered under an applicable general permit by submitting a Notice of Intent (NOI) to the Clean Water Branch (CWB). By submitting an NOI, an owner or operator thereby agrees to comply with all requirements of the applicable general permit.

Appendix C of HAR Chapter 11-55 authorizes the discharges of storm water associated with construction activities to a receiving state water. Construction activities include, but are not limited to, clearing; grading; excavation; and on or off-site construction support activities, that result in the disturbance of one acre or more of total land area. This general permit also covers activities that disturb less than one acre of total land area that are part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area.

Appendix J of HAR Chapter 11-55 authorizes unintentional discharges from recycled water systems to a receiving state water. The discharge shall be composed entirely of R-1 water, or R-1 water with any combination of storm water, potable water, or water used primarily for irrigation. R-1 water is defined as recycled water that has been oxidized, filtered, and disinfected to meet the corresponding standards set in HAR Chapter 11-62 titled “Wastewater Systems.” Unintentional discharges are waters that are discharged rarely and were never planned to be discharged to state waters.

Appendix L of HAR Chapter 11-55 authorizes discharges of circulation water from decorative ponds or tanks to a receiving state water. The decorative ponds or tanks may contain fish or other aquatic species, not including mammals. Appendix L also covers discharges of circulation water from decorative ponds or tanks that do not contain fish or other aquatic species provided that the discharge complies with HAR Chapter 11-54 titled “Water Quality Standards.”

## **II. PROPOSED REVISIONS**

The CWB is proposing the following revisions to HAR Chapter 11-55, and Appendices C, J, and L of HAR Chapter 11-55.

- For HAR Chapter 11-55, it is proposed to revise applicable references in section 11-55-42 since the rules for intake credits have been deleted from HAR Chapter 11-54 and added to HAR Chapter 11-55; and to update section 11-55-34.02 with the new expiration dates of the NPDES general permits in Appendices C, J, and L.
- For Appendix C of HAR 11-55, it is proposed to update the effective date, add coverage from snowmelt runoff, strengthen pollution prevention for chemicals stored onsite, streamline documentation of problems and corrective actions taken, maintain uniformity with the requirements for meeting water quality standards, and clarify procedures for extending general permit coverage.
- For Appendix J of HAR Chapter 11-55, it is proposed to update the effective date, require practices to prevent pollutants from being discharged to state waters, clarify processes for the reporting of analytical results, and clarify procedures for extending general permit coverage.
- For Appendix L of HAR Chapter 11-55, it is proposed to update the effective date, provide photographs of discharge, require practices to prevent pollutants from being discharged to state waters, and clarify procedures for extending general permit coverage.

## **III. PUBLIC COMMENTS**

The CWB conducted a Public Comment period on the proposed revisions to HAR Chapter 11-55, including the general permits specified in Appendixes C, J, and L, from May 19, 2023, through June 23, 2023. The CWB contacted approximately 1,750 permittees, including consultants, small businesses, and government agencies, to inform them of the proposed revisions and to solicit their comments.

No inputs were submitted about the proposed revisions to HAR Chapter 11-55 during the Public Comment period. A total of two (2) commenters from state and municipal agencies submitted input about the proposed revisions to Appendices C, J, and L of HAR Chapter 11-55. The CWB extends its gratitude to the commenters.

## IV. RESPONSES TO COMMENTS

### A. APPENDIX C OF HAR CHAPTER 11-55

Below is the summary of responses to all comments submitted about the proposed revisions to Appendix C of HAR Chapter 11-55.

#### 1. Proposed revision of section 5.1.1.2

**Comment:** The CWB should revise the note to use the most recent precipitation data available when designing storm water controls.

**Comment:** The CWB should revise the note to consider historical precipitation data when implementing enhanced storm water controls.

**Response:** The CWB stresses that it is a design requirement to use recent weather data and to plan earth-disturbing activities when there is a lower risk of storm events, such as heavy precipitation, flooding, and hurricanes. The CWB also stresses that it is a design consideration, and not a design requirement, to use historical weather data and to plan contingency measures or mitigation measures which may help minimize the potential impacts from storm events. The proposed use of recent and historical weather data is also specified in the current version of the U.S. Environmental Protection Agency Construction General Permit (dated February 17, 2022).

The CWB is not amending the proposed revision of section 5.1.1.2.

*5.1.1.2. Design requirements.*

*5.1.1.2.1.*

*The permittee shall account for the following factors in designing storm water ~~[controls:]~~controls.*

*Note: Storm water controls must be designed using the most recent data available to account for recent precipitation patterns and trends.*

*Note: If the site is exposed to or has previously experienced major storms, such as hurricanes, storm surge, extreme/heavy precipitation, and flood events, the permittee should also include consideration of and contingencies for whether implementing structural improvements, enhanced/resilient storm water controls, and other mitigation measures may help minimize impacts from storm water discharges from such major storm events.*

*5.1.1.2.1.1.*

*The expected amount, frequency, intensity, and duration of precipitation;*

*5.1.1.2.1.2.*

*The nature of storm water runoff (i.e., flow) and run-on at the site, including factors such as expected flow from impervious surfaces, slopes, and site drainage features. If any storm water flow will be channelized at the site, the permittee shall design storm water controls to control both peak flowrates and total storm water volume to minimize channel and streambank erosion in the immediate vicinity of discharge points; and*

*5.1.1.2.1.3.*

*The range of soil particle sizes expected to be present on the site.*

*5.1.1.2.2.*

*The permittee shall direct discharges from storm water controls to vegetated areas of the site, including any natural buffers established under section 5.1.2.1., and maximize ~~[stormwater]~~ storm water infiltration to reduce pollutant discharges, unless ~~[infeasible. Use]~~ infiltration would be inadvisable due to the underlying geology and ground water contamination concerns, or infeasible due to site conditions. The permittee shall use velocity dissipation devices if necessary to minimize soil erosion in order to minimize pollutant discharges when directing storm water to vegetated areas.*

## **2. Proposed revision of section 5.1.1.4**

**Comment:** The CWB should clarify the requirements for routine maintenance.

**Response:** The CWB agrees that the requirements for routine maintenance can be clarified by referencing the requirements for completing inspection reports as specified in section 9.1.7.1. Specifically, the permittee needs to document in an inspection report why a routine maintenance cannot be completed by the close of the next work day, and why the repair, or the upkeep to be performed, can still be considered as routine maintenance.

The CWB is amending the proposed revision of section 5.1.1.4 as follows to clarify routine maintenance requirements. The amended revision is shown as underlined and red-colored text.

### *5.1.1.4. Maintenance Requirements*



5.1.1.4.1.

The permittee shall ensure that all erosion and sediment controls required in this section remain in effective operating condition during permit coverage and are protected from activities that would reduce their effectiveness.

5.1.1.4.2.

The permittee shall inspect all erosion and sediment controls in accordance with the applicable requirements in section 9.1., and document the findings in accordance with section 9.1.7. If a problem is found (e.g., erosion and sediment controls need to be replaced, repaired, or maintained), the permittee shall make the necessary repairs or modifications in accordance with the following schedule:

5.1.1.4.2.1.

Initiate work to fix the problem immediately after discovering the problem, and complete such work by the close of the next work day, if the problem does not require significant repair or replacement, or if the problem can be corrected through routine maintenance. If it is infeasible to complete the routine maintenance by the close of the next work day, the permittee shall document why this is the case and why the repair or other upkeep to be performed should still be considered routine maintenance in an inspection report under section 9.1.7.1.c and complete such work no later than seven (7) calendar days from the time of discovery of the condition requiring maintenance.

Note: Routine maintenance means minor repairs or other upkeep performed to ensure the site's storm water controls remain in effective operating condition, not including significant repairs or the need to install a new or replacement control.

5.1.1.4.2.2.

When installation of a new erosion or sediment control or a significant repair is needed, the permittee shall install the new or modified control and make it operational, or complete the repair, by no later than 7 calendar days from the time of discovery where feasible. If it is infeasible to complete the installation or repair within 7 calendar days, the permittee shall document in its records why it is infeasible to complete the installation or repair within the 7-day timeframe and document the schedule for installing the storm water control(s)

*and making it operational as soon as practicable after the 7-day timeframe. Where these actions result in changes to any of the storm water controls or procedures documented in the SWPPP, the permittee shall modify the SWPPP accordingly within 7 calendar days of completing this work.*

### **3. Proposed revision of section 9.1.7.2**

**Comment:** The CWB should consider revising the signature requirements of inspection reports.

**Response:** As specified in section 11-55-07(b) of HAR Chapter 11-55, "... all information to comply with the conditions of the individual permit or notice of general permit coverage ... shall be signed by person designated in subsection 11-55-07(a) or by a duly authorized representative of that person." Since an inspection report contains information documented to demonstrate compliance with permit conditions, it must be certified and signed per the requirements of section 11-55-07(b).

The CWB is not amending the proposed revision of section 9.1.7.2.

#### *9.1.7.2. Signature Requirements.*

*Each inspection report must be certified and signed in accordance with section 15 of appendix A, chapter 11-55 or the duly authorized representative that meets the requirements of 11-55-07(b).*

### **4. Proposed revision of section 10.4.3**

**Comment:** The CWB should consider revising the signature requirements of corrective action logs.

**Response:** As defined in section 10.1 of Appendix C of HAR Chapter 11-55, corrective actions are actions that are taken to repair, modify, or replace any storm water controls at the project site; clean up and properly dispose of spills, releases, or other deposits; or remedy a permit violation. As specified in the proposed revision of section 10.4 of Appendix C of HAR Chapter 11-55, permittees shall document corrective actions in corrective action logs.

As specified in section 11-55-07(b) of HAR Chapter 11-55, "... all information to comply with the conditions of the individual permit or notice of general permit coverage ... shall be signed by person designated in subsection 11-55-07(a) or by a duly authorized representative of that person." Since a corrective action log is a summary of information documented to demonstrate compliance with permit conditions, it must be certified and signed per the requirements of section 11-55-07(b) of HAR Chapter 11-55.

The CWB is not amending the proposed revision of section 10.4.3.

#### *10.4.3.*

~~[Each corrective action report]~~Each entry into the corrective action log, consisting of the information required by both sections 10.4.1. and 10.4.2., must be certified and signed in accordance with section 15 of appendix A, chapter 11-55 or the duly authorized representative that meets the requirements of 11-55-07(b).

Note: The corrective action log may be prepared, certified and signed, and kept electronically, rather than in paper form, if the records are:

a. In a format that can be read in a similar manner as a paper record;

b. Legally dependable with no less evidentiary value than their paper equivalent; and

c. Immediately accessible to the inspector during an inspection to the same extent as a paper copy stored at the site would be, if the records were stored in paper form.

## **5. Proposed revision of section 11.4.2**

**Comment:** The CWB should consider clarifying the submission requirements of NOIs.

**Response:** Since January 31, 2023, requests for permit coverage and compliance forms, that are required by permit conditions, must be submitted at the e-Permitting Portal. It is no longer possible to physically send, or hand deliver hard-copy requests for permit coverage and compliance forms to the CWB. The CWB agrees that it would be helpful to update Appendix C of HAR Chapter 11-55 and include the web address of the e-Permitting Portal.

As explained, the CWB uses the e-Permitting Portal for the submission of requests from interested parties for permit coverage, and compliance forms from permittees. At the same time, the CWB also uses the Water Pollution Control (WPC) Database to store information and documents that are related to all permits issued by the branch. Permittees and the public can access information and documents about issued permits by using the WPC Viewer or requesting access to government records. Currently, the CWB must synchronize the information submitted at the e-Permitting Portal with the information stored in the WPC Database.

In the short-term, the CWB will continue to accept requests for permit coverage and compliance forms at the e-Permitting Portal, and to provide access to information and documents of all issued permits. In the medium term, the CWB is considering the use of an integrated application such as the NPDES Electronic Reporting Tool (NeT) by the EPA. Integrated applications allow both the submission and management of permit documents, and they eliminate the need to synchronize permit documents that are accessed by multiple applications.

For upcoming updates of Appendix C of HAR Chapter 11-55, the CWB will consider clarifying the submission requirements of NOIs to include the web address of a “future” integrated application for the submission and management of permit documents. At this time, the CWB is not amending the proposed revision of section 11.4.2.

11.4.2.

*The owner or operator shall submit a complete notice of intent to the director at the following address or as otherwise specified:*

*Director of Health  
Clean Water Branch  
Environmental Management Division  
Department of Health  
P.O. Box 3378  
Honolulu, Hawaii 96801-3378*

## **6. Proposed revision of section 13.3**

**Comment:** The CWB should consider clarifying the submission requirements of reports required by the general permit.

**Response:** Since January 31, 2023, requests for permit coverage and compliance forms, that are required by permit conditions, must be submitted at the e-Permitting Portal. It is no longer possible to physically send, or hand deliver hard-copy requests for permit coverage and compliance forms to the CWB. The CWB agrees that it would be helpful to update Appendix C of HAR Chapter 11-55 and include the web address of the e-Permitting Portal.

For upcoming updates of Appendix C of HAR Chapter 11-55, the CWB will consider clarifying the submission requirements of reports to include the web address of a “future” integrated application for the submission and management of permit documents. Please see the above response to comment(s) about the proposed revision of section 11.4.2 for a detailed discussion of the benefits from using integrated applications. At this time, the CWB is not amending the proposed revision of section 13.3.

13.3

*The ~~[owner]~~ permittee or its duly authorized representative shall submit signed copies of all reports required by this general permit to the director at the following address or as otherwise specified:*

*Director of Health  
Clean Water Branch  
Environmental Management Division  
~~[State]~~ Department of Health*

P.O. Box 3378  
Honolulu, Hawaii 96801-3378

## 7. Proposed revision of section 13.4

**Comment:** The CWB should consider clarifying the signature requirements of forms, reports, and documents that are required by the general permit.

**Response:** Since January 31, 2023, requests for permit coverage and compliance forms, that are required by permit conditions, must be submitted at the e-Permitting Portal. It is no longer possible to physically send, or hand deliver hard-copy permit documents with wet signatures to the CWB. The CWB agrees that it would be helpful to update Appendix C of HAR Chapter 11-55 and reflect the use of approved electronic signatures for the submission of permit documents at the e-Permitting Portal.

The CWB is amending the proposed revision of section 13.4 as follows to clarify signature requirements. The amended revision is shown as underlined and red-colored text.

### 13.4

The ~~[owner]~~ permittee or its duly authorized representative shall include the following certification statement and an original signature, or as otherwise specified, on each submittal in accordance with section 11-55-34.08(e) or (f):

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

## **B. APPENDIX J OF HAR CHAPTER 11-55**

Below is the summary of responses to all comments submitted about the proposed revisions to Appendix J of HAR Chapter 11-55.

### **1. Proposed revision of section 4**

**Comment:** The CWB should consider clarifying the submission requirements of NOIs as specified in section 4(e).

**Response:** Since January 31, 2023, requests for permit coverage and compliance forms, that are required by permit conditions, must be submitted at the e-Permitting Portal. It is no longer possible to physically send, or hand deliver hard-copy requests for permit coverage and compliance forms to the CWB. The CWB agrees that it would be helpful to update Appendix J of HAR Chapter 11-55 and include the web address of the e-Permitting Portal.

As explained, the CWB uses the e-Permitting Portal for the submission of requests from interested parties for permit coverage, and compliance forms from permittees. At the same time, the CWB also uses the WPC Database to store information and documents that are related to all permits issued by the branch. Permittees and the public can access information and documents about issued permits by using the WPC Viewer or requesting access to government records. Currently, the CWB must synchronize the information submitted at the e-Permitting Portal with the information stored in the WPC Database.

In the short-term, the CWB will continue to accept requests for permit coverage and compliance forms at the e-Permitting Portal, and to provide access to information and documents of all issued permits. In the medium term, the CWB is considering the use of an integrated application such as NeT by the EPA. Integrated applications allow both the submission and retrieval of permit documents, and they eliminate the need to synchronize permit documents that are accessed by multiple applications.

For upcoming updates of Appendix J of HAR Chapter 11-55, the CWB will consider clarifying the submission requirements of NOIs to include the web address of a “future” integrated application for the submission and retrieval of permit documents. At this time, the CWB is not amending the proposed revision of section 4.

### *4. Notice of Intent (NOI) Requirements*

~~[(a) The owner or its duly authorized representative shall submit a complete notice of intent no later than thirty days before the proposed starting date of the discharge or thirty days before the expiration date of the applicable notice of general permit coverage.]~~

(a) The owner or operator shall submit a complete notice of intent thirty days before the proposed starting date of the discharge, and at least

thirty days before the expiration date of this general permit.

- (b) The owner or ~~[its duly authorized representative]~~operator shall include the following information in the notice of intent:
- (1) Information required in section 34 of appendix A of chapter 11-55;
  - (2) ~~[Activity for which the recycled water is to be used and the amount in gallons per day of recycled water to be used or conveyed]~~A brief description of the recycled water system and the amount in gallons per day of R-1 water;
  - (3) Name of the owner or operator of treatment works producing or supplying the R-1 water, if different from the permittee;
  - (4) ~~[Copy of the agreement(s) relating to R-1 water use between the permittee and the owner or operator of treatment works producing the R-1 water, if the owner or operator is different from the permittee; and]~~Documentation showing that the recycled water system has been approved pursuant to Chapter 11-62 by the department.
  - (5) Quantitative data of the R-1 water in the recycled water system.
- (c) The director may require additional information to be submitted.
- ~~[(d) The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:~~

~~Director of Health  
Wastewater Branch  
Environmental Management Division  
Department of Health  
P.O. Box 3378  
Honolulu, Hawaii 96801-3378]~~

(d) The initial notice of intent shall be signed by the certifying person as described in section 11-55-07(a). A revised notice of intent (a notice of intent that the department has required to be revised and resubmitted) shall be signed by either the certifying person or duly authorized representative as described in section 11- 55-07(b) .

(e) The owner or operator shall submit a complete notice of intent to the director at the following address or as otherwise specified:

Director of Health  
Clean Water Branch  
Environmental Management Division  
State Department of Health  
P.O. Box 3378  
Honolulu, Hawaii 96801-3378

## **2. Proposed revision of section 10**

**Comment:** The CWB should consider clarifying the submission requirements of reports, that are required by the general permit, as specified in section 10(a).

**Comment:** The CWB should consider clarifying the signature requirements of forms, reports, and documents, that are required by the general permit, as specified in section 10(b).

**Response:** Since January 31, 2023, requests for permit coverage and compliance forms, that are required by permit conditions, must be submitted at the e-Permitting Portal. It is no longer possible to physically send, or hand deliver hard-copy permit documents with wet signatures to the CWB. The CWB agrees that it would be helpful to update Appendix J of HAR Chapter 11-55 by including the web address of the e-Permitting Portal and reflecting the use of approved electronic signatures for the submission of permit documents at the e-Permitting Portal.

For upcoming updates of Appendix J of HAR Chapter 11-55, the CWB will consider clarifying the submission requirements of reports to include the web address of a “future” integrated application for the submission and management of permit documents. Please see the above response to comment(s) about the proposed revision of section 4 for a detailed discussion of the benefits from using integrated applications. At this time, the CWB is not amending the proposed revision of section 10 to include the web address of the e-Permitting Portal.

The CWB is amending the proposed revision of section 10 as follows to clarify the signature requirements. The amended revision is shown as underlined and red-colored text.

### *10. Submittal Requirements*



- (a) The ~~[owner]~~permittee or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit to the director at the following address or as otherwise specified:

Director of Health  
~~[Wastewater]~~Clean Water Branch  
Environmental Management Division  
State Department of Health  
P.O. Box 3378  
Honolulu, HI 96801-3378

- (b) The ~~[owner]~~permittee or its duly authorized representative shall include the following certification statement and an original signature, or as otherwise specified, on each submittal in accordance with section 11-55-34.08(e) or (f):

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

- (c) The ~~[owner]~~permittee or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence or submittals may be a basis for delay of the processing of the document(s).

## C. APPENDIX L OF HAR CHAPTER 11-55

Below is the summary of responses to all comments submitted about the proposed revisions to Appendix L of HAR Chapter 11-55.

### 1. Proposed revision of section 2

**Comment:** The CWB should consider clarifying the maintenance requirements of filter media, that are used in decorative pond devices, as specified in section 2(c)(5).

**Response:** There are many types of filtering devices for fish and decorative ponds including pressurized and non-pressurized devices. Depending on the device used, there are other factors besides pressure differentials to consider when replacing filter media. The CWB agrees that the maintenance requirements should accommodate a wide range of decorative pond devices with different factors for determining the replacement of filter media.

The CWB is amending the proposed revision of section 2 as follows to clarify maintenance requirements. The amended revision is shown as underlined and red-colored text.

### 2. *Limitations on Coverage Under the General Permit*

(a) *This general permit does not cover the following:*

- (1) *Discharges of circulation water from decorative ponds or tanks into a sanitary sewer system; ~~and~~*
- (2) *Discharges of circulation water from decorative ponds or tanks which initially enter separate storm water drainage systems, unless a permit, license, or equivalent written approval is granted by the owner(s) of the drainage system(s) allowing the subject discharge to enter their drainage system(s) ~~[and]~~ except if the permittee is the owner of the drainage system~~[and]~~; and*
- (3) *Discharges of decorative ponds with toxic parameter concentrations above the applicable water quality criteria in chapter 11-54.*

(b) *The director may require any permittee authorized by this general permit to apply for and obtain an individual permit, in accordance with sections 11-55-34.05 and 11- 55-34.10.*

(c) Permittees authorized by this general permit are required to comply with the following requirements.

- (1) Treat decorative pond discharges with controls to minimize discharges of pollutants. Appropriate controls to use downstream of decorative pond controls to minimize erosion include vegetated buffers, check dams, riprap, and grouted riprap at outlets.
- (2) Prohibit visible plumes from the discharge and prohibit the discharge of visible floating solids or foam.
- (3) To the extent feasible, use vegetated, upland areas to infiltrate decorative pond water before discharge. State waters are prohibited from being used as part of the treatment area.
- (4) At all points where decorative pond water is discharged, dissipate velocity to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points. Control measures that can be used to comply with this requirement include the use of erosion controls and/or velocity dissipation devices (e.g., check dams, sediment traps), within and along the length of the conveyance and at the outfall to slow down the discharge. These devices shall not be placed within receiving waters.
- (5) ~~[Replace or clean the]~~ Inspect, maintain, and replace filter media used in decorative pond devices ~~[when the pressure differential equals or exceeds]~~ according to the manufacturer's specifications.

## **2. Proposed revision of section 4**

**Comment:** The CWB should consider clarifying the submission requirements of NOIs as specified in section 4(e).

**Response:** Since January 31, 2023, requests for permit coverage and compliance forms, that are required by permit conditions, must be submitted at the e-Permitting Portal. It is no longer possible to physically send, or hand deliver hard-copy requests for permit coverage and compliance forms to the CWB. The CWB agrees that it would be helpful to update Appendix L of HAR Chapter 11-55 and include the web address of the e-Permitting Portal.

As explained, the CWB uses the e-Permitting Portal for the submission of requests from interested parties for permit coverage, and compliance forms from permittees. At the same time, the CWB also uses the WPC Database to store information and documents that are related to all permits issued by the branch. Permittees and the public can access information and documents about issued permits by using the WPC Viewer or requesting access to government records. Currently, the CWB must synchronize the information submitted at the e-Permitting Portal with the information stored in the WPC Database.

In the short-term, the CWB will continue to accept requests for permit coverage and compliance forms at the e-Permitting Portal, and to provide access to information and documents of all issued permits. In the medium term, the CWB is considering the use of an integrated application such as NeT by the EPA. Integrated applications allow both the submission and retrieval of permit documents, and they eliminate the need to synchronize permit documents that are accessed by multiple applications.

For upcoming updates of Appendix L of HAR Chapter 11-55, the CWB will consider clarifying the submission requirements of NOIs to include the web address of a “future” integrated application for the submission and retrieval of permit documents. At this time, the CWB is not amending the proposed revision of section 4.

#### *4. Notice of Intent Requirements*

~~[(a) The owner or its duly authorized representative shall submit a complete notice of intent no later than thirty days before the proposed starting date of the discharge.]~~

(a) The owner or operator shall submit a complete notice of intent thirty days before the proposed starting date of the discharge, and at least thirty days before the expiration date of this general permit.

(b) The owner or [its duly authorized representative] operator shall include the following information in the notice of intent:

(1) Information required in section 34 of appendix A of chapter 11-55;

- (2) Description of the decorative fish pond or tank and the type of aquatic species being housed. The description should include, but not be limited to:  
material type of the pond or tank;  
water volume contained; the type, size, and number of aquatic species being housed; and, the type(s) and quantity of food utilized;
- (3) Description of the average frequency of flow and duration of any intermittent or seasonal discharge. The frequency of flow means the number of days or months per year when there is an intermittent discharge. Duration means the number of days or hours per discharge. Provide the best estimate for new discharges;
- (4) Source(s) of the circulation water for the decorative fish pond or tank;
- (5) Quantitative data on [~~pollutant(s)~~] pollutant(s) that the owner or operator of the facility knows or reasonably should know are or will be present in the discharge and for which the pollutants numerical criteria for the existing or proposed receiving state waters are specified in chapter 11-54, especially section 11-54-4;
- (6) Name and chemical composition of any water enhancement or treatment additives, if any used;
- (7) Best management practices applied to minimize or eliminate the discharge of pollutants (e.g., feeding procedures, pond or tank cleaning operations, and control measures); and
- (8) A brief description of any treatment system used or to be used. For discharges to Class AA or Class 1 waters, the treatment system plan shall be submitted with the notice of intent.

*For discharges to Class A or Class 2 waters, the treatment system plan shall be submitted with the notice of intent or thirty days before the start of discharge activities. The permittee shall retain the treatment system plan, and all subsequent revisions, on-site or at a nearby office.*

*(c) The director may require additional information to be submitted.*

*(d) The initial notice of intent shall be signed by the certifying person as described in section 11-55-07(a). A revised notice of intent (a notice of intent that the department has required to be revised and resubmitted) shall be signed by either the certifying person or duly authorized representative as described in section 11-55-07(b) .*

*~~[(d)]~~ (e) The owner or operator shall submit a complete notice of intent to the director at the following address or as otherwise specified:*

*Director of Health  
Clean Water Branch  
Environmental Management Division  
State Department of Health  
P.O. Box 3378  
Honolulu, Hawaii 96801-3378*

### **3. Proposed revision of section 9**

**Comment:** The CWB should consider clarifying the submission requirements of reports, that are required by the general permit, as specified in section 9(a).

**Comment:** The CWB should consider clarifying the signature requirements of forms, reports, and documents, that are required by the general permit, as specified in section 9(b).

**Response:** Since January 31, 2023, requests for permit coverage and compliance forms, that are required by permit conditions, must be submitted at the e-Permitting Portal. It is no longer possible to physically send, or hand deliver hard-copy permit documents with wet signatures to the CWB. The CWB agrees that it would be helpful to update Appendix L of HAR Chapter 11-55; and include the web address of the e-Permitting Portal and reflect the use of approved electronic signatures for the submission of permit documents at the e-Permitting Portal.

For upcoming updates of Appendix L of HAR Chapter 11-55, the CWB will consider clarifying the submission requirements of reports to include the web address of a “future” integrated application for the submission and management of permit documents. Please see the above response to comment(s) about the proposed revision of section 4 for a detailed discussion of the benefits from using integrated applications. At this time, the CWB is not amending the proposed revision of section 9 to include the web address of the e-Permitting Portal.

The CWB is amending the proposed revision of section 9 as follows to clarify signature requirements. The amended revision is shown as underlined and red-colored text.

9. *Submittal Requirements*

- (a) *The ~~owner~~ permittee or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit to the director at the following address or as otherwise specified:*

*Director of Health  
Clean Water Branch  
Environmental Management Division  
State Department of Health  
P.O. Box 3378  
Honolulu, HI 96801-3378*

- (b) *The ~~owner~~ permittee or its duly authorized representative shall include the following certification statement and an original signature, or as otherwise specified, on each submittal in accordance with section 11-55-34.08(e) or (f):*

*"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of*

*fine [~~for~~and] and imprisonment for knowing violations."*

- (c) *The [~~owner~~] permittee or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence or submittals may be a basis for delay of the processing of the document(s).*



## Fact Sheet, Hawaii Administrative Rules (HAR), Chapter 11-55, Water Pollution Control

Hawaii Administrative Rules (HAR), Chapter 11-55 Water Pollution Control regulates the National Pollutant Discharge Elimination System (NPDES) in Hawaii. The NPDES is a permit system required by Section 402 of the federal Clean Water Act that authorizes certain types of point source discharges, as well as some storm water discharges, to surface waters such as streams, lakes, or oceans. The U.S. Environmental Protection Agency (EPA) authorized the State of Hawaii, Department of Health (DOH) to administer the NPDES permit system in Hawaii.

In addition to providing policies and requirements for the NPDES program, HAR Chapter 11-55 also contains the NPDES General Permits in its appendices. The General Permits authorize a category of discharges and has one set of requirements for a group of similar types of activities or facilities such as once-through cooling water for air conditioning systems or storm water discharges from construction activities. A General Permit is an already written permit that requires an eligible owner or operator to notify the DOH that it wishes to be covered under the General Permit and that it will comply with all requirements of the permit. Coverage under a General Permit tends to be more expeditious than under the formal Individual Permit process.

The current revisions for this chapter include:

- Reissuance of NPDES general permits:
  - Appendix C authorizing discharges of storm water associated with construction activities
  - Appendix J authorizing unintentional discharges from recycled water systems
  - Appendix L authorizing discharges of circulation water from decorative ponds or tanks.
- References to HAR Chapter 11-54 in 11-55-42 Intake water.

Section	Current	Proposed	Rationale
Throughout		Various formatting, grammatical, and stylistic changes.	Various formatting, grammatical, and stylistic changes were made throughout the proposed rules. Such changes were minor and not substantive changes and will not be discussed in this rationale. All changes were identified following Ramseyer formatting requirements.
Title Page	Stamped adoption date.	Placeholder.	Left a placeholder for the adoption date to be stamped after rule making.

## Fact Sheet, Hawaii Administrative Rules (HAR), Chapter 11-55, Water Pollution Control

Section	Current	Proposed	Rationale
Table of Contents	Appendix J NPDES General Permit Authorizing Occasional or Unintentional Discharges from Recycled Water Systems	Appendix J NPDES General Permit Authorizing Unintentional Discharges from Recycled Water Systems	Revised general permit name. Appendix J will only cover unintentional discharges.
11-55-34.02(b)(2)	Appendix C, titled “NPDES General Permit Authorizing Discharges of Storm Water Associated with Construction Activity” for storm water discharges from construction activities which result in the disturbance of five acres or more of total land area or small construction activities which result in the disturbance of one to less than five acres of total land area or construction activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area, dated February 9, 2019;	Appendix C, titled “NPDES General Permit Authorizing Discharges of Storm Water Associated with Construction Activity” for storm water discharges from construction activities which result in the disturbance of five acres or more of total land area or small construction activities which result in the disturbance of one to less than five acres of total land area or construction activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area, dated _____;	Update issuance date of Appendix C.
11-55-34.02(b)(9)	Appendix J, titled “NPDES General Permit Authorizing Occasional or Unintentional Discharges from Recycled Water Systems” for the discharge of treated process wastewater effluent from recycled water distribution systems, dated February 9, 2019;	Appendix J, titled “NPDES General Permit Authorizing Unintentional Discharges from Recycled Water Systems” for the discharge of treated process wastewater effluent from recycled water distribution systems, dated _____;	Update name and issuance date of Appendix J.
11-55-34.02(b)(11)	Appendix L, titled “NPDES General Permit Authorizing Discharges of Circulation Water from Decorative Ponds or Tanks” for the discharge of circulation water from decorative ponds or tanks, dated February 9, 2019;	Appendix L, titled “NPDES General Permit Authorizing Discharges of Circulation Water from Decorative Ponds or Tanks” for the discharge of circulation water from decorative ponds or tanks, dated _____;	Update issuance date of Appendix L.

## Fact Sheet, Hawaii Administrative Rules (HAR), Chapter 11-55, Water Pollution Control

Section	Current	Proposed	Rationale
11-55-42(e)(4)	The director finds that the discharge of intake pollutants into the receiving water will not adversely impact narrative or numeric water quality criteria specified in this chapter.	The director finds that the discharge of intake pollutants into the receiving water will not adversely impact narrative or numeric water quality criteria specified in <u>chapter 11-54</u> .	Revise reference of water quality criteria from “this chapter” to “chapter 11-54” due to the move of the intake water rule from 11-54 to 11-55.
11-55-42(j)	All other water quality criteria established under this chapter continue to apply.	All other water quality criteria established under chapter <u>11-54</u> continue to apply.	Revise reference of water quality criteria from “this chapter” to “chapter 11-54” due to the move of the intake water rule from 11-54 to 11-55.
Adoption text	Stamped adoption date and previous public hearing and hearing notice.	Placeholder	Left placeholders to be filled in after adoption.

**National Pollutant Discharge Elimination System**  
**General Permit Fact Sheet for**  
**Hawaii Administrative Rules (HAR) Chapter 11-55, Appendix C**  
**Authorizing Discharges of Storm Water Associated with Construction Activity**

- (1) A brief description of the type of facility or activity which is the subject of the draft permit.

*This general permit covers storm water discharges associated with construction activities, and on or off-site construction support activities that result in the disturbance of one acre or more of total land area. This general permit also covers activities, disturbing less than one acre of land area, that are part of a larger common plan with cumulative activities disturbing one acre or more of total land area.*

- (2) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged.

*Storm water discharges include storm water runoff, snowmelt runoff, and surface runoff and drainage that are associated with construction activities, and on or off-site construction support activities.*

- (3) For a PSD permit, the degree of increment consumption expected to result from operation of the facility or activity.

*Not applicable.*

- (4) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by 40 CFR §124.9 (for EPA-issued permits). Language that is added to the 2019 Appendix C is shown as underlined and red-colored text, and language that is deleted is shown as ~~bracketed and strikethrough black-colored text~~.

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**Chapter 11-55, Appendix C Revisions**

*The General Permit is divided into the following sections. Sections that are revised are shown as underlined and red-colored text.*

1. Coverage under this General Permit
2. Limitations on Coverage under this General Permit
3. Term of this General Permit and the Notice of General Permit Coverage
4. Standard Conditions
5. Effluent Limitations Applicable to all Discharges from Construction Sites
6. Water Quality-Based Effluent Limitations
7. Storm Water Pollution Prevention Plan (SWPPP)
8. Implementation of the Storm Water Pollution Prevention Plan (SWPPP)
9. Inspections
10. Corrective Actions
11. Notice of Intent (NOI) Requirements
12. Reporting Requirements
13. Submittal Requirements
14. Additional Conditions
15. Record Retention
16. Falsifying Report
17. Administrative Extension

The proposed major revisions include:

- Adding general permit coverage for eligible storm water discharges from snowmelt runoff at sites with ongoing construction activities. Specifically, additional site inspection requirements are proposed to account for runoff due to the discharge of snowmelt after a storm event that produces 3.25 inches or more of snow within a 24-hour period. There are also additional requirements to reduce the site inspection frequency due to frozen conditions. All proposed requirements for snowmelt runoff are as stringent as the equivalent provisions that are specified in the current version of the U.S. Environmental Protection Agency Construction General Permit (2022 EPA CGP).
- Strengthening the linkage between the types of pollution prevention control needed and the volume of pollutants, including petroleum products and other chemicals, that are stored, handled, and disposed at a construction site. Specifically, storage requirements, containment controls, and spill procedures are proposed for pollutants based on their volumes. It is proposed to use the nominal volume of most industrial barrels (i.e., 55 gallons) as the volume threshold for determining the types of control. This volume threshold is also specified in the 2022 EPA CGP.
- Streamlining the documentation of problems found on the construction site and the corresponding corrective actions taken. Specifically, the current requirements for completing a corrective action report are proposed to be

*replaced by new requirements for updating a corrective action log. It is proposed to document on the log the same information that is currently found on a report. It is also proposed to ensure the certification, format, availability, and retention of a corrective action log. The proposed requirements for the corrective action log are identical to the provisions in the 2022 EPA CGP.*

- *Clarifying the renewal process of a Notice of General Permit Coverage (NGPC).* Prior to the expiration date of the current general permit, permittees do not know the requirements of the new general permit, and therefore, permittees cannot request for a renewal when they do not know if compliance with the new general permit is possible. It is proposed to revise the renewal process of a NGPC, and to clarify the requirements of the administrative extension process.
- *Maintaining uniformity with the requirements for meeting water quality standards (WQS), as specified in HAR Chapter 11-54.* Specifically, references to the reasonable potential approach are proposed to be removed from the general permit. It is proposed to make clear that discharges not meeting WQS are prohibited, and permittees must ensure discharges do not lower water quality in the receiving state waters.

*The proposed minor revisions include:*

- *Maintaining conformity of commonly used terms* such as “storm water control”, “receiving state water”, “site drainage feature”, “permittee”, and “operator”.
- *Clarifying unclear terms, incorrect references, and incomplete notes.*

*The Clean Water Branch (CWB) conducted a Public Comment period on the proposed revisions to HAR Chapter 11-55 including the general permits specified in Appendices C, J, and L, from May 19, 2023, through June 23, 2023. The CWB contacted approximately 1,750 permittees, including consultants, small businesses, and government agencies, to inform them of the proposed revisions and to solicit their comments.*

*A total of two (2) commenters from state and municipal agencies submitted input about the proposed revisions to Appendices C, J, and L of HAR Chapter 11-55. On July 12, 2023, the CWB finalized and issued the Response to Comments about the proposed revisions to HAR Chapter 11-55. The CWB also updated the Fact Sheets of Appendices C, J, and L to include the additional proposed revisions in response to the comments submitted.*

*For Appendix C of HAR Chapter 11-55, the additional proposed revisions are minor in nature; they are shown as **underlined and red-colored bolded text**, and they include:*

- Clarifying the requirements of routine maintenance. It is proposed to make clear that permittees need to complete inspection reports when it is infeasible to complete routine maintenance in a timely manner.
- Clarifying the signature requirements of forms, reports, and documents. It is proposed to make clear that approved electronic signatures can be used for the submission of permit documents.

## **Revised Section 1.1**

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### **1.1.**

This general permit covers ~~[discharges composed entirely of storm water runoff]~~ storm water discharges, including storm water runoff, snowmelt runoff, and surface runoff and drainage, associated with construction activities, including, but not limited to, clearing, grading, excavation, and construction support activities that result in the disturbance of one acre or more of total land area. This general permit also covers activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area.

Construction support activities include, but are not limited to, concrete or asphalt batch plants, rock crushing plants, equipment staging yards/areas, material storage areas, excavated material disposal areas, borrow areas, etc. Coverage under this general permit for construction support activities is allowed provided that the support activity is directly related to the construction ~~[site]~~ project required to have permit coverage for storm water discharges; is not a commercial operation, nor does it serve multiple unrelated construction projects; does not continue to operate beyond the completion of the construction activity at the project site it supports; and storm water controls are implemented in accordance with ~~[this section]~~ section 5 and if applicable, section 6, for storm water discharges from the support activity areas.

**Rationale:** Section 1.1 of the general permit specifies the types of storm water discharges from construction activities that are eligible for general permit coverage. This revision is proposed to include general permit coverage for storm water discharges from snowmelt runoff. Snowmelt runoffs are included in the current version of the U.S. Environmental Protection Agency (EPA) CGP that provides coverage for eligible storm water discharges from construction activities undertaken at locations where the EPA is the NPDES permitting authority. All proposed requirements for snowmelt runoffs are as stringent as the equivalent

provisions specified in the 2022 EPA CGP. The 2022 EPA CGP can be accessed at:  
<https://www.epa.gov/npdes/2022-construction-general-permit-cgp#2022cgp>.

This revision is also proposed to clarify the requirements for storm water discharges from the support activity areas. Specifically, storm water controls must be implemented in accordance with section 5 of the general permit, and if applicable, section 6 of the general permit for eligible discharges from the support activity areas.

## **Revised Section 2.2**

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### **2.2.**

Discharges of storm water from new sources that ~~[have the reasonable potential to cause, or contribute to an excursion above any]~~**do not meet** applicable water quality standard are not eligible for coverage under this permit, except if the permittee has included appropriate controls and implementation procedures designed to bring the discharge into compliance with water quality standards. In the absence of information demonstrating otherwise, the department expects that compliance with the storm water control requirements in this permit, including the requirements applicable to such discharges in section 6.2., will result in discharges that ~~[will not cause, have the reasonable potential to cause, or contribute to an excursion above any]~~**meet** applicable water quality ~~[standard.]~~**standards.**

For this permit "new sources" means projects which occur after this general permit becomes effective when section 11-55-34.02(b)(2) becomes effective, ten days after filing with the office of the lieutenant governor.

**Rationale:** The requirements in section 2.2 of the general permit are applicable to new sources, and they prohibit discharges that do not meet the instream water quality standards of receiving state waters. Currently, the general permit references the reasonable potential approach to prohibit all "discharges that have the reasonable potential to cause, or contribute to an excursion above any applicable quality standards." There are also water quality-based requirements in section 6.2 of the general permit that are applicable to existing sources, as well as new sources. The water quality-based requirements are specified to prohibit all discharges from all permittees that do not meet applicable water quality standards.



*This revision is proposed to maintain uniformity in the requirements for water quality standards, as specified in Hawaii Administrative Rules, Chapter 11-54 (HAR Chapter 11-54) and the general permit by removing references to the reasonable potential approach. This revision requires permittees to comply with specific requirements in the general permit, which are intended to ensure that their discharges meet applicable water quality standards in the receiving state waters. Specifically, this revision makes clear to permittees their requirements for complying with applicable water quality standards, and provides assurance that their discharges will not lead to a lowering of water quality in the receiving state waters. It is also proposed to revise sections 6.1 and 8.1 to maintain uniformity by removing references to the reasonable potential approach.*

### **Revised Section 3.2 & Revised Section 3.3**

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#### **3.2. Term of the Notice of General Permit Coverage**

~~[A notice of general permit coverage under this general permit expires, the earlier of the following, unless the notice of general permit coverage is automatically terminated in accordance with section 2.3 or administratively extended under section 11-55-34.09(d):]~~

~~[3.2.1.~~

~~As specified on Page 55-C-1; or]~~

~~[3.2.2.~~

~~When the notice of general permit coverage specifies.]~~

Unless otherwise specified on the notice of general permit coverage, a notice of general permit coverage granted under this general permit shall expire five years after the effective date of this general permit, unless it is administratively extended in accordance with section 3.3 of this general permit.

#### **3.3. Administrative Extension of the Notice of General Permit Coverage**

If the department is unable to reissue this general permit prior to its expiration, a notice of general permit coverage granted under this general permit shall be automatically administratively extended, unless otherwise specified on the notice of general permit coverage. This administrative extension shall expire sixty days after the effective date of the new general permit unless:

3.3.1.

*A notice of intent for coverage under the new general permit is submitted within sixty days after the effective date of the new general permit. The administrative extension shall expire on the effective date of the notice of general permit coverage authorizing the existing discharge under the new general permit;*

3.3.2.

*An application for a NPDES individual permit is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the NPDES individual permit authorizing the existing discharge; or*

3.3.3.

*A notice of cessation is submitted where the administrative extension shall expire on the date that the discharge ceased.*

**Rationale:** Section 3.2 of the general permit specifies the term of the general permit and a Notice of General Permit Coverage (NGPC) that is issued under the general permit. This revision is proposed to clarify that a NGPC granted under this general permit shall expire five years after the effective date of the general permit, unless it is administratively extended. This revision is also proposed to clarify the administrative extension process of a NGPC issued under the general permit.

Currently, to maintain coverage under this general permit in instances where the general permit is going to expire prior to its reissuance, permittees need to submit a renewal NOI prior to the general permit's expiration date. This procedure creates a situation where a permittee is required to submit an NOI to request coverage under the reissued general permit prior to the reissued permit being finalized and adopted. In essence, permittees are required to submit an NOI to apply for coverage under a general permit that has not been finalized, or at worst, has not had a draft public noticed yet, and therefore, permittees are not even aware of the requirements of the new general permit.

To avoid this situation, the renewal process for general permit coverage is revised. This revision specifies that when the department is unable to reissue the general permit prior to its expiration, NGPCs granted under the general

*permit prior to its expiration are administratively extended until 60 days after effective date of the reissued general permit, unless one of 3 actions are taken by the permittee. In the new process, permittees would have 60 days to submit an NOI to request coverage under the reissued general permit, before their administrative extension expires. This will allow permittees to determine if they are able to comply with the new general permit and provide any newly required information in the NOI to request coverage under the reissued general permit.*

### **Revised Section 5 (Note)**

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#### **5. Effluent ~~[Limitation]~~Limitations Applicable To All Discharges From Construction Sites**

*The permittee is required to comply with the following effluent limitations in this section for authorized discharges from the site and/or from construction support activities.*

*~~[Note: If the project is an "existing project" meaning that an administrative extension of the NGPC was granted or the NGPC was renewed under this general permit; or if the permittee is new because of a transfer of ownership and/or operation replaces the permittee of an already issued NGPC, and it is infeasible for the permittee to comply with a specific requirement in this section because (1) the requirement was not part of the 2007 Appendix C, and (2) because the permittee is prevented from compliance due to the nature or location of earth disturbances that commenced prior to December 6, 2013, or because the permittee is unable to comply with the requirement due to the manner in which storm water controls have already been installed or were already designed prior to December 6, 2013, the permittee is required to document this fact in the SWPPP, refer to section 7, and are waived from complying with that requirement. This flexibility applies only to the requirements in sections 5.1 and 5.3.3. through 5.3.5. (except for sections 5.3.3.1., 5.3.3.2.2., 5.3.3.3.3.a., and 5.3.3.4.). This only applies to those portions of the site that have already commenced earth-disturbing activities or where storm water controls implemented in compliance with the previous permit have already been installed.]~~*

**Rationale:** Section 5 of the general permit requires all permittees to comply with effluent limitations for authorized discharges from both the site and the construction support activities. This revision is proposed to delete the note clarifying when it is infeasible for a permittee to comply with any requirement specified in section 5 of the general permit. This clarifying note is no longer

*necessary due to the revision of the renewal process for a NGPC, as proposed in revised section 3 of the general permit.*

#### **Revised Section 5.1.1.2**

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##### **5.1.1.2. Design requirements.**

###### **5.1.1.2.1.**

*The permittee shall account for the following factors in designing storm water ~~[controls:]~~controls.*

*Note: Storm water controls must be designed using the most recent data available to account for recent precipitation patterns and trends.*

*Note: If the site is exposed to or has previously experienced major storms, such as hurricanes, storm surge, extreme/heavy precipitation, and flood events, the permittee should also include consideration of and contingencies for whether implementing structural improvements, enhanced/resilient storm water controls, and other mitigation measures may help minimize impacts from storm water discharges from such major storm events.*

###### **5.1.1.2.1.1.**

*The expected amount, frequency, intensity, and duration of precipitation;*

###### **5.1.1.2.1.2.**

*The nature of storm water runoff (i.e., flow) and run-on at the site, including factors such as expected flow from impervious surfaces, slopes, and site drainage features. If any storm water flow will be channelized at the site, the permittee shall design storm water controls to control both peak flowrates and total storm water volume to minimize channel and streambank erosion in the immediate vicinity of discharge points; and*

###### **5.1.1.2.1.3.**

*The range of soil particle sizes expected to be present on the site.*

5.1.1.2.2.

*The permittee shall direct discharges from storm water controls to vegetated areas of the site, including any natural buffers established under section 5.1.2.1., and maximize ~~[stormwater]~~storm water infiltration to reduce pollutant discharges, unless ~~[infeasible. Use]~~infiltration would be inadvisable due to the underlying geology and ground water contamination concerns, or infeasible due to site conditions. The permittee shall use velocity dissipation devices if necessary to minimize soil erosion in order to minimize pollutant discharges when directing storm water to vegetated areas.*

**Rationale:** Section 5.1.1.2 specifies the factors that permittees must account for when designing their storm water controls. This revision is proposed to stress the importance of considering recent precipitation data so that earth-disturbing activities can be planned during periods with a lower risk of precipitation, and so that erosion and sediment controls can be implemented to best manage the expected precipitation. If earth-disturbing activities are planned during periods with a higher risk of precipitation, the permittee should consider implementing appropriate erosion and sediment controls to better manage the expected high precipitation. This revision makes clear that it is a design consideration, and not a design requirement, to plan, on the basis of historical precipitation data, contingency measures or mitigation measures which may help minimize the potential impacts from storm events

*This revision is also proposed to clarify the requirements for effluent limitations that prevent and control the discharge of sediment and other pollutants through the use of erosion control measures. Specifically, permittees should reduce pollutant discharges by maximizing infiltration unless there are geological features preventing the implementation of such erosion control measures, or there are potential risks of contamination to ground water.*

**Revised Section 5.1.1.4**

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5.1.1.4. Maintenance Requirements

5.1.1.4.1.

*The permittee shall ensure that all erosion and sediment controls required in this section remain in effective operating condition during permit coverage and are protected from activities that would reduce their effectiveness.*

5.1.1.4.2.

*The permittee shall inspect all erosion and sediment controls in accordance with the applicable requirements in section 9.1., and document the findings in accordance with section 9.1.7. If a problem is found (e.g., erosion and sediment controls need to be replaced, repaired, or maintained), the permittee shall make the necessary repairs or modifications in accordance with the following schedule:*

5.1.1.4.2.1.

*Initiate work to fix the problem immediately after discovering the problem, and complete such work by the close of the next work day, if the problem does not require significant repair or replacement, or if the problem can be corrected through routine maintenance. If it is infeasible to complete the routine maintenance by the close of the next work day, the permittee shall document in its records why this is the case and why the repair or other upkeep to be performed should still be considered routine maintenance in an inspection report under section 9.1.7.1.c. and complete such work no later than seven (7) calendar days from the time of discovery of the condition requiring maintenance.*

*Note: Routine maintenance means minor repairs or other upkeep performed to ensure the site's storm water controls remain in effective operating condition, not including significant repairs or the need to install a new or replacement control.*

5.1.1.4.2.2.

*When installation of a new erosion or sediment control or a significant repair is needed, the permittee shall install the new or modified control and make it operational, or complete the repair, by no later than 7 calendar days from the time of discovery where feasible. If it is infeasible to complete the installation or repair within 7 calendar days, the permittee shall document in its records why it is infeasible to complete the installation or repair within the 7-day timeframe and document the schedule for installing the storm water control(s) and making it operational as soon as practicable after the 7-day timeframe. Where these actions result in changes to any of the storm water controls or procedures documented in the SWPPP, the permittee shall modify the SWPPP accordingly within 7 calendar days of completing this work.*

**Rationale:** Section 5.1.1.4 of the general permit requires permittees to inspect and maintain the effectiveness of all erosion and sediment controls during the term of the general permit coverage. There is considerable confusion as to the difference between routine maintenance, and the repair or replacement of a storm water control that is considered a corrective action in accordance with section 10 of the general permit. To remedy this confusion and to improve compliance with the intended meaning of the general permit, this revision defines routine maintenance of storm water controls as minor repairs or other upkeep performed to ensure their effective operating condition. This revision is proposed to clarify that permittees must treat necessary on-site repairs of storm water controls as corrective actions, and not as routine maintenance.

When repeated routine maintenance fixes are made to the same storm water control, this revision also clarifies that permittees must document their justification for treating these problems as routine maintenance, and not as necessary on-site repairs of a storm water control. If routine maintenance fixes of a storm water control are considered to be necessary on-site repairs, permittees must treat their corrective actions in accordance with section 10 of the general permit.

### **Revised Section 5.1.2.1**

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#### **5.1.2.1. Provide natural buffer and sediment controls**

~~[Provide natural buffers and sediment control. (These requirements only apply when a state water is located within 50 feet of the project's earth disturbances).]~~

**Note:** These requirements only apply when there are receiving state waters located within 50 feet of the project's earth disturbances.

**Note:** The department does not consider all storm water ~~[control features]~~ controls (e.g., ~~[storm water conveyance channels,]~~ constructed or natural site drainage features, storm drain inlets, sediment basins) to be state waters.

**Note:** Written documentation allowing use is required from the owner of areas that are not owned by the permittee or that are otherwise outside the operational control to be considered areas of undisturbed natural buffer for purposes of compliance with this section.

~~[The permittee shall ensure that any discharges to state waters through the area between the disturbed portions of the property and any state waters located within 50 feet of the site are treated by an area of undisturbed natural buffer and~~



~~sediment controls.]~~The permittee shall provide and maintain an area of undisturbed natural buffer and sediments controls between the disturbed portions of the site and any receiving state waters that are located within 50 feet of the project's earth disturbances.

*Note: If the boundary of the disturbance area is within 50 feet of ~~[the State]~~any receiving state water, triggering this requirement, then the installation of the project's perimeter control may be considered equivalent to the installation of sediment control.*

**Rationale:** Section 5.1.2.1 of the general permit specifies the requirements for erosion and sediment controls that are applicable to all construction sites. This revision is proposed to clarify that the requirements only apply to receiving state waters located within 50 feet of earth disturbances found at construction sites.

### **Revised Section 5.3.3.3**

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5.3.3.3. Storage, Handling, and Disposal of Construction Products, Materials, and Wastes.

*The permittee shall minimize the exposure to storm water of any of the products, materials, or wastes specified below that are present at the site by complying with the requirements in this section.*

*Note: These requirements do not apply to those products, materials, or wastes that are not a source of storm water contamination or that are designed to be exposed to storm water.*

*Note: Compliance with the requirements of this permit does not relieve compliance with respect to federal, state or local requirements for the storage, handling, and disposal of solid, hazardous, or toxic wastes and materials.*

*To ensure meeting this requirement, the permittee shall:*

5.3.3.3.1.

*For building products: In storage areas, provide either:*

- a. *Cover (e.g., plastic sheeting or temporary roofs) to prevent these products from coming into contact with rainwater, or*



- b. A similarly effective means designed to prevent the discharge of pollutants from these areas.*

*5.3.3.3.2.*

*For pesticides, herbicides, insecticides, fertilizers, and landscape materials:*

- a. In storage areas, provide either (1) cover (e.g., plastic sheeting or temporary roofs) to prevent these chemicals and materials from coming into contact with rainwater, or (2) a similarly effective means designed to prevent the discharge of pollutants from these areas; and*
- b. Comply with all application and disposal requirements included on the registered pesticide, herbicide, insecticide, and fertilizer label.*

*5.3.3.3.3.*

*For diesel fuel, oil, hydraulic fluids, other petroleum products, and other chemicals:*

- [a. ~~To comply with the prohibition in section 5.3.1.3., store chemicals in water-tight containers, and provide either (1) cover (e.g., plastic sheeting or temporary roofs) to prevent these containers from coming into contact with rainwater, or (2) a similarly effective means designed to prevent the discharge of pollutants from these areas (e.g., spill kits), or provide secondary containment (e.g., spill berms, decks, spill containment pallets); and]~~*

*The following requirements apply to the storage and handling of chemicals on the site. If the permittee is already implementing controls as part of an SPCC or other spill prevention plan that meet or exceed the requirements of this section, the permittee may continue to do so and be considered in compliance with these requirements provided the permittee reference the applicable sections of the SPCC or other plans in the SWPP as required in section 7.2.11.1.*

*5.3.3.3.3.1.*

*If any chemical container has a storage capacity of less than 55 gallons:*

- a. The containers must be water-tight, and must be kept closed, sealed, and secured when not being actively used;
- b. If stored outside, use a spill containment pallet or similar device to capture small leaks or spills; and
- c. Have a spill kit available on site that is in good working condition (i.e., not damaged, expired, or used up) and ensure personnel are available to respond immediately in the event of a leak or spill.

5.3.3.3.2.

If any chemical container has a storage capacity of 55 gallons or more:

- a. The containers must be water-tight, and must be kept closed, sealed, and secured when not being actively used;
- b. Store containers a minimum of 50 feet from receiving state waters, constructed or natural site drainage features, and storm drain inlets. If infeasible due to site constraints, store containers as far away from these features as the site permits. If site constraints prevent storing containers 50 feet away from receiving state waters or the other features identified, the permittee must document in the SWPPP the specific reasons why the 50-foot setback is infeasible, and how the permittee will store containers as far away as the site permits;
- c. Provide either (1) cover (e.g., temporary roofs) to minimize the exposure of these containers to precipitation and to storm water, or (2) secondary containment (e.g., curbing, spill berms, dikes, spill containment pallets, double-wall, above-ground storage tank); and
- d. Have a spill kit available on site that is in good working condition (i.e., not damaged, expired, or used up) and ensure personnel are available to respond immediately in the event of a leak or spill.

[b.]5.3.3.3.3.

*Clean up spills immediately, using dry clean-up methods where possible, and dispose of used materials properly. Do not clean surfaces or spills by hosing the*

*area down. Eliminate the source of the spill to prevent a discharge or a continuation of an ongoing discharge.*

5.3.3.3.4.

*For hazardous or toxic ~~[waste:]~~wastes:*

*Separate hazardous or toxic waste from construction and domestic waste;*

- a. Store waste in sealed containers, which are constructed of suitable materials to prevent leakage and corrosion, and which are labeled in accordance with applicable Resource Conservation and Recovery Act (RCRA) requirements and all other applicable federal, state, and local requirements;*
- b. Store all containers that will be stored outside away from ~~[surface waters]~~ receiving state waters, storm drain inlets, and constructed or natural site drainage features, and within appropriately-sized secondary containment (e.g., spill berms, decks, spill containment pallets) to prevent spills from being discharged, or provide a similarly effective means designed to prevent the discharge of pollutants from these areas (e.g., storing chemicals in covered area or having a spill kit available on site);*
- c. Dispose of hazardous or toxic waste in accordance with the manufacturer's recommended method of disposal and in compliance with federal, state, and local requirements; and*
- d. Clean up spills immediately, using dry clean-up methods where possible, and dispose of used materials properly. Do not clean surfaces or spills by hosing the area down. Eliminate the source of the spill to prevent a discharge or a furtherance of an ongoing discharge.*

5.3.3.3.5.

*For construction and domestic ~~[waste:]~~wastes:*

*Provide waste containers (e.g., dumpster or trash receptacle) of sufficient size and number to contain construction and domestic wastes. In addition, the permittee shall:*

- a. For waste containers with lids, keep waste container lids closed when not in use, and close lids at the end of the business day and during storm events;
- b. For waste containers without lids, provide either cover (e.g., a tarp, plastic sheeting, temporary roof) to minimize exposure of wastes to precipitation, or a similarly effective means (e.g., secondary containment) designed to minimize the discharge of pollutants;
- ~~[a-]~~c. On work days, clean up and dispose of waste in designated waste containers; and
- ~~[b-]~~d. Clean up immediately if containers overflow~~[-]~~, and if there is litter elsewhere on the site from escaped trash.

Note: Examples of construction and domestic wastes include packaging materials, scrap construction materials, masonry products, timber, pipe and electrical cuttings, plastics, Styrofoam, concrete, demolition debris; and other trash or discarded materials.

#### 5.3.3.3.6.

For sanitary waste:

Position portable toilets so that they are secure and will not be tipped or knocked over~~[-]~~, and are located away from receiving state waters, storm drain inlets, and constructed or natural site drainage features.

**Rationale:** Section 5.3.3.3 of the general permit requires permittees to comply with specific pollution prevention requirements for activities, including the storage, handling, and disposal of construction products, materials, and wastes, that may result in pollutant discharges. This revision is proposed to make changes to the pollution prevention requirements for diesel fuel, oil, hydraulic fuels, or other petroleum products, and other chemicals based on the volume being used and stored on the site. Specifically, it is proposed to strengthen the linkage between the type of pollution prevention control needed and the volume of the pollutant kept on site.

Where smaller amounts of chemicals are kept on site, the permittees should be able to move the controls, that are used to prevent and treat a possible spill and leak, around the project site wherever materials are being used or stored. In

*such instances, the proposed revision establishes control requirements that are appropriate for smaller-sized containers by requiring that the permittees use water-tight containers, place them on a spill containment pallet (or similar device) if kept outside, and have available at all times a spill kit in good working condition and personnel available to respond quickly to a spill or leak. These controls will be effective at preventing a discharge from a spill or leak, while also having the added advantage of being able to be maneuvered more easily around the site.*

*Where larger amounts of chemicals are present at the site, the proposed revision includes controls that are more geared to the storage of chemical material in a fixed location and that are effective at preventing pollution from a larger spill or leak that could pose a significantly higher risk to the receiving water. Specifically, the proposed revision requires the following for larger volumes of chemicals on site:*

- Use of water-tight containers;*
- Store containers a minimum of 50 feet from the receiving state waters, drainageways, or storm water inlets;*
- Provide either (1) cover (e.g., temporary roofs) to minimize the exposure of these containers to precipitation and to storm water, or (2) secondary containment (e.g., curbing, spill berms, dikes, spill containment pallets); and*
- Have a spill kit available on site that is in good working condition (i.e., not damaged, expired, or used up) and ensure personnel are available to respond expeditiously in the event of a leak or spill.*

*The department proposes that the volume threshold for determining which types of controls apply is determined by whether or not the amount of oil or other chemicals on site is above or below 55 gallons. This proposed volume threshold is based on the nominal volume of most industrial barrels (i.e., 55 gallons), and it is identical to the volume threshold that is specified in the 2022 EPA CGP for determining if the amount of oil or other chemicals is relatively small or large at a construction site.*

*This revision is also proposed to make a minor change to the pollution prevention control requirements for construction and domestic wastes, as specified in section 5.3.3.3.5 of the general permit, by clarifying the need to close the lids of waste containers with lids or to provide covers for waste containers without lids. Specifically, it is proposed to require that where waste containers have lids, they must be kept closed at the end of the business day and during storm events. It is also proposed to require that where waste containers have no lids, they must be provided with covers or an effective means to minimize the discharge of pollutants.*

#### ***Revised Section 5.3.3.4***

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**5.3.3.4. Washing of applicators and containers used for paint, concrete, or other materials.**

*The permittee shall provide an effective means of eliminating the discharge of water from the washout and cleanout of stucco, paint, concrete, form release oils, curing compounds, and other construction materials. To comply with this requirement, the permittee shall:*

**5.3.3.4.1.**

*Direct all washwater into a leak-proof container or leak-proof pit. The container or pit must be designed so that no overflows can occur due to inadequate sizing or precipitation;*

**5.3.3.4.2.**

*Handle washout or cleanout wastes as follows:*

**5.3.3.4.2.1. For liquid wastes**

- a. Do not dump liquid wastes [~~in storm sewers;~~]or allow them to enter into constructed or natural site drainage features, storm drain inlets, or receiving state waters;***
- b. [~~Dispose of liquid wastes in accordance with applicable requirements in section 5.3.3.3.; and~~]Do not allow liquid wastes to be disposed of through infiltration or to otherwise be disposed of on the ground;***
- c. Comply with applicable state or local requirements for the disposal of liquid wastes; and***

**5.3.3.4.2.2. For solid wastes**

***[~~e.~~]Remove and dispose of hardened concrete waste consistent with the handling of other construction wastes in section 5.3.3.3.; and***

**5.3.3.4.3.**

Locate any washout or cleanout activities as far away as possible from receiving state waters~~[and storm water inlets or conveyances,]~~, constructed or natural site drainage features, and storm drain inlets, and, to the extent practicable, designate areas to be used for these activities and conduct such activities only in these areas.

**Rationale:** Section 5.3.3.4 of the general permit requires permittees to comply with specific requirements applicable to the washing of applicators and containers used for stucco, paint, concrete, form release oils, curing compounds, or other materials. This revision is proposed to clarify the handling of liquid wastes and solid wastes from washout and cleanout activities. Specifically, permittees cannot allow liquid wastes from entering storm inlets or receiving state waters, and permittees cannot dispose liquid wastes through infiltration.

#### **Revised Section 6.1 & Revised Section 6.2**

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##### **6.1. General Effluent limitation to meet applicable water quality standards**

~~[The permittee shall not cause or contribute to a violation of the basic water quality criteria]~~ Discharges shall be controlled as necessary to meet applicable water quality standards as specified in section 11-54-4.

*In the absence of information demonstrating otherwise, the department expects that compliance with the conditions in this permit will result in storm water discharges being controlled as necessary to meet applicable water quality standards. If at any time the permittee becomes aware, or the department determines, that the discharge is not being controlled as necessary to meet applicable water quality standards, the permittee must take corrective action as required in section 10.2.1., and document the corrective actions as required in section 10.2.1. and section 10.4.*

*The department will also impose additional water quality-based limitations on a site-specific basis, or require the permittee to obtain coverage under an individual permit, if information in the NOI, or from other sources indicates that the discharges are not controlled as necessary to meet applicable water quality standards. This includes situations where additional controls are necessary to comply with a wasteload allocation in a state-established and EPA-approved Total Maximum Daily Load (TMDL).*

##### **6.2. ~~[Discharge limitations for]~~ Water quality-based conditions for sites discharging to impaired state waters**

*If discharge is to a state water that is impaired for (1) sediment or a sediment-related parameter, such as total suspended solids (TSS) or turbidity, and/or (2) nutrients, including impairments for nitrogen and/or phosphorus, the permittee is required to comply with the requirements in section 6.2.2.*

*Note: For the purposes of this section, "impaired waters" are waters identified as impaired on the State CWA section 303(d) list, and waters with a state-established and EPA-approved TMDL. The construction site will be considered to discharge to an impaired water if the first state water to which the discharge enters is to a water on the section 303(d) list or one with a state established and EPA-approved TMDL. For discharges that enter a storm water drainage system prior to discharge, the first state water to which discharge is the water body that receives the storm water discharge from the storm water drainage system.*

*If discharge is to ~~[an impaired]~~ a state water that is impaired for a parameter other than a sediment-related parameter or nutrients, the department will inform the permittee if any additional limits or controls are necessary for the discharge to be controlled as necessary to meet water quality standards~~[-, including for it].~~ These controls might include those necessary for the discharge to be consistent with the assumptions of any available wasteload allocation in any applicable TMDL~~[-, or if coverage under an individual permit is necessary].~~ In addition, the department may require the permittee to apply for or obtain coverage under a NPDES individual permit.*

*If during the coverage under a previous permit, the permittee was required to install and maintain storm water controls specifically to meet the assumptions and requirements of a state-established and EPA-approved TMDL (for any parameter) or to otherwise control the discharge to meet water quality standards, the permittee shall continue to implement such controls as part of this permit.*

**Rationale:** Section 6.2 of the general permit specifies the requirements for construction sites with discharges to impaired state waters. State waters are identified as impaired when a nutrient-related parameter or a sediment-related parameter exceeds applicable state water quality criteria. This revision is proposed to clarify that the department may require additional limitations, controls or individual permit coverage when a permittee is discharging to an impaired state water. This revision is also proposed to maintain uniformity by removing references to the reasonable potential approach. For more details, see the rationale for the revised section 2.2 of the general permit.



## **Revised Section 7.2**

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### **7.2. SWPPP Contents**

*The SWPPP must include the following information, at a minimum.*

#### **7.2.1. Storm water team.**

*The permittee shall assemble and oversee a "storm water team," which is responsible for the development of the SWPPP, any later modifications to it, and for compliance with the requirements in this permit.*

*The SWPPP must identify the personnel (by name ~~[or]~~ and position) that ~~[are]~~ the permittee made part of the storm water team, as well as their individual responsibilities. Each member of the storm water team must have ready access to an electronic or paper copy of applicable portions of this permit, the most updated copy of the SWPPP, and other relevant documents or information that must be kept with the SWPPP.*

#### **7.2.2. Nature of construction activities.**

*The SWPPP must describe the nature of the construction activities, including the size of the project site (in acres) and the total area expected to be disturbed by the construction activities (in acres), construction support activity areas covered by this permit (see section 5), and the maximum area expected to be disturbed at any one time.*

#### **7.2.3. Emergency-related projects.**

*If conducting earth-disturbing activities in response to a public emergency (see section 1.3.), the permittee shall document the cause of the public emergency (e.g., natural disaster, extreme flooding conditions, etc.), information substantiating its occurrence (e.g., state emergency proclamation or similar state proclamation), and a description of the construction necessary to reestablish effected public services. The proclamation of a civil defense emergency or similar proclamation is required to be from the President of the United States or State Governor.*

#### **7.2.4. Identification of other site contractors.**

*The SWPPP must include a list of all other contractors (e.g., sub-contractors) who will be engaged in construction activities at the site, and the areas of the site over which each contractor has control.*

*Note: The department acknowledges that a list of all other contractors might not be available at the time the SWPPP and NOI are submitted. If that is the case, then the SWPPP must be amended to include the information required in Section 7.2.4 prior to the start of construction activities.*

#### *7.2.5. Sequence and estimated dates of construction activities.*

*The SWPPP must include a description of the intended sequence of construction activities, including a schedule of the estimated start dates and the duration of the activity, for the following activities:*

##### *7.2.5.1.*

*Installation of storm water [~~control measures,~~ controls, and when they will be made operational, including an explanation of how the sequence and schedule for installation of storm water [~~control measures~~ controls complies with section 5.1.1.3.1. and of any departures from manufacturer specifications pursuant to section 5.1.1.3.2., including removal procedures of the storm water [~~control measures~~ controls after construction has ceased;*

##### *7.2.5.2.*

*Commencement and duration of earth-disturbing activities, including clearing and grubbing, mass grading, site preparation (i.e., excavating, cutting and filling), final grading, and creation of soil and vegetation stockpiles requiring stabilization;*

##### *7.2.5.3.*

*Cessation, temporarily or permanently, of construction activities on the site, or in designated portions of the site;*

##### *7.2.5.4.*

*Final or temporary stabilization of areas of exposed soil. The dates for stabilization must reflect the applicable deadlines to which the permittee is subject to in section 5.2.1.; and*

##### *7.2.5.5.*

Removal of temporary [~~storm water conveyances/channels~~] site drainage features and other storm water [~~control measures,~~]controls, removal of construction equipment and vehicles, and cessation of any pollutant-generating activities.

*Note: If plans change due to unforeseen circumstances or for other reasons, the requirement to describe the sequence and estimated dates of construction activities is not meant to "lock in" the permittee or contractor to meeting these projections. When departures from initial projections are necessary, this should be documented in the SWPPP itself or in associated records, as appropriate.*

#### 7.2.6. Site map.

*The SWPPP must include a legible site map, or series of maps, showing the following features of the project:*

*Note: Included in the project site are any construction support activities covered by this permit (see section 5).*

##### 7.2.6.1.

*Boundaries of the property and of the locations where construction activities will occur, including:*

- a. Locations where earth-disturbing activities will occur, noting any sequencing of construction activities;*
- b. Approximate slopes before and after major grading activities and drainage patterns with flow arrows. Note areas of steep slopes, as defined in section 5.1.2.6.;*
- c. Locations where sediment, soil, or other construction materials will be stockpiled;*
- d. Locations of any contaminated soil or contaminated soil stockpiles;*
- e. Locations of any crossings of receiving state waters;*
- f. Designated points on the site where vehicles will exit onto paved roads;*

- g. Locations of structures and other impervious surfaces upon completion of construction; and*
- h. Locations of construction support activity areas covered by this permit (see section 5).*

*7.2.6.2.*

*Locations of ~~[all]~~ any receiving state waters, including wetlands, that exist within or in the immediate vicinity of the site and indicate which ~~[waterbodies]~~ of these receiving state waters are listed as impaired;*

*7.2.6.3.*

*The boundary lines of any natural buffers provided consistent with section 5.1.2.1.1.;*

*7.2.6.4.*

*Topography of the site, existing vegetative cover and features (e.g., forest, pasture, pavement, structures), and drainage pattern(s) of storm water onto, over, and from the site property before and after major grading activities;*

*7.2.6.5.*

*Storm water discharge locations, including:*

- a. Locations of any storm drain inlets on the site and in the immediate vicinity of the site to receive storm water runoff from the ~~[project;]~~ project site; ~~[and]~~*
- b. Locations where storm water will be discharged to receiving state waters (including wetlands); and*
- c. Locations where storm water will exit the site.*

*7.2.6.6.*

*Locations of all potential pollutant-generating activities identified in section 7.2.7.;*

*7.2.6.7.*

*Locations of storm water [~~control measures~~]controls; and*

*7.2.6.8.*

*Locations where chemicals will be used and stored.*

*7.2.7. Construction site pollutants.*

*The SWPPP must include the following:*

- a. A list and description of all the pollutant-generating activities on the site.*
- b. For each pollutant-generating activity, an inventory of pollutants or pollutant constituents (e.g., sediment, fertilizers and/or pesticides, paints, solvents, fuels) associated with that activity, which could be exposed to rainfall and could be discharged from the construction site. The permittee shall take into account where potential spills and leaks could occur that contribute pollutants to storm water discharges. The permittee shall also document any departures from the manufacturer's specifications for applying fertilizers containing nitrogen and phosphorus, as required in section 5.3.5.1.*

*7.2.8. Sources of non-storm water.*

*The SWPPP must also identify all sources of non-storm water and information, including, but not limited to, the design, installation, and maintenance of the [~~control measures~~]controls to prevent its discharge.*

*7.2.9. Buffer documentation.*

*If the permittee is required to comply with section 5.1.2.1. because a receiving state water is located within 50 feet of the project's earth disturbances, the permittee shall describe which compliance alternative the permittee has selected for the site, and comply with any additional requirements to provide documentation in section 5.1.2.1.*

*7.2.10. Description of storm water [~~control measures~~]controls*

*7.2.10.1 Storm water [~~control measures~~]controls to be used during construction activity.*

*The SWPPP must describe all storm water ~~[control measures]~~controls that are or will be installed and maintained at the site to meet the requirements of section 5. For each storm water ~~[control measure,]~~ control, the permittee must document:*

- a. Information on the type of storm water control ~~[measure]~~to be installed and maintained, including design information;*
- b. What specific sediment controls will be installed and made operational prior to conducting earth-disturbing activities in any given portion of the site to meet the requirement of section 5.1.2.2.1.;*
- c. If contaminated soil exists on-site, the ~~[control measures]~~controls to either prevent the contact of storm water with the contaminated soil, including any contaminated soil stockpiles, or prevent the discharge of any storm water runoff which has contacted contaminated soil or any contaminated soil stockpiles;*
- d. For exit points on the site, document stabilization techniques the permittee will use and any additional controls that are planned to remove sediment prior to vehicle exit consistent with section 5.1.2.3.; and*
- e. For linear projects, where the permittee has determined that the use of perimeter controls in portions of the site is impracticable, document why the permittee believes this to be the case (see section 5.1.2.2.1.).*

#### *7.2.10.2. Stabilization practices.*

*The SWPPP must describe the specific vegetative and/or non-vegetative practices that will be used to comply with the requirements in section 5.2., including if the permittee will be complying with the stabilization deadlines specified in section 5.2.1.3.2. The permittee shall document the circumstances that prevent the permittee from meeting the deadlines specified in sections 5.2.1.1. and/or 5.2.1.2.*

#### *7.2.10.3. Post construction measures.*

*Descriptions of measures that will minimize the discharge of pollutants via storm water discharges after construction operations have been finished. All projects require post construction BMPs to minimize the discharge of pollutants via storm water discharges after construction operations have been finished. Examples include: open, vegetated swales and natural depressions; structures for storm water retention, detention, or recycle; velocity dissipation devices to be placed at*

*the outfalls of detention structures or along with the length of outfall channels; and other appropriate measures.*

7.2.11. *Pollution prevention procedures.*

7.2.11.1. *Spill prevention and response procedures.*

*The SWPPP must describe procedures that the permittee will follow to prevent and respond to spills and leaks consistent with section 5.3., including:*

- a. Procedures for expeditiously stopping, containing, and cleaning up spills, leaks, and other releases. Identify the name or position of the employee(s) responsible for detection and response of spills or leaks; and*
- b. Procedures for notification of appropriate facility personnel, emergency response agencies, and regulatory agencies where a leak, spill, or other release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity consistent with section 5.3.4. and established under either 40 CFR Part 110, 40 CFR Part 117, or 40 CFR Part 302, occurs during a 24-hour period. Contact information must be in locations that are readily accessible and available.*

*The permittee may also reference the existence of Spill Prevention Control and Countermeasure (SPCC) plans developed for the construction activity under Part 311 of the CWA, or spill control programs otherwise required by an NPDES permit for the construction activity, provided that the permittee keeps a copy of that other plan onsite.*

*Note: Even if the permittee already has an SPCC or other spill prevention plan in existence, the plans will only be considered adequate if they meet all of the requirements of this section, either as part of the existing plan or supplemented as part of the SWPPP.*

7.2.11.2. *Waste management procedures.*

*The SWPPP must describe procedures for how the permittee will handle and dispose of all wastes generated at the site, including, but not limited to, clearing and demolition debris, sediment removed from the site, construction and domestic waste, hazardous or toxic waste, and sanitary waste.*

7.2.12. *Procedures for inspection, maintenance, and corrective action.*

*The SWPPP must describe the procedures the permittee will follow for maintaining the storm water [~~control measures~~]; controls, conducting site inspections, and, where necessary, taking corrective actions, in accordance with section 5.1.1.4., section 5.3.2., section 9, and section 10 of the permit[-]. Accordingly. The following information must also be included in the SWPPP:*

- a. *Personnel responsible for conducting inspections;*
- b. *The inspection schedule the permittee will be following, which is based on whether the site is subject to section 9.1.2. or section 9.1.3., and whether the site qualifies for any of the allowances for reduced inspection frequencies in 9.1.4. If the permittee will be conducting inspections in accordance with the inspection schedule in section 9.1.2.a. or section 9.1.2.b., the location of the rain gauge on the site or the address of the weather station the permittee will be using to obtain rainfall data[-]. If the permittee will be reducing the inspection frequency in accordance with section 9.1.4.2., the beginning and ending dates of frozen conditions on the site; and*
- c. *Any inspection or maintenance checklists or other forms that will be used.*

#### **7.2.13. Staff training.**

*The SWPPP must include documentation that the required personnel were trained in accordance with the following:*

##### **7.2.13.1.**

*Prior to the commencement of earth-disturbing activities or pollutant-generating activities, whichever occurs first, the permittee shall ensure that the following personnel understand the requirements of this permit and their specific responsibilities with respect to those requirements:*

- a. *Personnel who are responsible for the design, installation, maintenance, and/or repair of storm water controls (including pollution prevention [~~measures~~]; controls);*
- b. *Personnel who are responsible for the application and storage of chemicals (if applicable);*
- c. *Personnel who are responsible for conducting inspections as required in [~~Part 4.1.1~~]; section 9.1.1.; and*



- d. *Personnel who are responsible for taking corrective actions as required in ~~[Part 5.]~~[section 10.](#)*

*Notes: (1) If the person requiring training is a new employee, who starts after the permittee commences earth-disturbing or pollutant-generating activities, the permittee shall ensure that this person has the proper understanding as required above prior to assuming particular responsibilities related to compliance with this permit. (2) For emergency-related construction activities, the requirement to train personnel prior to commencement of earth-disturbing activities does not apply, however, such personnel must have the required training prior to NOI submission.*

7.2.13.2.

*The permittee is responsible for ensuring that all activities on the site comply with the requirements of this permit. The permittee is not required to provide or document formal training for subcontractors or other outside service providers, but must ensure that such personnel understand any requirements of the permit that may be affected by the work they are subcontracted to perform.*

*At a minimum, personnel must be trained to understand the following if related to the scope of their job duties (e.g., only personnel responsible for conducting inspections need to understand how to conduct inspections):*

- a. *The location of all storm water controls on the site required by this permit, and how they are to be maintained;*
- b. *The proper procedures to follow with respect to the permit's pollution prevention requirements; and*
- c. *When and how to conduct inspections, record applicable findings, and take corrective actions.*

7.2.14. *Documentation of compliance with Safe Drinking Water Act Underground Injection Control (UIC) requirements for certain subsurface storm water controls.*

*If using any of the following storm water controls at the site, as they are described below, the permittee must document any contact with the department's Safe Drinking Water Branch for implementing the requirements for underground injection wells in the Safe Drinking Water Act and EPA's*

*implementing regulations at 40 CFR Parts 144 -147. Such controls would generally be considered Class V UIC wells:*

- a. Infiltration trenches (if storm water is directed to any bored, drilled, driven shaft or dug hole that is deeper than its widest surface dimension, or has a subsurface fluid distribution system);*
- b. Commercially manufactured precast or pre-built proprietary subsurface detention vaults, chambers, or other devices designed to capture and infiltrate storm water flow; and*
- c. Drywells, seepage pits, or improved sinkholes (if storm water is directed to any bored, drilled, driven shaft or dug hole that is deeper than its widest surface dimension, or has a subsurface fluid distribution system).*

*7.2.15. Information to be included in the SWPPP prior to the start of construction activities.*

*7.2.15.1. Contractor information.*

*The following contractor (general and subcontractors) information shall be included in the SWPPP: legal name, street address, contact person's name and position title, telephone number, and email address.*

*7.2.15.2. Other state, federal, or county permits.*

*The following are required to be included in the SWPPP prior to the start of construction activities, if applicable:*

- a. Copy of the drainage system owner's approval allowing the discharge to enter their drainage system;*
- b. Copy of the county-approved grading permit;*
- c. Copy of the department of the army permit and section 401 water quality certification; and*
- d. A list of other permits.*

*7.2.16. Any other information as requested by the director.*

*7.2.17. SWPPP certification.*

*The certifying person or duly authorized representative must certify, sign, and date the SWPPP in accordance with section 15 of appendix A, chapter 11-55.*

**7.2.18. Post-authorization additions to the SWPPP.**

*After the issuance of the NGPC the permittee shall include the following documents as part of the SWPPP:*

- a. A copy of the NOI submitted to the department along with any correspondence exchanged between the permittee and the department related to coverage under this permit;*
- b. A copy of the NGPC and all attachments included with the NGPC (an electronic copy easily available to the storm water team is also acceptable).*

***Rationale:*** *Section 7 of the general permit establishes the overall requirement that permittees develop and maintain Storm Water Pollution Prevention Plans (SWPPPs), and section 7.2 specifies the information that must be included in a SWPPP. A SWPPP is intended to serve as a road map for how the permittee will comply with the effluent limitations and other conditions of the general permit, and it must be in place prior to discharging.*

*The department emphasizes that a SWPPP is an external tool, and it does not include effluent limitations. Permittees are therefore able to modify or retool their SWPPPs during the course of the general permit term, and to continually improve their compliance with the requirements of the general permit. Permittees must document all SWPPP modifications in accordance with section 7.4.3, and they must certify all SWPPP modifications in accordance with section 7.4.4 of the general permit.*

*Section 7.2.1 of the general permit requires permittees to provide in their SWPPPs information about the Storm Water Team, and to ensure that specific personnel are identified as responsible for overseeing its development, and for ensuring compliance with the general permit requirements. This revision is proposed to clarify that a member of the Storm Water Team must be identified by name and position.*

*Section 7.2.6 of the general permit requires permittees to provide in their SWPPPs a legible site map, or series of maps, showing where construction activities and construction support activities will occur in relation to the*

*boundaries of the project site. This revision is proposed to clarify that permittees must identify the locations of any receiving state waters within the vicinity of the construction site and identify if any of these receiving state waters are impaired. Information about receiving state waters will assist permittees in their compliance with the erosion and sediment control requirements specified in section 5.1.2, the pollution prevention requirements specified in section 5.3.3, and the water quality-based conditions for impaired state waters specified in section 6.2 of the general permit.*

*Section 7.2.10 of the general permit requires permittees to list in their SWPPPs all storm water controls that are installed and maintained at the construction site in order to comply with the effluent limitations specified in section 5 of the general permit. Storm water controls include erosion controls, sediment controls, pollution prevention controls, and perimeter controls. Storm water controls are called “storm water control measures” in the current version of the general permit. It is proposed to appropriately replace all occurrences of “storm water control measures” in the general permit with “storm water controls.” This revision is proposed to maintain uniformity in the description of all controls as specified in the general permit, and to maintain conformity with the terminology used in the 2022 EPA CGP.*

*Section 7.2.12 of the general permit requires permittees to describe in their SWPPPs all procedures for inspections, maintenance activities, and corrective actions, and to demonstrate compliance with the requirements of the general permit. As specified in section 9.1.2 of the general permit, permittees are required to conduct site inspections at least once every 7 calendar days, or once every 14 calendar days and within 24 hours of the occurrence of a storm event. This revision is proposed to list the correct references to the inspection frequency requirements that are specified in section 9.1.2 of the general permit. This revision is also proposed to specify the reporting requirements for permittees who are reducing their inspection frequency due to frozen conditions at their construction sites in accordance with section 9.1.4.2 of the general permit. Specifically, permittees must document the beginning and ending dates of frozen periods in their records.*

*Section 7.2.13 of the general permit specifies the staff training requirements to ensure that each member of the storm water team understands the requirements of the general permit and their specific responsibilities with respect to those requirements. This revision is proposed to list the correct reference to the requirements that are specified in section 9.1.1 for personnel who are responsible for conducting site inspections. This revision is also proposed to list*

*the correct reference to the requirements that are specified in section 10 for personnel who are taking corrective actions.*

*This revision does not propose to include the additional training provisions, that are specified in the 2022 EPA CGP, for personnel conducting site inspections. The EPA added the 2022 training provisions to ensure that personnel who are responsible for conducting site inspections are competent and that their training is adequate. The 2022 training provisions specify that anyone carrying out inspections must either (1) complete the EPA construction inspection course and pass the exam developed for the 2022 EPA CGP, or (2) hold a current valid certification or license from an equivalent training program. The 2022 training provisions also specify an exception for members of the storm water team who are working under the supervision of a “qualified person.”*

*The department considers the 2022 training provisions to be essentially an extension of the existing general permit requirement that “the person conducting site inspections is a qualified person.” The “qualified person” requirements are found in section 9.1.1 of the general permit, and they specify that a “qualified person” must be “a person knowledgeable in the principles and practice of erosion and sediment controls and pollution prevention, who possesses the skills to assess the effectiveness of any storm water controls selected and installed to meet the requirements of this permit.” In many ways, the 2022 training provisions represent a different method of establishing the same core inspection requirements. The key difference is that the 2022 training provisions specify the mechanism by which personnel conducting site inspections must obtain their necessary training. The department needs more time to evaluate the 2022 training provisions.*

## **Revised Section 8.1**

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### **8. Implementation of the Storm Water Pollution Prevention Plan (SWPPP)**

#### **8.1.**

*The permittee shall design, operate, implement, and maintain the SWPPP to ensure that storm water discharges associated with construction activities will ~~[not cause or contribute to a violation of]~~ **meet** applicable state water quality standards.*

#### **8.2.**

*The permittee shall implement the SWPPP to improve the quality of storm water discharges or when instructed by the director.*

**Rationale:** Section 8 of the general permit requires all permittees to design, operate, implement, and maintain the SWPPP to ensure discharges meet applicable water quality standards. This revision is proposed to maintain uniformity by removing references to the reasonable potential approach. For more details, see the rationale for the revised section 2.2 of the general permit.

### **Revised Section 9.1**

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#### **9.1. Site Inspections**

*The permittee shall inspect the receiving state waters, storm water runoff and ~~[control measures]~~ all controls and best management practices to detect violations of ~~[and conditions which may cause violations of the basic]~~ applicable water quality criteria as specified in section 11-54-4 ~~[in accordance with this section.]~~ (e.g., the permittee shall look at storm water discharges and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other ~~[life.]~~ life). The permittee must inspect the receiving state waters only when there is a discharge from the project site or there is a potential for downstream erosion. If the discharge enters an MS4 or separate drainage system prior to the receiving state water, then the permittee may inspect their discharge where it enters the drainage system rather than at the receiving water. When effluent commingles with offsite water or pollutant sources prior to discharging to the receiving water or separate drainage system, in lieu of inspecting the receiving water or where it enters the drainage system, the permittee may inspect the effluent at a location representative of the discharge quality prior to commingling. The permittee is not required to inspect areas that, at the time of the inspection, are considered unsafe to inspection personnel, if the unsafe conditions have been documented.*

##### **9.1.1. Person(s) responsible for ~~[inspecting site.]~~ conducting site inspection**

*The person(s) inspecting the site may be a person on staff or a third party hired to conduct such inspections. The permittee is responsible for ensuring that ~~[the person who conducts inspections is a "qualified person."]~~ any person conducting site inspections is a "qualified person."*

*Note: A "qualified person" is a person knowledgeable in the principles and practice of erosion and sediment controls and pollution prevention, who possesses the skills to assess conditions at the construction site that could impact storm water quality, and the skills to assess the effectiveness of any storm water controls selected and installed to meet the requirements of this permit.*

#### *9.1.2. Frequency of Inspections.*

*At a minimum, the permittee shall conduct a site inspection in accordance with one of the two schedules listed below, unless subject to section 9.1.3. for discharges to impaired waters or qualify for a section 9.1.4.[-] reduction in the inspection frequency. As specified in section 9.1., the permittee is not required to inspect areas that, at the time of inspection, are considered unsafe to inspection personnel, if the unsafe conditions have been documented.*

- a. At least once every 7 calendar days; or*
- b. Once every 14 calendar days and within 24 hours of the occurrence of a storm event ~~[of 0.25 inches or greater. To determine if a storm event of 0.25 inches or greater has occurred on the site, the permittee shall either keep a properly maintained rain gauge on the site, or obtain the storm event information from a weather station that is representative of the location. For any day of rainfall during normal business hours that measures 0.25 inches or greater, the permittee shall record the total rainfall measured for that day in accordance with section 9.1.7.1.d.]~~ as specified in section 9.1.2.1.1. or section 9.1.2.1.2.*

*Note: Inspections are only required during the project's normal working hours.*

*Note: The permittee is required to specify in the SWPPP which schedule will be followed.*

*~~[Note: "Within 24 hours of the occurrence of a storm event" means that the permittee is required to conduct an inspection within 24 hours once a storm event has produced 0.25 inches, even if the storm event is still continuing. Thus, if the permittee has elected to inspect bi-weekly in accordance with section 9.1.2.b. and there is a storm event at the site that continues for multiple days, and each day of the storm produces 0.25 inches or more of rain, the permittee is required to conduct an inspection within 24 hours of the first day of the storm and within 24 hours after the end of the storm.]~~*

9.1.2.1. Types of storm event

9.1.2.1.1. For rain

A storm event that produces 0.25 inches or more of rain within a 24-hour period.

- a. If a storm event produces 0.25 inches or more of rain within a 24-hour period (including when there are multiple, smaller storms that alone produce less than 0.25 inches but together produce 0.25 inches or more in 24 hours), the permittee is required to conduct one inspection within 24 hours of when 0.25 inches of rain or more has fallen.
- b. If a storm event produces 0.25 inches or more of rain within a 24-hour period on the first day of a storm and continues to produce 0.25 inches or more of rain on subsequent days, the permittee must conduct an inspection within 24 hours of the first day of the storm and within 24 hours after the last day of the storm that produces 0.25 inches or more of rain (i.e., only two inspections would be required for such a storm event).

Note: For example, if 0.30 inches of rain falls on Day 1, 0.25 inches of rain falls on Day 2, and 0.10 inches of rain fall on Day 3, the permittee is required to conduct a first inspection within 24 hours of the Day 1 rainfall and a second inspection within 24 hours of the Day 2 rainfall, but a third inspection is not required within 24 hours of the Day 3 rainfall.

9.1.2.1.2. For snow

A discharge of snowmelt from a storm event that produces 3.25 inches or more of snow accumulation within a 24-hour period.

Note: 3.25 inches of snow is equivalent to 0.25 inches of rain. This is based on information from the National Oceanic and Atmospheric Administration (NOAA) indicating that 13 inches of snow is, on average, equivalent to 1 inch of rain.

- a. The permittee is required to conduct one inspection once the discharge of snowmelt from a 3.25-inch or more snow accumulation occurs.
- b. The permittee is required to conduct additional inspections if following the discharge from the first snowmelt, there is a discharge of snowmelt from a separate storm event that produces 3.25 inches or more of snow accumulation.



9.1.2.2.

To determine whether a storm event meets either of the thresholds in section 9.1.2.1.1. or section 9.1.2.1.2.:

- a. For rain, the permittee must either keep a properly maintained rain gauge on the site, or obtain the storm event information from a weather station that is representative of the location. For any 24-hour period during which there is 0.25 inches or more of rainfall, the permittee must record the total rainfall measured for that day in accordance with section 9.1.7.1d.
- b. For snow, the permittee must either take measurements of snowfall at the site, or rely on similar information from a local weather forecasting provider that is representative of the location.

Note: For snowfall measurements, the department suggests use of a piece of wood, about 16 inches by 16 inches in size, that is placed in an unobstructed part of the site on a hard surface.

9.1.3. Increase in inspection frequency ~~[for sites discharging to impaired waters:]~~

~~[For any portion of the site that discharges to an impaired water (see section 6.2.), instead of the inspection frequency specified in section 9.1.2., the permittee shall conduct inspections in accordance with the following inspection frequencies:]~~

- ~~[a. Once every 7 calendar days; and]~~
- ~~[b. Within 24 hours of the occurrence of a storm event of 0.25 inches or greater. To determine if a storm event of 0.25 inches or greater has occurred on the site, the permittee shall either keep a properly maintained rain gauge on the site, or obtain the storm event information from a weather station that is representative of the location. For any day of rainfall during normal business hours that measures 0.25 inches or greater, the permittee shall record the total rainfall measured for that day in accordance with section 9.1.7.1.d.]~~

For any portion of the site that discharges to an impaired water (see section 6.2), the permittee shall conduct an inspection once every 7 calendar days and within 24 hours of the occurrence of a storm event that produces 0.25 inches or more of rain within a 24-hour period, or within 24 hours of the discharge of snowmelt from a storm event that produces 3.25 inches or more of snow accumulation within a 24-hour period. Refer to sections 9.1.2.2.a. and 9.1.2.2.b. for the

requirements to determine if a storm event produces enough rain or snow to trigger the inspection requirement.

Note: The increased inspection frequencies established in this section take the place of the inspection frequencies specified in section 9.1.2 for the portion of the site affected.

Note: Inspections are only required during the project's normal working hours.

~~[Note: "Within 24 hours of the occurrence of a storm event" means that the permittee is required to conduct an inspection within 24 hours once a storm event has produced 0.25 inches, even if the storm event is still continuing. Thus, if there is a storm event at the site that continues for multiple days, and each day of the storm produces 0.25 inches or more of rain, the permittee is required to conduct an inspection within 24 hours of the first day of the storm and within 24 hours after the end of the storm.]~~

Note: If the permittee qualifies for any of the reduced inspection frequencies in section 9.1.4., the permittee may conduct inspections in accordance with section 9.1.4. for any portion of the site that discharges to an impaired water.

#### 9.1.4. Reductions in inspection frequency.

~~[For stabilized areas.]~~ 9.1.4.1. For stabilized areas

The permittee may reduce the frequency of inspections to once per month until the permit coverage expires or is terminated in any area of the site where the stabilization steps in sections 5.2.1.2.1. and 5.2.1.2.2. have been completed. If construction activity resumes in this portion of the site at a later date, the inspection frequency immediately increases to that required in sections 9.1.2. or 9.1.3., if applicable. The permittee shall document the beginning and ending dates of this period in the records.

#### 9.1.4.2. For frozen conditions

##### 9.1.4.2.1.

If construction activities are suspended due to frozen conditions, the permittee may temporarily suspend inspections on the site until thawing conditions begin to occur under the following conditions.

- a. If discharges are unlikely due to continuous frozen conditions that are likely to continue at the site for least three (3) months based on historic seasonal averages. If unexpected weather conditions (such as above freezing temperatures or rain events) make discharges likely, the permittee must immediately resume regular inspection frequency described in sections 9.1.2. and 9.1.3., as applicable;

Note: The permittee must use data sets that include the most recent data available to account for recent precipitation patterns and trends.

- b. If earth disturbances have been suspended; and
- c. If all disturbed areas of the site have been stabilized in accordance with section 5.2.1.

9.1.4.2.2.

If construction activities are still conducted during frozen conditions, the permittee may reduce the inspection frequency to once per month under the following conditions.

- a. If discharges are unlikely due to continuous frozen conditions that are likely continue at the site for at least three (3) months based on historic seasonal averages. If unexpected weather conditions (such as above freezing temperatures or rain events) make discharges likely, the permittee must immediately resume regular inspection frequency described in sections 9.1.2. and 9.1.3., as applicable; and
- b. If the areas in which the construction activities are actively conducted, the disturbed areas of the site have been stabilized in accordance with section 5.2.1.

9.1.4.2.3.

The permittee shall document the beginning and ending dates of this period in the records.

**9.1.5. Areas that need to be inspected.**

**The permittee shall at a minimum inspect the following areas of the site:**

- a. All areas that have been cleared, graded, or excavated and that have not yet completed stabilization consistent with section 5.2.;
- b. All storm water controls (including pollution prevention ~~[measures]~~controls) installed at the site to comply with this permit;

Note: This includes the requirement to inspect sediment that has been tracked out from the site onto paved roads, sidewalks, or other paved areas consistent with section 5.1.2.3.

- c. Material, waste, borrow, or equipment storage and maintenance areas that are covered by this permit;
- d. All areas where storm water typically flows within the site, including ~~[drainageways]~~constructed or natural site drainage features designed to divert, convey, and/or treat storm water;
- e. All points of discharge from the site; and
- f. All locations where stabilization measures have been implemented.

~~[The]~~ As specified in section 9.1., the permittee is not required to inspect areas that, at the time of the inspection, are considered unsafe to inspection ~~[personnel.]~~ personnel, if the unsafe conditions have been documented.

#### 9.1.6. Requirements for inspections.

During ~~[the]~~each site inspection, the permittee shall at a minimum:

##### 9.1.6.1.

Check whether all erosion and sediment controls and pollution prevention controls are installed, appear to be operational, and are working as intended to minimize pollutant discharges. Determine if any controls need to be replaced, repaired, or maintained in accordance with sections 5.1.1.4. and 5.3.2.;

##### 9.1.6.2.

Check for the presence of conditions that could lead to spills, leaks, or other accumulations of pollutants on the site;

##### 9.1.6.3.

*Identify any locations where new or modified storm water controls are necessary to meet the requirements of sections 5 and/or 6;*

9.1.6.4.

*At points of discharge and, if applicable, on the banks of any receiving state waters flowing within the property boundaries or immediately adjacent to the property, check for signs of visible erosion and sedimentation (i.e., sediment deposits) that have occurred and are attributable to the discharge;[~~and~~]*

9.1.6.5.

*Check for signs of sediment deposition that are visible from the site and attributable to the discharge (e.g., sand bars with no vegetation growing on top in receiving state waters or in other constructed or natural site drainage features, or the buildup of sediment deposits on nearby streets, curbs, or open conveyance channels); and*

9.1.6.6

*Identify any and all incidents of noncompliance observed.*

*[~~9.1.6.6.~~]9.1.6.7.*

*If a discharge is occurring during the inspection, the permittee is required to:*

- a. *Identify all points of the property from which there is a discharge[;] and*
- b. *Observe and document the visual quality of the discharge, and take note of the characteristics of the storm water discharge, including color, odor, floating, settled, or suspended solids, foam, oil sheen, and other obvious indicators of storm water pollutants[;]. Check also for signs of these same pollutant characteristics that are visible from the site and attributable to the discharge in receiving state waters or in other constructed or natural site drainage features; and*
- c. *Document whether the storm water controls are operating effectively, and describe any such controls that are clearly not operating as intended or are in need of maintenance.*

*[~~9.1.6.7.]~~9.1.6.8.*

*Based on the results of the inspection~~], initiate corrective action under section 10.];~~*

*a. Initiate any necessary maintenance repairs or replacements under section 10; and*

*b. Modify the SWPPP site map in accordance with section 7.4.1. to reflect changes to the storm water controls that are no longer accurately reflected on the current site map.*

*9.1.7. Inspection report.*

*9.1.7.1.*

*Requirement to Complete Inspection Report. The permittee must complete an inspection report within 48 hours of completing any site inspection. Each inspection report must include the following:*

- a. The inspection date;*
- b. Names and titles of personnel making the inspection;*
- c. A summary of the inspection findings, covering at a minimum the observations made in accordance with section 9.1.6.~~];~~ including any problems found during the inspection that make it necessary to perform routine maintenance pursuant to section 5.1.1.4.2.1. or corrective actions pursuant to section 10.*
- d. If inspecting the site at the frequency specified in section 9.1.2.b., section 9.1.3., or section 9.1.4., and ~~[have]~~the permittee conducted an inspection because of a storm event that produced rainfall measuring 0.25 inches or ~~[greater,]~~more within a 24-hour period, the permittee shall include the applicable rain gauge or weather station readings that triggered the inspection~~];~~ Similarly, if the permittee conducted an inspection because of a snowmelt discharge from a storm event that produced 3.25 inches or more of snow within a 24-hour period, the permittee must include any measurements taken of snowfall at the site, or weather station information that triggered the inspection; and*

- e. *If determined that it is unsafe to inspect a portion of the site, the permittee shall describe the reason to be unsafe and specify the locations that this condition applied to.*

9.1.7.2. *Signature Requirements.*

*Each inspection report must be certified and signed in accordance with section 15 of appendix A, chapter 11-55 or the duly authorized representative that meets the requirements of 11-55-07(b).*

9.1.7.3. *Recordkeeping Requirements.*

*The permittee is required to keep a current, copy of all inspection reports at the site or at an easily accessible location, so that it can be made immediately available at the time of an onsite inspection or upon request by the department or EPA.*

*Note: Inspection reports may be prepared, certified and signed, and kept electronically, rather than in paper form, if the records are:*

- a. In a format that can be read in a similar manner as a paper record;*
- b. Legally dependable with no less evidentiary value than their paper equivalent; and*
- c. Immediately accessible to the inspector during an inspection to the same extent as a paper copy stored at the site would be, if the records were stored in paper form.*

*All inspection reports completed for this section must be retained for at least three years from the date that the permit coverage expires or is terminated.*

***Rationale:*** Section 9.1 of the general permit requires permittees to inspect the receiving state waters, storm water runoff and all controls and best management practices to detect violations of applicable state water quality standards. It is vital that permittees conduct site inspections within a day of the occurrence of a storm event to identify storm water controls that have been compromised and no longer functioning properly, and to avoid any potential discharges of pollutants that are caused by storm water or snowmelt runoff. Specifically, permittees are required to conduct a site inspection either on a weekly frequency, or biweekly frequency and within 24 hours of the occurrence of a storm event. This revision is proposed to include additional site inspection requirements that are necessary to

*account for runoff due the discharge of snowmelt after a storm event. The proposed site inspection requirements are as stringent as the equivalent site inspection provisions specified in the 2022 EPA CGP.*

*The proposed revision specifies threshold requirements for triggering the need for site inspections after the occurrence of a qualifying storm event that produces either 0.25 inches or more of rain, or 3.25 inches or more of snow accumulation within a 24-hour period. The EPA relied on published data from the National Oceanic and Atmospheric Administration (NOAA) to derive a numeric equivalent for snowfall to the 0.25-inch rain event. On average, data from NOAA indicates that 13 inches of snow is equivalent to 1 inch of rain (i.e., 3.25 inches of snow to 0.25 inches of rain). Permittees are required to conduct a site inspection after a 3.25-inch snow accumulation only if there is sufficient snowmelt to cause a discharge. This revision also clarifies that permittees are not required to inspect areas that are considered unsafe to inspection personnel at the time of the inspection, in accordance with section 9.1.*

*This revision is proposed to also clarify the inspection frequency for discharges to state waters that are identified as impaired, and to specify the reduction in inspection frequency due to frozen conditions.*

#### **Revised Section 10.4**

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##### **10.4. Corrective action ~~[report]~~log**

*For each corrective action taken in accordance with this section, the permittee shall ~~[complete a corrective action report, which includes the applicable information in sections 10.4.1. and 10.4.2. Note that these reports must be maintained in the permittee's records but do not need to be provided to the department except upon request.]~~record the following information in a corrective action log.*

##### **10.4.1.**

*Within 24 hours of discovering the occurrence of one of the triggering conditions in section 10.2.1. at the site, the permittee shall ~~[complete a report of the following:]~~document the following information:*

- a. ~~[Which condition was]~~The condition identified at the site;*
- b. The nature of the condition identified; and*



- c. *The date and time of the condition identified and how it was identified.*

10.4.2.

*Within 7 calendar days of discovering the occurrence of one of the triggering conditions in section 10.2.1. at the site, the permittee shall ~~[complete a report of the following:]~~document the following information:*

- a. *Any follow-up actions taken to review the design, installation, and maintenance of storm water controls, including the dates such actions occurred;*
- b. *A summary of storm water control modifications taken or to be taken, including a schedule of activities necessary to implement changes, and the date the modifications are completed or expected to be completed; and*
- c. *Notice of whether SWPPP modifications are required as a result of the condition identified or corrective action.*

10.4.3.

~~[Each corrective action report]~~Each entry into the corrective action log, consisting of the information required by both sections 10.4.1. and 10.4.2., must be certified and signed in accordance with section 15 of appendix A, chapter 11-55 or the duly authorized representative that meets the requirements of 11-55-07(b).

Note: The corrective action log may be prepared, certified and signed, and kept electronically, rather than in paper form, if the records are:

- a. In a format that can be read in a similar manner as a paper record;
- b. Legally dependable with no less evidentiary value than their paper equivalent; and
- c. Immediately accessible to the inspector during an inspection to the same extent as a paper copy stored at the site would be, if the records were stored in paper form.

10.4.4.

*The permittee shall keep a current copy of ~~[all corrective action reports]~~the corrective action log at the site or at an easily accessible location, so that it can be made immediately available at the time of an onsite inspection or upon request by the department.*

*~~[All corrective action reports completed for this Part must be retained]~~The permittee shall retain the corrective action log for at least three years from the date that the permit coverage expires or is terminated.*

**Rationale:** Section 10.4 of the general permit requires permittees to document on corrective action reports the problems found on the construction site, the corresponding corrective actions taken, and the applicable implementation dates. In practice, there are situations where permittees find it difficult to differentiate between corrective action reports and inspection reports. The scope of both reports is similar in the sense that they both require documentation of the problems found and the actions taken by the permittees to fix or correct them. To make clear the distinction between the two reports and to improve compliance with the general permit, the department intends to streamline the documentation required for corrective actions.

*This revision is proposing to replace the current requirements for completing a corrective action report with new requirements for documenting the same information as an entry into a “corrective action log.” Specifically, the proposed revision requires permittees to document the following information on corrective action logs:*

- Within 24 hours of identifying the corrective action condition, document the specific condition, and the date and time when it was identified;*
- Within 7 calendar days of identifying the corrective action condition, document any follow-up actions, and the dates when the actions were taken;*
- Within 7 calendar days of identifying the corrective action condition, document any modifications made or to be made to storm water controls, and the dates when the modifications were completed or expected to be completed; and*
- Within 7 calendar days of identifying the corrective action condition, document if any corrective actions taken would require updating the SWPPP.*

*The proposed revision also establishes requirements to ensure the certification, format, availability, and retention of corrective action logs:*

- Each corrective action log entry can be certified and signed in accordance with either 11-54-07(a) or 11-54-07(b);*

- *Each corrective action log entry may be entered, certified, signed, and kept electronically;*
- *Corrective action logs must be immediately available at the time of an onsite inspection; and*
- *Corrective action logs must be retained for at least 3 years from the date when the general permit coverage expires or is terminated.*

## **Revised Section 11**

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### **11. Notice of Intent (NOI) requirements**

#### **11.1.**

*The owner or [~~its duly authorized representative~~] operator shall submit a complete notice of intent no later than thirty days before the proposed starting date of the construction activity or thirty days before the expiration date of the applicable notice of general permit coverage.*

#### **11.2.**

*The owner or [~~its duly authorized representative~~] operator shall include the following information in the notice of intent:*

##### **11.2.1.**

*Information required in section 34 of appendix A of chapter 11-55;*

##### **11.2.2.**

*That coverage is being requested as a result of an emergency and meets the eligibility [~~requirements~~] conditions under this permit and information required in section 7.2.3.*

##### **11.2.3.**

*That coverage is being requested for discharge to an impaired water, if applicable;*

##### **11.2.4.**

*Preparation of a SWPPP in accordance with section 7 prior to submitting the NOI;*

11.2.5.

*Information required in section 7.2.2 – Nature of construction activities.*

11.2.6.

*Information required in section 7.2.5. – Sequence and estimated dates of construction activities.*

11.2.7.

*Information required in section 7.2.6. – Site map, except for sections 7.2.6.6. [– through 7.2.6.8.*

11.2.8.

*If applicable, army corps of engineers' jurisdictional determination and section 401 water quality certification best management practices plan.*

11.2.9.

*Agreement to the terms, conditions, and requirements in this general permit and all other applicable State, County, and Federal regulations.*

11.3.

*The director may require additional information to be submitted.*

11.4.

*The owner or ~~[its duly authorized representative]~~ operator shall submit a notice of intent form or forms specified by the CWB.*

*Electronic notice of intent forms may be found at the department's e-Permitting portal. The e-Permitting portal may be accessed via the ~~[clean water branch's]~~ Clean Water Branch website at: <http://health.hawaii.gov/cwb/>*

11.4.1.

*The initial notice of intent shall be signed by the certifying person as described in section 11-55-07(a). A revised notice of intent (a notice of intent that the*

department has required to be revised and resubmitted) shall be signed by either the certifying person or duly authorized representative as described in section 11-55-07(b).

11.4.2.

The owner or operator shall submit a complete notice of intent to the director at the following address or as otherwise specified:

Director of Health  
Clean Water Branch  
Environmental Management Division  
Department of Health  
P.O. Box 3378  
Honolulu, Hawaii 96801-3378

**Rationale:** Section 11 of the general permit specifies the requirements for the submission of NOIs.

*It is specified that the owner or its authorized representative must submit a NOI no later than thirty days before the proposed discharge date for new dischargers or thirty days before the expiration date of an applicable NGPC for existing dischargers. An operator who is authorized by the owner can be designated as the duly authorized representative in accordance with section 11-55-07(b). In practice, either the owner or the duly authorized representative (including the authorized operator) can sign a NOI. The signatory requirements of a NOI are separate from the requirements to provide information in a NOI that are applicable to the either owner or the operator (i.e., the authorized operator). This revision is proposed to clearly identify the permittees who are responsible for providing information in a NOI by replacing “its duly authorized representative” with “operator.” This revision is also proposed to clearly identify the permittees who can sign an initial NOI or a revised NOI.*

*It is specified in section 1.3 of the general permit that discharges of storm water from construction activities are automatically covered by the general permit in response to public emergencies under certain conditions. However, it is specified in section 11.2.2 that a NOI requesting coverage as a result of a public emergency must meet the eligibility requirements of the general permit. This revision is proposed to maintain uniformity by specifying that there are eligibility conditions for NOIs requesting coverage due to public emergencies.*

*Lastly, it is proposed to include the Post Office box of the Clean Water Branch for the submission of NOIs by postal mail.*

## **Revised Section 12**

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### **12. Reporting Requirements**

#### **12.1.**

*The permittee shall immediately notify the director of the incident and identify the ~~[pollutant(s) source(s)]~~**pollutant sources** and the proposed and implemented ~~[control]~~**controls** or mitigative measures as required in section 16 of appendix A of chapter 11-55.*

#### **12.2.**

*The permittee shall notify the director of the construction start date through the e-Permitting portal within seven (7) calendar days before the start of construction activities. All communication with the department shall include the file number and the certification statement. The notification will only be accepted from the person qualified in accordance with section 11-55-34.08(f).*

**Rationale:** *This revision is proposed to avoid the ambiguous use of parenthetical plurals in section 12.1 of the general permit. Specifically, it is proposed to replace “pollutant(s) source(s)” with “pollutant sources.” It is also proposed to replace the singular form of “control” with the plural form.*

## **Revised Section 13**

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### **13. Submittal Requirements**

#### **13.1.**

*The ~~[owner]~~**permittee** or its duly authorized representative shall prepare a monthly compliance report, which shall include but is not limited to information as required in this general permit and NGPC, any incidences of non-compliance and corrective actions. The monthly compliance report shall be kept on-site and available by the end of the next business day when requested by the department.*

#### **13.2.**

*When all construction activities have ceased, the ~~[owner]~~permittee shall submit to the department a completed Notice of Cessation. The department shall receive this information within 7 calendar days after the end of the month.*

13.3.

*The ~~[owner]~~permittee or its duly authorized representative shall submit signed copies of all reports required by this general permit to the director at the following address or as otherwise specified:*

*Director of Health  
Clean Water Branch  
Environmental Management Division  
~~[State]~~Department of Health  
P.O. Box 3378  
Honolulu, HI 96801-3378*

13.4.

*The ~~[owner]~~permittee or its duly authorized representative shall include the following certification statement and an original signature, or as otherwise specified, on each submittal in accordance with section 11-55-34.08(e) or (f):*

*"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."*

13.5.

*The ~~[owner]~~permittee or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence or submittals may be a basis for delay of the processing of the document(s).*

**Rationale:** Section 13 of the general permit requires permittees to prepare and submit a monthly compliance report that documents any incidences of non-compliance and corrective actions. Currently, the term “owner” is used interchangeably with the term “permittee,” which can potentially cause confusion since the owner is not always the permittee. There are NGPCs with the operator of the project/facility identified as the permittee. This revision is proposed to avoid confusion and to provide clarity by replacing the term “owner” with the term “permittee.”

## **New Section 17**

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### 17. Administrative Extension

Any notice of general permit coverage issued under the general permit dated February 9, 2019, shall be automatically administratively extended. This administrative extension shall expire sixty days after the effective date of this general permit unless:

#### 17.1.

A notice of intent for coverage under this general permit is submitted within sixty days after the effective date of this general permit. The administrative extension shall thus expire on the effective date of the notice of general permit coverage authorizing the existing discharge under this general permit; or

#### 17.2.

An application for a NPDES individual permit coverage is submitted within sixty days after the effective date of this general permit. The administrative extension shall thus expire on the effective date of the NPDES individual permit authorizing the existing discharge.

**Rationale:** Prior to the expiration date of the current general permit, permittees do not know the requirements of the new general permit, and therefore, permittees cannot request for a renewal when they do not know if compliance with the new general permit is possible. To avoid this situation, the renewal process has been revised and the administrative extension process of a NGPC issued under the general permit has been clarified. This revision is proposed to specify the requirements of the administrative extension process. For more details, see the rationale for the revised section 3.3 of the general permit.

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- (5) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

*Not applicable.*

- (6) A description of the procedures for reaching a final decision on the draft permit including:

- (i) The beginning and ending dates of the comment period under § 124.10 and the address where comments will be received;
- (ii) Procedures for requesting a hearing and the nature of that hearing; and
- (iii) Any other procedures by which the public may participate in the final decision.

*Refer to HAR 11-1 Subchapter 3 for procedures for adopting rules. The proposed NPDES General Permit is issued as Appendix C within HAR Chapter 11-55, Water Pollution Control.*

- (7) Name and telephone number of a person to contact for additional information.

*Mr. Darryl Lum  
Chief  
Clean Water Branch  
Department of Health  
Ph. (808) 586-4309*

- (8) For NPDES permits, provisions satisfying the requirements of § 124.56.

*Refer to 40 CFR 450 (Construction and Development Effluent Guidelines).*

- (9) Justification for waiver of any application requirements under § 122.21(j) or (q) of this chapter.

*Not applicable.*

**National Pollutant Discharge Elimination System**  
**General Permit Fact Sheet for**  
**Hawaii Administrative Rules (HAR) Chapter 11-55, Appendix J**  
**Authorizing Unintentional Discharges**  
**from Recycled Water Systems**

- (1) A brief description of the type of facility or activity which is the subject of the draft permit;

*This general permit covers occasional or unintentional discharges composed entirely of R-1 water or R-1 water with any combination of stormwater or potable water or water used primarily for irrigation.*

*Currently, no general permit coverages are issued for occasional or unintentional discharges from recycled water systems covered under HAR 11-55, Appendix J.*

- (2) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged.

*Recycled R-1 water or R-1 water with any combination of stormwater or potable water or water used primarily for irrigation. R-1 water is defined as recycled water that has been oxidized, filtered, and disinfected to meet the corresponding standards set in HAR Chapter 11-62.*

- (3) For a PSD permit, the degree of increment consumption expected to result from operation of the facility or activity.

*Not applicable.*

- (4) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by 40 CFR §124.9 (for EPA-issued permits);

**The General Permit is divided into the following sections:**

1. Coverage under this General Permit [Revised]
2. Limitations on Coverage under this General Permit [Revised]
3. Term of General Permit [Revised]
4. Notice of Intent Requirements [Revised]
5. Standard Conditions
6. Implementations of Best Management Practices

7. *Effluent Limitations and Monitoring Requirements*
8. *Corrective Action*
9. *Reporting Requirements*
10. *Submittal Requirements [Revised]*
11. *Additional Conditions*
12. *Record Retention*
13. *Falsifying Report*
14. *Administrative Extension [Revised]*
15. *Forms*

*Sections 1 through 5 and 8 through 15 are basic requirements necessary to the General Permit. Sections 6 and 7 detail the implementation of Best Management Practices and effluent limitations and monitoring requirements for discharges of R-1 water or R-1 water with any combination of stormwater or potable water or water used primarily for irrigation.*

***Basis for Discharge Limitations and Monitoring Requirements***

*The basis for the proposed effluent limitations and monitoring requirements are the HAR Chapter 11-54, Water Quality Standards and Chapter 11-62, Wastewater Systems.*

***Discharges to Class 1 or Class AA Waters***

*Discharges to Class 1 and Class AA waters are allowed coverage under the general permit. The conditions and provisions of the general permit are protective of the uses for these classes of waters.*

**Chapter 11-55, Appendix J Revisions**

**Title**

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**Original:** NPDES GENERAL PERMIT AUTHORIZING OCCASIONAL OR UNINTENTIONAL DISCHARGES FROM RECYCLED WATER SYSTEMS

**Revised:** NPDES GENERAL PERMIT AUTHORIZING UNINTENTIONAL DISCHARGES FROM RECYCLED WATER SYSTEMS

**Rationale:** This general permit was intended to cover unintentional discharges from recycled water systems. CWB believes a facility that knowingly has “occasional” discharges should be covered under an NPDES permit for wastewater discharges. The proposed revision to remove “occasional” discharges from this general permit is more protective of water quality standards.

**Section 1(a)**

---

**Original:** This general permit covers occasional or unintentional discharges composed entirely of: (1) R-1 water, or (2) R-1 water with any combination of stormwater or potable water or water used primarily for irrigation, where the R-1 water is supplied from a treatment works and is conveyed or used by a recycled water system.

**Revised:** This general permit covers unintentional discharges composed entirely of: (1) R-1 water, or (2) R-1 water with any combination of stormwater or potable water or water used primarily for irrigation, where the R-1 water, defined as recycled water that has been oxidized, filtered, and disinfected to meet the corresponding standards set in chapter 11-62, is supplied from a treatment works and is conveyed or used by a recycled water system. Occasional or unintentional discharges are waters that are discharged rarely and was never planned to be discharged to State waters.

**Rationale:** This revision provides definition to R-1 waters and occasional or unintentional discharges. This general permit covers only R-1 water that meets the standards set in HAR 11-62.

**Section 2(a)(5)**

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**Original:** (NEW)

**Revised:** Recycled water system discharges with toxic parameter concentrations above the applicable water quality criteria in Chapter 11-54;

**Rationale:** This limitation was added to prevent R-1 water discharges that contain toxic constituents in exceedance of the water quality standards listed in HAR Chapter 11-54, Appendix E.

#### **Section 2(a)(7)**

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**Original:** Treatment works discharges that are not from an approved recycled water system.

**Revised:** Treatment works discharges that are not from a recycled water system approved by the department pursuant to chapter 11-62.

**Rationale:** Section revised to clarify who approves the recycled water system.

#### **Section 2(c)(1) – (4) [New]**

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**Original:** (NEW)

**Revised:** (c) Permittees authorized by this general permit are required to comply with the following requirements:

- (1) Treat recycled water system discharges with controls to minimize discharges of pollutants, including appropriate controls to minimize erosion;
- (2) Prohibit visible plumes from the discharge and prohibit the discharge of visible floating solids or foam;
- (3) To the extent feasible, use vegetated, upland areas to infiltrate recycled water before discharge. State waters are prohibited from being used as part of the treatment area;
- (4) At all points where recycled water is discharged, dissipate velocity to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points. Control measures that can be used to comply with this requirement include the use of erosion controls and/or velocity dissipation devices (e.g., check dams, sediment traps), within and along the length of the conveyance and at the outfall to

slow down the discharge. These devices shall not be placed within the receiving waters.

**Rationale:** Discharges authorized by this permit are often episodic. As this permit only authorizes the discharge of R-1 waters, facilities discharging under this permit are occasional or unintentional.

Discharges associated with this permit, if not treated, have the potential to cause receiving waters to exceed water quality standards. To better protect water quality and improve the permit effectiveness, the following changes are proposed:

- Require treatment which targets the reduction of settleable and suspended solids to reduce the potential for discharges causing exceedances of the turbidity water quality standards.
- Adding an explicit prohibition for visible plumes increases the protection of receiving waters from visual impacts, creates an intuitive compliance requirement, and is far more enforceable than a simple numeric turbidity limit. A prohibition of the visible plumes also accounts for potential variability in discharge quality throughout the discharge period as well as potential short-term variability in background receiving water quality.

### **Section 3(a)**

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**Original:** This general permit becomes effective ten days after filing with the office of the lieutenant governor.

**Revised:** This general permit becomes effective ten days after filing with the office of the lieutenant governor and shall expire five years after the effective date, unless amended earlier.

**Rationale:** The revision is to make this subsection consistent with the general permit term specified at the beginning of the general permit. The previous language only specified when the general permit term began, and not when it expired. This is a minor change for completeness and consistency and has no functional impact on any permit requirements.

### **Section 3(b)**

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**Original:** A notice of general permit coverage under this general permit expires:

- (1) Five years after the effective date of this general permit;

- (2) When the notice of general permit coverage specifies; or
- (3) When amendments to section 11-55-34.02(b)(9) are adopted,

whichever is earliest, unless the notice of general permit coverage is administratively extended under section 11-55-34.09(d).

**Revised:** Unless otherwise specified on the notice of general permit coverage, a notice of general permit coverage granted under this general permit shall expire five years after the effective date of this general permit, unless it is administratively extended in accordance with section 3(c) of this general permit.

**Rationale:** Previously, to maintain coverage under this general permit in instances where the general permit is going to expire prior to its reissuance, permittees would need to submit a renewal NOI prior to the general permit's expiration date. The previous section 3(b) specified that the Notice of General Permit Coverage (NGPC) expires in the identified 3 scenarios in accordance with this renewal procedure. The Clean Water Branch is now revising the renewal procedures for general permits to no longer require a renewal NOI and administrative extension prior to the expiration of the general permit. Under the new procedure, unless otherwise specified on the NGPC, the NGPC expires five years after the effective date of the general permit, unless it is administratively extended under the new section 3(c). This revision is necessary to be consistent with the new renewal process. More information explaining this change in the renewal process is provided in the rationale for the new section 3(c).

### **Section 3(c)(1) – (3)**

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**Original:** (New)

**Revised:** (c) If the department is unable to reissue this general permit prior to its expiration, a notice of general permit coverage granted under this general permit shall be automatically administratively extended, unless otherwise specified on the notice of general permit coverage. This administrative extension shall expire sixty days after the effective date of the new general permit unless:

- (1) A notice of intent for coverage under the new general permit is submitted within sixty days after the effective date of the new general permit. The administrative extension shall expire on the effective date of the notice of general permit coverage authorizing the existing discharge under the new general permit;

- (2) An application for an individual NPDES permit is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge; or  
(3) A notice of cessation is submitted where the administrative extension shall expire on the date that the discharge ceased.

**Rationale:** Previously, to maintain coverage under this general permit in instances where the general permit is going to expire prior to its reissuance, permittees would need to submit a renewal NOI prior to the general permit's expiration date. This procedure created a situation where a permittee is required to submit an NOI to request coverage under the reissued general permit prior to the reissued permit being finalized and adopted. In essence, permittees would be required to submit an NOI to apply for coverage under a general permit that has not been finalized, or at worst, has not had a draft public noticed yet, and therefore, permittees would not even be aware of what the new general permit's requirements would potentially be. To avoid this situation, the renewal process for general permit coverage has been revised. This new section now specifies that when the department is unable to reissue the general permit prior to its expiration, NGPCs granted under the general permit prior to its expiration are administratively extended until 60 days after effective date of the reissued general permit, unless one of 3 actions are taken by the permittee. In the new process, permittees would have 60 days to submit an NOI to request coverage under the reissued general permit, before their administrative extension expires. This will allow permittees to determine if they are able to comply with the new general permit and provide any newly required information in the NOI to request coverage under the reissued general permit.

#### **Section 4(a) and (b)**

---

**Original:** The owner or its duly authorized representative shall;

**Revised:** The owner or operator shall;

**Rationale:** The previous text specified that the owner or its authorized representative shall submit the notice of intent. As an NPDES permittee may be either the owner or operator of a facility or activity, the term "operator" was added to this section. Further, while the owner or operator's certifying person or duly authorized representative must sign the notice of intent as applicable, the requirement to submit the notice of intent is still the owner or operator's responsibility and is separate from notice of intent signatory requirements. To



*provide clarity, the duly authorized representative language is removed from this section.*

#### **Section 4(b)(2)**

---

**Original:** *Activity for which the recycled water is to be used and the amount in gallons per day of recycled water to be used or conveyed*

**Revised:** *A brief description of the recycled water system and the amount in gallons per day of R-1 water;*

**Rationale:** *This revision is to provide the Clean Water Branch more detailed information about the recycled water treatment system.*

#### **Section 4(b)(4)**

---

**Original:** *Copy of the agreement(s) relating to R-1 water use between the permittee and the owner or operator of treatment works producing the R-1 water, if the owner or operator is different from the permittee; and*

**Revised:** *Documentation showing that the recycled water system has been approved pursuant to Chapter 11-62 by the department.*

**Rationale:** *Applicants seeking coverage under this general permit previously submitted their notice of intent to Wastewater Branch for review and approval. The proposed revisions to this general permit designates Clean Water Branch to review and approve general permit coverage for this permit. As part of the notice of intent, Clean Water Branch requires the permittee to show the R-1 water system has been approved pursuant to HAR Chapter 11-62.*

#### **Section 4(d)**

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**Original: (New)**

**Revised:** *The initial notice of intent shall be signed by the certifying person as described in section 11-55-07(a). A revised notice of intent (a notice of intent that the department has required to be revised and resubmitted) shall be signed by either the certifying person or duly authorized representative as described in section 11-55-07(b).*

**Rationale:** *The revised section 4(d) was revised to clarify the signatory requirements of the notice of intent. Previously, the DOH would receive questions*

*on who must sign the notice of intent and revised notice of intent (as applicable). The intent of this revision is to clarify the signatory abilities of the certifying person. These signatory requirements are already in practice in current notice of intent processing procedures.*

**Section 4(e)**

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**Original:** [From previous section 4(d)] The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:

Director of Health  
Wastewater Branch  
Environmental Management Division  
State Department of Health  
P.O. Box 3378  
Honolulu, Hawaii 96801-3378

**Revised:** *The owner or operator shall submit a complete notice of intent to the director at the following address or as otherwise specified:*

*Director of Health  
Clean Water Branch  
Environmental Management Division  
Department of Health  
P.O. Box 3378  
Honolulu, Hawaii 96801-3378*

**Rationale:** The address was revised to submit the complete NOI, discharge monitoring reports, and all other reports required by the general permit to Clean Water Branch.

**Section 4(d) and 10(a)**

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**Original:** *Director of Health  
Wastewater Branch  
Environmental Management Division  
Department of Health  
P.O. Box 3378  
Honolulu, Hawaii 96801-3378*

**Revised:** *Director of Health*

Clean Water Branch  
Environmental Management Division  
Department of Health  
P.O. Box 3378  
Honolulu, Hawaii 96801-3378

**Rationale:** The address was revised to submit the complete NOI, discharge monitoring reports, and all other reports required by the general permit to Clean Water Branch.

#### **Section 7(b)(5)**

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**Original:** [NEW]

**Revised:** Color photographs shall be taken during the unintentional discharges of the Recycled Water effluent. Copies of the color photographs shall contain the date and time the photos were taken and a written narrative description of what is being depicted in the photograph. A photograph orientation map shall also be submitted.

All photographs shall be submitted to the DOH-CWB via the DOH e-Permitting Portal Compliance Submittal Form for Individual NPDES Permits and NGPCs. Photographs taken after the completion of the unintended discharges shall be submitted to the DOH-CWB within thirty (30) days after the completion of the discharges.

**Rationale:** Photo documentation added as a compliance requirement of the Basic Water Quality Criteria.

#### **Section 10(a)**

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**Original:** The owner or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit to the director at the following address or as otherwise specified:

Director of Health  
Wastewater Branch  
Environmental Management Division  
State Department of Health  
P.O. Box 3378  
Honolulu, Hawaii 96801-3378

**Revised:** The permittee or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit to the director at the following address or as otherwise specified:

Director of Health  
Clean Water Branch  
Environmental Management Division  
State Department of Health  
P.O. Box 3378  
Honolulu, Hawaii 96801-3378

**Rationale:** Previously, the term “owner” was used interchangeably with “permittee”, which potentially caused confusion as the owner is not always the permittee (the permittee may also be the operator of the project/facility). This section was revised to provide clarity and avoid confusion.

The Clean Water Branch has taken over responsibility for the implementation of Appendix J from the Wastewater Branch.

#### **Section 10(b)**

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**Original:** The owner or its duly authorized representative shall include the following certification statement and an original signature on each submittal in accordance with section 11-55-34.08(e) or (f):

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine [or]and imprisonment for knowing violations.”

**Revised:** The permittee or its duly authorized representative shall include the following certification statement and an original signature, or as otherwise specified, on each submittal in accordance with section 11-55-34.08(e) or (f):

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system

*designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."*

***Rationale:*** Previously, the term "owner" was used interchangeably with "permittee", which potentially caused confusion as the owner is not always the permittee (the permittee may also be the operator of the project/facility). This section was revised to provide clarity and avoid confusion.

***Since January 31, 2023, requests for permit coverage and compliance forms that are required by permit conditions must be submitted at the DOH's e-Permitting Portal using electronic signature forms. This section was revised to clarify the signature requirements.***

### **Section 10(c)**

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***Original:*** The owner or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence may be a basis for delay of the processing of the document(s).

***Revised:*** The permittee or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence may be a basis for delay of the processing of the document(s).

***Rationale:*** Previously, the term "owner" was used interchangeably with "permittee", which potentially caused confusion as the owner is not always the permittee (the permittee may also be the operator of the project/facility). This section was revised to provide clarity and avoid confusion.

### **Section 14**

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***Original:*** Renewal

*Requests for renewal of general permit coverage must be received no later than 30 calendar days before the expiration of the general permit coverage.*

**Revised:** Administrative Extension

Any notice of general permit coverage issued under the general permit dated February 9, 2019, shall be automatically administratively extended. This administrative extension shall expire sixty days after the effective date of this general permit unless:

(a) A notice of intent for coverage under this general permit is submitted within sixty days after the effective date of this general permit. The administrative extension shall thus expire on the effective date of the notice of general permit coverage authorizing the existing discharge under this general permit; or

(b) An application for an individual NPDES permit coverage is submitted within sixty days after the effective date of this general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge.

**Rationale:** Request for renewals requires the permittee to certify in the NOI that they will comply with the new general permit. Request for renewals should not be submitted before the new general permit is issued. The permittee will not know of the new general permit requirements if the new general permit cannot be issued before the existing general permit expires. Section 3(c) has been revised to require the renewal NOI be submitted within 60 days after the effective date of the reissued general permit. See the rationale for Section 3(c) above.

- 
1. Reasons why any requested variances or alternatives to required standards do or do not appear justified;  
  
*Not applicable.*
  2. A description of the procedures for reaching a final decision on the draft permit including:
    - (i) The beginning and ending dates of the comment period under § 124.10 and the address where comments will be received;
    - (ii) Procedures for requesting a hearing and the nature of that hearing; and
    - (iii) Any other procedures by which the public may participate in the final decision.

General Permit Fact Sheet for  
HAR Chapter 11-55, Appendix J

*Refer to HAR 11-1 Subchapter 3 for procedures for adopting rules. The proposed NPDES General Permit is issued as Appendix J within HAR Chapter 11-55, Water Pollution Control.*

3. Name and telephone number of a person to contact for additional information.

*Mr. Darryl Lum  
Engineering Section Supervisor  
Clean Water Branch  
Department of Health  
Ph. (808) 586-4309*

4. For NPDES permits, provisions satisfying the requirements of § 124.56.

*Refer to 40 CFR 450.*

5. Justification for waiver of any application requirements under § 122.21(j) or (q) of this chapter.

*Not applicable.*

## **National Pollutant Discharge Elimination System**

### **General Permit Fact Sheet for**

#### **Hawaii Administrative Rules (HAR) Chapter 11-55, Appendix L**

#### **Authorizing Discharges of Circulation Water From Decorative Ponds or Tanks**

- (1) A brief description of the type of facility or activity which is the subject of the draft permit;

*This general permit covers facilities in the State of Hawaii that discharge circulation water from decorative ponds or tanks containing or not containing fish or other aquatic species, not including mammals.*

*Currently, there are three (3) general permit coverages issued for circulation water from decorative ponds or tanks covered under HAR 11-55, Appendix L.*

- (2) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged.

*The allowed discharge is circulation water from decorative ponds or tanks that have been treated such that, prior to discharge, any pollutant in the effluent is at or below Hawaii's waterbody-specific water quality standard for that pollutant.*

- (3) For a PSD permit, the degree of increment consumption expected to result from operation of the facility or activity.

*Not applicable.*

- (4) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by 40 CFR §124.9 (for EPA-issued permits);

#### **The General Permit is divided into the following sections:**

1. Coverage under this General Permit
2. Limitations on Coverage under this General Permit [Revised]
3. Term of General Permit [Revised]
4. Notice of Intent Requirements [Revised]
5. Standard Conditions
6. Effluent Limitations and Monitoring Requirements [Revised]
7. Corrective Action
8. Reporting Requirements [Revised]
9. Submittal Requirements [Revised]
10. Additional Conditions



11. *Record Retention*
12. *Falsifying Report*
13. *Renewal [Revised]*
14. *Forms*

**Table 34.8    *Effluent Limitations and Monitoring Requirements for Circulation Water from Decorative Ponds and Tanks [Revised]***

Sections 1 through 5 and 7 through 13 are basic requirements necessary to the General Permit. Section 6 and Table 34.8 detail the effluent limitations and monitoring requirements for discharge of circulation water from decorative ponds and tanks.

**Basis for Discharge Limitations and Monitoring Requirements**

*There are no effluent guidelines promulgated for discharges of circulation water from decorative ponds and tanks.*

*The CWA requires point source dischargers to control the amount of conventional, non-conventional, and toxic pollutants that are discharged into the waters of the United States. The control of pollutants discharged is established through effluent limitations and other requirements in National Pollutant Discharge Elimination System (NPDES) permits. NPDES regulations establish two (2) principal bases for effluent limitations. At 40 CFR 122.44(a), permits are required to include applicable technology-based effluent limitations (TBELs) and standards; and at 40 CFR 122.44(d), permits are required to include water quality-based effluent limitations (WQBELs) to attain and maintain applicable numeric and narrative water quality criteria to protect the beneficial uses of the receiving water. When both TBELs and WQBELS for a parameter exist, then the more protective effluent limitation is selected.*

*Discharges of circulation water from decorative ponds and tanks do not have any federally established TBELs and therefore, only WQBELs would apply. Accordingly, the bases for the proposed effluent limitations are HAR Chapter 11-54, Water Quality Standards.*

**Flow:** *The monitoring for flow is for quantification of the discharge.*

**Total Nitrogen, Ammonia Nitrogen, Total Phosphorus, Turbidity, and pH:** *The total nitrogen, ammonia nitrogen, total phosphorus, turbidity and pH limitations are based on the specific criteria for each parameter listed in HAR Chapter 11-54 for the classification of the receiving water.*

**Fecal Coliform or Enterococcus:** *The fecal coliform or enterococcus limit is based on the statistical threshold value listed in HAR 11-54-8(c).*

*The discharges covered by the general permit shall comply with the Standard General Permit Conditions of HAR Chapter 11-55, Appendix A.*

*The permittee shall collect representative discharge samples at the nearest accessible point after final treatment and prior to actual discharge of missing with the receiving state waters.*

**Requirements for Discharge into Class 1 or Class AA Waters**

*Discharges to Class 1 and Class AA waters are allowed coverage under the general permit. The conditions and provisions of the general permit are protective of the uses for these classes of waters. For discharges to Class 1 and Class AA waters, the treatment system plan shall be submitted with the notice of intent.*

**Chapter 11-55, Appendix L Revisions**

**Section 2(a)(3) [New]**

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**Original:** (NEW)

**Revised:** Discharges of decorative ponds with toxic parameter concentrations above the applicable water quality criteria in chapter 11-54.

**Rationale:**

*This limitation was added to prevent decorative pond water discharges that contain toxic constituents in exceedance of the water quality standards listed in HAR Chapter 11-54, Appendix E.*

**Section 2(c)(1) – (5) [New]**

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**Original:** (NEW)

**Revised:** (c) Permittees authorized by this general permit are required to comply with the following requirements.

(1) Treat decorative pond discharges with controls to minimize discharges of pollutants. Appropriate controls to use downstream of decorative pond controls to minimize erosion include vegetated buffers, check dams, riprap, and grouted riprap at outlets.

(2) Prohibit visible plumes from the discharge and prohibit the discharge of visible floating solids or foam.

(3) To the extent feasible, use vegetated, upland areas to infiltrate decorative pond water before discharge. State waters are prohibited from being used as part of the treatment area.

(4) At all points where decorative pond water is discharged, dissipate velocity to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points. Control measures that can be used to comply

with this requirement include the use of erosion controls and/or velocity dissipation devices (e.g., check dams, sediment traps), within and along the length of the conveyance and at the outfall to slow down the discharge. These devices shall not be placed within receiving waters.

(5) Replace or clean the filter media used in decorative pond devices when the pressure differential equals or exceeds the manufacturer's specifications.

**Rationale:**

Discharges associated with this permit, if not treated, have the potential to cause receiving waters to exceed water quality standards.

To better protect water quality and improve the permit effectiveness, the following changes are proposed:

- *Require treatment which targets the reduction of settleable and suspended solids to reduce the potential for discharges causing exceedances of the turbidity water quality standards. Adding an explicit prohibition for visible plumes increases the protection of receiving waters from visual impacts, creates an intuitive compliance requirement, and is far more enforceable than a simple numeric turbidity limit. A prohibition of the visible plumes also accounts for potential variability in discharge quality throughout the discharge period as well as potential short-term variability in background receiving water quality.*
- *Add a treatment requirement such as particulate (e.g. "bag") filtration to reduce the potential for the discharge of pollutants associated with the hydrotesting activity. This requirement for treatment is also expected to reduce the presence of other pollutants that may be bound to the sediment particles removed through filtration. Permittees are also required to treat their discharge to remove any pollutants (such as sediments) that may be present in the tank being hydrotested. Proper dechlorination is also required to meet effluent limitations.*
- *Add an explicit narrative prohibition for visible plumes and a requirement for treatment while removing the numeric requirement for the following reasons:*
  - *Achieves results similar in nature to numeric requirements.*
  - *Ensures that the receiving water isn't visually degraded by the authorized discharge.*
  - *Reflects recognized variability in receiving water criteria.*

- Provides a qualitative limit that can continuously be monitored by discharger personnel.
- Strengthens enforceability including enforcement associated with complaints.
- Reduces the complexity and cost of discharge monitoring.
- Simplifies permit data tracking and compliance with EPA's E-Reporting Rule.

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**Section 2(c)(5) DRAFT**

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**Original:** Replace or clean the filter media used in decorative pond devices when the pressure differential equals or exceeds the manufacturer's specifications.

**Revised:** Inspect, maintain, and replace the filter media used in decorative pond devices according to the manufacturer's specifications.

**Rationale:**

**This revision was proposed by the State Department of Transportation during the public comment period. The rationale is, "There are different types of filter systems for fish and decorative ponds that include pressurized and non-pressurized systems, such as mechanical and biological systems. There are other determining factors outside of pressure differentials for when filter media needs to be changed. Suggested revision accommodates varying systems that use other methods/screening for determining when filter media should be replaced."**

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**Section 3(a)**

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**Original:** This general permit becomes effective ten days after filing with the office of the lieutenant governor.

**Revised:** This general permit becomes effective ten days after filing with the office of the lieutenant governor and shall expire five years after the effective date, unless amended earlier.

**Rationale:**

**This revision is to make this subsection consistent with the general permit term specified at the beginning of the general permit. The previous language only specified when the general permit term began, and not when it expired. This is a minor change for completeness and consistency and has no functional impact on any permit requirements.**

### **Section 3(b)**

---

**Original:** *A notice of general permit coverage under this general permit expires:*

- (1) Five years after the effective date of this general permit;*
- (2) When the notice of general permit coverage specifies; or*
- (3) When amendments to section 11-55-34.02(b)(11) are adopted,*  
*whichever is earliest, unless the notice of general permit coverage is*  
*administratively extended under section 11-55-34.09(d).*

**Revised:** *Unless otherwise specified on the notice of general permit coverage, a notice of general permit coverage granted under this general permit prior to the expiration of this general permit shall expire five years after the effective date of this general permit, unless it is administratively extended in accordance with section 3(c) of this general permit.*

**Rationale:**

*Previously, to maintain coverage under this general permit in instances where the general permit is going to expire prior to its reissuance, permittees would need to submit a renewal NOI prior to the general permit's expiration date. The previous section 3(b) specified that the Notice of General Permit Coverage (NGPC) expires in the identified 3 scenarios in accordance with this renewal procedure. The Clean Water Branch is now revising the renewal procedures for general permits to no longer require a renewal NOI and administrative extension prior to the expiration of the general permit. Under the new procedure, unless otherwise specified on the NGPC, the NGPC expires five years after the effective date of the general permit, unless it is administratively extended under the new section 3(c). This revision is necessary to be consistent with the new renewal process. More information explaining this change in the renewal process is provided in the rationale for the new section 3(c).*

### **Section 3(c) [New]**

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**Original:** (NEW)

**Revised:** *If the department is unable to reissue this general permit prior to its expiration, a notice of general permit coverage granted under this general permit shall be automatically administratively extended, unless otherwise specified on the notice of general permit coverage. This administrative extension shall expire sixty days after the effective date of the new general permit unless:*

- (1) A notice of intent for coverage under the new general permit is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the notice of*

general permit coverage authorizing the existing discharge under the new general permit;

(2) An application for an individual NPDES permit coverage is submitted within sixty days after the effective date of the new general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge; or

(3) A notice of cessation is submitted where the administrative extension shall expire on the date that the discharge ceased.

**Rationale:**

Previously, to maintain coverage under this general permit in instances where the general permit is going to expire prior to its reissuance, permittees would need to submit a renewal NOI prior to the general permit's expiration date. This procedure created a situation where a permittee is required to submit an NOI to request coverage under the reissued general permit prior to the reissued permit being finalized and adopted. In essence, permittees would be required to submit an NOI to apply for coverage under a general permit that has not been finalized, or at worst, has not had a draft public noticed yet, and therefore, permittees would not even be aware of what the new general permit's requirements would potentially be. To avoid this situation, the renewal process for general permit coverage has been revised. This new section now specifies that when the department is unable to reissue the general permit prior to its expiration, NGPCs granted under the general permit prior to its expiration are administratively extended until 60 days after effective date of the reissued general permit, unless one of 3 actions are taken by the permittee. In the new process, permittees would have 60 days to submit an NOI to request coverage under the reissued general permit, before their administrative extension expires. This will allow permittees to determine if they are able to comply with the new general permit and provide any newly required information in the NOI to request coverage under the reissued general permit.

**Section 4(a)**

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**Original:** The owner or its duly authorized representative shall submit a complete notice of intent no later than thirty days before the proposed starting date of the discharge.

**Revised:** *The owner or operator shall submit a complete notice of intent thirty days before the proposed starting date of the discharge, and at least thirty days before the expiration date of this general permit.*

**Rationale:**

*The previous text specified that the owner or its authorized representative shall submit the NOI no later than thirty days prior to discharge for new dischargers. The added language requires dischargers intending to be covered under the general permit to also submit their NOI thirty days before the expiration date of the general permit to receive coverage as NGPCs cannot be issued under expired general permits. The thirty-day deadline is the same timeframe as that for a new proposed discharge.*

*As an NPDES permittee may be either the owner or operator of a facility or activity, the term “operator” was also added to this section. Further, while the owner or operator’s certifying person or duly authorized representative must sign the notice of intent as applicable, the requirement to submit the notice of intent is still the owner or operator’s responsibility and is separate from notice of intent signatory requirements. To provide clarity, the duly authorized representative language is removed from this section.*

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**Section 4(b)**

***Original:*** *The owner or its authorized representative shall include the following information in the notice of intent:*

***Revised:*** *The owner or operator shall include the following information in the notice of intent:*

**Rationale:**

*The previous text specified that the owner or its authorized representative shall provide information for the notice of intent. As an NPDES permittee may be either the owner or operator of a facility or activity, the term “operator” was added to this section. Further, while the owner or operator’s certifying person or duly authorized representative must sign the notice of intent as applicable, the requirement to provide information in the notice of intent is still the owner or operator’s responsibility and is separate from notice of intent signatory requirements. To provide clarity, the duly authorized representative language is removed from this section.*

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**Section 4(d)**

***Original:*** *The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:*

*Director of Health*

Clean Water Branch  
Environmental Management Division  
State Department of Health  
P.O. Box 3378  
Honolulu, Hawaii 96801-3378

**Revised:** The initial notice of intent shall be signed by the certifying person as described in section 11-55-07(a). A revised notice of intent (a notice of intent that the department has required to be revised and resubmitted) shall be signed by either the certifying person or duly authorized representative as described in section 11-55-07(b).

**Rationale:**

The original text has been moved and modified to the new section 4(e). The revised section 4(d) was revised to clarify the signatory requirements of the notice of intent. Previously, the DOH would receive questions on who must sign the notice of intent and revised notice of intent (as applicable). The intent of this revision is to clarify the signatory abilities of the certifying person and authorized representative. These signatory requirements are already in practice in current notice of intent processing procedures.

**Section 4(e) [New]**

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**Original:** [From the previous section 4(d)] The owner or its duly authorized representative shall submit a complete notice of intent to the director at the following address or as otherwise specified:

Director of Health  
Clean Water Branch  
Environmental Management Division  
State Department of Health  
P.O. Box 3378  
Honolulu, Hawaii 96801-3378

**Revised:** The owner or operator shall submit a complete notice of intent to the director at the following address or as otherwise specified:

Director of Health  
Clean Water Branch  
Environmental Management Division  
State Department of Health  
P.O. Box 3378  
Honolulu, Hawaii 96801-3378

**Rationale:**

Most of the original text comes from the previous section 4(d). The previous text specified that the owner or its authorized representative shall submit a



*complete notice of intent to the DOH address listed. As an NPDES permittee may be either the owner or operator of a facility or activity, the term “operator” was added to this section. Further, while the owner or operator’s certifying person or duly authorized representative must sign the notice of intent as applicable, the requirement to submit the NOI is still the owner or operator’s responsibility and is separate from notice of intent signatory requirements. To provide clarity, the duly authorized representative language is removed from this section.*

#### **Section 6(a)(3)(B)**

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**Original:** “Composite sample” means a combination of a least eight samples aliquots, collected at periodic intervals during the operating hours of the facility over a 24-hour period. The composite shall be flow proportional; either the time interval between each aliquot or the volume of each aliquot shall be proportional to the total effluent flow since the collection of the previous aliquot. The permittee may collect aliquots manually or automatically, unless otherwise stated.

**Revised:** “Composite sample” means a combination of at least eight sample aliquots, collected at periodic intervals during the operating hours of the facility over a 24-hour period. The composite shall be flow proportional; either the time interval between each aliquot or the volume of each aliquot shall be proportional to the total effluent flow since the collection of the previous aliquot. The permittee may collect aliquots manually or automatically, unless otherwise stated.

**Rationale:**

*The paragraph was modified to correct grammatical errors.*

#### **Section 6(a)(4)(C)**

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**Original:** The permittee shall use test methods with detection limits that reflect the applicable numerical limitations as specified in chapter 11-54 and must be sufficiently sensitive as defined at 40 CFR 122.21(e)(3) and 122.44(i)(1)(iv). If the test result is not detectable, indicate that the test result is “less than #,” where the # is the lowest detection limit of the test method used.

**Revised:** The permittee shall use test methods with detection limits that reflect the applicable numerical limitations as specified in chapter 11-54 and must be sufficiently sensitive as defined at 40 CFR 122.21(e)(3) and 122.44(i)(1)(iv).

**Rationale:**

*The previous language provided directions on how to report non-detects that are not currently used in practice, and therefore the language has been removed. Section 8(a)(3) was added to describe the reporting of the method detection limit (MDL), minimum level (ML), and reporting of results below the MDL.*

**Section 6(b)(2)**

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**Original:** *The permittee shall [~~timely~~] inspect the receiving state waters, effluent, and control measures and best management practices at least once per discharge or once daily, if discharge is continuous and duration is longer than one day to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4. (e.g., the permittee shall look at effluent and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)*

**Revised:** *The permittee shall inspect the receiving state waters, effluent, and control measures and best management practices at least once per discharge or once daily, if discharge is continuous and duration is longer than one day to detect violations of and conditions which may cause violations of the basic water quality criteria as specified in section 11-54-4. (e.g., the permittee shall look at effluent and receiving state waters for turbidity, color, floating oil and grease, floating debris and scum, materials that will settle, substances that will produce taste in the water or detectable off-flavor in fish, and inspect for items that may be toxic or harmful to human or other life.)*

**Rationale:**

*The [~~timely~~] is an edit from the previous Ramseyer version that was not removed in the final standard version of the current general permit. It is being noted here as to not confuse that the word “timely” is being removed from the general permit.*

**Section 8(a)(2)**

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**Original:** *The permittee shall submit monitoring results obtained during the previous calendar month, postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting period.*

**Revised:** *The permittee shall submit monitoring results obtained during the previous calendar month, postmarked or received by the department no later than the twenty-eighth day of the month following the completed reporting*

period. The first reporting period begins on the effective date of the issued notice of general permit coverage (e.g., if the notice of general permit coverage effective date is January 16th, monitoring results shall be reported no later than February 28th).

**Rationale:**

Previously, the general permit did not include language that explicitly stated when the first reporting period began. This caused confusion among permittees, as the due date for their first DMR was left up to interpretation. Some may interpret the general permit requirements as being required to begin submissions from the issue date of the NGPC, while others may interpret it as beginning when discharge activities begin. Regulatorily, once the NGPC is issued, the permittee is required to comply with the general permit as applicable. The renumbered section 8(a)(5) specifies that permittees must submit a DMR specifying “no discharge” when no discharge activities occur in a calendar month. Based on this, the intent of these reporting requirements is to have permittees regularly report to the Clean Water Branch monthly regardless of whether there was a discharge in the calendar month reporting period. Therefore, this revision was made to explicitly state that reporting begins as soon as the NGPC is issued in accordance with the intent of the general permit’s reporting requirements.

**Section 8(a)(3)**

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**Original:** The permittee shall also submit the monitoring results with laboratory reports, including quality assurance/quality control data; effluent flow calculations; and any additional treatment strategies to be implemented based on monitoring results.

**Revised:** For the purposes of reporting, the permittee shall use the reporting threshold equivalent to the laboratory’s method detection limit (MDL) and must utilize a standard calibration where the lowest standard point is equal or less than the concentration of the minimum level (ML).

(A) The permittee shall report sample results and calculations at or above the laboratory’s ML on DMRs as the measured concentration or calculation.

(B) The permittee shall report sample results and calculations below the laboratory’s MDL as NODI(B) on the DMR. NODI(B) means that the concentration of the pollutant in the sample is not detected.

(C) The permittee shall report sample results and calculations between the ML and MDL as NODI(Q) on the DMR. NODI(Q) means that the concentration of the pollutant in a sample is detected, but not quantified.

(D) For purposes of calculating averages, zero shall be assigned for values less than the MDL and the numeric value of the MDL shall be assigned for

values between the MDL and the ML. The resulting average value must be compared to the effluent limitation or the ML, whichever is greater, in assessing compliance.

(E) For purposes of calculated geometric means,  $0.25 \times \text{MDL}$  shall be assigned for values less than the MDL and the numeric value of the MDL shall be assigned for values between the MDL and the ML. The resulting geometric mean must be compared to the effluent limitation of the ML, whichever is greater, in assessing compliance.

(F) When NODI(Q) or NODI(B) is reported for a parameter, the laboratory's numeric ML and MDL for that parameter shall also be noted on the DMR or on an attachment.

**Rationale:**

The original text has been moved to section 8(a)(4). This language specifies how to report quantifiable, non-quantifiable, and non-detected results, as well as how to calculate averages and geomeans that include these results. This new language is to update the general permit to be in accordance with current compliance practices and procedures.

**Sections 8(a)(3) through (5)**

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**Original:** (3) The permittee shall also submit the monitoring results with laboratory reports, including quality assurance/quality control data; effluent flow calculations; and any additional treatment strategies to be implemented based on monitoring results.

(4) Should there be no discharges during the monitoring period, the discharge monitoring report form shall so state.

(5) Discharge Monitoring Reports shall be submitted in compliance with Federal eReporting Rule requirements. Permittees shall switch from traditional paper Discharge Monitoring Reporting to electronic reporting upon written notification by the director.

**Revised:** (4) The permittee shall also submit the monitoring results with laboratory reports, including quality assurance/quality control data; effluent flow calculations; and any additional treatment strategies to be implemented based on monitoring results.

(5) Should there be no discharges during the monitoring period, the discharge monitoring report form shall so state.

(6) Discharge Monitoring Reports shall be submitted in compliance with Federal eReporting Rule requirements. Permittees shall switch from

*traditional paper Discharge Monitoring Reporting to electronic reporting upon written notification by the director.*

**Rationale:**

Sections renumbered due to the insertion of new section 8(a)(3).

**Section 8(c)(2)**

---

**Original:** *The permittee shall make oral reports by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State Hospital Operator at (808) 247-2191 outside of regular office hours.*

**Revised:** *The permittee or its duly authorized representative shall make oral reports by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State Hospital Operator at (808) 247-2191 outside of regular office hours.*

**Rationale:**

Section 8(c)(1) specifies that the permittee or its duly authorized representative shall orally report certain noncompliances to the Clean Water Branch. Section 8(c)(2) was revised to be consistent with section 8(c)(1) and also specify that the permittee or its duly authorized representative shall make oral reports at the identified phone numbers.

**Section 8(c)(3)**

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**Original:** *The permittee shall provide a written report within five days of the time the permittee or its duly authorized representative becomes aware of the circumstances. The written report shall include the following:*

**Revised:** *The permittee or its duly authorized representative shall provide a written report within five days of the time the permittee or its duly authorized representative becomes aware of the circumstances. The written report shall include the following:*

**Rationale:**

Section 8(c)(1) specifies that the permittee or its duly authorized representative shall orally report certain noncompliances to the Clean Water Branch. Section 8(c)(3) was revised to be consistent with section 8(c)(1) and also specify that the permittee or its duly authorized representative shall make written reports.

**Section 9(a)**

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**Original:** The owner or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit to the director at the following address or as otherwise specified:

Director of Health  
Clean Water Branch  
Environmental Management Division  
State Department of Health  
P.O. Box 3378  
Honolulu, Hawaii 96801-3378

**Revised:** The permittee or its duly authorized representative shall submit signed copies of monitoring and all other reports required by this general permit to the director at the following address or as otherwise specified:

Director of Health  
Clean Water Branch  
Environmental Management Division  
State Department of Health  
P.O. Box 3378  
Honolulu, Hawaii 96801-3378

**Rationale:**

Previously, the term “owner” was used interchangeably with “permittee”, which potentially caused confusion as the owner is not always the permittee (the permittee may also be the operator of the project/facility). This section was revised to provide clarity and avoid confusion.

**Section 9(b)**

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**Original:** The owner or its duly authorized representative shall include the following certification statement and an original signature on each submittal in accordance with section 11-55-34.08(e) or (f):

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine ~~[or]~~and imprisonment for knowing violations.”

**Revised:** The permittee or its duly authorized representative shall include the following certification statement and an original signature, or as otherwise specified, on each submittal in accordance with section 11-55-34.08(e) or (f):

*“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”*

**Rationale:**

*Previously, the term “owner” was used interchangeably with “permittee”, which potentially caused confusion as the owner is not always the permittee (the permittee may also be the operator of the project/facility). This section was revised to provide clarity and avoid confusion.*

**Since January 31, 2023, requests for permit coverage and compliance forms that are required by permit conditions must be submitted at the DOH's e-Permitting Portal using electronic signature forms. This section was revised to clarify the signature requirements.**

*The “[~~or~~and]” is an edit from the previous Ramseyer version that was not removed and corrected in the final standard version of the current general permit.*

**Section 9(c)**

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**Original:** The owner or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence may be a basis for delay of the processing of the document(s).

**Revised:** The permittee or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number for this facility on future correspondence may be a basis for delay of the processing of the document(s).

**Rationale:**

*Previously, the term “owner” was used interchangeably with “permittee”, which potentially caused confusion as the owner is not always the permittee*

*(the permittee may also be the operator of the project/facility). This section was revised to provide clarity and avoid confusion.*

### **Section 13**

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**Original:** *Renewal*

*Requests for renewal of general permit coverage must be received no later than 30 calendar days before the expiration of the general permit coverage.*

**Revised:** *Administrative Extension*

*Any notice of general permit coverage issued under the general permit dated February 9, 2019, shall be automatically administratively extended. This administrative extension shall expire sixty days after the effective date of this general permit unless:*

*(a) A notice of intent for coverage under this general permit is submitted within sixty days after the effective date of this general permit. The administrative extension shall thus expire on the effective date of the notice of general permit coverage authorizing the existing discharge under this general permit; or*

*(b) An application for an individual NPDES permit coverage is submitted within sixty days after the effective date of this general permit. The administrative extension shall thus expire on the effective date of the individual NPDES permit authorizing the existing discharge.*

**Rationale:**

*Requests for renewals require the permittee to certify in the NOI that they will comply with the new general permit. Requests for renewals should not be submitted before the new general permit is issued. The permittee will not know of the new general permit requirements if the new general permit cannot be issued before the existing general permit expires. Section 3(c) has been revised to require the renewal NOI be submitted within 60 days after the effective date of the reissued general permit. See the rationale for Section 3(c) above.*

### **Table 34.8**

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**Original:** *EFFLUENT LIMITATION AND MONITORING REQUIREMENTS FOR CIRCULATION WATER FROM DECORATIVE PONDS AND TANKS*



General Permit Fact Sheet for  
HAR Chapter 11-55, Appendix L

Effluent Parameter	Effluent Limitation {1}	Minimum Monitoring Frequency	Type of Sample
Flow (GPD)	{2}	Once/Quarter {11}	Estimate
Total Nitrogen (mg/l)	{2}	Once/Quarter {11}	Grab
Nitrate + Nitrite Nitrogen (mg/l)	{2}	Once/Quarter {11}	Grab
Ammonia Nitrogen (mg/l)	{2}	Once/Quarter {11}	Grab
Total Phosphorus (mg/l)	{2}	Once/Quarter {11}	Grab
Chlorophyll a (µg/l)	{2}	Once/Quarter {11}	Grab
Total Suspended Solids (mg/l)	10	Once/Quarter {11}	Grab
Turbidity (NTU)	{3}	Once/Quarter {11}	Grab
pH (standard units)	{4}	Once/Quarter {11}	Grab {5}
Fecal coliform or Enterococcus (no./100 ml) {6}	{7}	Once/Quarter {11}	Grab
Toxic Pollutants {8}	{9}	Once/Quarter {11}	{10}

GPD = gallons per day

mg/l = milligrams per liter

µg/l = micrograms per liter

NTU = Nephelometric Turbidity Units

no./100 ml = number per 100 milliliters

***Revised: EFFLUENT LIMITATION AND MONITORING REQUIREMENTS  
FOR CIRCULATION WATER FROM DECORATIVE PONDS AND TANKS***

General Permit Fact Sheet for  
HAR Chapter 11-55, Appendix L

Effluent Parameter	Effluent Limitation {1}	Minimum Monitoring Frequency {2}	Type of Sample
Flow (GPD)	Report	Once/Quarter	Estimate
Total Nitrogen (µg/l)	{3}	Once/Quarter	Grab
Ammonia Nitrogen (µg/l)	{3}	Once/Quarter	Grab
Total Phosphorus (µg/l)	{3}	Once/Quarter	Grab
Total Suspended Solids (mg/l)	{3}	Once/Quarter	Grab
pH (standard units)	{4}	Once/Quarter	Grab {5}
Enterococcus (no./100 ml) {6}	130	Once/Quarter	Grab

GPD = gallons per day

mg/l = milligrams per liter

µg/l = micrograms per liter

NTU = Nephelometric Turbidity Units

no./100 ml = number per 100 milliliters

**Rationale:**

*40 CFR 122.44(d)(1)(i) requires all NPDES permits, including general permits, to contain limitations on all pollutant parameters that may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above the State's Water Quality Standards.*

*Effluent limitations for total nitrogen, ammonia nitrogen, total phosphorus, and pH are based upon the specific criteria for the classification of the receiving water. The limit for total suspended solids is based on the lowest concentration listed in HAR Chapter 11-54.*

*The enterococcus limit is based on the statistical threshold value listed in HAR 11-54-8(c). It is the recreational area criterion for all State waters.*

**Table 34.8 Footnote 1**

**Original:** Pollutant concentration levels shall not exceed the effluent limits or be outside the ranges indicated in the table. Actual or measured levels which

*exceed those effluent limits or are outside those ranges shall be reported to the director as required in section 8(c) of this general permit.*

**Revised:** *Pollutant concentration levels shall not exceed the single sample maximum effluent limits or be outside the ranges indicated in the table. Actual or measured levels which exceed those effluent limits or are outside those ranges shall be reported to the director as required in section 8(c) of this general permit*

**Rationale:**

*The previous language did not specify the type of effluent limitation that was established for pollutants. To clarify, the term “single sample maximum” was added to footnote 1. As the permittee is required to sample once per quarter, it is appropriate to clarify that the effluent limitation is a single sample maximum (i.e., each discharge must comply with effluent limitations).*

**Table 34.8 Footnote 2**

---

**Original:** *The value shall not exceed the applicable limit as specified in chapter 11-54 for the applicable classification of the receiving state waters. If no limitation is specified in chapter 11-54, then only monitoring and reporting is required.*

**Revised:** *The permittee shall take a minimum of one sample per quarter that is representative of the discharge. If the permittee collects more than one sample during the quarter, the maximum value for each pollutant parameter for the quarter shall be reported. For pH, only report the minimum and maximum for the quarter. Laboratory results of all sampling shall be included with the discharge monitoring report.*

**Rationale:**

*The previous language only applied to flow, total nitrogen, ammonia nitrogen, and total phosphorus limits. For flow, the term “Report” was substituted for footnote 2.*

*The new language in footnote 2 provides directions and requirements for reporting when more than one sample is taken in a quarter. This language replaces the previous language in footnote 11.*

**Table 34.8 Footnote 3**

---

**Original:** *Effluent limitation is the specific criteria established in section 11-54-5 and 11-54-6 for the classification of the receiving state waters, as applicable.*

**Revised:** *The value shall not exceed the applicable limit as specified in chapter 11-54 for the applicable classification of the receiving state waters. If*

no limitation is specified in chapter 11-54, then the permittee shall monitor and report the analytical result.

**Rationale:**

This language was previously footnote 2 and has been renumbered to footnote 3 due to the insertion of a new footnote 2.

**Table 34.8 Footnote 3 [Removed]**

---

**Original:** Effluent limitation is the specific criteria established in section 11-54-5 and 11-54-6 for the classification of the receiving state waters, as applicable.

**Revised:** (REMOVED)

**Rationale:**

The previous footnote 3 has been removed due to the removal of turbidity limits.

**Table 34.8 Footnote 7 [Removed]**

---

**Original:** Effluent limitation is the specific criteria established in section 11-54-8 for the classification of the receiving state waters, as applicable.

**Revised:** (REMOVED)

**Rationale:**

The footnote in the table has been replaced with the statistical threshold value of 130 colony forming units per 100 ml.

**Table 34.8 Footnote 8 [Removed]**

---

**Original:** The permittee shall measure for toxic pollutants, as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4 only if they are identified as potential pollutants requiring monitoring in the notice of intent. The permittee shall measure for the total recoverable portion of all metals.

**Revised:** (REMOVED)

**Rationale:**

As the toxics effluent limitations have been removed in the proposed permit, this language is no longer applicable. Therefore, footnote 8 was removed.

**Table 34.8 Footnote 9 [Removed]**

---

**Original:** Effluent limitations are the acute water quality standards established in section 11-54-4, for either fresh or saline waters and specific

*criteria established in section 11-54-5 and 11-54-6 for the classification of the receiving state waters, as applicable. For pollutants which do not have established acute water quality standards or specific criteria, the permittee shall report any detected concentration greater than 0.01 µg/l.*

**Revised:** (REMOVED)

**Rationale:**

*As the toxics effluent limitations have been removed in the proposed permit, this language is no longer applicable. Therefore, footnote 9 was removed.*

**Table 34.8 Footnote 10 [Removed]**

---

**Original:** *The permittee shall measure for cyanide and the volatile fraction of the toxic organic compounds using a grab sample. The permittee shall measure for all other pollutants, as identified in Appendix D of 40 CFR Part 122 or in section 11-54-4 using a composite sample.*

**Revised:** (REMOVED)

**Rationale:**

*As the toxics effluent limitations have been removed in the proposed permit, language is no longer applicable. Therefore, footnote 10 was removed.*

**Table 34.8 Footnote 11**

---

**Original:** *If there is more than one sample analysis per quarter in a single monitoring location, report for each parameter the quarterly maximum, quarterly minimum, and quarterly average values on the discharge monitoring report. For pH, only report quarterly minimum and quarterly maximum.*

**Revised:** (REMOVED)

**Rationale:**

*As the effluent limitations in the proposed permit are single sample maximums, monthly minimums and monthly averages are not relevant (except monthly minimum for pH). Requirements for reporting results when there is additional sampling in the month are now in footnote 2. Therefore, footnote 11 was removed, with the remaining relevant language moved to footnote 2.*

- (5) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

*Not applicable.*

- (6) A description of the procedures for reaching a final decision on the draft permit including:

- (i) The beginning and ending dates of the comment period under § 124.10 and the address where comments will be received;
- (ii) Procedures for requesting a hearing and the nature of that hearing; and
- (iii) Any other procedures by which the public may participate in the final decision.

*Refer to HAR 11-1 Subchapter 3 for procedures for adopting rules. The proposed NPDES General Permit is issued as Appendix L within HAR Chapter 11-55, Water Pollution Control.*

- (7) Name and telephone number of a person to contact for additional information.

*Mr. Darryl Lum  
Engineering Section Supervisor  
Clean Water Branch  
Department of Health  
Ph. (808) 586-4309*

- (8) For NPDES permits, provisions satisfying the requirements of § 124.56.

*The CWA requires that discharges from existing facilities, at a minimum, must meet technology-based effluent limitations (TBELs) reflecting, among other things, the technological capability of permittees to control pollutants in their discharges. Water quality-based effluent limitations (WQBELs) are required by CWA Section 301(b)(1)(C). Both technology-based and water quality-based effluent limitations are implemented through NPDES permits.*

*For this permit, the limits are based on Best Professional Judgement (BPJ) decision-making and Hawaii's water quality standards because no effluent limitation guidelines (ELG) applies.*

- (9) Justification for waiver of any application requirements under § 122.21(j) or (q) of this chapter

*Not applicable.*

## **IV. NEW BUSINESS**

- A. Discussion and Action on the Proposed New HAR Title 19 Chapter 25, **Rules and Regulations Governing Shore Water Events**, promulgated by Department of Parks and Recreation – City and County of Honolulu

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

Date: 7/10/2023

Department or Agency: Department of Parks and Recreation (DPR)

Administrative Rule Title and Chapter: Title 19, Chapter 25

Chapter Name: Rules and Regulations Governing Shore Water Events

Contact Person/Title: Dori Amano-Mitsui

E-mail: dori.amanomistui@honolulu.gov Phone: (808)768-3009

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," provide details: The draft rules are available on DPR's website: bit.ly/NorthShoreSurf

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.)

\*

\*

\*



**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.

See attached.

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.

See attached.

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.

N/A

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

N/A

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

N/A

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

N/A

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.

See attached.

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.

See attached.

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

See attached.

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.

See attached.

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

See attached.

- 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.

See attached.

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.

See attached.

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.  
N/A
- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.  
N/A
- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.  
N/A
- 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.  
N/A
- 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.  
N/A

\* \* \*

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

This Statement may be found on the SBRRB Website at: <http://dbedt.hawaii.gov/sbrrb/resources/small-business-impact-statements>

**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.

The City Council adopted Resolution 20-12, FD1 in January 2020, urging the Department of Parks and Recreation (DPR) to adopt new rules to ensure gender equity for all competitive surfing contests held on the north shore of Oahu. Over the course of 2021 Council members repeatedly requested DPR to amend the administrative rules to promote gender equity in north shore surf contests, which is also supported by several promoters of female surf events and some gender equity organizations.

Simultaneously, DPR began to receive requests to limit the number of surf contests held on five beaches along the Waikiki and urban Honolulu south shore during the summer surf season. The number of surf contests has grown to close out the breaks in these areas nearly every weekend.

The major changes that affect small businesses are that any person wanting a shore water event on the South shore must submit an application the year prior to the event; changing the existing North shore calendar so it's in line with the surf season, and establishing an after-event report for all shore water events on the North and South shores.

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.

No anticipated increase in direct costs to businesses.

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.

- a. Amount of the current fee or fine and the last time it was increased.  
N/A
- b. Amount of the proposed fee or fine and the percentage increase.  
N/A
- c. Reason for the new or increased fee or fine.  
N/A
- d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).  
N/A

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

The benefit to the DPR is that we'll be able to review and address all shore water event applications once, versus throughout the year. This will save time and resources for DPR.

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.

To reduce the impact to businesses, we used the same ranking criteria that the promoters were familiar with and simply changed the weight of each criterion.

The after-events report addressed the complaints that the DPR received from other promoters stating that those who ran their event did not comply with their application and information submitted to the department. The after-events report will keep all applicants authentic.

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

The DPR did consider less restrictive alternatives, but based on the requests by the community to limit the number of surf contests held on the South Shore and the number of complaints the department receives regarding the traffic when surf events are held on the North Shore, the draft rules are proposing to establish a South Shore annual calendar and maintain the North Shore calendar.

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.

The application supplemental allows applicants to be creative in how they develop their events. The more creative they are to be inclusive and provide minimal impact to the community, the more points they will receive when their application is reviewed.

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

The DPR formed the Shore Water Advisory Group (SWAG) in July 2021 to conduct a public process to evaluate proposed administrative rule changes. The SWAG members were appointed by Mayor Blangiardi and two out of the three members are small business owners. The SWAG met six times from July 2021 until May 2022 and focused on the survey results, fees, cooling off period, gender equity, and event calendars. Meetings were run in accordance with the Sunshine Law, with formal public notice supplemented with social media announcements, public testimony, and minutes posted on the DPR Website. Surf promoters holding DPR permits were sent an email notice of when the SWAG meetings were held. The SWAG conducted a survey making a special effort to consult promoters, surfers, and community members. The survey ran from December 16, 2021 – February 16, 2022, during the north shore surf season, in an effort to reach surfers and community members during this peak event period. Two hundred and eighty persons provided survey responses.

- 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.

To address promoters who lost their event date to a competitor, the DPR is proposing an after-events report be submitted by all applicants who run a shore water event on the North and South Shores. The after-events report will ensure that all applicants are truthful.

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.

The proposed rules would not create more stringent restrictions.

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.  
N/A
- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.  
N/A
- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.  
N/A
- 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.  
N/A
- 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.  
N/A

DEPARTMENT OF PARKS AND RECREATION

Repeal of Chapter 19-4  
City and County of Honolulu Administrative Rules  
and

Adoption of Chapter 19-25  
City and County of Honolulu Administrative Rules

xxx xx, 2023

SUMMARY

1. Chapter 19-4, City and County of Honolulu Administrative Rules, entitled "Shore Water Events," is repealed.
2. Chapter 19-25, City and County of Honolulu Administrative Rules, entitled "Rules and Regulations Governing Shore Water Events", is adopted.

CITY AND COUNTY OF HONOLULU  
ADMINISTRATIVE RULES

TITLE 19

DEPARTMENT OF PARKS AND RECREATION

CHAPTER 4

SHORE WATER EVENTS

REPEALED

**§§19-4-1 to 19-4-15** Repealed. [R ]



CITY AND COUNTY OF HONOLULU ADMINISTRATIVE RULES

TITLE 19

DEPARTMENT OF PARKS AND RECREATION

CHAPTER 25

RULES AND REGULATIONS GOVERNING  
SHORE WATER EVENTS

Subchapter 1 General Provisions

§19-25-1	Purpose
§19-25-2	Application
§19-25-3	Definitions

Subchapter 2 Specific Provisions

§19-25-4	Permit required
§19-25-5	Permit application
§19-25-6	Permit application deadline for surf events held on the north shore
§19-25-7	Permit application deadline for surfing events held on the south shore
§19-25-8	Permit conditions
§19-25-9	Revocation of permit
§19-25-10	Regulations governing shore water events
§19-25-11	Regulations governing surf events held on the north shore
§19-25-12	Regulations governing surfing events held on the south shore
§19-25-13	System for ranking applications for north shore and south shore calendars
§19-25-14	Indemnification
§19-25-15	Denial or revocation of a permit
§19-25-16	Violation
§19-25-17	Severability

## SUBCHAPTER 1

### GENERAL PROVISIONS

**§19-25-1 Purpose.** The purpose of this chapter is to make public parks readily accessible to the public; to ensure maximum permissible use of park areas and facilities by appropriate distribution of users; to ensure proper, orderly and equitable use of park areas and facilities through user controls; to ensure protection and preservation of areas and facilities by not overtaxing facilities; and to promote the health, safety, and welfare of the users of park areas and facilities. [Eff ]  
(Auth: RCH §4-104, ROH §10-1.3) (Imp: ROH §10-1.3)

**§19-25-2 Application.** These rules and regulations shall apply to the use of City parks and beach properties under the control of the department of parks and recreation, City and County of Honolulu, to provide access to conduct shore water events. [Eff ] (Auth: RCH §6-1403, ROH §1-9.1) (Imp: ROH §10-1.3)

**§19-25-3 Definitions.** As used in this chapter, the following words and terms shall have the following meaning unless the context clearly indicates otherwise:

"2025-2027 triennial north shore calendar" means the schedule of surf events to be held on the north shore from January 1, 2025 through May 31, 2027.

"ADA" means the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12101 et. seq., as amended.

"Advisory committee" means a committee, appointed by the Mayor, comprised of persons who represent the Hawaii surfing industry, to assist the department in resolving scheduling conflicts by providing comments to the department concerning the various applicants and information concerning surf contests. At least two

persons and no more than six total persons will establish the Advisory Committee. A membership ratio of fifty percent men and fifty percent women is required.

"After-event action report" means a department form completed by a permittee following a shore water event to document the results for events that go through the ranking system described in §19-25-13 which will include findings, deficiencies, and opportunities for improvement.

"Amateur shore water event" means a shore water event open to participants who engage in a shore water event only as a pastime and not as a profession.

"Annual south shore calendar" means the schedule of surfing events to be held on the south shore over a one year period.

"Application for use of parks facilities" or "permit application" means a department form to request a permit.

"Applicant" means the person submitting a permit application or a person acting as an authorized agent for the applicant listed on the application.

"Big wave event" means a one-day surf event requiring participants to paddle into waves of minimum wave face heights of forty feet or higher without the use of thrill craft or tow-in assistance.

"Bodyboard" means a board consisting of a rectangular piece of foam shaped to a hydrodynamic form used for wave riding. The bodyboard is ridden usually in a prone position.

"Bodysurfing" means a water sport involving wave riding without the assistance of a floatation device.

"Bodyboarding" means a water sport involving wave riding with the assistance of a floatation device.

"Canoe surfing" means a water sport involving wave riding with the assistance of a canoe.

"City" means the city and county of Honolulu.

"Competition day" means any portion of the day consisting of maximum of eight hours used to conduct a surf event.

"Cooling off period" means the ten-day period preceding and following a surf event when no other

surf event will be permitted at the same park.

"Criteria rating sheet" means the rating form used in resolving the north shore and south shore calendar conflicts.

"Department" means the department of parks and recreation, city and county of Honolulu.

"Director" means the director of the department of parks and recreation, or duly authorized representative.

"Duke's OceanFest Watersports Festival" means the annual event held for no more than 14-days in August at venues in Waikiki, including Kuhio Beach Park and Kapiolani Park Beach, also known as Queen's Beach to celebrate the life Duke Paoa Kahanamoku. The festival may include a variety of watersports that represent Duke Kahanamoku's legacy.

"Eddie Aikau Big Wave Invitational" or "The Eddie" means the one-day big wave event at Waimea Bay Beach Park that honors Eddie Aikau, who was a champion athlete, waterman, and a family man who exemplified hawaiian culture.

"Event" means the permitted period, including setup days, waiting period days, competition days and breakdown days.

"Fundraiser" means a special event for the purpose of raising funds, including the exchange of monies on park property, that is sponsored by community organizations, associations, groups or individuals, including nonprofit fundraising activities, and is accessory and subordinate to the primary recreational permitted use.

"Hydrofoil" means the sport of wave riding a surfboard which has a hydrofoil attached to the board instead of a fin.

"HRS" means the Hawaii Revised Statutes, as amended.

"IRC" means the Internal Revenue Code, Title 26, United States Code, as amended.

"Kapiolani Park Beach" also known as "Queen's Beach" means the park area makai of Kalakaua Avenue between the groin at the end of Kapahulu Avenue and the Natatorium.

"Kitesurfing" or "kiteboarding" means a water sport using a power kite to pull the rider through the water on a surfboard and which may not involve wave riding.

"Marine event permit" means a document issued by the state division of boating and ocean recreation of the department of land and natural resources which authorizes use of a particular area of the shore water of the state for a specific time period.

"Nonprofit organization" means an association, corporation or other entity, organized and operated exclusively for religious, charitable, scientific, literary, cultural, educational, recreational, or other nonprofit purposes, and which qualifies for exemption from the general excise tax provisions of Chapter 237, Hawaii Revised Statutes, as amended, and under Section 501 of the Internal Revenue Code of 1954, as amended.

"North shore" means the shore water area that extends from Kaena Point to and inclusive of Kawela Bay under the jurisdiction of the department.

"North shore application supplement" means the packet of instructions and application materials made available to all applicants applying for permits for surf events to be calendared on the north shore calendar.

"North shore calendar" means the schedule of surf events to be held on the north shore from September 1<sup>st</sup> to May 31<sup>st</sup>

"Paddleboarding" means a surface water sport in which the participant is propelled by a swimming motion using their arms while lying or kneeling on a paddleboard or surfboard in the ocean.

"Parks permit" or "permit" means a non-transferrable department document granting a permittee permission for a specific event to use recreational and other areas and under the control, maintenance, management and operation of the department.

"Parks permit office" means the office in the department responsible for processing and final approval of permit applications and issuing of park permits.

"Person" means an individual, partnership, corporation, government, or government subdivision or agency, business trust, estate, association or any other legal entity.

"Power kite" means a type of dual-line kite capable of generating significant pulling power generally used in conjunction with a vehicle or board.

"Pro-Am shore water event" means a shore water surf event that may include divisions for amateurs, professional participates or a combination thereof.

"Professional shore water event" means a shore water event limited to participants who engage in the shore water event as a means of livelihood.

"Public park" means any park, park roadway, playground, athletic field, beach, beach right-of-way, tennis court, golf course, swimming pool, or other recreation area or facility under the control, maintenance and management of the department of parks and recreation. "Public park" does not include a public thoroughfare defined as a "mall" under Section 29-1.1 unless the public thoroughfare has been (1) accepted, dedicated, or named by the council expressly as a "Public park" or "park"; (2) placed under the control, maintenance, and management of and classified expressly as a "Public park" or "park" by the department of parks and recreation; or (3) constructed or situated within a larger specific recreation area or facility listed in the preceding sentence.

"Queen's Beach" means the area makai of Kalakaua Avenue between the groin at the end of Kapahulu Avenue and the Natatorium.

"ROH" means the revised ordinances of Honolulu 1990, as amended.

"Shore water" means any shore or water between the three nautical mile limit and the mean tide mark on the shores of the islands of the State.

"Shore water event" means any organized water sport event including, but not limited to sail race, jet ski race, paddle board race, surf event, swim race, canoe race, or similar activity held in the shore water.

"Skimboarding" or "skimming" means a water sport involving riding a board on wet sand or shallow water and which does not involve wave riding.

"South shore" means the shore water area that extends from west end of Kakaako Waterfront Park to Makapuu Point.

"South shore application supplement" means the packet of instructions and application materials made available to all applicants applying for permits for surf events to be calendared on the south shore calendar.

"South shore calendar" means the schedule of surfing events to be held on the south shore from May 1<sup>st</sup> to September 30<sup>th</sup>, unless allowed under §19-25-7(b). The south shore beach parks included on the calendar are Kuhio Beach Park, Queen's Beach, Kewalo Basin Park and Ala Moana Regional Park.

"Standup paddle surfing" or "stand up paddleboarding" means a wave riding water sport involving the use of a standup paddle to propel the rider across the surface of the water while standing on a surfboard, windsurf board, or paddleboard.

"State" means the State of Hawaii.

"State division of boating and ocean recreation" means the state division of boating and ocean recreation, department of land and natural resources, State of Hawaii.

"Submit" or "submitted" means a completed and signed park permit application containing an original wet signature that has been delivered either by hand Monday through Friday, except holidays, between the hours of 8:00 a.m. and 4:00 p.m. or by Fedex or UPS or similar carrier service to the department of parks and recreation permits section office located at the Frank F. Fasi Municipal Building, 1<sup>st</sup> Floor, 650 South King Street, Honolulu, HI 96813. Applications will be date stamped by the department upon date of receipt of the application and the wet signature.

"Surfboard" means any type of board which is used for the sport of surfing.

"Surf event" means a water sport contest, competition, exhibition or organized event involving

any form of wave riding.

"Surfing" means a water sport involving wave riding with the assistance of a surfboard.

"Surfing event" means a water sport contest, competition, exhibition or organized event involving surfing.

"Tow-in surfing" means a water sport utilizing a surfboard equipped with foot straps for wave riding with the assistance of a thrillcraft that is equipped with a rescue sled, bow tow-line and a tow-in-rope.

"Triennial north shore calendar" means the schedule of surf events to be held on the north shore over a three-year period beginning September 1<sup>st</sup> of the first year and ending on May 31<sup>st</sup> of the third year. For example, the Triennial north shore calendar for 2027-2030 shall run from September 1, 2027 through May 31, 2030, with events only permitted during the months of September 1<sup>st</sup> through May 31<sup>st</sup>.

"Waiting period" means the consecutive days within the permit period from which the permittee selects competition days, but does not include setup and breakdown days.

"Windboard" means a modified surfboard having a single sail mounted on a mast that pivots on a ball joint which is sailed by one person standing up.

"Windsurfing" means a water sport using a windboard and which does not involve wave riding.

[Eff ] (Auth: RCH §6-1403, ROH §1-9.1)  
(Imp: ROH §10-1.3)

## SUBCHAPTER 2

### SPECIFIC PROVISIONS

**§19-25-4 Permit required.** No person shall use a park to hold a shore water event or use a park in conjunction with a shore water event held in State shore waters without first obtaining a park use permit from the department. [Eff ] (Auth: RCH §6-1403, ROH §1-9.1) (Imp: ROH §10-1.3)



**§19-25-5 Permit Application.** (a) An applicant requesting a permit to conduct a shore water event shall submit an application to the department at least sixty days prior to the date of the shore water event but no earlier than one year prior to the date of the shore water event.

(b) All permit applications shall set forth the name of the applicant, nature of proposed shore water event, requested park, requested dates and time of the shore water event, requested number of competition days, requested contest dates, number of competitors, event format, number of days to setup and remove equipment and facilities, an estimate of the numbers of participants and spectators, a statement of equipment or facilities to be used, including site plan, proposed fees including entry fees, applicable federal, state identification numbers and any other information as may be requested by the department. Applicants for surf events requesting to be calendared on the north or south shore calendars will be required to provide additional detailed information that shall be used to rank applicants' proposed events to determine permit eligibility and awards, as described in §19-25-13.

(c) An applicant requesting a permit to conduct a surf event on the north shore shall submit an application by the deadlines set forth in §19-25-6.

(d) No permit to conduct a surf event on the north shore shall be issued for the period from June 1<sup>st</sup> through August 31<sup>st</sup>.

(e) An applicant requesting a permit to conduct a single surf event or multiple surf events to be scheduled on the triennial north shore calendar, including the 2025-2027 triennial north shore calendars shall submit separate applications and separate application supplements for each event requested for each north shore season. For example, an applicant desiring a single event only during January 1 through May 31, 2025, shall submit one application and application supplement. An applicant

requesting permits to conduct one surf event in multiple years of the Triennial calendar, one event in January 1 through May 31, 2025 and one surf event in September 1, 2025 through May 31, 2026 shall submit two permit applications and two application supplements specifying the requested park, dates and time.

(f) An applicant requesting a permit to conduct a surfing event on the south shore shall submit an application by the deadlines set forth in §19-25-7.

(g) No permit to conduct a surfing event on the south shore shall be issued for the period from October 1<sup>st</sup> through April 30<sup>th</sup>, unless allowed under §19-25-12(b).

(h) An applicant requesting a permit to conduct a single surfing event or multiple surfing events to be scheduled on an annual south shore calendar, shall submit separate applications and separate application supplements for each south shore season. For example, an applicant desiring a permit for a single surfing event only during 2024, shall submit one application and application supplement. An applicant requesting permits to conduct multiple surfing events in 2024 shall submit a permit application and application supplement specifying the requested park, dates and time, for each surfing event.

(i) The department may reject any application that contains false information, that is incomplete or is not received by the department by the close of business on the filing deadline.

(j) The department may require an applicant to provide additional information that may be considered in resolving conflicts in the selection process.

(k) The department may issue a permit, without unreasonable delay and provided that an application is submitted with reasonable timeliness and applicant has met all permit application requirements, unless;

- (1) The requested park has been reserved for city or department sponsored activity;
- (2) A prior application for a permit for the same time and place has been made that has been or will be granted;

- (3) Issuance of a permit will result in a violation of city, state or federal rules, regulations or ordinances;
  - (4) It reasonably appears that based upon the information provided that the shore water event will present a clear and present danger to the public health or safety;
  - (5) The shore water event is of such nature or duration that it cannot reasonably be accommodated in the particular location applied for, considering factors such as probable damage to the park's resources or facilities, interference with program activities, or impairment of the operation of the public use facilities or services of city concessionaires or contractors;
  - (6) Applicant fails to pay required fees or deposits, or if a payment made by check is returned unpaid;
  - (7) The application is subject to the ranking process described in §19-25-13;
  - (8) A state of emergency is declared by the State or City authorities;
  - (9) Natural or civil disturbances occur or threaten to occur, including but not limited to, tsunamis, floods, earthquakes, storms, riots, demonstrations, and employee strikes;
  - (10) Permittee violates or has previously violated permit conditions or provisions of this chapter within a year of a permit application.
  - (11) Applicant knowingly gives false, fictitious or fraudulent statements or representations made on the permit application.
  - (12) The park is closed or will be closed because of damage, or because of scheduled or ongoing construction, repair or maintenance activities.
- (1) If a permit is denied, the applicant shall be informed in writing, with the reasons for the denial set forth. [Eff \_\_\_\_\_] (Auth: RCH §6-1403, ROH §1-9.10) (Imp: ROH §10-1.3)

**§19-25-6 Permit application deadline for surf events held on the north shore.** (a) Surf events scheduled on the 2025-2027 triennial north shore surf calendar shall be scheduled for the period from January 1, 2025 through May 31, 2027. Starting from September 1, 2027-2030, permits to conduct surf events on the north shore shall be issued on a triennial three-year cycle running from September 1<sup>st</sup> of the first year and ending on May 31<sup>st</sup> of the last year. For example, for the 2027-2030 triennial north shore surf calendar, the first cycle will be from September 1, 2027 through May 31, 2028, the second cycle will be from September 1, 2028 through May 31, 2029, and the third cycle will be from September 1, 2029 through May 31, 2030.

(b) Applications for permits to conduct surf events on the north shore shall be submitted to the department on or before the last business day in the month of September of the year preceding the start of triennial north shore calendars except for the 2025-2027 triennial north shore surf. For example, an applicant desiring permits to conduct surf events during the 2027-2030 triennial north shore calendar must submit applications no later than the last business day in September, 2026. Applicants desiring permits to conduct surf events during the 2030-2033 triennial north shore calendar must submit applications no later than the last business day in September, 2029.

(c) For the 2025-2027 triennial north shore surf calendar years, starting on January 1, 2025 and ending on May 31, 2027, applications are due on the last business day in January 2024.

(d) The director may, in the director's discretion, extend the application deadline, if the extension is consistent with the purposes of these rules and in the public interest. [Eff  
] (Auth: RCH §6-1403, ROH §1-9.10) (Imp: ROH §10-1.3)

**§19-25-7 Permit application deadline for surfing events held on the south shore.** (a) Starting in 2026, permits to conduct surfing events on the south shore shall be issued on a one-year cycle.

(b) An application for a permit to conduct a surfing event on the south shore shall be submitted to the department on or before the last business day in the month of May of the year preceding the start of annual south shore calendar. For example, an applicant desiring a permit to conduct a surfing event during 2026 must submit an application no later than the last business day in May, 2025. An applicant desiring a permit to conduct a surfing event during 2027, must submit an application no later than the last business day in May, 2026.

(c) The director may, in the director's discretion, extend the application deadline, if the extension is consistent with the purposes of these rules and in the public interest. [Eff ]  
(Auth: RCH §6-1403, ROH §1-9.10) (Imp: ROH §10-1.3)

**§19-25-8 Permit conditions.** (a) A park permit is permission for the applicant to use the park land to stage and conduct the permitted event. Applicants are required to obtain a separate marine event permit issued by the state division of boating and ocean recreation, in order to utilize the ocean and shore area abutting the park under the jurisdiction of the department of land and natural resources. A city permit authorizing an applicant to conduct a shore water event in a park or to use a park in conjunction with a shore water event held in State shore waters does not authorize the applicant to utilize the ocean and shore area under jurisdiction of the department of land and natural resources.

(b) Permittee shall present to the department, no later than three weeks before the event starts, a certificate of comprehensive general liability insurance in which the combined limit of liability for bodily injury and property damage is two million dollars per occurrence. Such policy or policies shall

be placed with a company with an A.M. Best rating of A, Class 7, or better. The insurance certificate shall name the city and county of Honolulu, its directors, officers and employees, the State, its officers and employees, as additional insured, and a copy of the certificate of insurance shall be filed with the parks permit section. Said coverage to commence from the first day that equipment is set up on the park for the event to the last day of the event or the last day the equipment is removed from the park, whichever is the later. All policies and coverages required by this section are subject to the approval by the city risk manager as to content and form. If at any time in the judgment of the city risk manager said policies and/or coverages are not sufficient for any cause or reason, the city risk manager may require the permittee to replace said policies and/or coverages within five days with other policies and/or coverages acceptable to the city risk manager in accordance with this section. If said permittee fails to replace said policies within said period, the permit issued or to be issued shall be, by such failure, automatically suspended until such time said requirement is complied with, and the director or director's designated representative is hereby authorized to halt the activities of the permittee and enforce such suspension after receiving written notice from the city risk manager that said policies and/or coverage have not been replaced with good and sufficient policies and/or coverage.

(c) Permittee shall pay to the department prior to issuance of a permit for an amateur shore water event a \$500 deposit for clean-up and restoration of damages and a deposit of \$2,500 for professional shore water event and pro-am shore water event. An additional \$500 deposit shall be required of any permittee who obtains approval from the department to drive or park vehicles on the grass at the park site. Any damage to utilities, including sprinklers, water and electrical lines, facilities and grounds shall be repaired by a licensed contractor, retained by the permittee, immediately and to the satisfaction of the

department. Should clean-up and repair be deemed unsatisfactory by the department, the department shall clean-up and repair any damage to the park caused by the event or the permittee and use the deposit as full or partial payment for the clean-up and repair costs incurred by the department. If clean-up or restoration of damages is not satisfactory as determined by the director, or if clean-up and repair costs exceed the amount of the deposit, permittee shall be responsible for any costs incurred by the department exceeding the deposit.

(d) Permittee shall be required to provide portable toilets at locations or where existing restrooms are not operational or determined inadequate by the department to cover the estimated number of participants and spectators of the shore water event. Where public restrooms are not available, permittee shall be required to provide a minimum of one portable toilet for every 500 spectators. Where public restrooms are available, permittee shall provide a minimum of one portable toilet for every 1,000 spectators if it is determined by the department that the public restrooms are inadequate for the estimated number of participants and spectators. Permittee shall provide at least one ADA accessible portable toilet, with a minimum ratio of one ADA accessible portable toilet for every inaccessible portable toilet, at its own expense. The department has the authority to require more portable toilets or ADA accessible portable toilets than the minimum or the number of toilets the applicant listed on its application.

(e) Permittee shall service the portable toilets and public restrooms before the start of the shore water event and shall maintain the portable toilets and public restrooms in a clean and sanitary condition throughout the event, including pumping portable toilets to remove accumulated waste when the toilets are close to capacity. Portable toilets shall be serviced and remain open on each competition day. The portable toilets can be locked and remain locked until the start of the competition day. Permittee shall

insure that the portable toilets are accessible to the service contractor and that access to the portable toilets is not blocked by park users, vehicles or equipment. Permittee, at its own expense, shall provide supplemental custodial services as determined necessary by the department for park facilities and comfort stations to ensure garbage is collected and disposed of as to prevent littering of park beaches and the ocean.

(f) Permittee shall provide special duty police officers as determined necessary by the department for traffic, parking, security and crowd control in consultation with the Honolulu police department.

(g) Permittee shall be responsible to provide security using a bona fide security company or special duty police officers for all materials, supplies, equipment, and personal property stored on park property during the event. Permittee assumes full responsibility for the risk of property damage or loss which may arise from, or is in any way connected with the storage of permittee's property on the park property or the shore water event.

(h) Permittee shall be responsible for monitoring and controlling noise levels generated by the event, loudspeaker system and other equipment in order to comply with HRS Chapter 342F and ROH Section 10-1.2(b)(8), as amended. Violation of this provision shall automatically null and void the permit.

(i) Permittee shall not transfer, assign, or sell any or all rights granted by the permit or grant the use of any or all of the permit period to a third party or relinquish possession or use of the whole or any parts of the park granted to permittee under the permit. Any transfer, assignment, sale, grant or relinquishment of the permit shall automatically null and void the permit.

(j) Commercial announcements over the public address systems shall be limited to recognition of sponsors.

(k) Announcements over the public address systems and music shall not be in excess of 80 dBA sound pressure level, as established by ROH section



10-1.2(b) (8), as amended.

(l) The permit may contain such conditions as are reasonably consistent with the protection and use of the park for the purposes for which the park is managed. It may also contain reasonable limitations on equipment to be used and the time and area within which the event is allowed, and may require the permittee to provide additional portable toilet facilities, restroom maintenance, pumping of portable toilets as well as park restroom toilets, parking attendants, trash collection, and police security.

(m) Permittee shall comply with all applicable laws, rules, and regulations of the federal, state, and county governments. Issuance of a permit is not a grant of any other approvals that may be required of the permittee for the permitted activity, nor does a permit exempt the permittee or the permitted activity from any applicable laws, rules, ordinances, and regulations of any federal, state, or county government.

(n) The director may, in the director's discretion, waive any provision of this chapter, if the waiver is consistent with the purposes of this chapter and in the public interest. [Eff  
] (Auth: ROH §1-9.1) (Imp: ROH §10-1.3)

**§19-25-9 Revocation of permit.** (a) A permit may be revoked under any of the conditions listed in Section 19-25-5(k) that constitute grounds for the denial of a permit. Such revocation shall be in writing, with the reasons for revocation clearly set forth, except under emergency circumstances, when an immediate verbal revocation or suspension of the permit may be made, to be followed by written confirmation within seventy-two hours.

(b) A permit may be revoked in the event the department determines that the permitted park is unavailable due to public safety concerns resulting from severe shore water erosion.

(c) Violation of the terms and conditions of a permit issued in accordance with these rules and

regulations shall result in revocation of the permit and permittee shall be ineligible to apply for any shore water permit for a minimum of one calendar year following revocation and other penalties provided in ROH sections 10-1.3(c) and 10-1.6, as amended. [Eff ] (Auth: RCH §6-1403, ROH §1-9.1) (Imp: ROH §10-1.3)

**§19-25-10 Regulations governing shore water events.** (a) Posting of any signage, banners, posters, brochures, or advertising shall be subject to prior approval of the director.

(b) Permittee, at its own expense, shall pick up, bag and remove from the park at the end of each day all rubbish, or the permittee shall provide an on-site dumpster for the purpose of daily rubbish collection. The filled dumpster(s) shall be emptied daily as needed, and removed no later than 12:00 noon of the first working day after the end of the shore water event.

(c) Equipment, including spectator bleachers, judges' stand, or platforms may be allowed subject to the prior approval of the department and provided that permittee provides twenty-four hour security for the equipment.

(d) All materials, supplies, equipment and personal property shall be removed from the park no later than three days after the end of the shore water event or three days after the final competition day, whichever is sooner.

(e) Permittee may not enter into any agreement with any for-profit organization except as otherwise provided herein to be on the park property during the shore water event.

(f) Subject to prior department approval, permittee may arrange for a commercial food caterer or lunch wagon to provide prepaid food to the shore water event participants. Authorization is to be noted on the park use permit.

(g) Food and refreshments shall be served to only event participants and not to other park users or event spectators. There shall be no exchanging of

monies on park property.

- (1) Liability insurance coverage, including products liability, is to be provided by the commercial food caterer or lunch wagon in the following minimum amounts: two million dollars per occurrence for bodily injury and property damage.
- (2) The certificate of insurance shall name the city and county of Honolulu and the State of Hawaii and their officers and employees as additional insured.
- (h) Fundraising shore water events, for the purpose of raising funds, including the exchange of monies on park property that are sponsored by community organizations, associations, groups or individuals, including nonprofit fundraising activities, are allowed if it is accessory and subordinate to the primary recreational, permitted use. Authorization is to be noted on the park use permit.
  - (1) If authorized by law, commercial food caterers, lunch wagons, and commercial vendors are allowed to operate only by prior arrangement with the non-profit organization conducting the fundraiser.
  - (2) The non-profit organization shall obtain authorization from the parks permit office to operate a temporary concession.
  - (3) Liability insurance coverage, including products liability shall be provided by both the non-profit organization and the commercial food caterer or lunch wagon in the following amounts: two million dollars per occurrence for bodily injury and property damage. The certificate of insurance shall name the city and county of Honolulu and the State of Hawaii and their officers and employees as additional insured.
  - (4) In a park, where a food concession is operated under contract with the city, the non-profit organization shall obtain written

permission from the food concessionaire to sell food and refreshments in that park. The written permission shall be presented to the parks permit office prior to obtaining a temporary concessions permit.

- (5) The permittee shall provide a copy of a State department of health temporary food concession permit for each caterer and/or a lunch wagon State health certificate to the parks permit office.

- (i) Temporary structures over 2,100 square feet in size require a permit from the Honolulu fire department. Applicant is responsible to obtain all applicable permits. Applicant shall obtain the requisite agency and department approvals. No park permit shall be issued until the department receives a copy of the temporary building permit and Honolulu fire department permit. [Eff ] (Auth: RCH §6-1403, ROH §1-9.1) (Imp: ROH §10-1.3)

**§19-25-11 Regulations governing surf events held on the north shore.**

(a) Permits to use a park for a surf event on the north shore are limited by date, number of events, time of events and to specific beaches, to ensure recreational surfers have opportunity to surf these limited surf breaks during the prime surf season.

(b) Use of a park for a surf event to be held on the north shore is permitted only during the period from September 1<sup>st</sup> through May 31<sup>st</sup>. No permit will be issued for use of a park on the north shore for a surf event from June 1<sup>st</sup> through August 31<sup>st</sup>.

(c) All surf events held on the north shore must be scheduled on the triennial north shore calendar or on the 2025-2027 triennial north shore surf calendar before a park use permit may be issued.

(d) A surf event shall be permitted only at Haleiwa Ali'i Beach Park, Waimea Bay Beach Park, Ehukai Beach Park, Sunset Beach Park and other north shore parks as approved by the director.

(e) The department shall establish a triennial

north shore calendar for surf events no later than on the last business day of January of the same year when the triennial north shore calendar is being established. For example, for the 2027-2030 triennial north shore calendar, the calendar will be established by January 29, 2027. For the 2025-2027 triennial north shore surf calendar, the department shall establish the 2025-2027 triennial north shore surf calendar by the last business day on May 31, 2024.

(f) The total number of competition days for surf events permitted on the north shore during each north shore calendar period shall not exceed sixty-four, provided that no more than sixteen competition days may be scheduled at each beach park. For the 2025-2027 triennial north shore surf calendar, the total number of competition days for surf events scheduled during the period from January through May 2025 shall not exceed thirty-two, provided that no more than twelve competition days may be scheduled at each beach park. For the remainder of the 2025-2027 triennial north shore, the total number of competition days for surf events shall not exceed sixty-four, provided that no more than sixteen competition days may be scheduled at each beach park

(g) At each park there shall be a ten-day cooling off period, with the exception of a big wave event.

(h) Except for a big wave event or as authorized by the director, no surf event shall be permitted a waiting period of more than fifteen days.

(i) Scheduling of overlapping waiting periods is prohibited. However, the director may approve up to one big wave event, in addition to the Eddie, one or both may have a waiting period of up to a maximum of ninety days which may overlap the waiting periods of other surf events. In the event a second big wave event is approved, the two big wave events may have waiting periods that have consecutive days without a cooling off period in-between. On leap years, the waiting period may be up to a maximum of ninety-one days.

(j) The Eddie shall be given priority as a big

wave event, provided the applicant meets the community impact mitigation criteria and submits a complete application. The director may authorize no more than one additional big wave event, for the purpose of meeting the diversity criteria and supporting the growth of big wave surfers previously not included in such events due to their gender.

(k) Two big wave events shall not be held on two consecutive weekends. They may be held on two consecutive days.

(l) No surf event shall be permitted more than four competition days, however, the director may, in the director's discretion and if consistent with the purposes of this chapter and in the public's interest, permit a surf event five competition days if the maximum number of competition days scheduled at the requested park has not been awarded.

(m) Scheduling of two or more surf events on the same day is prohibited. However, the director may approve a big wave event to occur on the same day as another permitted surf event.

(n) No surf event shall start before 8:00 a.m. All surf events shall be completed before 4:30 p.m.

(o) A competition day shall consist of eight hours of competition. The director may, in the director's discretion, grant an extension of up to a maximum of thirty minutes to a competition day if the extension facilitates completion of a heat. Any extension granted shall be added to the total competition hours for the event. No extension will be granted if the cumulative total competition hours for the event is increased.

(p) The maximum period of time a surf event shall be permitted is as follows:

- (1) A surf event awarded one day may include a portion of two calendar days not to exceed a cumulative total of eight hours to complete the event.
- (2) A surf event awarded two days may use a maximum of three calendar days not to exceed a cumulative total of sixteen hours to complete the event.

- (3) A surf event awarded three days may use a maximum of five calendar days not to exceed a cumulative total of twenty-four hours to complete the event.
- (4) A surf event awarded four days may use a maximum of six calendar days not to exceed a cumulative total of thirty-two hours to complete the event.
- (q) Except for a big wave event, a surf event shall not be held on any of the following dates:
  - (1) Labor Day - The first Monday in September.
  - (2) General Election Day - In even-numbered years, the first Tuesday after the first Monday in November.
  - (3) Veterans' Day - The eleventh day in November.
  - (4) Thanksgiving Day - The fourth Thursday in November.
  - (5) Christmas Day - The twenty-fifth day in December.
  - (6) New Year's Day - The first day in January.
  - (7) Dr. Martin Luther King, Jr. Day - The third Monday in January.
  - (8) Presidents' Day - The third Monday in February.
  - (9) Prince Jonah Kuhio Kalaniana'ole Day - The twenty-sixth day in March.
  - (10) Good Friday - The Friday preceding Easter Sunday.
  - (11) Memorial Day - The last Monday in May.
- (r) Dates listed in §19-25-11(q) on which surf events are not permitted shall not be counted as part of the waiting period.
- (s) Expression sessions and exhibitions shall not be considered in the ranking process, but each day an expression session or exhibition is held shall count as a competition day.
- (t) Permittees of a north shore event are subject to having no more than two waiting period days cancelled due to a big wave event.
- (u) The permittee of the big wave event must notify the department of the date selected to conduct

the permitted big wave event. The department shall contact the permittee awarded the permit for a surf event during the same period, if any, and notify the permittee that the big wave event will be conducted during the permittee's event period. The department director may allow both the big wave event and the surf event to run on the same day.

(v) After completion of the shore water event, each permittee shall submit an after-event action report to the department, no later than one month after the event, which will be evaluated and published on the department's website. Failure to submit an after-event action report will affect future applications by the permittee when the applications are being reviewed and ranked, which is detailed in §19-25-13(h).

(w) The director may, in the director's discretion, waive any provision of this chapter, if the waiver is consistent with the purposes of this chapter and in the public interest. [Eff  
] (Auth: RCH §6-1403, ROH §1-9.1) (Imp: ROH §10-1.3)

**§19-25-12 Regulations governing surfing events held on the south shore.** (a) Use of a park for a surfing event to be held on the south shore is permitted only during the period from May 1<sup>st</sup> through September 30<sup>th</sup>. No permit will be issued for use of a park on the south shore for a surfing event from October 1<sup>st</sup> through April 30<sup>th</sup>, unless allowed under §19-25-12(b).

(b) Permits may be obtained only for organized youth sports for students ages pre-school through high school, and educational events that are for students ages pre-school through high school and conducted or offered by educational institutions recognized by the State of Hawaii department of education from October 1<sup>st</sup> through April 30<sup>th</sup>.

(c) All surfing events held on the south shore must be scheduled on the annual south shore calendar before a park use permit is issued.

(d) A south shore surfing event shall be



permitted only at Kuhio Beach Park, Queen's Beach Park, Kewalo Basin Park and Ala Moana Regional Park and other south shore parks as approved by the director.

(e) The department shall establish an annual south shore calendar for surfing events no later than on the last business day of September of the year preceding the start of the annual south shore calendar being established.

(f) At each park there shall be a ten-day cooling off period between surfing events.

(g) No surfing event shall be permitted a waiting period of more than fifteen days.

(h) No more than two surfing events can have overlapping waiting periods at two separate parks listed in §19-25-12(c).

(i) No surfing event shall be permitted more than four competition days, except for the Duke's oceanfest watersport festival.

(j) A maximum of two surfing events can run at the same time as long as it is not at the same park listed in §19-25-12(c).

(k) The maximum period of time a surf event shall be permitted is as follows:

(1) A surf event awarded one day may include a portion of two calendar days not to exceed a cumulative total of eight hours to complete the event.

(2) A surf event awarded two days may use a maximum of three calendar days not to exceed a cumulative total of sixteen hours to complete the event.

(3) A surf event awarded three days may use a maximum of five calendar days not to exceed a cumulative total of twenty-four hours to complete the event.

(4) A surf event awarded four days may use a maximum of six calendar days not to exceed a cumulative total of thirty-two hours to complete the event.

(1) For scheduling on the south shore calendar, scheduling of the Duke's oceanfest watersport festival

shall be given priority over other applicants requesting permits to conduct surfing events on the south shore, provided the applicants meet the community impact mitigation criteria and file a complete application.

(m) No surfing event shall start before 8:00 a.m. All surfing events shall be completed before 4:30 p.m.

(n) A surfing event shall not be held on any of the following dates:

- (1) Memorial Day - The last Monday in May.
- (2) King Kamehameha Day - The eleventh day in June.
- (3) Fourth of July - The fourth day in July
- (4) Admission Day - The third Friday in August
- (5) Labor Day - The first Monday in September.

(o) Dates listed in §19-25-12(1) on which surfing events are not permitted shall not be counted as part of the waiting period.

(p) Expression sessions and exhibitions shall not be considered in the ranking process, but each day an expression session or exhibition is held shall count as a competition day.

(q) After the surfing event, an after-event action report must be submitted to the department by the permittee, no later than one month after the event, which will be evaluated and published on the department's website. Failure to submit an after-event action report will affect future applications by the permittee when the applications are being reviewed and ranked, which is detailed in §19-24-13(h).

(r) The director may, in the director's discretion, waive any provision of this chapter, if the waiver is consistent with the purposes of this chapter and in the public interest. [Eff  
] (Auth: RCH §6-1403, ROH §1-9.1) (Imp: ROH §10-1.3)

**§19-25-13 System for ranking applications for north shore and south shore calendars.** (a) The Mayor may appoint an advisory committee to assist the department in resolving scheduling conflicts by

providing comments concerning the various applicants and information concerning surf contests. A person may not serve on the committee if the person is applying for a park permit to conduct a surf event in a public park. Should any member of the committee have a conflict of interest, the member shall recuse themselves from the process. If an advisory committee is established, the department shall provide the advisory committee with copies of the submitted applications. The advisory committee may provide comments concerning the ranking process as applied to the various applicants.

(b) The submitted applications shall be evaluated by a panel of three department employees who are designated by the director.

(c) The department shall apply the ranking system set forth in this section when it receives a permit application requesting a date(s) at the designated beach parks.

(d) Applications shall be ranked based on mitigating impacts to the community and the diversity of proposed event utilizing four criteria of diversity: diversity of event type; diversity of age range of event participants; diversity of professional, amateur and pro-am events; and, diversity of gender of participants. Applications shall include details on how the planned events incorporate these criteria in order to be eligible to receive points for this portion of the ranking.

(1) Diversity of primary event. The city desires to provide a surf calendar that includes a spectrum of types of surf events. Surf calendars are historically dominated by surfing events. Additional points shall be awarded to applications for events that include bodyboarding, bodysurfing or stand up paddle surfing exclusively or in addition to surfing, in order to promote a diversity in the type of event on this limited calendar.

(2) Diversity of age range of event

participants. The city desires to provide opportunities to young, emerging surfers and kupuna. Surf calendars are historically dominated by surf events for adults in their prime athletic years. Additional points shall be awarded to applications for events that include an array of age ranges for participants or are open exclusively to minor youth and/or adults over the age of 60, in order to promote a diversity of age of athletes competing in events on this limited calendar.

- (3) Diversity of professional and amateur events. The city desires to provide opportunities for amateur athletes. Surf calendars are historically dominated by professional surf events. Additional points shall be awarded to applications for events that include amateur surfers or are open exclusively for amateur surfers, in order to promote a diversity of category of athletes competing in events on this limited calendar.

- (4) Diversity of gender. The city desires to provide equal opportunities to surfers of all genders. Surf calendars are historically dominated by events for male surfers, or by events with nominal inclusion of female athletes. Additional points shall be awarded to applications for events that provide female athletes equitable opportunity, in order to promote a diversity of genders competing in events on this limited calendar. Non-binary and transgender athletes should be categorized as their self-identified gender for purposes of these administrative rules.

- (e) For the ranking system, each panel member shall complete a ranking criteria rating sheet for

each application using the following methodology:

- (1) Each application shall be scored on eight criteria divided into two categories.
- (2) The criteria and associated categories shall be as follows:

(A) Mitigating impacts to the community - Plans submitted as part of application will be evaluated on whether and how the plans address compliance with the following permit requirements:

- (i) Traffic and parking
- (ii) Crowd control
- (iii) Local resident and government services access
- (iv) Cleaning park restrooms and grounds, such as litter removal

Each of the above criteria shall be assigned a score:

- (i) Three points indicates the response exceeded the requirements.
- (ii) Two points indicates the response met the requirements.
- (iii) One point indicates the response partially met the requirements.
- (iv) Zero points indicates the response did not meet the requirements.

The scores for this category shall be equally weighted so that the total score for this category comprises 50 percent of the final score.

(B) Diversity of event - Plans submitted as part of the application will be evaluated on whether and how the plans incorporate the diversity objectives of the regulations governing surf events on the north and south shore calendars for the following criteria:

- (i) Diversity in the primary event, which may include the following, but not limited to:

- (a) Surfing
- (b) Standup paddle surfing
- (c) Bodyboarding
- (d) Bodysurfing
- (ii) Age range(s) of participants
- (iii) Whether event is professional, amateur, or pro-am
- (iv) Gender(s) of participants.

For the evaluation of event diversity, each of the four criteria shall be eligible to receive up to three points.

- (i) Three points shall be awarded for an event that is exclusively devoted to an underrepresented group.
- (ii) Two points shall be awarded to an event that provides equitable opportunity to an underrepresented group.  
Equitable opportunity shall mean an event that provides two out of the three of the following: equal numbers of contestants, equal numbers of heats, or equal prize money designated for both the historically represented and underrepresented group.
- (iii) One point shall be awarded to an event that provides some, but less than equitable, opportunity to an underrepresented group.
- (iv) Zero points shall be awarded to an event that does not provide designated opportunity to an underrepresented group.

Points shall be ranked for each of the four criteria and then added to obtain a final score for the diversity category. Applications can obtain a maximum of 12 points. For example, an

application proposing an amateur event for youth under age 18 with an equal number of female and male competitors with an equal number of heats would receive 8 points for diversity - age (3), amateur (3) and gender (2). The scores for this category shall be equally weighted so that the total score for this category comprises 50 percent of the final score.

(f) Applicants will be divided into two groups for surf events on the north shore. Each applicant within the group will be evaluated against each other. One group will be the applicants for a big wave event and the other group will be for all other surf events.

(g) Applicants will be divided into two groups for surfing events on the south shore. Each applicant within the group will be evaluated against each other. One group will be the applicants for the Duke's oceanfest watersports festival and the other group will be for all other surfing events.

(h) The following points will automatically be deducted from an applicant's score when the applicant submits an application for the next north shore or south shore calendar year if the applicant does not comply with the after-event action report filing requirements:

- (1) Five points will automatically be deducted when an applicant fails to submit an after-event action report for a previous event within 60 days after completion of the event, fails to submit a report, or submits a report which indicates that the event conducted was not consistent with the information provided in the application. For example, if a north shore triennial calendar applicant failed to submit an after-event action report in year 2 of the current triennial north shore calendar, five points will automatically be deducted when the applicant submits an application for year one in the following triennial north

shore calendar.

- (2) Four points will automatically be deducted when an applicant submits an application for the next north shore or south shore calendar year if the applicant submitted its after-event report for a previous event 30-60 days after completion of the event.

- (i) After each application has been scored, the department shall prepare a draft triennial north shore calendar or draft 2025-2027 triennial north shore calendar or draft annual south shore calendar. The dates and park site requested by the application receiving the highest total score shall be scheduled first on the draft calendar. The dates and park site requested by the applicant receiving the second highest score shall be scheduled on the draft calendar and so on until all requests have been calendared or the maximum number of events permitted at each park site has been calendared.

- (j) An application which requests a date and park site which has already been assigned on the draft calendar to another applicant shall be assigned the alternate dates and/or park sites on the draft calendar as requested in the application supplement. Applicants may request up to two alternate dates for each application.

- (k) The department may mediate resolution of the scheduling conflicts between applicants. If scheduling conflicts are resolved, each applicant whose requested dates have been changed shall submit an amended application. All amended applications for use of park facilities submitted as a result of the mediation will nullify the original permit application submitted by the applicant.

- (l) Late applications and incomplete applications submitted without required documentation shall not be considered in the ranking system.

- (m) At the conclusion of the ranking system the department shall notify all permit applicants in writing of their permit application status and the department shall post the final triennial north shore calendar, 2025-2027 triennial north shore calendar and



annual south shore calendar, as applicable on the internet website of the city.

(n) Once the calendar has been posted and all applicants notified, the triennial north shore calendar, 2025-2027 triennial north shore calendar and annual south shore calendar shall be considered final. Permits issued for events on the calendar may not be issued for a longer period than is scheduled on the calendar.

(o) In the event an application is withdrawn, denied, or revoked after the triennial north shore calendar, 2025-2027 triennial north shore calendar and annual south shore calendar are finalized, the resulting vacancy on the applicable calendar may be filled by another event's application for the same shore at the discretion of the department. [Eff ] (Auth: RCH §6-1403 ROH §1-9.1) (Imp: ROH §10-1.3)

**§19-25-14 Indemnification.** Prior to issuance of a permit, an applicant who has been awarded a permit for a north shore or south shore professional or program shore water event shall submit to the department a signed indemnification agreement provided by the department acknowledging that permittee assumes all risks of personal injury or wrongful death and loss or damage to property by whomsoever owned, arising out of or in connection with permittee's use of the public facilities under such permit; and agrees to indemnify, hold harmless and defend the city and county of Honolulu against any claim, cause of action, liability, loss, damage, cost or expense for bodily injury, wrongful death, or property damage, arising or resulting from permittee, its agents, employees, contractors or invitees use of the public facilities under such permit, as well as any breach of regulations or ordinances, except where such injury, death or property damage is caused by the willful act or gross negligence of the city. [Eff ] (Auth: RCH §6-1403, ROH §1-9.1 (Imp: ROH §10-1.3)

**§19-25-15 Denial or revocation of a permit. (a)**

An application for a permit may be denied or a permit revoked by the director or the authorized representative when:

- (1) If applicant knowingly gives false, fictitious or fraudulent statements of representations made on the permit application;
- (2) The park is closed or will be closed because of damage, or because of scheduled or ongoing construction, repair or maintenance activities;
- (3) The requested park has been reserved for city or department sponsored activity;
- (4) Issuance of a permit will result in a violation of City, State or Federal laws, rules or ordinances;
- (5) A state of emergency is declared by the director or other proper authorities;
- (6) Natural or civil disturbances including, but not limited to tsunamis, floods, earthquakes, storms, riots, demonstrations and employee strikes, which may be occurring or threatening to occur;
- (7) The park is inadequate to meet the needs of the anticipated activity;
- (8) A prior application for a permit for the same time and place has been made that has been or will be granted;
- (9) It reasonably appears that based upon the information provided that the anticipated activity presents a clear and present danger to the public health or safety;
- (10) Applicant fails to pay required fees or if payment made by check is returned unpaid;
- (11) Applicant has previously violated permit conditions or provisions of this chapter within a year of a permit application; or
- (12) The shore water event is of such nature or duration that it cannot reasonably be accommodated in the particular location applied for, considering factors such as

probable damage to the park's resources or facilities, interference with program activities, or impairment of the operation of the public use facilities or services of city concessionaires or contractors.

(b) If a permit is denied or revoked, the applicant shall be informed in writing of the reasons for denial or revocation, except under emergency circumstances, when an immediate verbal revocation or suspension of the permit may be made, to be followed by written confirmation within seventy-two hours.

(c) If a permit is revoked, the permittee shall be ineligible to apply for a shore water event for a minimum of one calendar year following revocation and be subject to other penalties as set forth in this chapter.

(d) Any person aggrieved by a decision of the director to revoke a permit shall be entitled to have the decision reviewed by the managing director; provided, that the request for review is submitted in writing to the managing director within five calendar days after notification of the decision made by the director. If the managing director finds that the director's action was based on an erroneous finding of a material fact or that the director had acted in an arbitrary or capricious manner or had manifestly abused the director's discretion, the managing director shall modify or reverse the decision of the director; otherwise, the managing director shall affirm the decision of the director. [Eff  
] (Auth: RCH §6-1403, ROH §1-9.1) (Imp: ROH §§10-1.2, 10-1.3)

**§19-25-16 Violation.** Any person violating any provision of these rules shall be subject to the penalties provided in ROH sections 10-1.3(c) and 10-1.6, as amended. [Eff  
] (Auth: RCH §4-105; ROH §1-9.1) (Imp: ROH §§10-1.2, 10-1.3)

**§19-25-17 Severability.** If any chapter,

section, subsection, sentence, clause, phrase, or portion of these rules is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof. [Eff \_\_\_\_\_] (Auth: RCH §4-105, RCH §1-9.1)

DRAFT

DEPARTMENT OF PARKS AND RECREATION

The repeal of chapter 19-4 and the adoption of chapter 19-25, City and County of Honolulu Administrative Rules, on the Summary Page dated \_\_\_\_\_ were adopted on \_\_\_\_\_, following a public hearing held on \_\_\_\_\_, after public notice was given in the Honolulu Star-Advertiser on \_\_\_\_\_.

This chapter shall take effect ten (10) days after filing with the Office of the City Clerk.

DEPARTMENT OF PARKS AND RECREATION  
CITY AND COUNTY OF HONOLULU

\_\_\_\_\_  
Laura H. Thielen, Director

APPROVED AS TO  
FORM AND LEGALITY:

\_\_\_\_\_  
Deputy Corporation Counsel

APPROVED this \_\_\_\_\_ day of  
\_\_\_\_\_, 2023.

\_\_\_\_\_  
Rick Blangiardi, Mayor  
City and County of Honolulu

CERTIFICATION

I, LAURA H. THIELEN, in my capacity as Director of the Department of Parks and Recreation, City and County of Honolulu, do hereby certify that the foregoing is a full, true and correct copy of Title 19, Chapter 25, City and County of Honolulu Administrative Rules, entitled " Rules and Regulations Governing Shore Water Events", which were adopted on \_\_\_\_\_, 2023 following a Public Hearing held on \_\_\_\_\_, 2023, after public notice was given on \_\_\_\_\_, 2023, in the Honolulu Star-Advertiser.

\_\_\_\_\_  
LAURA H. THIELEN  
Director

Received this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
City Clerk

## **IV. NEW BUSINESS**

- B. Discussion and Action on the Proposed Amendments to HAR Title 12 Chapter 46, **Civil Rights Commission**, promulgated by Department of Labor and Industrial Relations Civil Rights Commission

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

Date: 7/10/2023

Department or Agency: Dep't of Labor and Industrial Relations- Civil Rights Commission

Administrative Rule Title and Chapter: HAR Chapter 12, Subchapter 46

Chapter Name: Department of Labor and Industrial Relations - Civil Rights Commission

Contact Person/Title: Robin Wurtzel, Chief Counsel

E-mail: robin.wurtzel@hawaii.gov Phone: 586-8642 Direct line

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," provide details: \_\_\_\_\_

**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.)

\*

\*

\*



**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.

Small businesses employing 1 or more person(s) must comply with non-discrimination statutes and rules in regards to the changes of the definition of employment.

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.

This would not incur any direct impact of costs associated with adherence and compliance to these changes in the amendments.

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.

N/A

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

N/A

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

N/A

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

N/A

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.

N/A

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.

The amendments make the HCRC's rules consistent with similar rules enforced by the Department of Labor and Industrial Relations (DLIR). The proposed change in the definition of "employment" will be consistent with other DLIR divisions, such as Unemployment Insurance and the Disability Compensation Division, which includes Temporary Disability Income and Prepaid Health Care. See attachment.

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

HCRC thinks these amendments are for clarification. The amendment to the definition of "employment" in §12-46-1 is a less restrictive alternative to the current test promulgated by caselaw, which is currently used by Civil Rights Commission.

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.

The new proposed definition of "employment" result in the test for employment versus independent contractor being consistent with HRS §383-6 and other DLIR rules as explained in the attachment.

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

We contacted a number of agencies and groups working with employers and small business. Please see the list in the attachment.

- 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.

Some were incorporated, but not all. Please see the attachment.

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.

The proposed amendments to the rules do not include provisions that are more stringent than those mandated by any comparable federal, state or county standards.

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.

N/A

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

N/A

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

N/A

- 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.

N/A

- 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.

N/A

\* \* \*

Small Business Regulatory Review Board / DBEDT

Phone: (808) 586-2594 / Email: [DBEDT.sbrrb.info@hawaii.gov](mailto:DBEDT.sbrrb.info@hawaii.gov)

This Statement may be found on the SBRRB Website at: <http://dbedt.hawaii.gov/sbrrb/resources/small-business-impact-statements>

**Attachment to Pre-Public hearing Small Business Impact Statement to the Small Business Regulatory Review Board, for July, 2023 meeting, from Hawai'i Civil Rights Commission.**

**A. General Topic**

The rules implement the states enforcement by the Hawaii Civil Rights Commission which prohibit discrimination in employment, housing, public accommodations and State and State funded services

**Summary of amendments.**

The following is a summary of the proposed amendments. The actual draft of the proposed rule amendments in Ramseyer format is attached as Exhibit 1.

1. **§12-46-1 Definitions** - amends "ancestry" and "sex." Adds "arrest and court record," "conviction," "Domestic or sexual violence victim," "employment," "gender identity or expression" and "harassment."
2. **§12-46-5 Filing of complaint.** – allows scans in addition to facsimiles, and makes the language consistent with all areas of jurisdiction covered by HCRC
3. **§12-46-6 Contents of complaint.** – clarifies reference to complaint
4. **§12-46-6.1 Amendments.** – allows removal of parties and correction of names
5. **§12-46-11 Dismissal of complaint.** Allows e-mail
6. **§12-46-14 Notice of determination, conference, conciliation, and persuasion.** Adds requirement that ED must notify parties in housing cases of possible election
7. **§12-46-16 Compliance review and reports.** – delete "before case is closed" since compliance usually occurs after
8. **§12-46-21 Record keeping requirements.** Amend commission to executive director
9. **§12-46-27 Format and certification of pleadings.** Eliminates reference to "wet type"
10. **§12-46-28 Service.** allows service by email upon agreement of parties, during administrative hearing
11. **§12-46-31 Motions.** Allow declarations as well as affidavits
12. **§12-46-37– Decision, generally.** Clarifies definition of a final decision
13. **§1246-50 Proposed findings of fact and conclusions of law.** Allows hearing examiner to order proposed findings of fact and conclusions of law
14. **§12-46-101 General provisions.** Adds gender identity and expression and sexual orientation to the basis of sex
15. **§12-46-102 Bona fide occupational qualification.** clarifies language regarding sex.
16. **§12-46-103 Pre-employment practices.** clarifies language regarding sex.
17. **§12-46-105 Terms, conditions, and privileges of employment.** - clarifies language regarding sex.

18. **§12-45-106 Pregnancy, childbirth and related medical conditions; general policy** – see below
19. **§12-46-107 Hiring, retention, and accommodation of pregnant females.**
20. **§12-46-108 Leave due to pregnancy childbirth or related medical conditions.** Removes reference to disability in three rules, and amends language to remove gender and include conditions related to pregnancy
21. **§ 12-46-171 General policies.** Amend for clarification. Substitutes “or” instead of “and.”
22. **§12-46-174 Language.** The rule currently states that an English only policy can be based on an employer’s belief in its necessity. Eliminates “belief.”
23. **§12-46-181 General provision.** Technical amendment
24. **§12-46-182 Definitions.** Amend definition of “drug.”
25. **§12-46-187 Failure to make reasonable accommodation.** Adds reference to registered medical cannabis users with a disability.
26. **§12-46-302 Definitions.** Adds or amends definitions of “final order,” “harassment,” and “protected basis.”

The proposed definition of employment in HAR § 12-46-1 is amended to clarify whether a person is an employee or independent contractor. The proposed amendment is below, and is close to HRS § 383-6, which is used by Unemployment insurance (UI) to determine if an applicant is an employee for purposes of eligibility for UI.

"Employment" shall be as defined in section 378-1, HRS[-], and includes services performed by an individual for wages or under any contract of hire regardless of whether the common-law relationship of master and servant exists unless it is shown that:

(1) The individual has been and will continue to be free from control or direction over the performance of the service, both under the individual's contract of hire and in fact;

(2) The service is either outside the usual course of the business for which the service is performed or that the service is performed outside of all the places of business of the enterprise for which the service is performed; and

(3) The individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the contract of service.

Two other DLIR programs, Temporary Disability Income (TDI) and Prepaid Health Care (PHC), both with the Disability Compensation Division (DCD) have adopted the above definition, commonly called “the ABC test,” by rule.

The DCD definitions are as follows:

392-3: "Employment" and "employed" means service, including service in interstate commerce, performed for wages under any contract of hire, written or oral, express or implied, with an employer, except as otherwise provided in sections 392-4 and 392-5.

393-3: "Employment" means service, including service in interstate commerce, performed for wages under any contract of hire, written or oral, expressed or implied, with an employer, except as otherwise provided in sections 393-4 and 393-5.

The rules which interpret the DCD definitions are similar to the definition proposed by the Civil Rights Commission. The TDI rule is found at HAR 12-11-1:

"Employment" as defined in section 392-3, HRS, includes services performed by an individual for wages or under any contract of hire irrespective of whether the common-law relationship of master and servant exists unless and until it is shown to the satisfaction of the director that:

- (1) The individual has been and will continue to be free from control or direction over the performance of the service, both under the individual's contract of hire and in fact; and
- (2) The service is either outside the usual course of the business for which the service is performed or that the service is performed outside of all the places of business of the enterprise for which the service is performed; and
- (3) The individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the contract of service.

The PHC rule is found at HAR 12-12-1:

"Employment" shall be as defined in section 393-3, HRS, and shall include the period an employee is receiving benefits under chapters 386 or 392, HRS, for a period of not less than that prescribed in section 393-15, HRS. It shall also include services performed by an individual for wages or under any contract of hire irrespective of whether the common-law relationship of master and servant exists unless and until it is shown to the satisfaction of the director that:

- (1) The individual has been and will continue to be free from control or direction over the performance of the service, both under the contract of hire and in fact;
- (2) The service is either outside the usual course of the business for which the service is performed or that the service is performed outside of all the places of business of the enterprise for which the service is performed; and

- (3) The individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the contract of service.

Amending the definition as proposed in HAR § 12-46-1 will make the definitions used within the DLIR closer, allowing the analysis done by employers to be consistent.

The second substantial change in HAR Chapter 12, Section 46 is to clarify what is meant by a “final decision.” The Hawaii Civil Rights Commission (HCRC) is divided into separate enforcement and adjudication divisions. The process by which cases are filed and move through the agency is explained in the annual report, pages 28-34.

Adding a definition of “final order” will clarify that the executive director of the civil rights commission cannot issue a “final order.” The proposed definition is below:

["Final order" means an order issued by the commission in accordance with HRS §368-2\(b\).](#)

Other amendments primarily regarding procedure are for clarification or updating the rules, such as adding the use of pdf scans and email.

## #7

The amendments make the Civil Rights Commission's rules consistent with other rules and statutes of DLIR.

We contacted the following for input.

- Chamber of Commerce Hawaii
- Hawaii Employers Council
- Society for Human Resource Management (SHRM) Hawaii Chapter
- Hawaii Business Roundtable
- Maui Chamber of Commerce
- Kauai Chamber of Commerce
- Hawaii Island Chamber of Commerce
- Lanai Chamber of Commerce
- Hawai'i Small Business Development Center
- Musicians Association of Hawaii
- Hawaii Nurses Association
- HGEA
- United Here, Hawai'i's Hospitality and Healthcare Union
- Retail Merchants of Hawaii
- Kona-Kohala Chamber of Commerce
- University of Hawaii Human Resources

- University of Hawaii Professional Assembly
- Hawaii State AFL-CIO
- UPW- United Public Workers
- Hawaii State Teachers Association (HSTA)

7a.

Comments were submitted by the Chamber of Commerce and one law firm. We amended HAR §§ 12-46-101, 12-46-106 and 12-46-107 based on the comments.

Other comments centered on the proposed definitions in HAR §12-46-1, specifically of “employment,” “harassment,” and “legitimate nondiscriminatory reason.” We discussed the issues with both groups. We deleted the definition of “legitimate nondiscriminatory reason,” based on the comments.

As explained above, the proposed definition of “employment” is similar to the tests already in use through statute, HRS § 383-6, and other rules enforced by DLIR, HAR §§12-11-1 and 12-12-1.

The term “harassment” is consistent with the rules set forth in HAR §§12-46-109 and 12-46-175 and we amended it to be consistent with case law.



## **IV. NEW BUSINESS**

- C. Discussion and Action on the Proposed Amendments to HAR Title 16 Chapter 39, **Securities**, promulgated by Department of Commerce and Consumer Affairs

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

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

Department or Agency: \_\_\_\_\_

Administrative Rule Title and Chapter: \_\_\_\_\_

Chapter Name: \_\_\_\_\_

Contact Person/Title: \_\_\_\_\_

E-mail: \_\_\_\_\_ Phone: \_\_\_\_\_

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," provide details: \_\_\_\_\_  
website pursuant to HRS §92-7.

**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.)

\*

\*

\*

**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.
  
  
  
  
  
  
  
  
  
  
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.

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.).
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- 
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.

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

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.

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.info@hawaii.gov](mailto:DBEDT.sbrrb.info@hawaii.gov)

This Statement may be found on the SBRRB Website at: <http://dbedt.hawaii.gov/sbrrb/resources/small-business-impact-statements>



**JOSH GREEN, M.D.**  
GOVERNOR | KE KIA'ĀINA  
  
**SYLVIA LUKE**  
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA

**STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'**  
**DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**  
**KA 'OIHANA PILI KĀLEPA**  
**BUSINESS REGISTRATION DIVISION**  
**SECURITIES ENFORCEMENT BRANCH**  
335 MERCHANT STREET, ROOM 205, HONOLULU, HAWAII 96813  
P.O. BOX 40, HONOLULU, HAWAII 96810  
Phone Number: (808) 586-2740  
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**NADINE Y. ANDO**  
DIRECTOR | KA LUNA HO'OKELE  
  
**DEAN I HAZAMA**  
DEPUTY DIRECTOR | KA HOPE LUNA HO'OKELE  
  
**TY Y. NOHARA**  
ACTING COMMISSIONER OF SECURITIES

July 6, 2023

**MEMORANDUM**

**TO:** Small Business Regulatory Review Board (the "Board")  
c/o DBEDT  
[dbedt.sbrrb.info@hawaii.gov](mailto:dbedt.sbrrb.info@hawaii.gov)

**FROM:** Keola Fong  
Securities Enforcement Attorney  
[kfong@dcca.hawaii.gov](mailto:kfong@dcca.hawaii.gov)

**RE:** Proposed Amendments to Hawaii Administrative Rules §16-39

\*\*\*\*\*

Pursuant to Chapter 485A of the Hawaii Revised Statutes, Ty Y. Nohara, Acting Commissioner of Securities of the State of Hawaii ("Commissioner"), seeks to amend Hawaii Administrative Rules ("HAR") Chapter 39 of Title 16 of the Hawaii Administrative Rules ("HAR"). More specifically, the Commissioner proposes to add §16-39-454.5, which, if adopted, requires every investment adviser representative to complete continuing education courses on an annual basis to maintain their registration in Hawaii. The Commissioner also proposes the adoption of other non-substantive amendments throughout HAR §16-39. Therefore, the purpose of this memorandum is two-fold: (1) provide the Board with some background information and a summary of the newly proposed rule, and (2) obtain the Board's feedback and approval to proceed to a public hearing in accordance with the rulemaking process.

Investment adviser representatives play an important role in the financial well-being of thousands of Hawaii investors by providing advice on significant financial decisions such as retirement planning. Unlike other financial services professionals, investment adviser representatives are currently not subject to any mandatory continuing education requirements. To this end, the Commissioner's newly proposed rule, if adopted, will help promote heightened regulatory compliance and ensure that investment adviser representatives remain well-

informed of current regulatory requirements and best practices to better serve their Hawaii clients.

HAR §16-39-454.5 requires every investment adviser representative to complete 12 continuing education credits on an annual basis to maintain their registration in Hawaii. The 12 credits must include six credits of Products and Practices courses and six credits of Ethics and Professional Responsibility courses. Investment adviser representatives registered in Hawaii will begin taking and reporting continuing education courses during the 2024 calendar year. The courses must meet specific criteria established by the North American Securities Administrators Association (“NASAA”), a nonprofit association of state, provincial, and territorial securities regulators in the United States, Canada, and Mexico. This information can be found on [NASAA’s website](#), which investment adviser representatives can access for updates, course availability, and FAQs.

Investment adviser representatives will self-manage finding and completing courses, which will enable them to tailor their continuing education to their interests and business models. The courses may be offered by various vendors who are required to apply and obtain course approval from Prometric, the designated course manager, who will maintain the approved course list. The investment adviser representative shall be responsible for ensuring that the vendor reports his or her completion of the mandatory continuing education credits.

HAR §16-39-454.5 is based on the NASAA Model Rule on Investment Adviser Representative Continuing Education (“NASAA Model Rule”), which was adopted by the NASAA membership in November 2020. A copy of the NASAA Model Rule is available [here](#). Thus far, there are 10 states that have implemented similar continuing education requirements by adopting NASAA’s Model Rule for the investment adviser representatives registered in their state, and there are at least three more states, including Hawaii, that intend to adopt all or part of the NASAA Model Rule before the end of 2023.

Enclosed is a copy of the Commissioner’s newly proposed rule and other non-substantive amendments for the Board’s review and approval. Of note, the Commissioner has already reached out to various members of the industry regarding the newly proposed rule and received positive feedback and support. In addition, the Hawaii Department of the Attorney General has reviewed and given its approval of the newly proposed rule and other non-substantive amendments.

Should you have any questions or concerns regarding any of the foregoing, please do not hesitate to contact me at (808) 586-2740.

Thank you for your consideration and attention to this matter.

KF:rmnw

Enclosure

From: Keola LMF. Fong  
Sent: Thursday, July 13, 2023 8:16 AM  
To: DBEDT SBRRB; Ariola, Jetaime K; Palcovich, Dori  
Subject: RE: Amendment and Compilation of HAR 16-39 Securities

**RECEIVED**  
By SBRRB at 10:01 am, Jul 13, 2023

Hi Jet'aime,

In anticipation of the July 20 meeting, I am providing the names of the industry stakeholders we reached out to earlier in the rulemaking process, as well as a summary of their responses.

1. National Association of Insurance and Financial Advisors  
Cynthia Takenaka, Legislative Director  
cynthia@cynthiatakenaka.com  
RESPONSE: Submitted email in support of proposed amendments.

2. Financial Planning Association of Hawaii  
Cynthia Takenaka, Executive Director  
cynthia@cynthiatakenaka.com  
RESPONSE: Submitted email in support of proposed amendments.

3. American Council of Life Insurers  
Oren Chikamoto, Local Counsel  
otc@chikamolaw.com  
RESPONSE: Reviewed proposed amendments and did not submit comments.

4. Securities Industry Association of Hawaii  
Tony Goodrum, President  
tonygoodrum@msn.com  
RESPONSE: Submitted letter in support of proposed amendments.

We are also planning to reach out to the stakeholders soon and let them know about the upcoming SBRRB meeting on July 20.

Thanks again for all your help with this. If you have any questions or concerns, please do not hesitate to reach out.

Regards,  
Keola



DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendment and Compilation of Chapter 16-39  
Hawaii Administrative Rules

MM DD, YYYY

1. Chapter 16-39, Hawaii Administrative Rules, entitled, "Securities", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 39

SECURITIES

Subchapter 1 General Provisions

§16-39-101	Definitions
§16-39-102	Filing
§16-39-103	Fees
§16-39-104	Forms
§16-39-105	Action on documents submitted to the commissioner; extension
§16-39-106	Fines and penalties

Subchapter 2 Exempt Transactions and Notice  
Filing Requirements for Federal  
Covered Securities

A. Exempt Transactions

§16-39-201	Limitation on issuers and offerors
§16-39-202	Exemptions
§16-39-203	Notice filing
§16-39-204	Application for residential cooperative corporations
§16-39-205	Disqualification

B. Notice Filing for Federal Covered Securities

§16-39-220	Notice filing for investment company securities
§16-39-221	Notice filing for transactions under the Securities Act, Regulation D, 17 CFR section 230.506

Subchapter 3 Registration of Securities

A. Registration of Securities, Prospectus

§16-39-301	Registration of securities
§16-39-302	Prospectus

B. Statements of Policy Relating to Registration  
of Securities

§16-39-310	Registration of securities by qualification
§16-39-311	Financial reports
§16-39-312	Maximum commissions and expenses
§16-39-313	Offering price

- \$16-39-314 Compliance with Hawaii business registration law
- \$16-39-315 NASAA statements of policy for registration of securities

C. Effectiveness and Post-Effectiveness Requirements

- \$16-39-330 Effectiveness
- \$16-39-331 Confirmations by issuer
- \$16-39-332 Amendments
- \$16-39-333 Renewals
- \$16-39-334 Withdrawal, termination, or completion

D. Advertising and Financial Reports

- \$16-39-340 Advertising
- \$16-39-341 Reports

E. Small Company Offerings Registration

- \$16-39-350 Purpose
- \$16-39-351 Application of this chapter to SCOR registrations
- \$16-39-352 Availability
- \$16-39-353 Disqualification from use of SCOR registration
- \$16-39-354 Agreement by registrant on splits and dividends of stock or ownership interests
- \$16-39-355 Documents to be filed for SCOR registration

Subchapter 4 Registration of Broker-Dealers, Agents, Investment Advisers, and Investment Adviser Representatives

#### A. Broker-Dealers

\$16-39-401	Registration; generally
\$16-39-402	Eligibility requirements
\$16-39-403	Application
\$16-39-404	Financial requirements
\$16-39-405	Sales of securities at financial institutions
\$16-39-406	Books and records
\$16-39-407	Post-effective requirements; registration of successor broker-dealer
\$16-39-408	Expiration, renewal, termination of registration

#### B. Agents

\$16-39-420	Registration; generally
\$16-39-421	Eligibility requirements
\$16-39-422	Application
\$16-39-423	Examination requirements
\$16-39-424	Post-effective requirements
\$16-39-425	Expiration, renewal, termination of registration

#### C. Investment Advisers

\$16-39-430	Registration; generally
\$16-39-431	Notice filing for federal covered investment advisers
\$16-39-432	Eligibility requirements
\$16-39-433	Financial requirements
\$16-39-434	Bonding requirements for certain investment advisers
\$16-39-435	Application
\$16-39-436	Custody of client funds or securities by investment advisers
\$16-39-437	Annual financial reporting requirements
\$16-39-438	Examination requirements
\$16-39-439	Disclosure statements
\$16-39-440	Post-effective requirements

- §16-39-441      Expiration, renewal, termination of  
                         registration
- §16-39-442      Books and records

D.    Investment Adviser Representatives

- §16-39-450      Registration; generally
- §16-39-451      Eligibility requirements
- §16-39-452      Application
- §16-39-453      Examination requirements
- §16-39-454      Post-effective requirements
- §16-39-454.5    Continuing education requirements
- §16-39-455      Expiration, renewal, termination of  
                         registration

E.    Denial of Application; Suspension and  
         Revocation of Registration of Broker-Dealers,  
         Agents, Investment Advisers, and Investment  
         Adviser Representatives

- §16-39-470      Denial; suspension and revocation

Subchapter 5    Fraudulent Practices of Broker-  
                         Dealers, Broker-Dealer Agents, and  
                         Agents of an Issuer

- §16-39-501      Fraudulent practices of broker-dealers,  
                         broker-dealer agents, and agents of an  
                         issuer

Historical Note:    These new rules implement the new securities laws that become effective on July 1, 2008. In 2006, the Legislature passed Act 229, which established the new Hawaii Uniform Securities Act in HRS chapter 485A. Act 229 also repealed the old securities laws in HRS chapter 485 on June 30, 2008. Because these old

securities laws are being repealed, their corresponding administrative rules in HAR chapter 16-38 are also repealed. However, this chapter is based substantially upon chapter 16-38. [Eff 6/4/70; am 1/1/71; 7/30/81; am 11/5/81; am and comp 10/12/85; am 4/4/87; am and com 4/14/03; R 6/30/08; comp ]

## SUBCHAPTER 1

### GENERAL PROVISIONS

**§16-39-101 Definitions.** As used in this chapter, and in the forms, instructions, and orders of the commissioner, the following meanings shall apply to the extent that they are not inconsistent with the definitions provided in chapter 485A, HRS.

"Affiliate" means a person who, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with another person.

"Amount" means the aggregate dollar value affixed to a share. In the context of capitalization: number of shares multiplied by the par or stated value equals the amount. In the context of an offering: number of shares multiplied by the offering price per unit equals the amount.

"Applicant" means the issuer, broker-dealer, agent, investment adviser, investment adviser representative, or other person executing the application.

"Application" means the form prescribed by the commissioner, and includes any other paper, exhibit, amendment, or document filed pursuant to chapter 485A, HRS, and this chapter in connection with the registration of a security, broker-dealer, agent,

investment adviser, or investment adviser representative.

"Audited financial statements" means financial statements prepared in accordance with generally accepted accounting principles or any standard approved by the PCAOB and examined by independent accountants in accordance with generally accepted auditing standards, accompanied by an opinion of such independent accountants.

"Branch office" means any branch office, sales office, or office of supervisory jurisdiction that is listed on Schedule E to Form BD or on Schedule D to Form ADV; or any location in this State that is held out to the public as a place of business of a broker-dealer, an agent, an investment adviser, an investment adviser representative, or a federal covered investment adviser.

"Broker-dealer services" means the investment banking or securities business as defined by the FINRA.

"CFR" means the Code of Federal Regulations, as amended.

"Commissioner" means the state commissioner of securities.

"Compensation" as used in the definition of "investment adviser" in section 485A-102, HRS, shall include, but not be limited to, a salary, flat fee, any periodic retainer fee, or commissions or other types of monetary remuneration.

"Control" or "controlling person" means possession of the power, authority, or means to engage in the management or policymaking functions of a person, directly or indirectly, through ownership of securities, by contract or otherwise. A person owning at least twenty-five per cent of the outstanding voting securities of another shall be presumed to be a "controlling person" unless and until a determination to the contrary is made by the commissioner based on evidence presented by or on behalf of the person presumed to be controlling.

"CRD" means the Central Registration Depository of FINRA.

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

"FDIC" means the Federal Deposit Insurance Corporation.

"Financial institution" means any of the following federal and state-chartered banks, savings and loan associations, savings banks, credit unions, and the service corporations of such institutions located in this State.

"Financial statements" means, but is not limited to, the statement of financial condition, statement of income, and statement of changes in stockholders' or owners' equity, or similar statements, as well as all related footnotes and supporting schedules applicable thereto, prepared in accordance with generally accepted accounting principles or any standard approved by the PCAOB.

"FINRA" means the Financial Industry Regulatory Authority.

"HRS" means Hawaii Revised Statutes, as amended.

"IARD" means the Internet-based Investment Adviser Registration Depository operated by FINRA to receive and store filings and collect related fees from investment advisers and investment adviser representatives on behalf of the commissioner.

"Independent accountants" means independent certified public accountants. The concept of independence shall be defined by rules promulgated by the American Institute of Certified Public Accountants.

"Investment Advisers Act" means the Investment Advisers Act of 1940, as amended.

"Investment Company Act" means the Investment Company Act of 1940, as amended.

"NASAA" means the North American Securities Administrators Association.

"Networking arrangement" means a contractual or other arrangement between a broker-dealer and a financial institution pursuant to which the broker-dealer conducts broker-dealer services on the premises of the financial institution where retail deposits are taken.



"Officer" means a president, vice president, secretary, treasurer, or any other person performing similar functions with respect to any organization, whether incorporated or unincorporated.

"Opinion of independent accountants" means audited financial statements shall be accompanied by an opinion of an independent accountant. The opinion letter shall be dated, shall be signed, shall identify without detailed enumeration the financial statements covered by the opinion, shall state that the examination was conducted in accordance with generally accepted auditing standards and shall express the independent accountant's opinion as to the fairness or unfairness of the financial statements in accordance with generally accepted accounting principles or any standard approved by the PCAOB or the independent accountant's inability to express such an opinion.

"Organization" means a corporation, partnership, trust, association, joint venture, syndicate, limited liability company, and any other form of business entity.

"OTC" means over-the-counter.

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

"PCAOB" means the Public Company Accounting Oversight Board.

"Predecessor" means a person, a major portion of whose business, assets, or control has been acquired by another.

"Promoter" means a person who, acting alone or in conjunction with others, takes the initiative in founding, organizing, or incorporating the business or enterprise of an issuer.

"Prospectus" means a document meeting the applicable requirements of chapter 485A, HRS, and this chapter.

"Public offering" means the offering of any security for sale to the general public, including, but not limited to:

- (1) By advertisement in any newspaper, magazine, periodical, or other publication, or by

means of a prospectus, offering circular, pamphlet, brochure, dodger, or addressed or unaddressed written or printed communication intended for public distribution or information, including through electronic media; or

- (2) By general solicitation by billboard, window display, website posting, or use of phonographic or other recording, radio, television, or any public demonstration or explanation by any similar device.

"Registrant" means an applicant whose registration of securities has become effective or whose registration as a broker-dealer, agent, investment adviser, or investment adviser representative has been approved under this chapter and chapter 485A, HRS.

"Registration statement" means the application to register securities that is filed with the commissioner.

"SCOR" means small company offering registration.

"SEC" means the United States Securities and Exchange Commission.

"Securities Act" means the Securities Act of 1933, as amended.

"Securities Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Share" means a share of stock or unit of investment or interest in a corporation, limited partnership, limited liability company, or other unincorporated person, or a share or unit of a security.

"SRO" means self-regulatory organization.

"State" means the State of Hawaii.

"Subsidiary" means an affiliate controlled by another person.

"Underwriter" means a broker-dealer who participates in the distribution of a security, in connection with a public offering, either as a purchaser with a view to offer for resale, or one who undertakes to offer or sell, directly or indirectly, for an issuer. [Eff 6/30/08; comp ]

(Auth: HRS §485A-606) (Imp: HRS §§485A-102, 485A-202)

**§16-39-102 Filing.** (a) Unless otherwise specified, a document is considered filed on the first business day it is received in the office of the commissioner.

(b) All communications shall be addressed to: Commissioner of Securities, Business Registration Division, Department of Commerce and Consumer Affairs, P.O. Box 40, Honolulu, Hawaii 96810; or delivered to: 335 Merchant Street, Room 203, Honolulu, Hawaii 96813.

(c) The office of the commissioner shall be open for the transaction of business between the hours of 7:45 a.m. and 4:30 p.m. on weekdays, excluding state holidays.

(d) All documents, forms, statements, exhibits, etc. filed with the commissioner under chapter 485A, HRS, and this chapter shall be in the English language.

(e) Only originally executed forms or exhibits shall be filed, unless otherwise authorized by the commissioner.

(f) Unless otherwise provided by statute or rule, in computing any period of time prescribed or allowed by this chapter, the day of the act, event, or default after which the designated period of time is to run, shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday in the State, in which event the period runs until the next day which is neither a Saturday, Sunday, nor a holiday. Intermediate Saturdays, Sundays, and holidays shall not be included in a computation when the period of time prescribed or allowed is seven days or less. A half holiday shall not be considered a holiday for the purpose of these computations. [Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §§80-1, 485A-606)

**§16-39-103 Fees.** (a) The following fees shall be submitted with an initial or renewal application, or notice filing:

- (1) The fee for filing a notice of transaction involving the offer or sale of a security by an issuer to an accredited investor shall be \$200;
- (2) The fee for filing a report of the value of the federal covered securities sold or offered under section 485A-302, HRS, shall be \$50;
- (3) The fee for an initial notice filing for investment company securities shall be \$200 per portfolio or series. The annual fee to renew such notice filing shall be \$50 per portfolio or series;
- (4) The notice filing fee for a transaction under the Securities Act, Regulation D, 17 CFR Section 230.505, shall be \$100;
- (5) The notice filing fee for a federal covered security issued under the Securities Act, Regulation D, 17 CFR Section 230.506, shall be \$100;
- (6) The fee for registration of securities by qualification shall be one tenth of one per cent of the aggregate offering price of the securities to be offered in the State with a minimum fee of \$250 and a maximum fee of \$2,500. The annual fee to renew a registration by qualification shall be \$250;
- (7) The application fee for registration of a broker-dealer shall be \$200. The annual fee to renew a broker-dealer's registration shall be \$200;
- (8) The application fee for registration of a securities agent shall be \$50. The annual fee to renew an agent's registration shall be \$50. The fee for a transfer of registration as an agent shall be \$50;

- (9) The application fee for registration of an investment adviser shall be \$100. The annual fee to renew an investment adviser's registration shall be \$100;
  - (10) The application fee for registration of an investment adviser representative shall be \$50. The annual fee to renew an investment adviser representative's registration shall be \$50;
  - (11) The notice filing fee for a federal covered investment adviser required to file a notice shall be \$100 per calendar year. The annual fee to renew a federal covered investment adviser's notice filing shall be \$100; and
  - (12) The filing fee for any exempt transaction granted under subchapter 2 shall be \$100.
- (b) The fee for copies of documents filed in the office of the commissioner shall be twenty-five cents per page. [Eff 6/30/08; comp ] (Auth: HRS §§485A-303, 485A-606) (Imp: HRS §§92-24, 92-28, 485A-302, 485A-304, 485A-406)

**§16-39-104 Forms.** (a) The following forms shall be used by persons submitting an initial or renewal application, or notice filing to the commissioner:

- |             |  |
|-------------|--|
| Form ADV:   | shall be used by an investment adviser to request registration or to renew a registration, and by a federal covered investment adviser to submit a required notice filing; |
| Form ADV-H: | shall be used by an investment adviser to request a temporary or continuing hardship exemption;  |
| Form ADV-W: | shall be used by an investment adviser to terminate a registration, or by a federal covered investment adviser to terminate a notice filing;                               |

Form BD: shall be used by a broker-dealer or issuer to request registration;

Form BD-W: shall be used by a broker-dealer or issuer to terminate a registration;

Form D: shall be used by issuers of securities to satisfy the requirements of section 16-39-203 or section 485A-202(15)(D), HRS;

Form NF: shall be used by an investment company to comply with the notice filing requirements under section 16-39-221;

Form U-1: shall be filed by an issuer seeking registration of its securities by qualification;

Form U-2: shall be used to satisfy any requirement under chapter 485A, HRS, that a consent to service of process be filed with the commissioner; provided that in lieu of filing a Form U-2, the commissioner shall accept an originally executed Form ADV, Form BD, or Form U-4 that has been filed with the commissioner or with the CRD;

Form U-2A: shall be used by any person required under chapter 485A, HRS, to file a corporate resolution with the department;

Form U-4: shall be used by an agent or investment adviser representative to request registration or to request a transfer of registration from one broker-dealer, issuer, investment adviser, or federal covered investment adviser to another;

Form U-5: shall be used to terminate the registration of an agent or investment adviser representative;

Form U-7: shall be used by issuers seeking registration of a SCOR offering.

Model Accredited

Investor Form: shall be used by an issuer offering or selling securities to accredited investors to submit a notice filing;

(b) Broker-dealers that are registered under the Securities Exchange Act may file Forms BD, BD-W, U-4, and U-5 with the commissioner through the CRD.

(c) Investment advisers and federal covered investment advisers may, to the extent permitted by the IARD, file Forms ADV, ADV-W, U-4, and U-5 with the commissioner through the CRD.

(d) Every applicant or registrant that has filed any of the forms listed in subsection (a) with the commissioner shall promptly file with the commissioner any and all amendments necessary to keep the information previously reported on the forms current and accurate. If the form being amended was filed with the commissioner through the CRD, any amendment to the form may also be filed through the CRD. [Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §485A-606)

**§16-39-105 Action on documents submitted to the commissioner; extension.** (a) The commissioner shall accept or deny documents submitted to the commissioner within forty-five calendar days after the date the documents were submitted.

(b) An application for registration as a broker-dealer, agent, investment adviser, or investment adviser representative shall become effective at noon on the forty-fifth day after a completed application is filed unless:

- (1) Otherwise provided by state or federal law; or
- (2) An earlier effective date is specified by rule or order.

(c) To be complete, the document shall consist of the appropriate form described in section 16-39-104, together with any additional documents or information and fees required under this chapter or chapter 485A, HRS, or requested by the commissioner.

(d) The commissioner shall notify an applicant within forty-five calendar days of an application being received if the application is not complete and shall provide the applicant a list of the documents, information, and fees that must be filed in order to have the application deemed complete. An applicant shall have an additional forty-five calendar days from the receipt of the commissioner's letter within which to complete the pending document. If the document has not been completed within this time, it may be denied by the commissioner pursuant to section 485A-412, HRS, or be withdrawn by the applicant. [Eff 6/30/08; comp                   ] (Auth: HRS §§26-9, 91-13.5, 485A-606) (Imp: HRS §91-13.5)

**§16-39-106 Fines and penalties.** Any fines and penalties imposed under chapter 485A, HRS, or this chapter shall be deposited into the compliance resolution fund. [Eff 6/30/08; comp                   ] (Auth: HRS §§26-9, 485A-606) (Imp: HRS §§485A-508, 485A-602, 485A-603, 485A-604)

## SUBCHAPTER 2

### EXEMPT TRANSACTIONS AND NOTICE FILING REQUIREMENTS FOR FEDERAL COVERED SECURITIES

#### A. Exempt Transactions



**§16-39-201 Limitation on issuers and offerors.**

(a) Nothing in this subchapter shall relieve, or be construed as in any way relieving, issuers or persons acting on their behalf from the anti-fraud provisions of chapter 485A, HRS.

(b) In view of the objective of this subchapter and the purpose and policies underlying chapter 485A, HRS, the exemptions are not available to any issuer or persons acting on their behalf with respect to any transaction which, although in technical compliance with this subchapter, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in chapter 485A, HRS, or this chapter. [Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §§485A-202, 485A-203)

**§16-39-202 Exemptions.** (a) Any offer or sale of securities offered or sold in compliance with the Securities Act, Regulation D, 17 CFR sections 230.501, 230.502, 230.503, and 230.505 and complies with the conditions and limitations of this subchapter, shall be exempted under section 485A-203, HRS.

(b) This section shall not provide an exemption for any offer or sale of securities offered or sold in compliance with the Securities Act, Regulation D, 17 CFR section 230.504. [Eff 6/30/08; comp

] (Auth: HRS §§485A-203, 485A-606) (Imp: HRS §§485A-202, 485A-203)

**§16-39-203 Notice filing.** (a) For issuers offering or selling securities in compliance with the Securities Act, Regulation D, 17 CFR section 230.505, a notice filing shall be made no later than fifteen calendar days after the first sale is made in this State. The notice filing shall consist of:

- (1) One signed copy of the Form D currently updated, and the appendix thereto;

- (2) An executed consent to service of process (Form U-2); and
- (3) The filing fee set forth in section 16-39-103.

(b) Upon written request of the commissioner, the issuer shall provide copies of information furnished in tangible form, including by electronic transmission, by the issuer to offerees.

(c) Amendments. During the period of the offering, the issuer shall take steps necessary to ensure that all material information contained in the notice filing remains current and accurate. [Eff 6/30/08; comp ] (Auth: HRS §§485A-203, 485A-606) (Imp: HRS §§485A-202, 485A-203)

**§16-39-204 Application for residential cooperative corporations.** The information required for filing shall be as prescribed in the application form, together with other information as the commissioner may require. [Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §§485A-201, 485A-202)

**§16-39-205 Disqualification.** (a) Any person who is disqualified by the SEC from using any provision of the Securities Act, Regulation D, 17 CFR section 230.507, shall not qualify for any of the exemptions under this subchapter.

(b) Any disqualification caused by this section shall be automatically rescinded if the federal or state agency which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemptions be denied. [Eff 6/30/08; comp ] (Auth: HRS §§485A-203, 485A-606) (Imp: HRS §§485A-202, 485A-203)

B. Notice Filing [~~For~~] for Federal Covered Securities

**§16-39-220 Notice filing for investment company securities.** (a) Pursuant to section 485A-302, HRS, for a federal covered security that is issued by an investment company registered under the Investment Company Act, the notice filing shall include:

- (1) A Form NF or a copy of the issuer's federal registration statement;
- (2) A consent to service of process (Form U-2); and
- (3) The filing fee set forth in section 16-39-103.

(b) Except as otherwise provided in chapter 485A, HRS, and this chapter, a notice filing shall be effective commencing upon the later of its receipt by the commissioner or the effectiveness of the offering with the SEC, and continuing until two months after the issuer's fiscal year end. A notice filing may be renewed prior to its expiration by filing with the commissioner:

- (1) A current Form NF or a copy of the issuer's most recent federal registration statement; and
- (2) The renewal fee set forth in section 16-39-103.

(c) A renewed notice filing shall take effect upon the expiration of the previous notice filing.

(d) The initial notice filing by a unit investment trust shall be effective indefinitely.

[Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §485A-302)

**§16-39-221 Notice filing for transactions under the Securities Act, Regulation D, 17 CFR section 230.506.** For a federal covered security issued under the Securities Act, Regulation D, 17 CFR section 230.506, a notice filing shall be filed with the

commissioner no later than fifteen calendar days after the first sale is made in this State. The notice filing shall consist of:

- (1) One copy of the Form D currently updated, and the appendix thereto;
- (2) A consent to service of process (Form U-2); and
- (3) The filing fee set forth in section 16-39-103. [Eff 6/30/08; comp                      ]  
(Auth: HRS §485A-606) (Imp: HRS §485A-302)

### SUBCHAPTER 3

#### REGISTRATION OF SECURITIES

##### A. Registration of Securities, Prospectus

**§16-39-301 Registration of securities.** (a) In addition to the requirements of section 485A-303, HRS, a registration statement to register securities by qualification shall contain the following:

- (1) A Form U-1 and accompanying documents (including subscription agreement);
- (2) Two copies of the prospectus, including financial statements;
- (3) All exhibits filed with the SEC in connection with the registration statements;
- (4) The filing fee set forth in section 16-39-103; and
- (5) Any additional information or documents requested by the commissioner.

(b) An application filed with the SEC under the Securities Act, Regulation A, 17 CFR sections 230.251 to 230.262, may be filed with the commissioner by qualification. Notwithstanding the requirements of the SEC, however, the prospectus or offering circular

used in connection with an offering of securities under Regulation A of the SEC shall contain the financial statements prescribed by section 485A-303(b), HRS. [Eff 6/30/08; comp ]  
(Auth: HRS §485A-606) (Imp: HRS §§485A-301, 485A-303, 485A-304)

**§16-39-302 Prospectus.** (a) The prospectus of any security that is subject to registration under section 485A-303, HRS, or this chapter may be printed, mimeographed, lithographed, or typewritten, or prepared by any similar process in clearly legible copies.

(b) Every subscription agreement concerning the registration of a security by qualification shall contain a statement by the purchaser that the purchaser has received a copy of the security's prospectus.

(c) Interstate offerings shall contain the information required by the application form together with the following:

- (1) How the public offering price was established;
- (2) Whether there has been a public market for the securities;
- (3) The terms and conditions of the escrow agreement; and
- (4) Business history of the officers and directors.

(d) Intrastate offerings shall contain the same information as interstate offerings, plus the following:

- (1) That the offering is only to bona fide residents of this State;
- (2) That during the public offering, no securities may be transferred to a nonresident of this State;
- (3) That in case of a sale to a nonresident, the issuer may rescind the sale and refund the purchase price; and

(4) In an offering of interest-bearing securities, what reserves or sinking fund shall be provided to pay for the securities as they become due, or whether no reserves shall be provided.

(e) The prospectus shall be prepared in substantially the following form and shall contain the information required under chapter 485A, HRS, this chapter, and any additional information required by the commissioner. (The following specimen form has been prepared for use in connection with a speculative intrastate offering and may therefore be modified to the extent the provisions are inapplicable.)

(1) Cover page:

"PROSPECTUS  
(Date)

(NAME OF ISSUER)  
(Address)

Incorporated under the laws of the State of  
Hawaii (Date) \_\_\_\_\_ Shares of Common Stock of  
the Par Value of \$ \_\_\_\_\_ Per Share.

	Offering Price	Sales Commissions	Net Proceeds To Issuer*
Per Share	\$ _____	\$ _____	\$ _____
Aggregate	\$ _____	\$ _____	\$ _____

\*Before deducting expenses estimated not to  
exceed \$ \_\_\_\_\_ to be borne by the issuer.

THE SECURITY(IES) DESCRIBED IN THIS PROSPECTUS  
ARE SPECULATIVE. NEITHER THIS PROSPECTUS NOR THE

SECURITIES DESCRIBED HEREIN HAVE BEEN APPROVED OR DISAPPROVED BY THE COMMISSIONER OF SECURITIES OF THE STATE OF HAWAII, NOR HAS THE COMMISSIONER PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. THIS OFFERING IS MADE ONLY TO BONA FIDE RESIDENTS OF THE STATE OF HAWAII.

To be sold by \_\_\_\_\_";

(2) Business.

- (A) State the history, showing capitalization, mergers, change of names, etc., general character and location of issuer's business, properties, branch offices, stores, plants, outlets, etc., and similar information concerning its predecessors, affiliates, and subsidiaries. There should also be a statement as to the length of time the issuer has been in business;
- (B) Describe the physical properties, equipment, claims, patents, or patent applications, etc., and nature of title or interest therein;
- (C) If the issuer leases its plant, office, or other physical properties, disclose briefly the terms of the lease and relationship of the lessor to any officer, director, promoter, or stockholder of the issuer;
- (D) State the nature of present or proposed products or services, the principal market therefor;
- (E) Set forth the general competitive conditions in the industry or business in which the issuer is, or proposes to be, engaged, and any particular risks or hazards to which it might be subjected; and

- (F) Describe the issuer's employee relations by setting forth the number of employees and whether any of them are covered by collective bargaining agreements and, if so, approximately how many are so covered, when the agreements expire, and whether collective bargaining is on a company or industry wide basis. Also describe whether the issuer has experienced any work stoppages in recent years;
- (3) Use of proceeds. Outline the estimated monetary proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the estimated amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amount of funds to be raised from other sources to achieve the purposes stated; the sources of those funds; and, if a part of the proceeds is to be used to acquire property (including goodwill) other than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with the acquisition, and the amounts of the commissions and other expenses in connection with the acquisition;
- (4) Method of offering. If the securities are to be offered through a broker-dealer, state the name and address of the broker-dealer, with a statement of any material relationship between the issuer and the broker-dealer. State whether the securities are to be offered for cash only or whether the securities may be paid for in installments and, if so, the specific terms and conditions. If a minimum purchase is required, it should also be disclosed. State briefly the commission to be paid to



the broker-dealer, including cash, securities, contracts, options, or any other consideration. If the securities are to be sold by the issuer, it should also be stated that the offering shall be done by securities agents duly registered with the commissioner. If the proceeds of the offering are to be placed in escrow, state the terms and conditions of the escrow; and state the other terms prescribed by the commissioner for the certification by the escrow agent to the commissioner when the amount specified in the escrow agreement has been met in the specified time and the conditions whereby the funds shall be released to the subscribers by the escrow agent. State also that during the public offering, no securities may be transferred to a nonresident and that in case of a sale to a nonresident, the issuer shall rescind the sale and refund the purchase price;

- (5) Speculative features of the offering. Explain generally the speculative features of the offering and any special conditions that may affect the success or failure of the enterprise or the investor's interest therein. State how the public offering price was established and whether there has been a public market for the shares. In a speculative offering, the front cover shall contain a clear and conspicuous statement that the securities are speculative. If the officers, directors, or promoters are receiving or have received salaries, fees, or other compensation from the issuer, indicate the amounts, how paid, and services rendered;
- (6) Description of securities. Outline briefly as follows:
  - (A) In the case of shares, the par or stated value, if any; the rate of dividend, if fixed, whether cumulative

- or noncumulative and any restrictions on dividend payments; the preference, if any; and if convertible, the conversion rate; the restrictions, if any, on the transfer of the securities;
- (B) In the case of debt securities, the rate of interest; the date of maturity or, if the issue matures serially, a brief indication of the serial maturities; if the issue is redeemable before maturity, a brief statement of the redemption date or dates and price or prices; if payment of principal or interest is contingent, an indication of the contingency; a brief indication of the priority of the issue; and if convertible, the conversion rate; and
- (C) In the case of any other kind of security, appropriate information of a comparable character;
- (7) Management and control. With respect to each director and officer of the issuer, and other person having a similar status or performing similar functions, the person's name, address, and principal occupation for the previous five years; the amount of securities of the issuer held by the person as of the thirtieth day before the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest of the person in any material transaction with the issuer or a significant subsidiary effected within the previous three years or proposed to be effected. With respect to a promoter, if the issuer was organized within the previous three years, the information or records specified above, any amount paid to the promoter within that period or intended to

- be paid to the promoter, and the consideration for the payment;
- (8) Interests of management. Provide a description of all direct or indirect interests, by security holdings or otherwise, of each officer and director of the issuer and, if the issuer was organized within the last three years, of each promoter of the issuer:
    - (A) In the issuer or its affiliates; and
    - (B) In any material transactions within the past two years or in any material proposed transactions to which the issuer or any of its predecessors or affiliates was or is to be a party, stating the cost to those persons of any property or services for which payment by or for the account of the issuer has been or is to be made;
  - (9) Ownership. With respect to a person owning of record or owning beneficially, if known, ten per cent or more of the outstanding shares or any class or equity security of the issuer, the information specified in paragraph (7) other than the person's occupation;
  - (10) Options and warrants. A description of any stock options or other security options outstanding, or to be created in connection with the offering, including the names of the holders thereof, the cost thereof to the holders, the terms and conditions on which they may be exercised, and the price at which the securities may be acquired pursuant thereto;
  - (11) Litigation. A description of any pending litigation, action, or proceeding to which the issuer or any of its subsidiaries is a party or of which any of their property is the subject and that materially affects its business or assets, and any litigation,

- action, or proceeding known to be contemplated by governmental authorities;
- (12) Legal opinion. State the name and address of the attorney who has advised the issuer with respect to the legality of the offered securities, with an English translation if it is in a language other than English, which states whether the security when sold will be validly issued, fully paid, and nonassessable and, if a debt security, a binding obligation of the issuer;
- (13) Escrow provisions. If the officers, directors, promoters, or insiders have stock which is subject to escrow pursuant to section 485A-304(f), HRS, or subject to escrow pursuant to any state or federal statute or regulation, make a complete disclosure of the number of shares escrowed, names of persons escrowing the stock, where escrowed, and the terms and conditions of the escrow; and
- (14) Financial statements. Provide a balance sheet of the issuer at the close of the issuer's last fiscal year preceding the date of filing of the prospectus, and a profit and loss statement and analysis of surplus for the fiscal year ended at the date of the balance sheet, all certified by an independent public accountant; together with a balance sheet of the issuer as of a date within ninety days prior to the date of filing of the prospectus and a statement of profit and loss for the period from the close of the last preceding fiscal year to the date of the balance sheet, both verified by a duly authorized officer, or the equivalent, of the issuer or, if the issuer has been in existence for less than one year, a balance sheet of the issuer as of a date within ninety days prior to the date of filing and a statement of profit and loss for the period from the date of the issuer's

organization to the date of the balance sheet, both certified by an independent public accountant.

If consolidated financial statements are used, there should also be a financial statement of the issuer alone. If the issuer has not yet commenced business, there should be submitted in lieu of the statement of profit and loss a statement of receipts and disbursements certified to by an independent public accountant. [Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §§485A-303, 485A-304)

B. Statements ~~[Of]~~ of Policy Relating ~~[To]~~ to Registration ~~[Of]~~ of Securities

**§16-39-310 Registration of securities by qualification.** The commissioner may deny an application for registration of a security as being fraudulent or working or tending to work a fraud upon the purchaser, or may find that the enterprise or business of the issuer is based on unsound business principles, unless the requirements of chapter 485A, HRS, and this chapter are met or good cause is shown for an exception. [Eff 6/30/08; comp ] (Auth: HRS §§485A-303, 485A-606) (Imp: HRS §§485A-303, 485A-606)

**§16-39-311 Financial reports.** Financial statements required under chapter 485A, HRS, and this chapter shall be prepared, audited, and certified by independent certified public accountants or licensed independent public accountants in accordance with generally accepted accounting procedures and practices; provided that if a report contains exceptions of a material nature, it shall not be considered to be certified. [Eff 6/30/08;

comp ] (Auth: HRS §§485A-303, 485A-606) (Imp: HRS §§485A-303, 485A-606)

**§16-39-312 Maximum commissions and expenses.**

Compensation to broker-dealers in connection with the sale and promotion of a public offering, including selling expenses and allowances or reimbursement for items such as salaries, overrides, agent's commissions, clerical, administrative, printing, postage, advertising, and all other expenditures incurred, and anything of value accruing to the broker-dealer directly or indirectly, shall not exceed fifteen per cent of the total amount of the offering. [Eff 6/30/08; comp ] (Auth: HRS §§485A-303, 485A-606) (Imp: HRS §§485A-303, 485A-606)

**§16-39-313 Offering price.** In the case of an issuer which has been actually engaged in business or operation, the amount for which a security is being offered to the public should bear some reasonable relationship to:

- (1) Market value, if any;
- (2) Price-earnings ratio, as reflected by its financial statements covering an average three-year preceding period, or the shorter duration of experience or operation as may be applied; or
- (3) In the absence of an established or determinable market value or price-earnings ratio, the book value of the issuer may be taken into consideration in justifying or substantiating the reasonableness of the offering price. [Eff 6/30/08; comp ] (Auth: HRS §§485A-303, 485A-606) (Imp: HRS §§485A-303, 485A-606)

**§16-39-314 Compliance with Hawaii business registration laws.** No application of a Hawaii corporation, partnership, limited liability company, or other business entity for the registration of a security shall be accepted if the entity is not current in filing its annual reports as required by this State's business registration laws, and complete records as prescribed by this State's business registration laws shall be maintained at all times.  
[Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §§485A-303, 485A-304, 485A-606)

**§16-39-315 NASAA statements of policy for registration of securities.** The disclosure-related provisions of certain guidelines or statements of policy adopted by NASAA may be used by the commissioner for purposes of reviewing the adequacy of the disclosures required under this chapter and chapter 485A, HRS. The following "Statements of Policy and Guidelines" of NASAA are hereby adopted and incorporated by reference into this chapter:

- (1) "Uniform Disclosure Guidelines for Cover Legends" adopted on October 2, 2004, as amended;
- (2) "NASAA Guidelines Regarding Viatical Investments" adopted on October 1, 2002, as amended;
- (3) "Statement of Policy Regarding Corporate Securities Definitions" adopted on September 28, 1999, as amended;
- (4) "Statement of Policy Regarding the Impoundment of Proceeds" adopted on September 28, 1999, as amended;
- (5) "Statement of Policy Regarding Options and Warrants" adopted on September 28, 1999, as amended;
- (6) "Statement of Policy Regarding Promotional Securities" adopted on September 28, 1999, as amended;

- (7) "Statement of Policy Regarding Specificity in Use of Proceeds" adopted on September 28, 1999, as amended;
- (8) "Statement of Policy Regarding Underwriting Expenses, Underwriter's Warrants, Selling Expenses and Selling Securities Holders" adopted on September 28, 1999, as amended;
- (9) "Statement of Policy Regarding Unsound Financial Condition" adopted on September 28, 1999, as amended;
- (10) "Statement of Policy Regarding Promoters' Equity Investment" adopted on April 27, 1997, as amended; and
- (11) "Statement of Policy Regarding Real Estate Investment Trusts" adopted on May 7, 2007, as amended. [Eff 6/30/08; comp ]  
(Auth: HRS §485A-606) (Imp: HRS §§485A-303, 485A-606)

C. Effectiveness [~~And~~] and Post-Effectiveness Requirements

**§16-39-330 Effectiveness.** When an application for the registration of securities has been declared effective by the commissioner, it shall be designated as a registration statement, and the offering may be commenced upon the issuance of a certificate of registration or notification of effectiveness. A registration statement that has become effective with the SEC under the Securities Act becomes effective in this State automatically at the moment of effectiveness with the SEC if no stop order or notice of deficiency has been entered. The applicant shall promptly advise the commissioner by telephone, fax, or electronically of the date and time of the securities' federal effectiveness. [Eff 6/30/08; comp ]  
(Auth: HRS §485A-606) (Imp: HRS §§485A-302, 485A-303, 485A-304)



**§16-39-331 Confirmations by issuer.** Every issuer selling its own securities in an intrastate offering, at or before completion of a transaction, shall give or send to each customer written confirmation, retaining copies thereof, concerning all sales of securities, and disclosing the:

- (1) Date the transaction occurred;
  - (2) Price and commission charged; and
  - (3) Name of the agent handling the transaction.
- [Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §§485A-303, 485A-606)

**§16-39-332 Amendments.** (a) If prior to or during the period of effectiveness any statement, document, or information contained in the registration statement or prospectus becomes materially inaccurate, incorrect, or misleading, or in the light of changes in circumstances, addendums are made necessary in order to present a full disclosure of material facts affecting the issuer's business or the offering, or if the commissioner requests additional data, information, or verification thereof, the registrant shall promptly file, and in no event later than fifteen days following the event, occurrence, discovery, or notice thereof necessitating the same, a correcting amendment.

(b) In the event an issuer amends its prospectus, the revised date together with the date of the prospectus shall be shown on the front cover, and the portion or portions of the prospectus being amended should also show the amended date. [Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §§485A-301, 485A-303, 485A-304)

**§16-39-333 Renewals.** A registration statement may be renewed not less than fifteen days prior to the

expiration date by filing a new prospectus containing information of a date not more than ninety days prior to the date of filing, together with the renewal fee of \$250. The front cover shall show the balance of the offering, the amount of the original registration, and the date the original registration became effective. [Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §§485A-302, 485A-303)

**§16-39-334 Withdrawal, termination, or completion.** (a) A request for withdrawal of a registration statement may be made before or after its effectiveness by written notification to the commissioner; provided that no request shall be granted during the pending of a stop order proceeding under section 485A-305, HRS, unless the commissioner finds that the stop order is not necessary in the public interest. Upon the granting of a request for withdrawal, no part of the registration fee shall be refunded.

(b) Notification of termination or completion of a registered offering shall be submitted to the commissioner within thirty calendar days after the termination or completion, and shall include the results of the offering. [Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §§485A-302, 485A-303, 485A-304, 485A-305)

#### D. Advertising [~~And~~] and Financial Reports

**§16-39-340 Advertising.** (a) Definition. For purposes of this section, "sales literature" means material published in connection with an offer, sale, or purchase of a security to or from the general public, including material published in electronic format, or designed for use, in a newspaper, magazine or other periodicals, radio, television, telephone solicitation or tape recording, videotaped display,

signs, billboards, motion pictures, telephone directories (other than routine listings), other public media and any other written communication distributed or made generally available to the public, electronically or otherwise including, but not limited to, prospectuses, pamphlets, circulars, form letters, seminar texts, research reports, surveys, performance reports or summaries and reprints or excerpts of other sales literature or advertising to include publications.

(b) Filing requirement. Any sales literature used in connection with the offering of a security in this State shall be filed with the commissioner at least two business days prior to its proposed use; provided that the following materials shall be exempt from the filing requirements of this section: all advertising material previously filed with and cleared by the SEC or FINRA; all "tombstone" advertisements; and all advertisements relating to a federal covered security or to a security that is exempt from registration pursuant to section 485A-201 or 485A-202, HRS.

(c) Application of antifraud provisions. Sales literature used in any manner in connection with the offer, sale, or purchase of a security shall be subject to the provisions of sections 485A-501 and 485A-505, HRS, whether or not the sales literature is required to be filed pursuant to section 485A-504, HRS, or this section. Sales literature shall not contain any ambiguity, exaggeration, or other misstatement or omission of material fact that might confuse or mislead an investor.

(d) Prohibited disclosures. Unless specifically stating that the commissioner has not approved the merits of the security offering or the sales literature, no sales literature shall contain a reference to the commissioner unless such reference is specifically requested by the commissioner. [Eff 6/30/08; comp ] (Auth: HRS §§485A-504, 485A-606) (Imp: HRS §§485A-501, 485A-504, 485A-505, 485A-606)

**§16-39-341 Reports.** A copy of all financial reports sent or intended to be sent to security holders by an issuer of securities that is registered under chapter 485A, HRS, shall be filed with the commissioner upon request during the period of time that the issuer's registration statement is in effect. [Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §§485A-411, 485A-606)

E. Small Company Offerings Registration

**§16-39-350 Purpose.** The purpose of sections 16-39-350 to 16-39-355 is to encourage investment in small businesses, and provide a method of registration for small companies offering securities to the public. The commissioner recognizes that small issuers raising small amounts of money face special problems not faced by issuers raising larger amounts, and that standards appropriate to registrations of larger offerings may become unduly burdensome when applied to registrations of small offerings. The registration method offered by sections 16-39-350 to 16-39-355 is intended to reduce the costs and burdens of raising capital for small business and to maximize the amount of offering proceeds available to the issuer for investment in the business, without sacrificing investor protection. Issuers eligible for this method of registration shall use the SCOR registration form as the disclosure document for the offering. [Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §§485A-303, 485A-606)

**§16-39-351 Application of this chapter to SCOR registrations.** (a) The provisions of subchapter 3 shall apply to SCOR registrations; provided that

section 16-39-311 relating to financial reports, and section 16-39-330 relating to SEC effective dates shall not apply.

(b) The commissioner reserves the right to apply this chapter (or any provision therein) to offerings under sections 16-39-350 to 16-39-355 if the commissioner determines that such application, even in the small business offering context, is necessary for the protection of investors. [Eff 6/30/08; comp \_\_\_\_\_] (Auth: HRS §485A-606) (Imp: HRS §§485A-303, 485A-606)

**§16-39-352 Availability.** (a) SCOR is intended to allow small companies to conduct limited offerings of securities. SCOR uses a simplified offering format designed to provide adequate disclosure to investors concerning the issuer, the security offered, and the offering itself. Certain issuers may not be able to make adequate disclosure using the SCOR format and will, therefore, be unable to utilize SCOR.

(b) The commissioner finds that SCOR is generally unsuitable for the following issuers and programs:

- (1) Holding companies, and companies whose principal purpose is owning stock in or supervising the management of other companies;
- (2) Portfolio companies, including but not limited to real estate investment trusts as defined in NASAA's "Statement of Policy Regarding Real Estate Investment Trusts" referenced in section 16-39-315(11);
- (3) Issuers with complex capital structures;
- (4) Commodity pools;
- (5) Equipment leasing programs;
- (6) A "blind pool" or other offering for which the specific business to be engaged in or property to be acquired by the issuer cannot be specified; and
- (7) Real estate programs.

(c) SCOR registrations are available only to the issuer of the securities and not to any affiliate of that issuer or to any other person for resale of the issuer's securities.

(d) In addition, each of the following requirements shall be met:

- (1) The issuer shall be a corporation or centrally managed limited liability company organized under the law of the United States or Canada, or any state, province, or territory or possession thereof, or the District of Columbia, and have its principal place of business in one of the foregoing;
- (2) The issuer shall be required to engage in a business other than petroleum exploration or production or mining or other extractive industries;
- (3) The issuer shall not be a development stage company that either has no specific business plan or purpose or has indicated that its business plan is to engage in merger or acquisition with an unidentified company or companies or other entity or person;
- (4) The offering price for common stock (and the exercise price, if the securities offered are options, warrants, or rights for common stock, and the conversion price, if the securities are convertible into common stock) shall be equal to or greater than one dollar per share. The offering price for common ownership interests in a limited liability company (and the exercise price, if the securities are options, warrants, or rights for common ownership interests, and the conversion price, if the securities are convertible into common ownership interests) shall be equal to or greater than one dollar per unit of interest;
- (5) The aggregate offering price of the securities offered (within or outside this State) shall not exceed \$1,000,000 less the aggregate offering price of all securities

sold within the twelve months before the start of and during the offering of the securities under the Securities Act, 17 CFR section 230.504, in reliance on any exemption under section 3(b) of the Securities Act, in reliance on the exemption under section 3(a)(11) of the Securities Act, or in violation of section 5(a) of the Securities Act;

- (6) Commissions, fees, or other remuneration for soliciting any prospective purchaser in connection with the offering in this State shall only be paid to persons who, if required to be registered or licensed, the issuer believes or has reason to believe are appropriately registered or licensed in this State; and

- (7) Financial statements shall be prepared in accordance with either U.S. or Canadian generally accepted accounting principles. If appropriate, a reconciliation note should be provided. If the issuer has not conducted significant operations, statements of receipts and disbursements shall be included in lieu of statements of income. Interim financial statements may be unaudited. All other financial statements shall be audited by independent certified public accountants; provided that if each of the following four conditions are met, such financial statements in lieu of being audited may be reviewed by independent certified public accountants in accordance with the Accounting and Review Service Standards promulgated by the American Institute of Certified Public Accountants or the Canadian equivalent:

- (A) The issuer shall not have previously sold securities through an offering involving the general solicitation of prospective investors by means of advertising, mass mailing, public

meetings, "cold call" telephone solicitation, or any other method directed toward the public;

- (B) The issuer has not been previously required under federal, state, provincial, or territorial securities laws to provide audited financial statements in connection with any sale of its securities;
- (C) The aggregate amount of all previous sales of securities by the issuer (exclusive of debt financing with banks and similar commercial lenders) shall not exceed U.S. \$1,000,000; and
- (D) The amount of the present offering does not exceed U.S. \$1,000,000.

(e) SCOR registration shall not be available to investment companies subject to the Investment Company Act, nor shall it be available to issuers subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act. [Eff 6/30/08; am and comp ] (Auth: HRS §485A-606) (Imp: HRS §§485A-303, 485A-606)

**§16-39-353 Disqualification from use of SCOR registration.** (a) SCOR registration shall not be available for the security of any issuer if that issuer or any of its officers, directors, ten per cent shareholders, promoters or any selling agents of the security to be offered, or any officer, director, or partner of such selling agent:

- (1) Has filed an application for registration which is the subject of a currently effective registration stop order entered pursuant to any federal, state, or provincial securities law within five years prior to the filing of the SCOR registration application;
- (2) Has been convicted within five years prior to the filing of the SCOR registration



application of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit; including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

- (3) Is currently subject to any federal, state, or provincial administrative enforcement order or judgment entered by any state or provincial securities commissioner or the SEC within five years prior to the filing of the SCOR registration application;
- (4) Is subject to any federal, state, or provincial administrative enforcement order or judgment in which fraud or deceit, including but not limited to making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within five years prior to the filing of the SCOR registration application;
- (5) Is subject to any federal, state, or provincial administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase, or sale of securities;
- (6) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily, preliminarily, or permanently restrains or enjoins such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security, or involving the making of any false filing with any state or with the SEC, entered within five years prior to the filing of the SCOR registration application; or
- (7) Has violated the law of a foreign jurisdiction governing or regulating any aspect of the business of securities or

(b) The prohibitions of subsection (a) (1) through (3) and (a) (5) shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities-related business in the state or province in which the administrative order or judgment was entered against the person, or if the broker-dealer employing the person is licensed or registered in this State and the Form BD filed in this State discloses the order, conviction, judgment, or decree relating to the person.

**§16-39-354 Agreement by registrant on splits and dividends of stock or ownership interests.** By filing for SCOR registration in this State, the registrant agrees that it shall not split its common stock or common ownership interests, or declare a stock or

ownership interest dividend, for two years after the effective date of the registration. [Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §§485A-303, 485A-606)

**§16-39-355 Documents to be filed for SCOR registration.** In addition to filing a properly completed SCOR form, an applicant for SCOR registration shall file the following exhibits with the commissioner:

- (1) Form of selling agency agreement;
- (2) The issuer's articles of incorporation, articles of organization, or other charter documents, and all amendments thereto;
- (3) The issuer's bylaws or operating agreement, as amended to date;
- (4) Copies of any resolutions by directors setting forth terms and provisions of capital stock to be issued or by managers or managing members setting forth terms and provisions of capital ownership interest to be issued;
- (5) Any indenture, form of note, or other contractual provision containing terms of notes or other debt, or of options, warrants, or rights to be offered;
- (6) Specimen of security or ownership interest certificate to be offered (including any legend restricting resale);
- (7) Consent to service of process accompanied by appropriate corporate or company resolution;
- (8) Copy of all advertising or other materials directed to or to be provided to investors in the offering;
- (9) Form of escrow agreement for the escrow of proceeds;
- (10) Consent to inclusion in the disclosure document of the accountant's report;

- (11) Consent to inclusion in the disclosure document of any tax adviser's opinion or description of tax consequences;
- (12) Consent to inclusion in the disclosure document of any evaluation of litigation or administrative action by counsel;
- (13) Form of any subscription agreement for the purchase of securities in this offering;
- (14) Opinion of an attorney licensed to practice in a state or territory of the United States that the securities to be sold in the offering have been duly authorized and when issued upon payment of the offering price shall be legally and validly issued, fully paid, and nonassessable and binding on the issuer in accordance with their terms; and
- (15) Agreement by the registrant that the registrant shall not split its common stock or common ownership interests, or declare a stock or ownership interest dividend, for two years after the effectiveness of the registration. [Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §485A-303)

## SUBCHAPTER 4

REGISTRATION OF BROKER-DEALERS, AGENTS,  
INVESTMENT ADVISERS, AND INVESTMENT ADVISER  
REPRESENTATIVES

### A. Broker-Dealers

**§16-39-401 Registration; generally.** A person may be registered under chapter 485A, HRS, and this chapter if the commissioner finds that the applicant is qualified, has sufficient training and experience,

is of good repute, and otherwise satisfies the requirements of chapter 485A, HRS, and this chapter. [Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §§485A-401, 485A-406)

**§16-39-402 Eligibility requirements.** (a) An applicant, if a natural person, shall have attained the age of eighteen years.

(b) A broker-dealer that is a foreign business entity that intends to establish a branch office in this State shall, in addition to the requirements under this chapter and chapter 485A, HRS, comply with the requirements of this State's business registration laws, as applicable.

(c) An applicant, except an applicant that is registered as a broker or dealer under the Securities Exchange Act, shall have a minimum net capital of not less than \$5,000 and comply with the requirements of section 16-39-404(b).

(d) A partner or an officer of a registered broker-dealer or issuer may engage in the capacity of an agent only if that person has been duly registered as provided under this chapter and chapter 485A, HRS. [Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §§485A-401, 485A-406)

**§16-39-403 Application.** (a) An application for registration of a broker-dealer shall be filed on Form BD, which may be filed with the commissioner directly or through the CRD. If Form BD is filed with the commissioner directly, it shall be originally executed.

(b) The application shall be filed together with the following:

- (1) The application fee specified in section 16-39-103;
- (2) Evidence of compliance with all applicable requirements of section 16-39-402; and

- (3) Financial statements consisting of either:
  - (A) A balance sheet as of a date within thirty days of filing, verified by a duly authorized officer, or the equivalent, of the applicant and notarized, or if the applicant has been engaged in business one year or more preceding, an audited financial statement as of the last fiscal year, together with a balance sheet as of a date within thirty calendar days of filing, verified by a duly authorized officer, or the equivalent, of the applicant and notarized; or
  - (B) If the applicant is registered under the Securities Exchange Act, the applicant shall include with its application a copy of its most recent annual financial statement.
- (c) The commissioner may also require additional information regarding the applicant's previous history, record, and association, including without limitation the following:
  - (1) Disclosure of any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business, and any conviction of a felony;
  - (2) The applicant's financial condition and history;
  - (3) Disclosure as to whether the broker-dealer, or any person employed by or associated in business with the broker-dealer, is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of the broker-dealer under section 485A-412, HRS; and
  - (4) Any other information that the commissioner deems necessary to establish the qualifications of the applicant.

(d) Additional exhibits or information not specifically required by the application may be submitted by the applicant.

(e) The commissioner may require the applicant to file additional information if the information is necessary for the commissioner to determine whether to approve or deny the application. In accordance with the provisions of section 16-39-105, any additional information requested by the commissioner shall be requested in writing within forty-five calendar days of the commissioner's receipt of the application.

[Eff 6/30/08; am and comp ] (Auth: HRS §485A-606) (Imp: HRS §§485A-406, 485A-410)

**§16-39-404 Financial requirements.** (a) Every registered broker-dealer shall file an annual report of condition within ninety calendar days following the end of the calendar or fiscal year adopted as follows:

- (1) Broker-dealers registered under the Securities Exchange Act shall file a copy of the annual financial report filed with the SEC; and
- (2) All other broker-dealers shall file audited financial statements that evidences the broker-dealer's compliance with the requirements of subsection (b).

(b) A broker-dealer that is subject to subsection (a)(2) shall have at all times a minimum net capital of not less than \$5,000. As used in this section, "net capital" shall mean net worth, or the difference between total assets and total liabilities or indebtedness, after adjustment to eliminate or revise assets of doubtful or uncertain value and to reflect true liabilities, in accordance with the following schedule:

- (1) Asset items not allowable:
  - (A) Furniture, fixtures, and equipment; and
  - (B) Intangible items, such as goodwill, prepaid preincorporation, or organizational expenses, etc.; and

- (2) Asset items to be adjusted or substantiated:
  - (A) Securities owned shall be adjusted to market value;
  - (B) Value of real estate shall be attested to by qualified and disinterested persons;
  - (C) Property in joint ownership shall be limited to applicant's interest therein; and
  - (D) Value of unsecured notes, accounts receivable, or advanced commissions due from an agent, officer, director, partner, or affiliate may be required by the commissioner to be substantiated by an opinion of a bank, finance company, or other lending institution satisfactory to the commissioner.

(c) Broker-dealers registered in this State, who are registered with the SEC and are members of FINRA, may satisfy the annual report requirements of this section by complying with the following:

- (1) The broker-dealer files its annual audited financial report with FINRA;
- (2) The broker-dealer's annual audited financial reports filed with FINRA are current;
- (3) The broker-dealer notifies the commissioner in writing within twenty-four hours if the broker-dealer's net capital fails to meet the minimum amount required under this section;
- (4) The broker-dealer shall provide the commissioner with financial information within one business day following a request for such information from the commissioner; and
- (5) The broker-dealer shall complete the "Waiver Eligibility Certification" form. [Eff 6/30/08; am and comp ] (Auth: HRS §§485A-406 485A-411, 485A-606) (Imp: HRS §§485A-406 485A-411, 485A-606)



**§16-39-405 Sales of securities at financial institutions.** No broker-dealer shall conduct broker-dealer services on the premises of a financial institution where retail deposits are taken unless the broker-dealer complies initially and continuously with the following requirements:

- (1) Setting. Wherever practical, broker-dealer services shall be conducted in a physical location distinct from the area in which the financial institution's retail deposits are taken. In those situations where there is insufficient space to allow separate areas, the broker-dealer has a heightened responsibility to distinguish its services from those of the financial institution. In all situations, the broker-dealer shall identify its services in a manner that clearly distinguishes those services from the financial institution's retail deposit-taking activities. The broker-dealer's name shall be clearly displayed in the area in which the broker-dealer conducts its services.
- (2) Networking arrangements and program management. Networking arrangements shall be governed by a written agreement that sets forth the responsibilities of the parties and the compensation arrangements. Networking arrangements shall provide that supervisory personnel of the broker-dealer and representatives of state securities authorities, shall be permitted access to the financial institution's premises where the broker-dealer conducts broker-dealer services in order to inspect the books and records and other relevant information maintained by the broker-dealer with respect to its broker-dealer services. Management of the broker-dealer shall be responsible for ensuring that the networking arrangement clearly outlines the duties and

responsibilities of all parties, including those of the financial institution's personnel.

(3) Customer disclosure and written acknowledgment.

(A) At or prior to the time that a customer's securities brokerage account is opened by a broker-dealer on the premises of a financial institution where retail deposits are taken, the broker-dealer shall:

(i) Disclose, orally and in writing, that the securities purchased or sold in a transaction with the broker-dealer are: not insured by the FDIC; not deposits or other obligations of the financial institution and are not guaranteed by the financial institution; and subject to investment risks, including possible loss of the principal invested[-]; and

(ii) Make reasonable efforts to obtain from each customer during the account opening process a written acknowledgment of the disclosures required by clause (i).

(B) If broker-dealer services include any written or oral representations concerning insurance coverage, other than FDIC insurance coverage, then clear and accurate written or oral explanations of the coverage must also be provided to the customers when the presentations are first made.

(4) Communications with the public.

(A) All of the broker-dealer's confirmations and account statements shall indicate clearly that the broker-

dealer services are provided by the broker-dealer.

- (B) Advertisements and sales literature that announce the location of a financial institution where broker-dealer services are provided by the broker-dealer, or that are distributed by the broker-dealer on the premises of a financial institution, shall disclose that the securities: are not insured by the FDIC; are not deposits or other obligations of the financial institution and are not guaranteed by the financial institution; and are subject to investment risks, including possible loss of the principal invested. The shorter, logo format described in subparagraph (D) may be used to provide these disclosures.
- (C) Recommendations by a broker-dealer concerning non deposit investment products with a name similar to that of a financial institution shall only occur pursuant to policies and procedures reasonably designed to minimize risk of customer confusion.
- (D) The following shorter, logo format disclosures may be used by a broker-dealer in advertisements and sales literature, including material published, or designed for use, in radio or television broadcasts, automated teller machine ("ATM") screens, billboards, signs, posters and brochures, to comply with the requirements of subparagraph (B); provided that such disclosures are displayed in a conspicuous manner:
  - (i) Not FDIC insured;
  - (ii) No bank guarantee; and
  - (iii) May lose value.

- (E) As long as the omission of the disclosures required by subparagraph (B) would not cause the advertisement or sales literature to be misleading in light of the context in which the material is presented, such disclosures are not required with respect to messages contained in:
  - (i) Radio broadcasts of thirty seconds or less;
  - (ii) Electronic signs, including billboard-type signs that are electronic, time, and temperature signs and ticker tape signs, but excluding messages contained in such media as television, on-line computer services, or ATMs; and
  - (iii) Signs, such as banners and posters, when used only as location indicators.
- (5) Notification of termination. The broker-dealer shall promptly notify the financial institution if any agent of the broker-dealer who is employed by the financial institution is terminated for cause by the broker-dealer. [Eff 6/30/08; am and comp ] (Auth: HRS §§485A-406, 485A-606) (Imp: HRS §485A-406)

**§16-39-406 Books and records.** Every broker-dealer registered or required to be registered under chapter 485A, HRS, and this chapter shall prepare and maintain the books and records as described in the Securities Exchange Act, 17 CFR sections 240.17a-3 and 240.17a-4. [Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §485A-411)

**§16-39-407 Post-effective requirements; registration of successor broker-dealer.** (a) Every registrant shall promptly notify the commissioner of any material change in any information, exhibits, or schedules submitted, or circumstances disclosed in its last prior application, by filing a correcting amendment at the time of occurrence or discovery of the changes. Changes that shall be reported include but are not limited to the following:

- (1) Change in firm name, ownership, management, or control of a broker-dealer;
- (2) A change in any of its partners, officers, or persons in similar positions;
- (3) Change in its business address, or the creation or termination of a branch office in this State;
- (4) Change in type of business entity, general plan, or character of broker-dealer's business, method of operation or type of securities in which it is dealing or trading;
- (5) Material adverse change in financial condition, insolvency, dissolution or liquidation, or impairment of working capital, or noncompliance with the minimum net capital requirements provided in sections 16-39-402(c) and 16-39-404(b);
- (6) Termination of business or discontinuance of those activities as a broker-dealer or agent; and
- (7) The commencement of any proceeding or action that is required to be disclosed pursuant to the disciplinary questions on Form BD, including but not limited to, filing of a criminal charge or civil action against a registrant or a partner or officer in which a fraudulent, dishonest, or unethical act is alleged, or a violation of a securities law or any aspect of the securities business is involved, entry of a court or administrative order or proceeding against a registrant to deny, suspend, or revoke a registration, or

threatening to do so, or to enjoin it from engaging in or continuing any conduct or practice in the securities business, or to impose a fine, suspension, or expulsion from FINRA.

(b) Registration of successor broker-dealer. In the event that a new broker-dealer becomes the successor and continues the business of a broker-dealer registered pursuant to chapter 485A, HRS, and this chapter, the registration of the predecessor broker-dealer shall be deemed to remain effective as the registration of the successor broker-dealer only if the successor broker-dealer, within thirty days after such succession, files an application for registration on Form BD, and the predecessor broker-dealer files a notice of withdrawal from registration on Form BD-W.

- (1) The registration of the predecessor broker-dealer shall cease to be effective at such time as the application for registration on Form BD filed by the successor broker-dealer becomes effective; and
- (2) Notwithstanding any other provision of this section, if a new broker-dealer becomes the successor and continues the business of a registered broker-dealer, and the succession is based solely on a change in the predecessor broker-dealer's date or state of incorporation, form of organization, or composition of a partnership, the successor broker-dealer may, within thirty days after the succession, amend the registration of the predecessor broker-dealer on Form BD to reflect these changes. This amendment shall be deemed an application for registration filed by the predecessor broker-dealer and adopted by the successor broker-dealer.  
[Eff 6/30/08; comp ] (Auth:  
HRS §485A-606) (Imp: HRS §485A-407)

**§16-39-408 Expiration, renewal, termination of registration.** (a) All registrations shall automatically expire on December 31 of each year (unless sooner terminated in accordance with chapter 485A, HRS, and this chapter) and shall be renewed as provided in this section. A broker-dealer or issuer shall be responsible for renewing the registration of its agents at the time the broker-dealer or issuer renews its registration. A member of FINRA shall renew its registration with the commissioner by filing the renewal documents and fees through the CRD. All other broker-dealers and issuers shall renew their registration by annually filing, not earlier than November 1 or later than December 1 of the current registration year, an originally executed copy of page one of Form BD together with:

- (1) All amendments to Form BD that have previously not been filed with the commissioner;
- (2) A list of all agents of the broker-dealer that are renewing their registrations for the upcoming calendar year;
- (3) A copy of all amendments to Form U-4 of all such agents if such amendments have not been previously filed with the commissioner;
- (4) A Form U-5 on each registered agent of the broker-dealer who is not renewing its agent registration; and
- (5) A renewal fee as set forth in section 16-39-103 for the broker-dealer and for each agent renewing a registration.

(b) An application for renewal registration shall not be considered filed until the required fee and all required submissions have been received by the commissioner.

(c) Where registrations are permitted to expire on December 31 without the filing of a renewal application, a subsequent application shall be considered in all respects as an initial application.

(d) Registration may be terminated prior to the expiration date by filing a Form BD-W with the commissioner or through the CRD. Termination of the

broker-dealer's registration for any reason shall automatically terminate the registration of each registered agent of the broker-dealer. [Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §§485A-406, 485A-408, 485A-409, 485A-410)

#### B. Agents

**§16-39-420 Registration; generally.** A person may be registered as a securities agent under chapter 485A, HRS, and this chapter if the commissioner finds that the person is of good repute and otherwise satisfies the requirements of chapter 485A, HRS, and this chapter. [Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §§485A-402, 485A-406)

**§16-39-421 Eligibility requirements.** (a) An applicant, if a natural person, shall have attained the age of eighteen years.

(b) A broker-dealer or issuer shall submit an application with the commissioner to register an agent. [Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §§485A-402, 485A-406, 485A-410)

**§16-39-422 Application.** (a) An application for registration of an agent shall be filed on Form U-4, which shall be filed with the commissioner directly or through the CRD. If the broker-dealer is not registered through the CRD, an originally executed Form U-4 and fees shall be filed with the commissioner directly.

(b) The application shall be filed together with the following:



(1) The application fee set forth in section 16-39-103; and

(2) Evidence of compliance with section 16-39-421.

(c) The commissioner may also require additional information regarding the applicant's history, record, and association including without limitation the following:

(1) Disclosure of any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;

(2) The applicant's financial condition and history;

(3) Disclosure as to whether the agent or any person associated in business with the agent is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of the agent under section 16-39-470 or chapter 485A, HRS; and

(4) Any additional information that the commissioner deems necessary to establish the applicant's qualifications.

(d) All documents submitted to the commissioner shall be approved and registration shall become effective at noon on the forty-fifth calendar day after the submission of a completed application unless otherwise provided by state or federal law or unless an earlier effective date is specified by the commissioner.

(e) An agent's application that has been on file for a period of sixty calendar days with no attempt to comply with any notice of deficiency may be denied by the commissioner or withdrawn. The commissioner shall provide written notification of the denial to the broker-dealer or issuer with which the applicant is affiliated. If the application was filed through the CRD, the notification may be provided through the CRD.  
[Eff 6/30/08; comp ] (Auth: HRS

§§485A-402, 485A-606) (Imp: HRS §§485A-402, 485A-406, 485A-410)

**§16-39-423 Examination requirements. (a)**

Unless specifically exempt, every applicant for registration as a securities agent shall be required to pass a written examination that tests the applicant's knowledge of the securities business.

(b) The examination requirement of subsection (a) shall be deemed satisfied upon evidence to the commissioner that the applicant has passed an examination administered by FINRA that is appropriate for the type of business that will be conducted by the agent and FINRA's Uniform Securities Agent State Law Examination.

(c) An applicant who has not been registered in any jurisdiction for a period of two consecutive years immediately preceding the date of the application shall be required to comply with the examination requirements of this chapter.

(d) Notwithstanding any other provision to the contrary, the commissioner may by order waive the examination requirement if the commissioner determines that the examination is not necessary or appropriate in the public interest or for the protection of investors. [Eff 6/30/08; comp ] (Auth: HRS §§485A-406, 485A-412, 485A-606) (Imp: HRS §§485A-402, 485A-406)

**§16-39-424 Post-effective requirements. (a)**

Every applicant and registrant shall promptly file with the commissioner any and all amendments necessary to keep the information previously reported on the applicant's or registrant's Form U-4 current and accurate. If the Form U-4 being amended was filed with the commissioner through the CRD, any amendment to the form may also be filed through the CRD.

(b) Upon the receipt of an amendment, the commissioner may request additional information from the applicant or registrant to determine whether the applicant's application should be denied or the registrant's registration should be suspended or revoked. [Eff 6/30/08; comp ] (Auth: HRS §485A-606) (Imp: HRS §485A-411)

**§16-39-425 Expiration, renewal, termination of registration.** (a) All registrations shall automatically expire on December 31 of each year (unless sooner terminated in accordance with chapter 485A, HRS, and this chapter) and shall be renewed as provided in this section.

(b) A broker-dealer or issuer shall be responsible for renewing the registration of its agents at the time the broker-dealer or issuer renews its registration.

(c) An application for renewal registration shall not be considered filed until the broker-dealer or issuer submits the following:

- (1) The renewal fee set forth in section 16-39-103; and
- (2) A copy of all amendments to Form U-4 of all such agents if the amendments have not been previously filed with the commissioner.

(d) An agent's registration may be terminated at any time prior to its expiration date by either the broker-dealer or issuer employing the agent or by the agent filing a Form U-5 with the commissioner directly or through the CRD. Termination shall be effective when the notice of termination is received by the commissioner unless another date is indicated on the Form U-5.

(e) An agent's registration shall not be transferred. When an agent terminates an affiliation with the broker-dealer or issuer with whom the agent is registered, and wishes to be employed by another broker-dealer or issuer, a notice of termination shall be filed with the commissioner. The agent may then



to be filed with the commissioner pursuant to chapter 485A, HRS, and this chapter, shall be filed electronically with and transmitted to the IARD. The following additional conditions relate to these electronic filings:

- (1) Electronic signature. When a signature or signatures are required by the particular instructions of any filing to be made through the IARD, a duly authorized officer, or the equivalent, of the applicant or the applicant him or herself, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to the IARD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing;
- (2) When filed. Solely for purposes of a filing made through the IARD, a document is considered filed with the commissioner when all fees are received and the filing is accepted by the IARD on behalf of the State.

(e) Electronic filings. The electronic filing of any particular document and the collection of related processing fees shall not be required until the IARD provides for receipt of such filings and fees, and the commissioner provides at least thirty calendar days notice that electronic filing is available. Any documents or fees required to be filed with the commissioner that are not permitted to be filed with or cannot be accepted by the IARD shall be filed directly with the commissioner.

(f) Hardship exemptions. Notwithstanding subsections (d) and (e), there shall be two types of hardship exemptions from the requirements to make electronic filings:

- (1) Temporary hardship exemption.
  - (A) Investment advisers registered or required to be registered under the Investment Advisers Act who experience unanticipated technical difficulties

- that prevent submission of an electronic filing to the IARD may request a temporary hardship exemption from the requirements to file electronically;
- (B) To request a temporary hardship exemption, the investment adviser shall:
    - (i) File Form ADV-H in paper format with the commissioner where the investment adviser's principal place of business is located, no later than one business day after the filing (that is the subject of the Form ADV-H) was due; and
    - (ii) Submit the filing that is the subject of the Form ADV-H in electronic format to the IARD no later than seven business days after the filing was due;
  - (C) Effective date - upon filing. The temporary hardship exemption shall be deemed effective upon receipt by the commissioner of the complete Form ADV-H. Multiple temporary hardship exemption requests within the same calendar year may be disallowed by the commissioner; and
- (2) Continuing hardship exemption.
- (A) Criteria for exemption. A continuing hardship exemption may be granted only if the investment adviser is able to demonstrate that the electronic filing requirements of this chapter are prohibitively burdensome;
  - (B) To apply for a continuing hardship exemption, the investment adviser shall:
    - (i) File Form ADV-H in paper format with the commissioner at least twenty business days before a filing is due; and

- (ii) If a filing is due to more than one commissioner, the Form ADV-H shall be filed with the commissioner where the investment adviser's principal place of business is located;
- (C) Effective date - upon approval. The continuing hardship exemption shall be deemed effective upon approval by the commissioner. The time period of the exemption shall not exceed one year after the date on which the Form ADV-H is filed. If the commissioner approves the application, the investment adviser shall, no later than five business days after the exemption approval date, submit filings to the IARD in paper format (along with the appropriate processing fees) for the period of time for which the exemption is granted.

The decision to grant or deny a request for a hardship exemption shall be made by the commissioner or authority of the state in which the investment adviser's principal place of business is located.

[Eff 6/30/08; comp ] (Auth: HRS §§ 485A-406, 485A-606) (Imp: HRS §§485A-403, 485A-406)

**§16-39-431 Notice filing for federal covered investment advisers.** (a) A federal covered investment adviser may transact business in this State upon submitting to the commissioner a notice filing and notice filing fee as set forth in section 16-39-103, unless otherwise exempt pursuant to section 485A-405, HRS. The notice filing and notice filing fee may be filed with the commissioner through the IARD.

(b) The notice filing shall consist of the federal covered investment adviser's current Form ADV on file with the SEC. The notice filing shall be effective upon receipt and shall expire December 31 of

each year. A notice filing may be renewed prior to December 31 by either:

- (1) Filing with the commissioner:
  - (A) A copy of page one of the federal covered investment adviser's most recent Form ADV;
  - (B) A copy of Item 2 of Part 1A of the federal covered investment adviser's most recent Form ADV;
  - (C) Any amendments to Form ADV that have not been previously filed with the commissioner;
  - (D) A list containing the name and social security number or the IARD number of each investment adviser representative of the adviser who is renewing its registration for the coming notice filing period together with any amendments to the investment adviser representative's Form U-4 that have not been previously filed with the commissioner;
  - (E) A Form U-5 for each registered investment adviser representative who is not renewing its registration for the upcoming notice filing period; and
  - (F) A renewal fee as specified in section 16-39-103, to cover the renewal of the federal covered investment adviser's notice filing and the registration of each of its representatives who is renewing its registration; or
- (2) Filing a renewal and renewal fees through the IARD. Any investment adviser that elects to renew its notice filing through the IARD shall be required to file directly with the commissioner any information listed in paragraph (1)(D) and (E) that have not been filed through the IARD together with any fees due under paragraph (1)(F) that have not been paid through the IARD. [Eff



6/30/08; comp ] (Auth: HRS  
§485A-606) (Imp: HRS §485A-405)

**§16-39-432 Eligibility requirements.** (a) An applicant, if a natural person, shall have attained the age of eighteen years.

(b) A partner, officer, manager, representative, or employee of a registered investment adviser may render investment advisory services only if the person meets all the requirements of and has been duly registered as an investment adviser or investment adviser representative, as provided by section 485A-404, HRS, and this chapter.

(c) A corporation, partnership, limited liability company, sole proprietorship, or other unincorporated association whose partners, officers, managers, representatives, or employees render investment advisory services as defined in section 485A-403, HRS, shall comply with registration procedures as provided by section 485A-406, HRS, and this chapter, unless otherwise exempted.

(d) An individual applying to be registered as an investment adviser shall take and pass a written examination, prescribed by the commissioner, under section 16-39-438.

(e) An applicant shall have at all times, the minimum net worth, as defined in section 16-39-433. An applicant that maintains its principal place of business in a state other than this State shall not be required to comply with the minimum net worth requirement of this section; provided that the applicant is registered in the state where it maintains its principal place of business and is in compliance with that state's net capital or net worth requirements, if any.

(f) Except as otherwise expressly provided in this subchapter, an applicant who has custody or discretionary authority over client funds or securities shall obtain a surety bond as set forth in section 16-39-434.

(g) A foreign corporation, partnership, or limited liability company intending to establish a branch office in this State shall comply with the requirements of this State's business registration laws, as applicable. [Eff 6/30/08; comp ]  
(Auth: HRS §§485A-406, 485A-606) (Imp: HRS §§485A-403, 485A-406)

**§16-39-433 Financial requirements.** (a) An investment adviser registered or required to be registered, who does not have custody of client funds or securities, and who does not have discretionary authority over client funds or securities, shall maintain a minimum net worth of \$5,000 at all times.

(b) An investment adviser registered or required to be registered, who has custody of client funds or securities shall maintain a minimum net worth of \$35,000 at all times except:

- (1) Investment advisers that have custody solely due to their authority to deduct fees from client accounts and comply with the terms described in section 16-39-436 and related books and records shall only be required to maintain a minimum net worth of \$5,000 at all times; or
- (2) Investment advisers to pooled investment vehicles that have custody solely due to the capacity in which they act in advising pooled investment vehicles and comply with the terms described in section 16-39-436 and related books and records shall only be required to maintain a minimum net worth of \$5,000 at all times.

(c) An investment adviser, registered or required to be registered, who has discretionary authority over client funds or securities, but does not have custody of client funds or securities, shall maintain a minimum net worth of \$10,000 at all times.

(d) Unless otherwise exempted, as a condition of the right to transact business in this State, every

investment adviser registered or required to be registered shall notify the commissioner if the adviser's net worth is less than the minimum required by the close of business on the next business day. After transmitting the notice, each investment adviser shall file a report with the commissioner of its financial condition by the close of business on the next business day, including the following:

- (1) A trial balance of all ledger accounts;
- (2) A statement of all client funds or securities that are not segregated;
- (3) A computation of the aggregate amount of client ledger debit balances; and
- (4) A statement as to the number of client accounts.

(e) For purposes of this chapter, the term "net worth" means an excess of assets over liabilities, as determined by generally accepted accounting principles computed in accordance with the following:

- (1) Securities owned shall be adjusted to market value;
- (2) The value of real estate shall be attested to by qualified and disinterested persons; and
- (3) Property in joint ownership shall be limited to the applicant's interest therein.

(f) For purposes of this chapter, "net worth" shall not include the following as assets:

- (1) Prepaid expenses (except as to items properly classified as assets under generally accepted accounting principles);
- (2) Deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense and all other intangible assets;
- (3) Homes, home furnishings, [~~automobile(s),~~] automobiles, and any other personal items not readily marketable in the case of an individual;
- (4) Advances or loans to stockholders and officers in the case of a corporation;

- (5) Advances or loans to partners in the case of a partnership; or
- (6) Advances or loans to managers or members in the case of a limited liability company.
- (g) For purposes of this section, custody shall be defined as provided in section 16-39-436.
- (h) For purposes of this section, an investment adviser shall not be deemed to be exercising discretion when the investment adviser places trade orders with a broker-dealer pursuant to a third-party trading agreement if:
  - (1) The investment adviser has executed a separate investment adviser contract exclusively with its client which acknowledges that a third-party trading agreement will be executed to allow the investment adviser to effect securities transactions for the client in the client's broker-dealer account;
  - (2) The investment adviser contract specifically states that the client does not grant discretionary authority to the investment adviser and the investment adviser in fact does not exercise discretion with respect to the account; and
  - (3) A third-party trading agreement is executed between the client and a broker-dealer which specifically limits the investment adviser's authority in the client's broker-dealer account to the placement of trade orders and deduction of investment adviser fees.
- (i) The commissioner may require that a current appraisal be submitted in order to establish the worth of any asset.
- (j) Every investment adviser that has its principal place of business in a state other than this State shall be required to maintain only such minimum net worth as required by the state in which the investment adviser maintains its principal place of business, provided that the investment adviser is licensed in such state and is in compliance with such state's minimum net worth requirements, if any. [Eff

6/30/08; am and comp ] (Auth: HRS  
§§485A-406, 485A-411, 485A-606) (Imp: HRS §§485A-  
406, 485A-411)

**§16-39-434 Bonding requirements for certain investment advisers.** (a) Any investment adviser bond required under this chapter and chapter 485A, HRS, shall be issued by a surety company qualified to do business in this State with the State as obligee, and shall be subject to the claims of all clients of such investment adviser regardless of the client's state of residence.

(1) Every investment adviser registered or required to be registered under this chapter and chapter 485A, HRS, having custody of or discretionary authority over client funds or securities shall be bonded in the amount of \$50,000.

(2) Every investment adviser registered or required to be registered under this chapter and chapter 485A, HRS, who has custody of or discretionary authority over client funds or securities and who does not meet the minimum net worth requirements prescribed in section 16-39-433 shall be bonded in the amount of the net worth deficiency rounded up to the nearest \$5,000.

(b) For purposes of this section, "custody" shall be as defined in section 16-39-436.

(c) An investment adviser that has its principal place of business in a state other than this State shall be exempt from the requirements of subsection

(a), provided that the investment adviser is registered as an investment adviser in the state where the investment adviser has its principal place of business and is in compliance with such state's bonding requirements. [Eff 6/30/08; comp ]  
(Auth: HRS §§485A-411, 485A-606) (Imp: HRS §485A-411)

**§16-39-435 Application.** (a) Except as permitted by section 16 39 430(f), an application for registration shall be filed on Form ADV through the IARD and shall contain the information requested therein concerning the applicant's identification, qualification, business association, history, experience, and financial condition.

(b) The application shall be filed together with the following:

- (1) The application fee set forth in section 16-39-103;
- (2) Evidence of compliance with all applicable requirements of section 16-39-432(d) to (g);
- (3) Financial statements consisting of either:

- (A) A balance sheet as of a date within thirty calendar days of filing, verified by a duly authorized officer, or the equivalent, of the applicant and notarized, or if the applicant has been engaged in business one year or more preceding, an audited financial statement as of the last fiscal year, together with a balance sheet as of a date within thirty calendar days of filing, verified by a duly authorized officer, or the equivalent, of the applicant and notarized. However, if the applicant does not have custody or discretionary authority over client funds, the adviser need only file financial statements verified by a duly authorized officer, or the equivalent, of the applicant and notarized; or
- (B) If the investment adviser maintains its principal place of business in a state other than this State, and if the investment adviser is registered in the other state and is in compliance with the other state's financial reporting requirements, if any, a copy of the

adviser's most recent financial statement filed with the state where the adviser maintains its principal place of business; and

- (4) Proof that the applicant, if an individual, has complied with the examination requirement provided in section 16-39-438, or otherwise qualifies for exemption from the examination as specified in section 16 39-438.

(c) The commissioner may also require additional information regarding the applicant's previous history, record, and association, including without limitation the following:

- (1) Disclosure of any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business, and any conviction of a felony;
- (2) The applicant's financial condition and history;
- (3) Disclosure as to whether the investment adviser, or any person employed by or associated in business with the investment adviser, is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of the investment adviser under section 485A-412, HRS; and
- (4) Any other information that the commissioner deems necessary to establish the applicant's qualifications.

(d) Additional exhibits or information not specifically required by the application may be submitted by the applicant.

(e) The commissioner may require the applicant to file additional information if such information is necessary for the commissioner to determine whether to approve or deny the application. In accordance with the provisions of section 16-39-105, any additional information requested by the commissioner shall be

requested by the commissioner in writing within forty-five calendar days of receipt of the application.

(f) An application for initial registration shall not be considered filed until the required fee and all required submissions have been received by the commissioner. [Eff 6/30/08; comp ]  
(Auth: HRS §§485A-403, 485A-406, 485A-410, 485A-411, 485A-606) (Imp: HRS §§485A-403, 485A-406, 485A-410, 485A-411)

**§16-39-436 Custody of client funds or securities by investment advisers.** (a) Safekeeping required.

It shall be unlawful and deemed to be a fraudulent, deceptive, or manipulative act, practice, or course of business for an investment adviser that is registered or required to be registered to have custody of client funds or securities unless:

- (1) Notice to commissioner. The investment adviser shall notify the commissioner promptly in writing that the investment adviser has or may have custody. Such notification is also required to be given on Form ADV through the IARD;
- (2) Qualified custodian. A qualified custodian maintains those funds and securities:
  - (A) In a separate account for each client under that client's name; or
  - (B) In accounts that contain only the client's funds and securities, under the investment adviser's name as agent or trustee for the client;
- (3) Notice to clients. If the investment adviser opens an account with a qualified custodian on the client's behalf, either under the client's name or under the investment adviser's name as agent, the investment adviser shall notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, promptly



when the account is opened and following any changes to this information;

(4) Account statements shall be sent to clients, either:

(A) By a qualified custodian. The investment adviser shall have a reasonable basis for believing that the qualified custodian sends an account statement, at least quarterly, to each of the investment adviser's clients for which it maintains funds or securities, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period; or

(B) By the investment adviser.

(i) The investment adviser shall send an account statement, at least quarterly, to each client for whom the investment adviser has custody of funds or securities, identifying the amount of funds and of each security of which the investment adviser has custody at the end of the period and setting forth all transactions during that period;

(ii) An independent certified public accountant shall verify all client funds and securities by actual examination at least once during each calendar year at a time chosen by the accountant without prior notice or announcement to the investment adviser and that is irregular from year to year, and shall file a copy of the auditors report and financial statements with the commissioner within

- thirty calendar days after the completion of the examination, along with a letter stating that it has examined the funds and securities and describing the nature and extent of the examination, and
- (iii) The independent certified public accountant, upon finding any material discrepancies during the course of the examination, shall notify the commissioner of the discrepancies within one business day of the finding, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the commissioner;
  - (C) Special rule for limited partnerships and limited liability companies. If the investment adviser is a general partner of a limited partnership or managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle, the account statements required under paragraph (4) shall be sent to each limited partner or member, or other beneficial owner or their independent representative;
  - (5) Independent representatives. A client may designate an independent representative to receive, on the client's behalf, notices and account statements as required under paragraphs (3) and (4);
  - (6) Direct fee deduction. An investment adviser who has custody by having the authority to deduct fees directly deducted from client accounts shall provide the following safeguards:

- (A) Written authorization. The investment adviser shall have written authorization from the client to deduct advisory fees from the account held with the qualified custodian;
- (B) Notice of fee deduction. Each time a fee is directly deducted from a client account, the investment adviser shall concurrently:
  - (i) Send the qualified custodian an invoice of the amount of the fee to be deducted from the client's account; and
  - (ii) Send the client an invoice itemizing the fee. Such itemization shall include the formula used to calculate the fee, the amount of assets under management the fee is based on, and the time period covered by the fee;
- (C) Notice of safeguards. The investment adviser shall notify the commissioner in writing that the investment adviser intends to use the safeguards required under this section. Such notification shall be given on Form ADV[~~-~~];
- (D) Waiver of net worth, bonding and audited financial statement requirements. An investment adviser having custody solely because the investment adviser meets the definition of custody as defined under this section and who complies with the safekeeping requirements in paragraphs (1) through (6) shall not be required to meet the financial requirements for an investment adviser with custody as provided in section 16-39-433, the bonding requirement set forth in section 16-39-434, and the audited

financial statement requirement set forth in section 16-39-437;

- (7) Pooled investments. An investment adviser to pooled investment vehicles who has custody and who does not meet the exception provided in subsection (b)(3) shall, in addition to the safeguards set forth in paragraphs (1) through (5), comply with the following:
  - (A) Engage an independent party. Hire an independent party to review all fees, expenses, and capital withdrawals from the pooled investment accounts;
  - (B) Review of fees. Send all invoices or receipts to the independent party, detailing the amount of the fee, expenses or capital withdrawal, and the method of calculation such that the independent party can:
    - (i) Determine that the payment is in accordance with the pooled investment vehicle standards (generally, the partnership agreement or membership agreement); and
    - (ii) Forward, to the qualified custodian, approval for payment of the invoice with a copy to the investment adviser;
  - (C) For purposes of this section, an "independent party" means a person that:
    - (i) Is engaged by the investment adviser to act as a gatekeeper for the payment of fees, expenses, and capital withdrawals from the pooled investment;
    - (ii) Does not control and is not controlled by, and is not under common control with the investment adviser; and

- (iii) Does not have, and has not had within the past two years, a material business relationship with the investment adviser;
- (D) Notice of safeguards. The investment adviser shall notify the commissioner in writing that the investment adviser intends to use the safeguards required under this section. The notification shall be given on Form ADV;
- (E) Waiver of net worth, bonding and audited financial statement requirements. An investment adviser having custody solely because the investment adviser meets the definition of custody as defined under this section and who complies with the safekeeping requirements in paragraphs (1) through (5) and (7) shall not be required to meet the financial requirements for an investment adviser with custody as provided in section 16-39-433, the bonding requirement set forth in section 16-39-434, and the audited financial statement requirement set forth in section 16-39-437;
- (8) Investment adviser or investment adviser representative as trustee. When a trust retains an investment adviser, investment adviser representative, or employee, director, or owner of an investment adviser as trustee and the investment adviser acts as the investment adviser to that trust, the investment adviser shall:
  - (A) Notify the commissioner in writing that the investment adviser intends to use the safeguards required under this section. The notification shall be given on Form ADV;
  - (B) Send to the grantor of the trust, the attorney for the trust if it is a testamentary trust, the co-trustee

(other than the investment adviser, investment adviser representative, or employee, director, or owner of the investment adviser); or a defined beneficiary of the trust, at the same time that it sends any invoice to the qualified custodian, an invoice showing the amount of the trustees' fee or investment management or advisory fee, the value of the assets on which the fees were based, and the specific manner in which the fees were calculated;

- (C) Enter into a written agreement with a qualified custodian which specifies:
  - (i) That the qualified custodian shall not deliver trust securities to the investment adviser, any investment adviser representative or employee, director, or owner of the investment adviser; nor transmit any funds to the investment adviser, any investment adviser representative or employee, director or owner of the investment adviser, except that the qualified custodian may pay trustee fees to the trustee and investment management or advisory fees to investment adviser; provided that:
    - (A) The grantor of the trust or attorneys for the trust, if it is a testamentary trust, the co trustee (other than the investment adviser, investment adviser representative, or employee, director, or owner of the investment adviser); or a defined

- beneficiary of the trust  
has authorized the  
qualified custodian in  
writing to pay those fees;
- (B) The statements for those  
fees show the amount of the  
fees for the trustee and,  
in the case of statements  
for investment management  
or advisory fees, show the  
value of the trust assets  
on which the fee is based  
and the manner in which the  
fee was calculated; and
- (C) The qualified custodian  
agrees to send to the  
grantor of the trust, the  
attorneys for a  
testamentary trust, the co-  
trustee (other than the  
investment adviser,  
investment adviser  
representative, or  
employee, director or owner  
of the investment adviser);  
or a defined beneficiary of  
the trust, at least  
quarterly, a statement of  
all disbursements from the  
account of the trust,  
including the amount of  
investment management fees  
paid to the investment  
adviser and the amount of  
trustees' fees paid to the  
trustee;
- (ii) Except as otherwise set forth  
below in subparagraph  
(8)(C)(ii)(A), the qualified  
custodian may transfer funds or  
securities, or both, of the  
trust only upon the direction of

the trustee (who may be the investment adviser, investment adviser representative, or employee, director, or owner of the investment adviser), who the investment adviser has duly accepted as an authorized signatory. The grantor of the trust or attorneys for the trust, if it is a testamentary trust, the co-trustee (other than the investment adviser, investment adviser representative, or employee, director, or owner of the investment adviser); or a defined beneficiary of the trust, shall designate the authorized signatory for management of the trust. The direction to transfer funds or securities, or both, can only be made to the following:

- (A) A trust company, bank trust department or brokerage firm independent of the investment adviser for the account of the trust to which the assets relate;
- (B) The named grantors or to the named beneficiaries of the trust;
- (C) A third person who is independent of the investment adviser with respect to payment of the fees or charges of the third person including, but not limited to: attorney's, accountant's, or qualified custodian's fees for the trust; and taxes, interest,



(D) Third persons independent of the investment adviser for any other purpose legitimately associated with the management of the trust; or

(D) Waiver of net worth, bonding and audited financial statement requirements. An investment adviser having custody solely because the investment adviser meets the definition of custody as defined under this section and who complies with the safekeeping requirements in paragraphs (1) through (5) and (8) shall not be required to meet the financial requirements for an investment adviser with custody as provided in section 16-39-433, the bonding requirement set forth in section 16 39-434 and the audited financial statement requirement set forth in section 16-39-437.

(1) Shares of mutual funds. With respect to shares of an open-end company as defined in section 5(a)(1) of the Investment Company Act ("mutual fund"), the investment adviser may use the mutual fund's transfer agent in lieu of a qualified custodian for purposes of complying with the requirements of subsection (a);

- (2) Certain privately offered securities.
  - (A) An investment adviser shall not be required to comply with the requirements of subsection (a) with respect to securities that are:
    - (i) Acquired from the issuer in a transaction or chain of transactions not involving any public offering;
    - (ii) Uncertificated, and ownership thereof is recorded only on books of the issuer or its transfer agent in the name of the client; and
    - (iii) Transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.
  - (B) Notwithstanding subparagraph (A), the provisions of paragraph (2) are available with respect to securities held for the account of a limited partnership (or limited liability company, or other type of pooled investment vehicle) only if the limited partnership is audited, the audited financial statements are distributed, as described in paragraph (3) and the investment adviser notifies the commissioner in writing that the investment adviser intends to provide audited financial statements, as described above. The notification shall be given on Form ADV;
- (3) Limited partnerships subject to annual audit. An investment adviser shall not be required to comply with paragraph (4) with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) that is subject to audit at least annually and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) within one hundred twenty calendar days after the end of its fiscal year. The investment adviser shall also notify the commissioner in

writing that the investment adviser intends to employ the use of the audit safeguards described above. The notification is required to be given on Form ADV;

- (4) Registered investment companies. The investment adviser shall not be required to comply with this section with respect to the account of an investment company registered under the Investment Company Act;
- (5) Beneficial trusts. The investment adviser shall not be required to comply with safekeeping requirements of subsection (a) or the net worth requirement set forth in section 16-39-433 and the bonding requirements set forth in section 16 39 434 if the investment adviser has custody solely because the investment adviser, investment adviser representative, or employee, director, or owner of the investment adviser is a trustee for a beneficial trust, if all of the following conditions are met for each trust:
  - (A) The beneficial owner of the trust is a parent, grandparent, spouse, sibling, child, or grandchild of the trustee. These relationships shall include "step" relationships.
  - (B) For each account under subparagraph (A), the investment adviser shall comply with the following:
    - (i) The investment adviser shall provide a written statement to each beneficial owner of the account setting forth a description of the requirements of subsection (a) and the reasons why the investment adviser will not be complying with those requirements;
    - (ii) The investment adviser obtains from each beneficial owner a signed and dated statement acknowledging the receipt of the written statement required under clause (i); and

- (iii) The investment adviser maintains a copy of both documents described in clauses (i) and (ii) until the account is closed or the investment adviser is no longer the trustee;
- (6) Any investment adviser who intends to have custody of client funds or securities but is not able to utilize a qualified custodian as defined in subsection (c) shall first obtain approval from the commissioner and shall comply with all of the applicable safekeeping provisions under subsection (a), including taking responsibility for those provisions that are designated to be performed by a qualified custodian.
- (c) Definitions. For purposes of this section:
  - "Custody" means holding directly or indirectly, client funds or securities, or having any authority to obtain possession of them. Custody includes:
    - (1) Possession of client funds or securities unless received inadvertently and returned to the sender promptly, but in any case within three business days of receiving them;
    - (2) Any arrangement (including a general power of attorney) under which the investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment adviser's instruction to the custodian; and
    - (3) Any capacity (such as general partner or a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives the investment adviser or investment adviser's supervised person legal ownership of or access to client funds or securities;

Receipt of checks or securities drawn by clients and made payable to unrelated third parties shall not meet the definition of custody if forwarded to the third party within twenty-four hours of receipt and the adviser maintains the records required under section 16-39-442;

- "Independent representative" means a person who:
- (1) Acts as an agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners of a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle and by law or contract is obligated to act in the best interest of the advisory client or the limited partners, members, or other beneficial owners;
  - (2) Does not control, is not controlled by, and is not under common control with the investment adviser; and
  - (3) Does not have, and has not had within the past two years, a material business relationship with the investment adviser.

"Qualified custodian" means the following independent institutions or entities that are not affiliated with the investment adviser by any direct or indirect common control and have not had a material business relationship with the adviser in the previous two years:

- (1) A bank or savings association that has deposits insured by the FDIC under the Federal Deposit Insurance Act;
  - (2) A registered broker-dealer holding the client assets in customer accounts;
  - (3) A registered futures commission merchant registered under section 4f(a) of the Commodity Exchange Act, holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon; and
  - (4) A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.
- [Eff 6/30/08; am and comp ] (Auth: HRS §§485A-411, 485A-606) (Imp: HRS §485A-411)

**§16-39-437 Annual financial reporting**

**requirements.** (a) Every registered investment adviser shall file an annual report within ninety calendar days following the end of the investment adviser's fiscal year as follows:

- (1) An investment adviser that maintains its principal place of business in this State shall file audited financial statements; however, if an investment adviser does not have custody or discretionary authority over client funds, the investment adviser shall file financial statements verified by a duly authorized officer, or the equivalent, of the investment adviser and notarized. Any statement that does not adequately reflect the applicant's true financial picture shall not be accepted; and
  - (2) An investment adviser that maintains its principal place of business in a state other than this State shall file with the commissioner a copy of the most recent financial report or statement, if any, that the investment adviser has filed with the securities commissioner in the state in which it maintains its principal place of business. An investment adviser that maintains its principal place of business in a state other than this State but that is not registered in the state in which it maintains its principal place of business or is not in compliance with that state's financial reporting requirements, if any, shall be required to file with the commissioner financial statements that comply with the requirements of paragraph (1).
- (b) Except as otherwise provided in subsection (d), each registered investment adviser shall have at

all times a minimum net worth specified in section 16-39-433.

(c) To ensure the investment adviser's compliance with section 16-39-433 and this section, the commissioner may require that the value of unsecured notes, accounts receivable, or advanced commissions due from an agent, officer, director, partner, or affiliate be substantiated by an opinion of a bank, finance company, or other lending institution satisfactory to the commissioner.

(d) The provisions of subsections (b) and (c) shall not apply to an investment adviser that maintains its principal place of business in another state; provided that the investment adviser is registered in the state where it maintains its principal place of business and is in compliance with that state's net worth or net capital requirements, if any. [Eff 6/30/08; am and comp ]  
(Auth: HRS §§ 485A-411, 485A-606) (Imp: HRS §485A-411)

**§16-39-438 Examination requirements. (a)**

Examination requirements. Except as otherwise provided in this chapter, an individual applying to be registered as an investment adviser shall provide the commissioner with proof of obtaining a passing examination score or scores as follows:

- (1) The Uniform Investment Adviser Law Examination (Series 65 examination); or
- (2) The General Securities Representative Examination (Series 7 examination) and the Uniform Combined State Law Examination (Series 66 examination).

(b) An individual who has not been registered in any jurisdiction for a period of two consecutive years immediately preceding the date of the application shall be required to comply with the examination requirements of this section.

(c) Any investment adviser who fails to renew his or her registration for two or more consecutive

years, or who has not registered in any other jurisdiction for two or more consecutive years since passing a qualifying examination approved by the commissioner, shall be required to apply as a new applicant and comply with the examination requirements of this section.

(d) Exemptions.

(1) Any individual who is registered as an investment adviser or investment adviser representative in any jurisdiction in the United States on July 1, 2008 shall not be required to satisfy the examination requirements for continued registration; provided that the commissioner may require additional examinations for any individual found to have violated any state or federal securities law;

(2) Waivers. The examination requirement shall not apply to an individual who currently holds one of the following professional designations:

- (A) Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.;
- (B) Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;
- (C) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;
- (D) Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts;
- (E) Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.; or
- (F) Such other professional designation as the commissioner may by rule or order recognize.

(e) Notwithstanding any other provision to the contrary, the commissioner, by order, may waive the examination requirement if the commissioner determines



that the examination is not necessary or appropriate in the public interest or for the protection of investors. [Eff 6/30/08; comp ] (Auth: HRS §§485A-403, 485A-406, 485A-412, 485A-606) (Imp: HRS §§485A-403, 485A-406)

**§16-39-439 Disclosure statements.** Unless waived by the commissioner, every investment adviser that is registered or required to be registered under chapter 485A, HRS, and this chapter shall furnish each advisory client and prospective advisory client with a written disclosure statement that complies with the provisions of the Investment Advisers Act, 17 CFR section 275.204-3, notwithstanding the fact that the investment adviser is not registered or required to be registered under the Investment Advisers Act. The delivery and updating of the disclosure statement required by this section shall be done in accordance with the requirements of Investment Advisers Act, 17 CFR section 275.204-3. [Eff 6/30/08; comp ] (Auth: HRS §§485A-403, 485A-406, 485A-411, 485A-502, 485A-606) (Imp: HRS §§485A-403, 485A-406, 485A-411, 485A-502)

**§16-39-440 Post-effective requirements.** (a) Every registrant shall promptly notify the commissioner of any material change in any information, exhibits, or schedules submitted, or circumstances disclosed in its last prior Form ADV by filing a correcting amendment on Form ADV. Changes to be reported shall include, but are not limited to, the following:

- (1) Change in firm name, ownership, management, or control of an investment adviser;
- (2) Change in any of its partners, officers, or persons in similar positions;

- (3) Change in its business address, or the creation or termination of a branch office in this State;
- (4) Change in type of entity, general plan, or character of the investment adviser's business, method of operation, or type of securities in which it is dealing or trading;
- (5) Material adverse change in financial condition, insolvency, dissolution, or liquidation, or impairment of working capital, or noncompliance with the minimum net worth or bond requirements hereinabove provided; and
- (6) The filing of any disciplinary proceeding that is required to be disclosed on Form ADV, including but not limited to, a criminal charge or civil action against a registrant or a partner, officer, or employee who acts as an investment adviser in which a fraudulent, dishonest, or unethical act is alleged, or a violation of a securities law or any aspect of the securities business is involved or entry of a court or administrative order or proceeding against a registrant to deny, suspend, or revoke a registration, or threatening to do so, or to enjoin it from engaging in or continuing any conduct or practice in the securities business, or to impose a fine, suspension, or expulsion from FINRA.

(b) Registration of successor to registered investment adviser. In the event that a new investment adviser becomes the successor and continues the business of an investment adviser registered pursuant to section 16-39-430, the registration of the predecessor investment adviser shall be deemed to remain effective as the registration of the successor investment adviser if the successor investment adviser, within thirty calendar days after such succession, files an application for registration on

Form ADV, and the predecessor investment adviser files a notice of withdrawal from registration on Form ADV-W.

- (1) The registration of the predecessor investment adviser shall cease to be effective at such time as the application for registration on Form ADV filed by the successor investment adviser becomes effective; and
- (2) Notwithstanding any other provision of this section, if an investment adviser succeeds to and continues the business of a registered investment adviser, and the succession is based solely on a change in the predecessor investment adviser's date or state of incorporation, form of organization, or composition of a partnership, the successor investment adviser shall, within thirty calendar days after the succession, amend the registration of the predecessor investment adviser on Form ADV to reflect these changes. This amendment shall be deemed an application for registration filed by the predecessor investment adviser and adopted by the successor investment adviser. [Eff 6/30/08; comp ] (Auth: HRS §§485A-411, 485A-606) (Imp: HRS §§ 485A-407, 485A-409, 485A-411)

**§16-39-441 Expiration, renewal, termination of registration.** (a) All registrations shall automatically expire on December 31 of each year (unless sooner terminated in accordance with chapter 485A, HRS, and this chapter) and shall be renewed as provided in this section. An investment adviser shall be responsible for renewing the registration of its investment adviser representatives at the time the investment adviser renews its registration. An investment adviser shall renew its registration with

the commissioner by filing the renewal documents and fees through the IARD. The renewal documents shall include:

- (1) All amendments to Form ADV and Form U-4 that have not previously been filed with the commissioner;
- (2) The renewal fee as set forth in section 16-39-103 for the investment adviser and for each investment adviser representative renewing a registration.

(b) An application for renewal registration shall not be considered filed until the required fee and all required submissions have been received by the commissioner.

(c) A copy of all amendments to Form ADV that have previously been filed shall be submitted directly to the commissioner.

(d) Where registrations are permitted to expire on December 31 without the filing of a renewal application, a subsequent application shall be considered in all respects as an initial application.

(e) Registration may be terminated prior to the expiration date by filing a Form ADV-W with the commissioner or through the IARD. Termination of the investment adviser's registration for any reason shall automatically terminate the registration of each registered investment adviser representative of the investment adviser. [Eff 6/30/08; comp

] (Auth: HRS §§485A-406, 485A-606) (Imp: HRS §§485A-406, 485A-409, 485A-606)

**§16-39-442 Books and records.** (a) Every investment adviser registered or required to be registered under chapter 485A, HRS, and this chapter shall make and keep true, accurate, and current books and records in compliance with the Investment Advisers Act, 17 CFR section 275.204-2. In addition, investment advisers who have custody, as that term is defined in section 16-39-436, of client funds or

securities, shall keep all records and evidence of compliance required by section 16-39-436.

(b) An investment adviser subject to subsection (a), before ceasing to conduct or discontinuing business as an investment adviser shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this section for the remainder of the period specified in this section, and shall notify the commissioner in writing of the exact address where such books and records shall be maintained during such period.

(c) To the extent that the SEC promulgates changes to the rules of the Investment Advisers Act referenced in subsection (a), investment advisers in compliance with such rules as amended shall not be subject to enforcement action by the commissioner for violation of this section to the extent that the violation results solely from the investment adviser's compliance with the amended rule.

(d) Every investment adviser that has its principal place of business in a state other than this State shall be exempt from the requirements of this section; provided the investment adviser is licensed in such state and is in compliance with the state's recordkeeping requirements. [Eff 6/30/08; comp ] (Auth: HRS §§485A-406, 485A-411, 485A-606) (Imp: §485A-411)

#### D. Investment Adviser Representatives

**§16-39-450 Registration; generally.** A person may be registered as an investment adviser representative under chapter 485A, HRS, if the commissioner finds that the applicant is of good repute and otherwise satisfies the requirements of chapter 485A, HRS, and this chapter. [Eff 6/30/08; comp ] (Auth: HRS §§485A-406, 485A-606) (Imp: HRS §§485A-404, 485A-406)

**§16-39-451 Eligibility requirements.** (a) An applicant, if a natural person, shall have attained the age of eighteen years.

(b) An investment adviser shall submit an application with the commissioner to register an investment adviser representative. [Eff 6/30/08; comp ] (Auth: HRS §§485A-406, 485A-606) (Imp: HRS §§485A-404, 485A-406)

**§16-39-452 Application.** (a) An application for registration of an investment adviser representative shall be filed on Form U-4 through the IARD.

(b) The application shall be filed together with the following:

- (1) The application fee set forth in section 16-39-103; and
- (2) Evidence of compliance with section 16-39-451.

(c) The commissioner may also require additional information regarding the applicant's history, record, and association, including without limitation the following:

- (1) Disclosure of any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;
- (2) The applicant's financial condition and history;
- (3) Disclosure as to whether the investment adviser representative or any person associated in business with the investment adviser representative is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of the agent under section 16-39-470 or chapter 485A, HRS; and

(4) Any additional information that the commissioner deems necessary to establish the applicant's qualifications.

(d) All documents submitted to the commissioner shall be approved and registration shall become effective at noon on the forty-fifth calendar day after the submission of a completed application unless otherwise provided by State or federal law or unless an earlier effective date is specified by the commissioner.

(e) An investment adviser representative's application that has been on file for a period of sixty calendar days with no attempt to comply with any notice of deficiency may be denied by the commissioner or withdrawn. The commissioner shall provide written notification of the denial to the investment adviser with which the applicant is affiliated. If the application was filed through the IARD, the notification may be provided through the IARD.

(f) The termination of any investment adviser's registration for any reason shall automatically terminate the registration of all investment adviser representatives registered thereunder.

(g) When an investment adviser representative ceases the activities of an investment adviser representative, or the investment adviser representative otherwise becomes ineligible to be registered, a notice to terminate the registration shall be filed with the commissioner on Form U-5 by either the investment adviser representative or the investment adviser with whom the investment adviser representative is registered. The termination of the registration shall be effective upon the commissioner's receipt of such form unless another date is indicated on the Form U-5. [Eff 6/30/08; comp ] (Auth: HRS §§485A-406, 485A-606) (Imp: HRS §§485A-406, 485A-408, 485A-409)

**§16-39-453 Examination requirements.** (a) Unless specifically exempt, every applicant for

registration as an investment adviser representative shall provide the commissioner with proof of obtaining a passing score or scores on the following examinations:

- (1) The Uniform Investment Adviser Law Examination (Series 65 examination); or
- (2) The General Securities Representative Examination (Series 7 examination) and the Uniform Combined State Law Examination (Series 66 examination).

(b) An applicant who has not been registered in any jurisdiction for a period of two consecutive years immediately preceding the date of the application shall be required to comply with the examination requirements of this section.

(c) Any investment adviser representative who fails to renew his or her registration for two or more consecutive years, or who has not registered for two or more consecutive years since passing a qualifying examination as approved by the commissioner, shall be required to apply as a new applicant and comply with the examination requirements of this section.

(d) Exemptions.

- (1) Any individual who is registered as an investment adviser or investment adviser representative in any jurisdiction in the United States on July 1, 2008 shall not be required to satisfy the examination requirements for continued registration; provided that the commissioner may require additional examinations for any individual found to have violated any state or federal securities law.
- (2) Waivers. The examination requirement shall not apply to an individual who currently holds one of the following professional designations:
  - (A) Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.;



- (B) Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;
- (C) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;
- (D) Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts;
- (E) Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.; or
- (F) Such other professional designation as the commissioner may by rule or order recognize.

(e) Notwithstanding any other provision to the contrary, the commissioner, by order, may waive the examination requirement if the commissioner determines that the examination is not necessary or appropriate in the public interest or for the protection of investors. [Eff 6/30/08; comp ] (Auth: HRS §§485A-404, 485A-406, 485A-412, 485A-606) (Imp: HRS §§485A-404, 485A-406)

**§16-39-454 Post-effective requirements.** (a)

Every applicant and every registrant shall promptly file with the commissioner any and all amendments necessary to keep the information previously reported on the applicant's or registrant's Form U-4 current and accurate. If the Form U-4 being amended was filed with the commissioner through the CRD or IARD, any amendment to the Form U-4 may also be filed through the CRD or IARD.

(b) Upon the receipt of the amendment, the commissioner may request additional information from the applicant or registrant to determine whether the applicant's application should be denied, or the registrant's registration should be suspended or revoked. [Eff 6/30/08; comp ] (Auth:

HRS §§485A-411, 485A-606) (Imp: HRS §§485A-404, 485A-409, 485A-411)

**§16-39-454.5 Continuing education requirements.**

(a) Investment adviser representative continuing education. Every investment adviser representative registered under chapter 485A, HRS, must complete the following IAR continuing education requirements each Reporting Period:

- (1) IAR Ethics and Professional Responsibility Requirement. An investment adviser representative must complete six Credits of IAR Regulatory and Ethics Content offered by an Authorized Provider, with at least three Credits covering the topic of ethics; and
- (2) IAR Products and Practice Requirement. An investment adviser representative must complete six Credits of IAR Products and Practice Content offered by an Authorized Provider.

(b) Agent of FINRA-registered broker-dealer compliance. An investment adviser representative who is also registered as an agent of a FINRA member broker-dealer and who complies with FINRA's continuing education requirements is considered to be in compliance with the subrule (a)(2) IAR Products and Practice Requirement for each applicable Reporting Period so long as the FINRA continuing education content meets all of the following baseline criteria as determined by NASAA:

- (1) The continuing education content focuses on compliance, regulatory, ethical, and sales practices standards;
- (2) The continuing education content is derived from state and federal investment advisory statutes, rules and regulations, securities industry rules and regulations, and accepted standards and practices in the financial services industry; and

- (3) The continuing education content requires that its participants demonstrate proficiency in the subject matter of the educational materials.

(c) Credentialing organization continuing education compliance. Credits of continuing education completed by an investment adviser representative who was awarded and currently holds a credential that qualifies for an examination waiver under section 16-39-453 complies with subsection (a)(1) and (a)(2) provided all of the following are true:

- (1) The investment adviser representative completes the credits of continuing education as a condition of maintaining the credential for the relevant Reporting Period;
- (2) The credits of continuing education completed during the relevant Reporting Period by the investment adviser representative are mandatory to maintain the credential; and
- (3) The continuing education content provided by the credentialing organization during the relevant Reporting Period is Approved IAR Continuing Education Content.

(d) IAR continuing education reporting. Every investment adviser representative is responsible for ensuring that the Authorized Provider reports the investment adviser representative's completion of the applicable IAR continuing education requirements.

(e) No carry-forward. An investment adviser representative who completes Credits of continuing education in excess of the amount required for the Reporting Period may not carry forward excess credits to a subsequent Reporting Period.

(f) Failure to complete or report. An investment adviser representative who fails to comply with this rule by the end of a Reporting Period will renew as "CE Inactive" at the close of the calendar year in this state until the investment adviser representative completes and reports all required IAR continuing education Credits for all Reporting Periods as

required by this rule. An investment adviser representative who is CE inactive at the close of the next calendar year is not eligible for investment adviser representative registration or renewal of an investment adviser representative registration.

(g) Discretionary waiver by the Commissioner. The Commissioner may, in the Commissioner's discretion, waive any requirements of this rule.

(h) Home state. An investment adviser representative registered or required to be registered in this state who is registered as an investment adviser representative in the individual's Home State is considered to be in compliance with this rule provided that both of the following are true:

(1) The investment adviser representative's Home State has continuing education requirements that are at least as stringent as the NASAA Model Rule on Investment Adviser Representative Education; and

(2) The investment adviser representative is in compliance with the Home State's investment adviser representative continuing education requirements.

(i) Unregistered periods. An investment adviser representative who was previously registered under the Act and became unregistered must complete IAR continuing education for all reporting periods that occurred between the time that the investment adviser representative became unregistered and when the person became registered again under the Act unless the investment adviser representative takes and passes the examination or receives an examination waiver as required by section 16-39-453 in connection with the subsequent application for registration.

(j) Definitions. As used in this section: "Act" means the Hawaii Uniform Securities Act (2008), codified at Chapter 485A, of the Hawaii Revised Statutes.

"Approved IAR Continuing Education Content" means the materials, written, oral, or otherwise that have been approved by NASAA or its designee and which make

up the educational program provided to an investment adviser representative under this rule.

"Authorized Provider" means a person that NASAA or its designee has authorized to provide continuing education content required by this rule.

"Credit" means a unit that has been designated by NASAA or its designee as at least fifty minutes of educational instruction.

"FINRA" means the Financial Industry Regulatory Authority.

"Home State" means the state in which the investment adviser representative has its principal office and place of business.

"IAR Ethics and Professional Responsibility Content" means Approved IAR Continuing Education Content that addresses an investment adviser representative's ethical and regulatory obligations.

"IAR Products and Practice Content" means Approved IAR Continuing Education Content that addresses an investment adviser representative's continuing skills and knowledge regarding financial products, investment features, and practices in the investment advisory industry.

"Investment adviser representative" or "IAR" means an individual who meets the definition of "investment adviser representative" under the Act and an individual who meets the definition of "investment adviser representative" under section 485A-102, HRS.

"NASAA" means the North American Securities Administrators Association or a committee designated by its Board of Directors.

"Reporting Period" means one twelve-month period as determined by NASAA. An investment adviser representative's initial Reporting Period with this state commences the first day of the first full Reporting Period after the individual is registered or required to be registered with this state. [Eff and comp  
] (Auth: HRS §§485A-406, 485A-411, 485A-606) (Imp: HRS §§485A-406, 485A-411, 485A-606)

**§16-39-455 Expiration, renewal, termination of registration.** (a) All registrations shall automatically expire on December 31 of each year (unless sooner terminated in accordance with chapter 485A, HRS, and this chapter) and shall be renewed as provided in this section.

(b) An investment adviser shall be responsible for renewing the registration of its investment adviser representatives at the time the investment adviser renews its registration.

(c) An application for renewal registration shall not be considered filed until the investment adviser submits the following:

- (1) The renewal fee set forth in section 16-39-103; and
- (2) A copy of all amendments to Form U-4 of all such investment adviser representatives if such amendments have not been previously filed with the commissioner.

(d) An investment adviser representative's registration may be terminated at any time prior to its expiration date by the investment adviser employing the investment adviser representative or by the investment adviser representative by filing a Form U-5 with the commissioner directly or through the IARD. Termination shall be effective when the notice of termination is received by the commissioner unless another date is indicated on the Form U-5.

(e) An investment adviser representative's registration shall not be transferred. When an investment adviser representative terminates an affiliation with the investment adviser with whom the investment adviser representative is registered, and wishes to be employed by another investment adviser, a notice of termination shall be filed with the commissioner. The investment adviser representative may then reapply for registration with another investment adviser by complying with the requirements of this subchapter.

(f) The termination of any investment adviser's registration for any reason shall automatically

terminate the registration of all agents registered thereunder.

(g) When an investment adviser representative ceases the activities of an investment adviser representative, or the investment adviser representative otherwise becomes ineligible to be registered, a notice to terminate the registration shall be filed with the commissioner on Form U-5 by either the investment adviser representative, or the investment adviser with whom the investment adviser representative is registered. The termination of the registration shall be effective upon the commissioner's receipt of such form unless another date is indicated on the Form U-5. [Eff 6/30/08; comp ] (Auth: HRS §§485A-406, 485A-606) (Imp: HRS §485A-406, 485A-409, 485A-606)

E. Denial ~~[Of]~~ of Application; Suspension ~~[And]~~ and Revocation ~~[Of]~~ of Registration ~~[Of]~~ of Broker-Dealers, Agents, Investment Advisers, ~~[And]~~ and Investment Adviser Representatives

**§16-39-470 Denial; suspension and revocation.**

(a) A proceeding to deny an application for registration, or to suspend or revoke the effectiveness of a registration may be instituted by the commissioner if the action is in the public interest, reasonable grounds exist that the applicant or registrant has violated or failed to comply with any provision of chapter 485A, HRS, or this chapter, or the applicant or registrant has demonstrated its unworthiness to transact the business of a broker-dealer, agent, investment adviser, or investment adviser representative.

(b) Without in any way limiting the generality thereof, for the purposes of section 485A-412(d)(14), HRS, any of the following shall demonstrate an applicant's or registrant's unworthiness to transact the business of a broker-dealer or agent:

- (1) Delivery delays. Engaging in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers or in the payment upon request of free credit balances reflecting completed transactions of any of its customers, or both;
- (2) Churning. Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;
- (3) Unsuitable recommendations. Recommending to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that the transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer or agent;
- (4) Unauthorized transactions. Executing a transaction on behalf of a customer without authorization to do so;
- (5) Discretionary authority. Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the executing of orders, or both;
- (6) Margin accounts. Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account;
- (7) Segregation of client securities. Failing to segregate customers' free securities or securities held in safekeeping;
- (8) Hypothecating customer securities. Hypothecating a customer's securities



without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by rules of the SEC;

- (9) Unreasonable price, commission. Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security, or receiving an unreasonable commission or profit;
- (10) Prospectus delivery. Failing to furnish to a customer purchasing securities in an offering, no later than the due date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus;
- (11) Unreasonable fees. Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;
- (12) Offer to ~~[buy/sell]~~ buy or sell at stated price. Offering to buy from or sell to any person any security at a stated price unless the broker-dealer or agent is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell;
- (13) Sales at the market. Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless the broker-dealer or agent knows or has reasonable grounds to believe that a market for the security exists other than that made, created, or

controlled by the broker-dealer or agent, or by any person for whom one is acting or with whom one is associated in the distribution, or any person controlled by, controlling or under common control with the broker-dealer or agent;

- (14) Manipulative, deceptive, or fraudulent practices. Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include but not limited to~~[+]~~:

(A) Effecting any transaction in a security which involves no change in the beneficial ownership thereof;

(B) Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; provided that nothing in this subsection shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customers; or

(C) Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security of others;

- (15) Loss guarantees. Guaranteeing a customer against loss in any securities account of such customer carried by the broker-dealer or agent, or in any securities transaction effected by the broker-dealer or agent, or in any securities transaction effected by the broker-dealer or agent with or for such customer;
- (16) Bona fide price reports. Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such broker-dealer or agent believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer or agent believes that such quotation represents a bona fide bid for, or offer of, such security;
- (17) Deceptive or misleading advertising. Using any advertising or sales presentation in any manner that is deceptive or misleading. An example would be the distribution of any nonfactual data, material, or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede, or defeat the purpose or effect of any prospectus or disclosure;
- (18) Disclosure of control. Failing to disclose that the broker-dealer is controlled by, controlling, affiliated with, or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of such security, the existence of such

control to such customer, and if such disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;

- (19) Bona fide distribution. Failing to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution; whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member;
- (20) Customer communication. Failure or refusal to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond to a formal written request or complaint from a customer;
- (21) Loans [~~to/from~~] to or from customers. Engaging in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities, or an executed stock power of a customer;
- (22) Unrecorded transactions. Effecting securities transactions not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction;
- (23) Fictitious accounts. Establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited;
- (24) [~~Profit/loss~~] Profit or loss sharing. Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the agent represents;

- (25) Splitting commissions. Dividing or otherwise splitting the agent's commissions, profits, or other compensation from the purchase or sale of securities with any person not also registered as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control;
- (26) Unsolicited transactions. Marking any order tickets or confirmations as unsolicited when in fact the transaction was solicited;
- (27) Compliance with the rules of self-regulatory organizations. Failing to comply with any applicable provision of the Conduct Rules and any other Rules of Fair Practice of the NASD or any applicable fair practice or ethical standard promulgated by the SEC or by a self-regulatory organization approved by the SEC;
- (28) Failure to cooperate. Failing to cooperate with, or providing false or incomplete information to, the commissioner in connection with any investigation under this chapter or chapter 485A, HRS;
- (29) Statement of account for OTC securities. Failing to provide each customer with a statement of account which, with respect to all OTC non-NASDAQ equity securities in the account, contains a value for each security based on the closing market bid on a date certain for any month in which activity has occurred in a customer's account, but in no event less than every three months; provided that this paragraph shall apply only if the firm has been a market maker in the security at any time during the period for which the monthly or quarterly statement is issued;
- (30) Credit to customer. Extending credit to a customer in violation of the Securities Exchange Act or the regulations of the Federal Reserve Board;

- (31) Fee disclosures. Charging a fee based on the activity, value, or contents (or lack thereof) of a customer account unless written disclosure pertaining to the fee, which shall include information about the amount of the fee, how imposition of the fee can be avoided, and any consequence of late payment or non-payment of the fee, was provided no later than the date the account was established or, with respect to an existing account, at least sixty calendar days prior to the effective date of the fee;
- (32) Business disclosures. Failing to accurately describe or disclose, in any advertising or other promotional materials (including business cards, stationery or signs) relating to an agent's business, the identity of the broker-dealer or issuer with whom the agent is associated or the nature of the securities services offered by the agent;
- (33) Boiler room tactics. Engaging or aiding in high pressure tactics in connection with the solicitation of a sale or purchase of a security by means of an intensive telephone, e-mail, or fax campaign, or unsolicited calls to persons not known by, nor having an account with, the agent or broker-dealer represented by the agent, whereby the prospective purchaser is encouraged to make a hasty decision to buy, irrespective of his or her investment needs and objectives;
- (34) Protection of non-public information. Failing to protect the security and confidentiality of the non-public personal information of any client;
- (35) Minimum capital requirements. Operating a securities business while being unable to meet current liabilities, or violating any rule or order relating to minimum capital, bond, record-keeping and reporting requirements, or provision concerning use,

- commingling, or hypothecation of a customer's funds or securities;
- (36) Outside business activity. Any agent associated with a broker-dealer registered under chapter 485A, HRS, and this chapter shall not engage in business activities, for which the agent receives compensation either directly or indirectly, outside the scope of the agent's regular employment unless the agent has provided prior written notice to his employing firm;
  - (37) Dual agency. Failing to disclose a dual agency capacity;
  - (38) Other terms or conditions. Effecting transactions upon terms and conditions other than those stated per confirmations; or
  - (39) False, misleading, deceptive, exaggerated, or flamboyant representations. Making false, misleading, deceptive, exaggerated, or flamboyant representations or predictions in the solicitation or sale of a security. Examples of this include without limitation misrepresenting:
    - (A) That the security shall be resold or repurchased;
    - (B) That the security shall be listed or traded on an exchange or established market;
    - (C) That the security shall result in an assured, immediate or extensive increase in value, future market price, or return on investment;
    - (D) With respect to the issuer's financial condition, anticipated earnings, potential growth, or success; or
    - (E) That there is a guarantee against risk or loss.

This subsection is not intended to be all-inclusive, and thus, acts or practices not enumerated in this subsection may also be deemed to demonstrate unworthiness to transact the business of broker-dealer or agent. Engaging in

other conduct such as forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices shall also be grounds for denial, suspension, or revocation of registration.

(c) Without in any way limiting the generality thereof, for the purposes of section 485A-412, HRS, any of the following shall demonstrate an applicant's or registrant's unworthiness to transact the business of an investment adviser or investment adviser representative:

- (1) Unsuitable recommendation. Recommending to a client to whom investment supervisory, management, or consulting services are provided the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser;
- (2) Discretionary authority. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten business days after the date of the first transaction place pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both;
- (3) Churning. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives, and character of the account in light of the fact that an investment adviser or an



investment adviser representative in such situations can directly benefit from the number of securities transactions effected in a client's account. This paragraph appropriately forbids an excessive number of transaction orders to be induced by an adviser for a "customer's account";

- (4) Unauthorized transactions. Placing an order to purchase or sell a security for the account of a client without authority to do so;
- (5) Unauthorized third-party trade. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client;
- (6) Loans from clients. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds;
- (7) Loans to clients. Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser;
- (8) Misrepresentations concerning advisory services. Misrepresenting to any advisory client or prospective advisory client, the qualifications of the investment adviser or any employee of the investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading;

- (9) Advisory report prepared by another.  
Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact; provided that this prohibition shall not apply to a situation where the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service;
- (10) Unreasonable advisory fees. Charging a client an unreasonable advisory fee;
- (11) Conflict of interest. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the adviser, or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:
  - (A) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; or
  - (B) Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employees;
- (12) Guaranteeing specific results. Guaranteeing a client that a specific result will be achieved (gain or loss) with advice that will be rendered;
- (13) Advertising. Publishing, circulating, or distributing any advertisement which does not comply with the Investment Advisers Act, 17 CFR section 275-206(4)-1;
- (14) Disclosure of private information.  
Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client;

- (15) Action contrary to section 16-39-435.  
Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the adviser's action is subject to and does not comply with the requirements of section 16-39-435;
- (16) Advisory contract disclosure. Entering into, extending, or renewing any investment advisory contract, unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the adviser and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract;
- (17) Protection of non-public information. Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of section 204A of the Investment Advisers Act;
- (18) Advisory contract to comply with federal law. Entering into, extending, or renewing any advisory contract contrary to the provisions of section 205 of the Investment Advisers Act; provided that this provision shall apply to all advisers and investment adviser representatives registered or required to be registered under chapter 485A, HRS, and this chapter, notwithstanding whether such adviser or representative would be exempt from federal registration pursuant

to section 203(b) of the Investment Advisers Act;

- (19) Waiver of state or federal law prohibited. To indicate, in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of chapter 485A, HRS, this chapter, or the Investment Advisers Act;
- (20) Fraudulent, deceptive, or manipulative acts. Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative in contrary to the provisions of section 206(4) of the Investment Advisers Act, notwithstanding the fact that such investment adviser or investment adviser representative is not registered or required to be registered under section 203 of the Investment Advisers Act;
- (21) Third party conduct. Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of chapter 485A, HRS, and this chapter;
- (22) Disclosure of material facts. Failing to disclose to any client or prospective client all material facts that may influence the client or prospective client's ability to make an informed decision;
- (23) Compliance with exchange or SRO rules. Failing to complying with any rule of a national securities exchange or self-regulatory organization approved by the SEC;
- (24) Failure to cooperate. Failing to cooperate with, or providing false or incomplete information to, the commissioner in connection with any investigation under chapter 485A, HRS, or this chapter;
- (25) Outside business activity. Any investment adviser representative associated with an investment adviser registered under chapter 485A, HRS, and this chapter, shall not

engage in business activities, for which the investment adviser representative receives compensation either directly or indirectly, outside the scope of the investment adviser representative's regular employment unless the investment adviser representative has provided prior written notice to the investment adviser representative's employing firm;

- (26) Client communication. Failing or refusing to furnish a client, upon reasonable request, information to which the client is entitled, or to respond to a formal written demand or complaint from the client;
- (27) Inside information. In connection with the offer, purchase, or sale of a security leading a client to believe that the investment adviser or investment adviser representative is in possession of material, non-public information that would affect the value of the security;
- (28) Unreasonable delay. Causing unreasonable delay or failure to execute orders, liquidate customer's accounts, or in making delivery of securities purchased or remittances (or credits) for securities sold; or
- (29) Unlicensed broker-dealer. Placing an order through an unlicensed broker-dealer or agent which the investment adviser should have known was unlicensed.

This subsection is not intended to be all inclusive, and thus, acts or practices not enumerated in this subsection may also be deemed to demonstrate unworthiness to transact the business of investment adviser or investment adviser representative. Engaging in other conduct such as non-disclosure, incomplete disclosure, or deceptive practices shall be deemed an unethical business practice. The federal statutory and regulatory provisions referenced in this section shall apply to

investment advisers, investment adviser representatives, and federal covered investment advisers to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290). [Eff 6/30/08; comp ]  
(Auth: HRS §485A-606) (Imp: HRS §485A-412)

## SUBCHAPTER 5

### FRAUDULENT PRACTICES OF BROKER-DEALERS, BROKER-DEALER AGENTS, AND AGENTS OF AN ISSUER

**§16-39-501 Fraudulent practices of broker-dealers, broker-dealer agents, and agents of an issuer.** The purpose of this section is to identify practices in the securities business that are generally associated with schemes to manipulate. A broker-dealer, broker-dealer agent, or agent of the issuer who engages in one or more of the following practices shall be deemed to have engaged in an "act, practice, or course of business that operates or would operate as a fraud or deceit" as used in section 485A-501, HRS; provided that this section is not intended to be all-inclusive, and thus, acts or practices not enumerated herein may also be deemed fraudulent:

- (1) Unreasonable price/commission. Entering into a transaction with a customer in any security at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;
- (2) Contradicting prospectus information. Contradicting or negating the importance of any information contained in a prospectus or other offering materials with intent to deceive or mislead or using any advertising

- or sales presentation in a deceptive or misleading manner;
- (3) Insider information. In connection with the offer, sale, or purchase of a security, falsely leading a customer to believe that the broker-dealer or agent is in possession of material, non-public information which would impact on the value of the security;
  - (4) Contradictory recommendations. In connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations to different investors of similar investment objective for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstances of each investor;
  - (5) Bona fide distribution. Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution by, among other things, transferring securities to a customer, another broker-dealer or a fictitious account with the understanding that those securities will be returned to the broker-dealer or its nominees; or parking or withholding securities;
  - (6) Relating to OTC securities. Although nothing in this section precludes application of the general anti-fraud provisions against anyone for practices similar in nature to the practices discussed below, the following subparagraphs specifically apply only in connection with the solicitation of a purchase or sale of OTC unlisted non-NASDAQ equity securities:
    - (A) ~~[Bid/ask]~~ Bid and ask price disclosure. Failing to disclose the firm's present bid and ask price of a particular security at the time of solicitation;

- (B) Commission disclosure. Failing to advise the customer, both at the time of solicitation and on the confirmation, of any and all compensation related to a specific securities transaction to be paid to the agent including commissions, sales charges, or concessions;
- (C) Short inventory position. In connection with a principal transaction, failing to disclose, both at the time of solicitation and on the confirmation, a short inventory position in the firm's account of more than three per cent of the issued and outstanding shares of that class of securities of the issuer provided that this subparagraph shall apply only if the firm is a market maker at the time of the solicitation;
- (D) Sales contests. Conducting sales contests in a particular security;
- (E) Delay executing sell orders. After a solicited purchase by a customer, failing or refusing, in connection with a principal transaction, to promptly execute sell orders;
- (F) Secondary market solicitation. Soliciting a secondary market transaction when there has not been a bona fide distribution in the primary market;
- (G) Differing compensation. Engaging in a pattern of compensating an agent in different amounts for effecting sales and purchases in the same security;
- (H) Manipulative, deceptive, or fraudulent acts. Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive, or other fraudulent device or contrivance including but not



limited to the use of boiler room tactics or use of fictitious or nominee accounts;

- (I) Prospectus delivery. Failure to comply with any prospectus delivery requirement promulgated under federal law; or
- (J) Penny stock sales. Effecting any transaction in, or inducing or attempting to induce the purchase or sale of, any penny stock by any customer except in accordance with the requirements as set forth in section 15(g) of the Securities Exchange Act." [Eff 6/30/08; am and comp ]  
(Auth: HRS §485A-606) (Imp: HRS §485A-501)

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

3. Additions to update source notes and other notes to reflect these amendments to sections are not bracketed, struck through, or underscored.

4 These amendments to and compilation of chapter 16-39, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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

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NADINE Y. ANDO  
Director of Commerce and  
Consumer Affairs

APPROVED AS TO FORM:

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ANDREW I. KIM  
Deputy Attorney General

## **IV. NEW BUSINESS**

- D. Discussion and Action on Proposed New HAR Title 13 Chapter 60.11, **Kipahulu Community-Based Subsistence Fishing Area, Maui**, promulgated by Department of Land and Natural Resources

## PRE-PUBLIC HEARING SMALL BUSINESS IMPACT

RECEIVED

By SBRRB at 12:21 pm, Jul 12, 2023

TO THE  
SMALL BUSINESS REGULATORY REVIEW BOARD

(Hawaii Revised Statutes §201M-2)

Date: 7/12/2023

Department or Agency: Department of Land and Natural Resources - DAR

Administrative Rule Title and Chapter: Chapter 13-60.11, Hawaii Administrative Rules

Chapter Name: Kīpahulu Community-Based Subsistence Fishing Area, Maui

Contact Person/Title: David Sakoda - Fisheries Program Manager

E-mail: david.sakoda@hawaii.gov Phone: 808-587-0104

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," provide details: <https://ltgov.hawaii.gov/the-office/administrative-rules/proposed-changes/>**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.)

\*

\*

\*

**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.

Small businesses directly impacted would be commercial fishers who currently fish within the bounds of the proposed Kīpahulu Community-Based Subsistence Fishing Area (CBSFA) targeting certain species or utilizing gears, methods, or fishing practices which the proposed rules seek to prohibit or restrict.

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.

There would be no increased burden on commercial fishers other than requiring compliance with the proposed rules, which may prohibit certain activities within the CBSFA area. Anticipated revenue loss is difficult to quantify (see Attachment A).

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.

N/A

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

N/A

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

N/A

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

N/A

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.

Because there will be no permit or entry fee to fish in the proposed CBSFA, adoption of the proposed rules would not result in any new or increased revenue for the Division of Aquatic Resources (DAR). The proposed rules are simply more restrictive fishing rules in addition to or replacing current regulations within the proposed CBSFA area. These place-based rules will be enforced via the Division of Conservation and Resource Enforcement (DOCARE), which is currently tasked with enforcing rules in the area.

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.

The rules are a result of extensive community scoping efforts and have incorporated feedback from small businesses (i.e. commercial fishers, commercial tours, etc.) to reduce the impacts of the rules on those businesses while still ensuring efficacy of the rules.

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

The proposed rules were designed to achieve the specific conservation goals of the Kīpahulu community residents that provided input to DAR. It is unlikely that alternatives exist to achieve these goals while also being less restrictive.

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.

No additional reporting or licensing requirement will be placed on fishers who fish in the proposed CBSFA. They will need to adhere to all applicable rules when fishing in the the proposed CBSFA as in any other area with rules differing from statewide regulations.

7. How the agency involved small business in the development of the proposed rules.  
See answer to Question #4.

- 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.

See answer to Question #4.

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.

Current statewide gear and species rules in place are found in Hawaii Administrative Rules Title 13 (Department of Land and Natural Resources), Subtitle 4 (Fisheries), Chapters 75 and 95. The proposed rules are in addition to (and generally more stringent than) statewide rules for the specific needs of the Kīpahulu community.

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.  
See answer to Question #5.
- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.  
Statewide fisheries rules (HAR 13-95) are meant as a baseline set of rules that are generally applicable across the state. However, due to regional conditions, some especially sensitive areas may require additional rules.
- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.  
There are multiple restrictions including bag limits, size limits, open and closed seasons, and gear restrictions that differ from the statewide rules. This will be highlighted in the presentation to the Board.
- 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.  
N/A
- 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.  
This will be discussed in the presentation to the Board because it is difficult to extrapolate data specific for Kīpahulu based on the current commercial catch reporting system.

\* \* \*

Small Business Regulatory Review Board / DBEDT

Phone: (808) 586-2594 / Email: [DBEDT.sbrrb.info@hawaii.gov](mailto:DBEDT.sbrrb.info@hawaii.gov)

This Statement may be found on the SBRRB Website at: <http://dbedt.hawaii.gov/sbrrb/resources/small-business-impact-statements>

## ATTACHMENT A: Summary of Commercial Catch in Reporting Area 304, and Potential Impacts of the Proposed Kīpahulu Community Based Subsistence Fishing Area on Commercial Fishing

Bryan Ishida, Aquatic Biologist, DLNR-DAR

### Area Description

The inshore waters (zero to approximately two nautical miles from shore) surrounding the island of Maui are divided into six Division of Aquatic Resources (DAR) commercial reporting grid areas (300 – 305; Figure 1). The proposed Kīpahulu Community Based Subsistence Fishing Area (CBSFA) falls within area 304 (Figure 2). Area 304 covers approximately 47 square miles whereas the Kīpahulu CBSFA covers roughly 2.6 square miles (unofficial calculation), or 6% of the overlying reporting area.

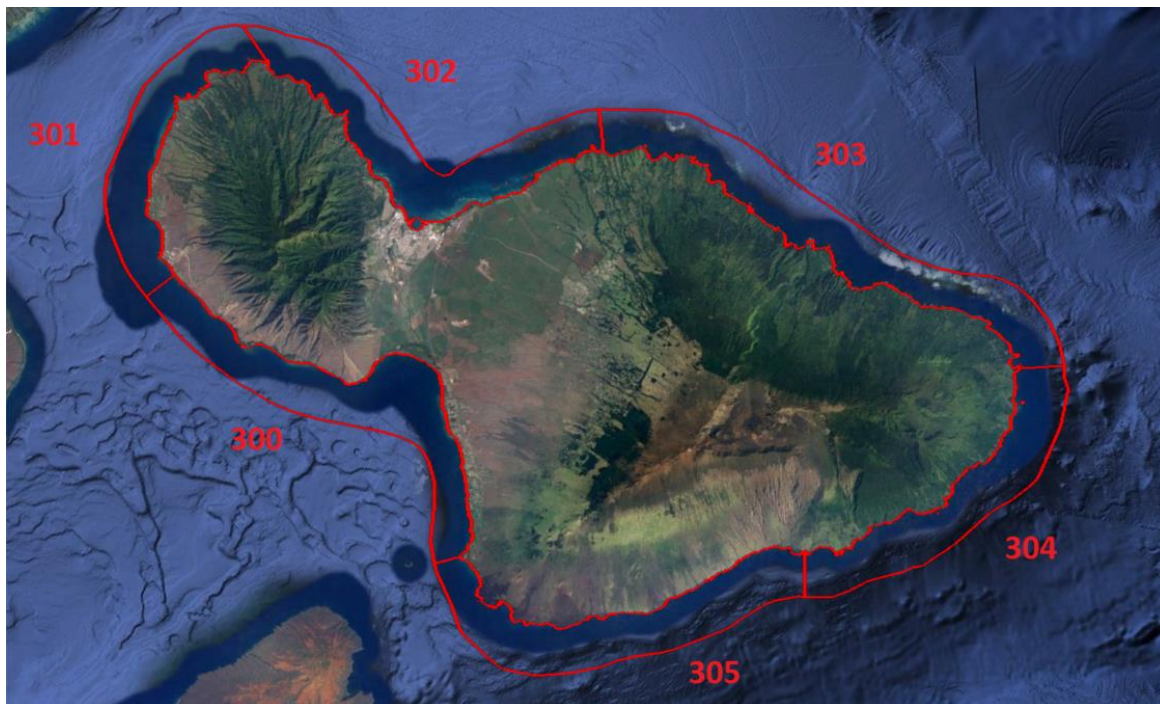


Figure 1. Aerial view of Maui with DAR inshore commercial reporting grid areas.



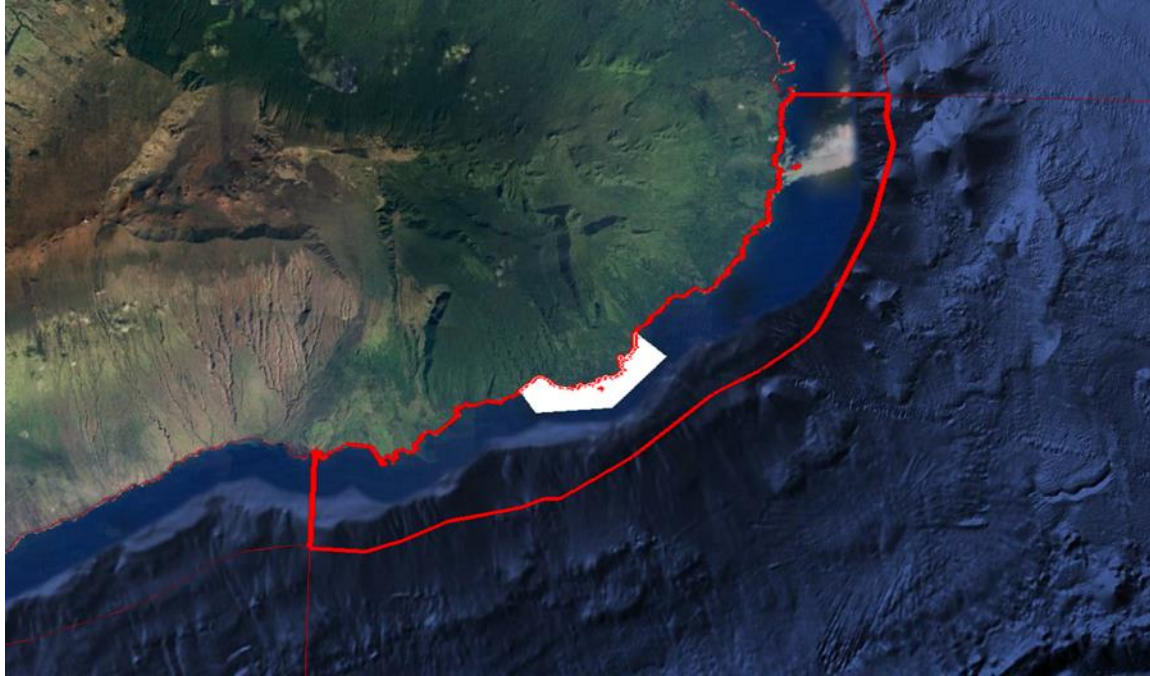


Figure 2. Aerial view of the East Maui coastline with the boundary of commercial reporting area 304 noted by the heavy red line and the proposed Kīpahulu CBSFA noted in white.

### Commercial Catch in Area 304

In the past ten years (2013 to 2022) area 304 has contributed about 8% of all commercial landings reported in area 300 to 305 (Figure 3). In comparison to top producing grid areas (i.e., 300 and 302), landings in area 304 may be relatively low due to several factors including proximity to major populations centers, markets, and available boat ramps. For example, about 50% of trips reporting catch in area 304 originated from the remote Hana boat ramp.

Whereas total commercial catch in area 304 is relatively low, its contribution of offshore species (pelagic species and deep bottomfish) is relatively high at 23% of the landings reported in areas 300 to 305 (Figure 4). Between 2013 and 2022, landings of offshore species in area 304 ranged between 1,131 lbs. and 8,632 lbs., with a ten-year average of 4,976 lbs. (Figure 5). Conversely, landings of inshore species in area 304 is low at 4% of the total inshore Maui reporting areas, though relatively similar to areas 301, 303, and 305 (Figure 6). Between 2013 and 2022, landings of inshore species in area 304 ranged between 1,447 lbs. and 7,910 lbs., with a ten-year average of 3,802 lbs. Low inshore species landings in area 304 are heavily influenced by low and inconsistent reported catch of akule (bigeye scad; *Selar crumenophthalmus*), which typically dominate statewide inshore commercial catch.

Annual value (calculated as pounds caught x average ex-vessel price per pound) of landings reported in area 304 between 2013 and 2022 ranged between \$18,450 and \$86,297, with an average of \$43,615 per year. Value from offshore species ranged between \$7,046 and \$51,524, with an average of \$28,492 per year (Figure 7). Value from inshore landings ranged between \$5,781 and \$34,773, with an average of \$15,123 per year.

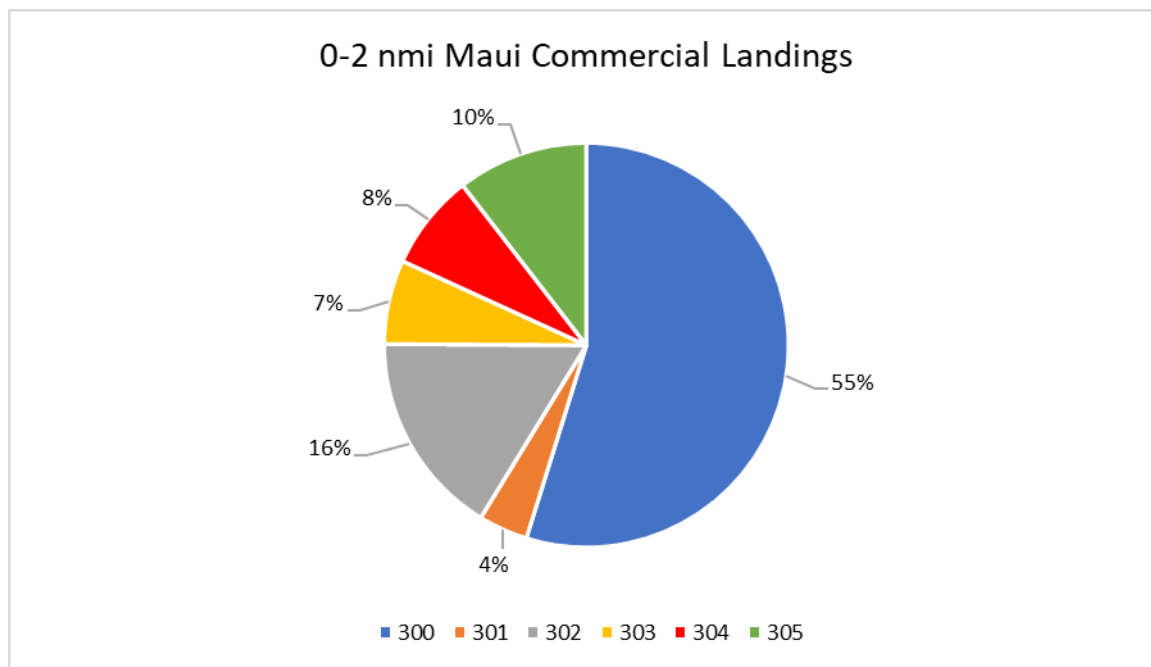


Figure 3. Percent commercial landings (lbs.) reported in the inshore grid areas surrounding Maui.

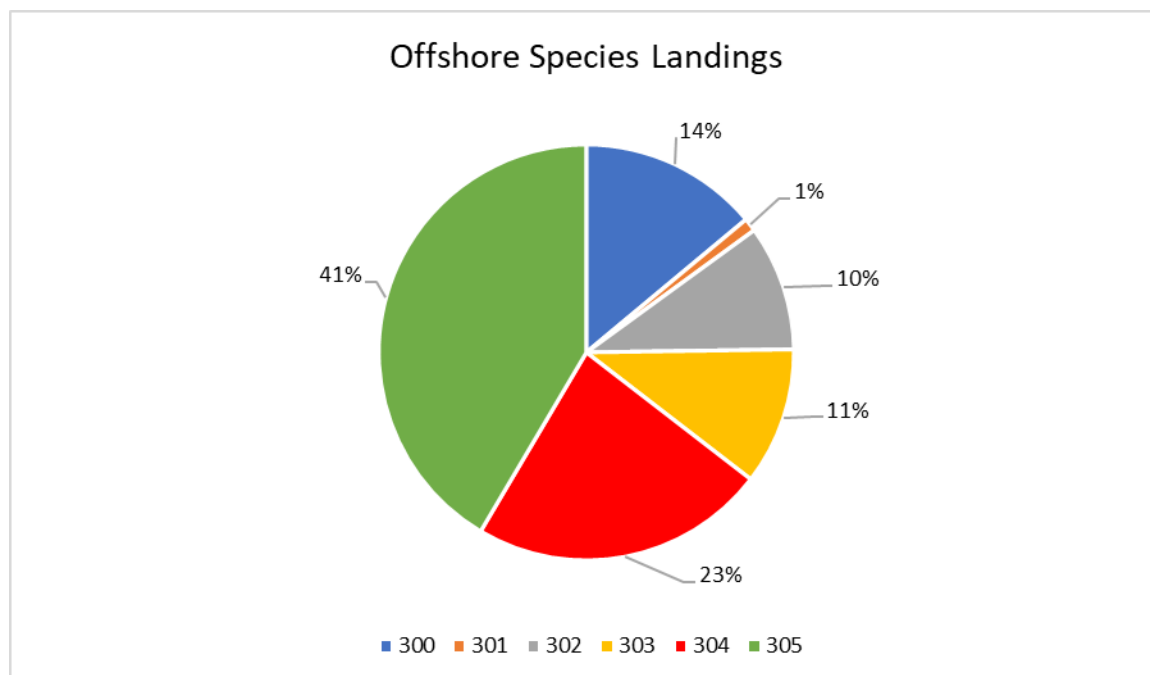


Figure 4. Percent commercial landings (lbs.) of offshore species (pelagics and deep bottomfish) reported in the inshore grid areas surrounding Maui.

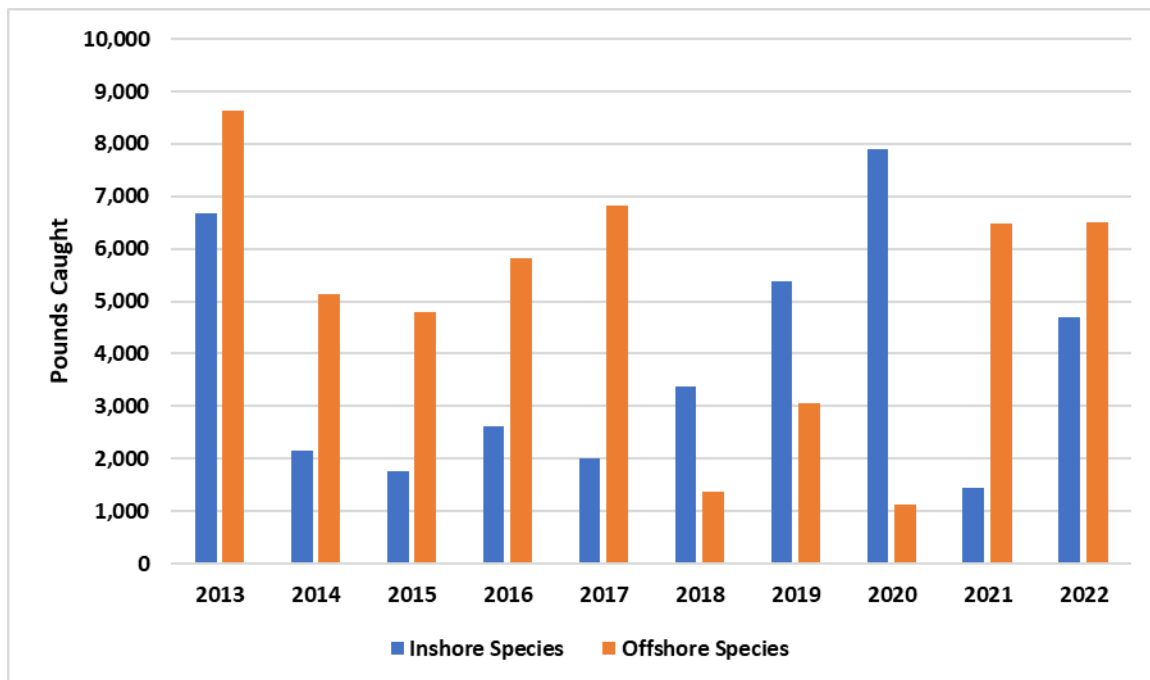


Figure 5. Annual landings of inshore and offshore species reported in grid area 304, 2013-2022.

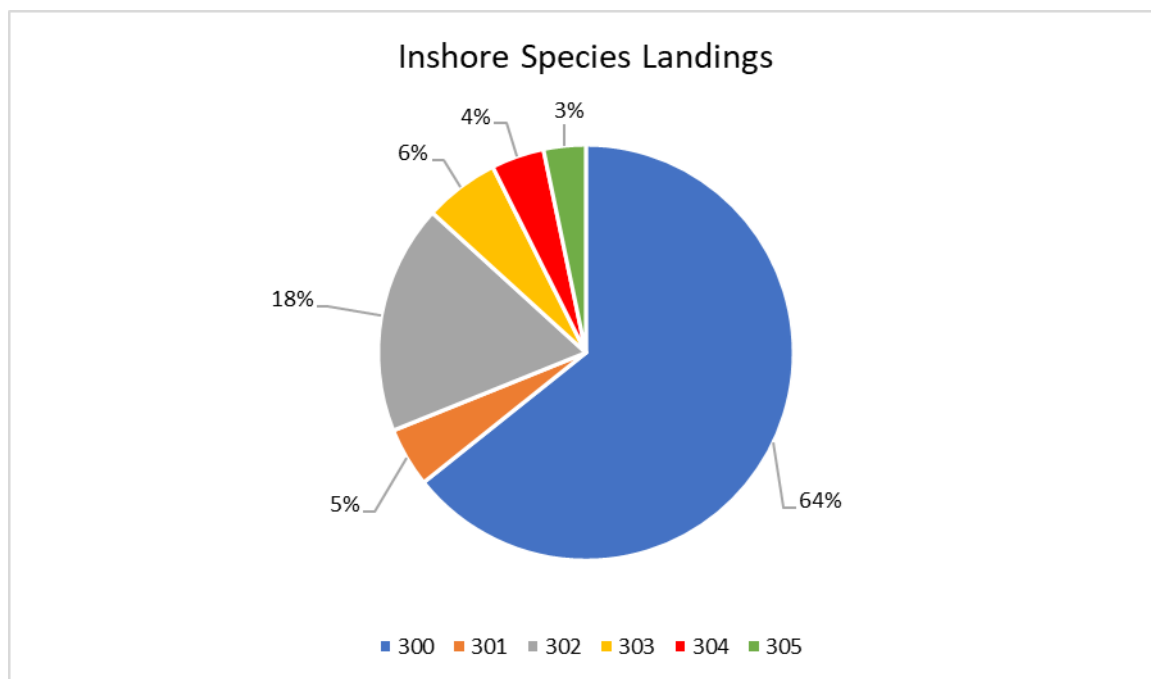


Figure 6. Percent commercial landings (lbs.) of inshore species (non-pelagics and deep bottomfish) reported in the inshore grid areas surrounding Maui.

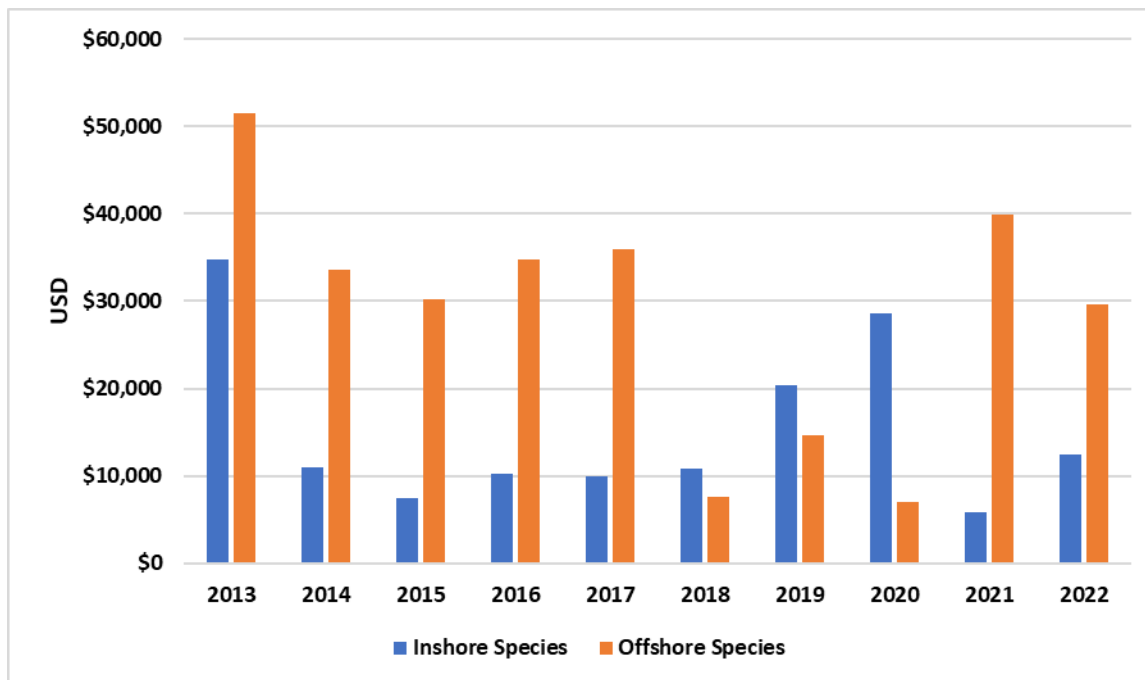


Figure 7. Estimated annual value of inshore and offshore species reported in area 304, 2013-2022.

### Commercial Catch in the Proposed Kīpahulu CBSFA and Potential Impacts

Quantifying commercial catch within the bounds of the proposed Kīpahulu CBSFA cannot be confidently estimated using commercial reports alone given that DAR does not collect data at a finer scale than the overlaying reporting grid. Additionally, inshore and offshore commercial fisheries both tend to be area-specific and not spread equally across the ocean. Therefore, commercial catch in the proposed CBSFA may not be accurately expressed as simple fraction total area 304 landings.

Because the proposed Kīpahulu CBSFA only extends out to a depth of 60 meters (197 feet), impacts to offshore fisheries will likely be low given they typically occur in deeper waters. For commercial fishers that currently fish for inshore species in the proposed CBSFA area (again, which we cannot at this time quantify), the proposed rules will likely be impactful. Though the prohibition on commercial take of akule is the only rule that directly specifies a ban on a commercial activity, proposed bag limits and gear restrictions will likely diminish the ability to fish profitably in the CBSFA.

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-60.11  
Hawaii Administrative Rules

(Date of adoption)

1. Chapter 13-60.11, Hawaii Administrative Rules, entitled "Kīpahulu Community-Based Subsistence Fishing Area, Maui" is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART II MARINE FISHERIES MANAGEMENT AREAS

CHAPTER 60.11

KĪPAHULU COMMUNITY-BASED SUBSISTENCE FISHING AREA,  
MAUI

§13-60.11-1	Purpose
§13-60.11-2	Definitions
§13-60.11-3	Boundaries
§13-60.11-4	Permitted and prohibited activities

§13-60.11-5	Transit through the Kīpahulu Community-Based Subsistence Fishing Area with restricted gear and species
§13-60.11-6	Penalty
§13-60.11-7	Asset Forfeiture
§13-60.11-8	Severability

**§13-60.11-1 Purpose.** The purposes for this chapter regarding the Kīpahulu Community-Based Subsistence Fishing Area are to:

- (1) Sustainably support the subsistence needs of the Kīpahulu Moku community on the island of Maui through culturally-rooted, community-based management;
  - (2) Ensure the sustainability of nearshore ocean resources in the area through effective management practices, including the establishment of limits on the harvest of marine life;
  - (3) Recognize and protect customary and traditional native Hawaiian fishing practices that are exercised for subsistence, cultural, and religious purposes in the area;
  - (4) Facilitate the substantive involvement of the community in resource management decisions for the area through dialogue with community residents and resource users;
  - (5) Establish the 'Ōpihi Rest Area to ensure stock health and to allow replenishment of this important food resource; and
  - (6) Establish the Kukui Bay Sanctuary for the preservation and protection of critical nursery habitat for numerous marine species, including species traditionally relied upon for subsistence. [Eff ]
- (Auth: HRS §§188-22.6, 188-53, 190-3) (Imp: HRS §§188-22.6, 188-53, 190-3, Haw. Const. art. XI, §6)

**§13-60.11-2 Definitions.** As used in this chapter, unless otherwise provided:

"Akule" means any fish known as *Selar crumenophthalmus* or other recognized synonyms. Akule are also known as pā'ā'ā, halalū, hahalalū, goggle-eyed scad, or big-eyed scad.

"Area" means the Kīpahulu Community-Based Subsistence Fishing Area, Maui (Kīpahulu CBSFA) as encompassed within the boundaries described in section 13-60.11-3(a).

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

"Bag net" means a type of fishing net made into the shape of a pocket or pouch with an open end held open in the water with the aid of a net float line that supports the top edge of the net up towards the ocean surface and parallel to a net lead line that keeps the lower edge of the net down on the ocean bottom. The bag net is usually made of heavy gauge line to make the net visible and made of small mesh to prevent the fish from passing through the mesh.

"Department" means the Department of Land and Natural Resources.

"Community" means a *hoa'āina* relationship to place as demonstrably indicated through genealogy, practice, or residency.

"Diving" means any activity conducted in the water involving the use of an underwater breathing apparatus or a mask, goggles, or any other device that assists a person to see underwater while the person's face is submerged. Diving includes both extractive and non-extractive activities, such as SCUBA diving, free diving, and snorkeling.

"Double hook" means a hook having two points on a common shank.

"Finfish" means any of the various species of marine life that uses fins to swim, not including invertebrates, marine mammals, or sea turtles.

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

"Fishing" or "to fish" means catching, taking, or harvesting, or attempting to catch, take, or harvest, aquatic life. The use of a pole, line, hook, net, trap, spear, or other gear which is designed to catch, take, or harvest aquatic life, by any person who is in the water, or in a vessel on the water, or on or about the shore where aquatic life can be caught, taken, or harvested, shall be deemed to be fishing.

"Fishing gear" means any net, spear, rod, reel, hook-and-line, slurp gun, or any other equipment or gear adapted, designed, or commonly used to take or capture aquatic life.

"Fishing lure" means any device, including a fishing fly, which is designed to attract fish and which incorporates a fishing hook.

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

"Hoa`āina" means ahupua`a tenant.

"Holdfast" means a stalked organ by which limu is attached to a substrate.

"Introduced species" means any species that did not occur naturally in Hawai`i prior to introduction caused by human activity. Introduced species are also referred to as non-native species, alien species, or exotic species.



"Invasive species" means an introduced species of marine life that causes or is likely to cause economic or environmental harm or harm to human health.

"Kala" means any fish known as *Naso unicornis*, *Naso brevirostris*, *Naso annulatus*, or any recognized synonym. Kala are also known as bluespine unicornfish, short-nosed unicornfish, spotted unicornfish, or whitemargin unicornfish.

"Kō'ele" means any limpet known as *Cellana talcosa* or any recognized synonym. Kō'ele are also known as giant 'opihi, talc limpet, or turtle limpet.

"Kole" means any fish known as *Ctenochaetus strigosus* or any recognized synonym. Kole are also known as kole tang, spotted surgeonfish, goldring surgeonfish, or yellow-eyed tang.

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

"Makaiāuli" means any limpet known as *Cellana exarata* or any recognized synonym. Makaiāuli are also known as blackfoot 'opihi or Hawaiian blackfoot.

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

"Moi" means any fish known as *Polydactylus sexfilis* or any recognized synonym. Moi are also known as six-fingered threadfin or yellowthread threadfin.

"Native species" means a species that occurs naturally in Hawai'i. Native species include both endemic species and indigenous species.

"Native limu" means any limu that occurs naturally in Hawai'i, including but not limited to all species of limu, or any recognized synonyms, listed in Exhibit A entitled "Common Native Limu Species of Hawai'i", dated 4/20/23, located at the end of this chapter.

"'Ōmilu" means any fish known as *Caranx melampygus* or any recognized synonym. 'Ōmilu are also

known as bluefin trevally, blue ulua, bluefin jack, bluefin kingfish, bluefinned crevalle, and spotted trevally.

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

"SCUBA gear" means any equipment adapted, designed, or commonly used to enable a diver to breathe while underwater, including but not limited to SCUBA regulators, high pressure cylinders, rebreathers, SNUBA, and hookah rigs.

"Spotted reef crab" means any crab known as *Carpilius maculatus* or any recognized synonym. Spotted reef crabs are also known as seven-eleven crab, dark-finger coral crab, and large spotted crab.

"State" means the state of Hawai'i.

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

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

"Surround net fishing" means a technique of fishing where a person or persons engage in the act of or attempt to engage in the act of deploying a gill net in the water in such a manner as to completely encircle the aquatic life. The gill net primarily entangles aquatic life within the mesh of the net as the aquatic life swim or move into the gill net. The main characteristics of surround net fishing are the closed net configuration, the moving net, person or persons chase the aquatic life into the net, and only the aquatic life that entangles in the net mesh are captured.

"Stretched mesh" means the straight line distance between two opposite inner edges of each eye of the net mesh as measured when the eye is stretched to its maximum size.

"Ta'ape" means any fish known as *Lutjanus kasmira* or any recognized synonym. Ta'ape are also known as bluestripe snapper.

"Treble hook" means a hook having three points on a common shank.

"Throw net" means a circular net with a weighted outer perimeter designed to be deployed by manually casting or throwing the net over fish or other aquatic life. This gear is also known as a cast net.

"Ula" means any spiny lobster of the genus *Panulirus*. Ula are also known as lobster, Hawaiian spiny lobster, spiny lobster, red lobster, or green lobster.

"Ula pāpapa" means any crustacean of the species *Scyllarides squammosus* or *Scyllarides haanii*, or any recognized synonym. Ula pāpapa are also known as ula 'āpāpapa, slipper lobster, ridgeback slipper lobster, or shovel-nosed lobster. [Eff ] (Auth: HRS §§187A-5, 188-22.6, 188-53, 190-3) (Imp: HRS §§187A-5, 188-22.6, 188-53, 190-3)

**§13-60.11-3 Boundaries.** (a) The Kīpahulu CBSFA includes that portion of the southeast coast of the island of Maui consisting of all state waters and submerged lands from Kālepa Gulch in the west to 'Ohe'o Gulch in the east, from the shoreline out to approximately 60 meters in depth. The boundaries of the Kīpahulu CBSFA are described by western and eastern boundary lines, landward and seaward boundary lines, and five reference points (A, G, H, I, and J) identified by their latitude and longitude coordinates as follows:

- (1) Point A is the westernmost point of the Kīpahulu CBSFA along the shoreline, located at 20.646167°, -156.086300.
- (2) Point G is the easternmost point of the Kīpahulu CBSFA along the shoreline, located at 20.667318°, -156.040689°.
- (3) The landward boundary of the Kīpahulu CBSFA is an imaginary line drawn along the shoreline from Point A to Point G.
- (4) The western boundary of the Kīpahulu CBSFA is an imaginary straight line drawn

perpendicular to the shore at Point A out to Point H, located on the 60-meter depth contour at 20.637752°, -156.080016°.

- (5) The seaward boundary of the Kīpahulu CBSFA consists three points along the 60-meter depth contour connected by imaginary straight lines beginning at Point H; then to Point I, located at 20.639762°, -156.049777°; then to Point J, located at 20.658495°, -156.028482°.
- (6) The eastern boundary of the Kīpahulu CBSFA consists of an imaginary straight line drawn perpendicular to the shore at Point G to Point J.

The foregoing boundaries and reference points are shown on Exhibit B entitled "Map of the Kīpahulu Community-Based Subsistence Fishing Area, Maui", dated 4/20/23, located at the end of this chapter.

(b) The following sub-zones are established within the Kīpahulu CBSFA:

- (1) The Kukui Bay Sanctuary, which includes all state waters and submerged lands bounded by the shoreline boundary of the Kīpahulu CBSFA from Puhilele Point in the west at 20.654171°, -156.045763° (Point B) to a point on the inside of Kukui Bay at 20.658259°, -156.045675° (Point D), a straight line from Point D to Submarine Point in the west at 20.656429°, -156.046071° (Point C), and a straight line from Submarine Point at Point C to Puhilele Point at Point B; as shown on Exhibit C entitled "Map of the Kukui Bay Sanctuary and 'Ōpihi Rest Area", dated 4/20/23, located at the end of this chapter.
- (2) The 'Ōpihi Rest Area, which includes all state waters and submerged lands within 300 feet from the shoreline between an imaginary line that extends seaward, perpendicular from the shoreline at Point E to 20.658366°, -156.043053° (Point EE) and an imaginary line that extends seaward, perpendicular

from the shoreline at Point F to 20.661982°, -156.039876° (Point FF); as shown on Exhibit C entitled "Map of Kīpahulu CBSFA Kukui Bay Sanctuary and 'Ōpihi Rest Area", dated 4/20/23, located at the end of this chapter.

(c) For the purposes of this chapter, the shoreline shall be determined by the upper reaches of the wash of the waves on shore, as indicated by the vegetation line. Should there be a stream or river flowing into the ocean, the shoreline shall be determined by an imaginary straight line drawn between the upper reaches of the wash of the waves on either side of the stream or river. [Eff

] (Auth: HRS §§188-22.6, 188-53, 190-3) (Imp: HRS §§187A-1.5, 188-22.6, 190-3)

#### **§13-60.11-4 Permitted and prohibited activities.**

(a) Nothing in this chapter shall be construed as abridging traditional and customary native Hawaiian rights or as allowing within the Kīpahulu CBSFA any activity or fishing gear otherwise prohibited by law or rules adopted by the Department of Land and Natural Resources or any other department of the State.

(b) The following restrictions apply within the Kīpahulu CBSFA:

- (1) It is unlawful to take or possess more than ten finfish per person per day; provided that akule and introduced or invasive fish species do not count towards the ten finfish bag limit.
- (2) It is unlawful to take any akule for commercial purposes.
- (3) It is unlawful to take or possess more than one 'ōmilu per person per day.
- (4) It is unlawful to take or possess more than two kala per person per day.
- (5) It is unlawful to take or possess any kole less than five inches in length.
- (6) It is unlawful to take or possess any moi:
  - (A) From May through September;

- (B) Less than eleven inches in length; or
  - (C) Greater than eighteen inches in length.
- (7) It is unlawful to take or possess:
- (A) More than forty 'opihi of any species per person per day;
  - (B) Any 'opihi with a shell diameter of less than one and one-fourth inches or greater than two inches;
  - (C) Any 'opihi within the 'Opihi Rest Area; or
  - (D) Any 'opihi while diving.
- (8) It is unlawful to take or possess:
- (A) Any ula or ula pāpapa from May through September; or
  - (B) A combined total of more than two ula or ula pāpapa per person per day.
- (9) It is unlawful to take or possess more than two spotted reef crabs per person per day.
- (10) It is unlawful to take or possess any native limu species with a holdfast or roots attached.
- (11) It is unlawful to engage in surround net fishing using a gill net with a stretched mesh of less than two and three-fourths inches.
- (12) It is unlawful to engage in surround net fishing to take any marine life, except akule and ta'ape.
- (13) It is unlawful to take any marine life using a bag net.
- (14) It is unlawful for any person who is in the water or on or about the shore where fish can be taken to have in the person's possession a throw net with a stretched mesh of less than three inches.
- (15) It is unlawful for any person to use more than two fishing poles, provided that each fishing pole may have only one line, and each line may have no more than two hooks, with each hook having only one point, while at or near the shoreline, except that double

- or treble hooks are allowed when using fishing lures.
- (16) Except as provided in subsection (c) of this section, it is unlawful for any person to:
    - (A) Take any marine life while using SCUBA gear;
    - (B) Possess both SCUBA gear and marine life at the same time; or
    - (C) Possess both SCUBA gear and fishing gear at the same time.
  - (17) During the time period beginning thirty minutes after sunset until thirty minutes before sunrise, it is unlawful to:
    - (A) Take or possess any marine life while diving; or
    - (B) Possess any fishing gear while diving.
  - (18) It is unlawful to take or possess any marine life within the Kukui Bay Sanctuary.
  - (c) The department may issue a permit to allow any action prohibited under subsection (b)(16) of this section for the purposes of:
    - (1) Taking akule while surround net fishing; or
    - (2) Taking introduced or invasive species of marine life. [Eff ] (Auth: HRS §§187A-5, 188-22.6, 188-53, 190-3) (Imp: HRS §§187A-5, 188-22.6, 188-53, 190-3)

**§13-60.11-5 Transit through Kīpahulu CBSFA with restricted gear and species.** Prohibited gear and restricted species as described in section 13-60.11-4 may be possessed while onboard a vessel in active transit through the areas, provided that no prohibited gear is in the water during the transit. Boats that are adrift, anchored, or moored are not considered to be in active transit. [Eff ] (Auth: HRS §§187A-5, 188-22.6, 188-53, 190-3) (Imp: HRS §§187A-5, 188-22.6, 188-53, 190-3)

**§13-60.11-6 Penalty.** (a) Any person who violates any provision of this chapter or the terms and conditions of any permit issued as provided by this chapter, shall be subject to:

- (1) Administrative penalties as provided by section 187A-12.5, HRS;
- (2) Criminal penalties as provided by section 188-70, HRS; and
- (3) Any other penalty as provided by law.

(b) Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State. [Eff ] (Auth: HRS §§187A-5, 188-22.6, 188-53, 190-3) (Imp: HRS §§187A-5, 187A-12.5, 188-22.6, 188-70, 190-5)

**§13-60.11-7 Asset forfeiture.** Any equipment, article, instrument, aircraft, vehicle, vessel, business record, or natural resource used or taken in violation of this chapter, may be seized and subject to forfeiture as provided by section 199-7 and chapter 712A, HRS. [Eff ] (Auth: HRS §190-3) (Imp: HRS §199-7, ch. 712A)

**§13-60.11-8 Severability.** If any provision of this chapter, or the application thereof, to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable." [Eff ] (Auth: HRS §§187A-5, 188-22.6, 188-53, 190-3) (Imp: HRS §§1-23, 187A-5, 188-22.6, 188-53, 190-3)



2. The adoption of chapter 13-60.11, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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

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DAWN N.S. CHANG  
Chairperson  
Board of Land and Natural  
Resources

APPROVED FOR PUBLIC HEARING:



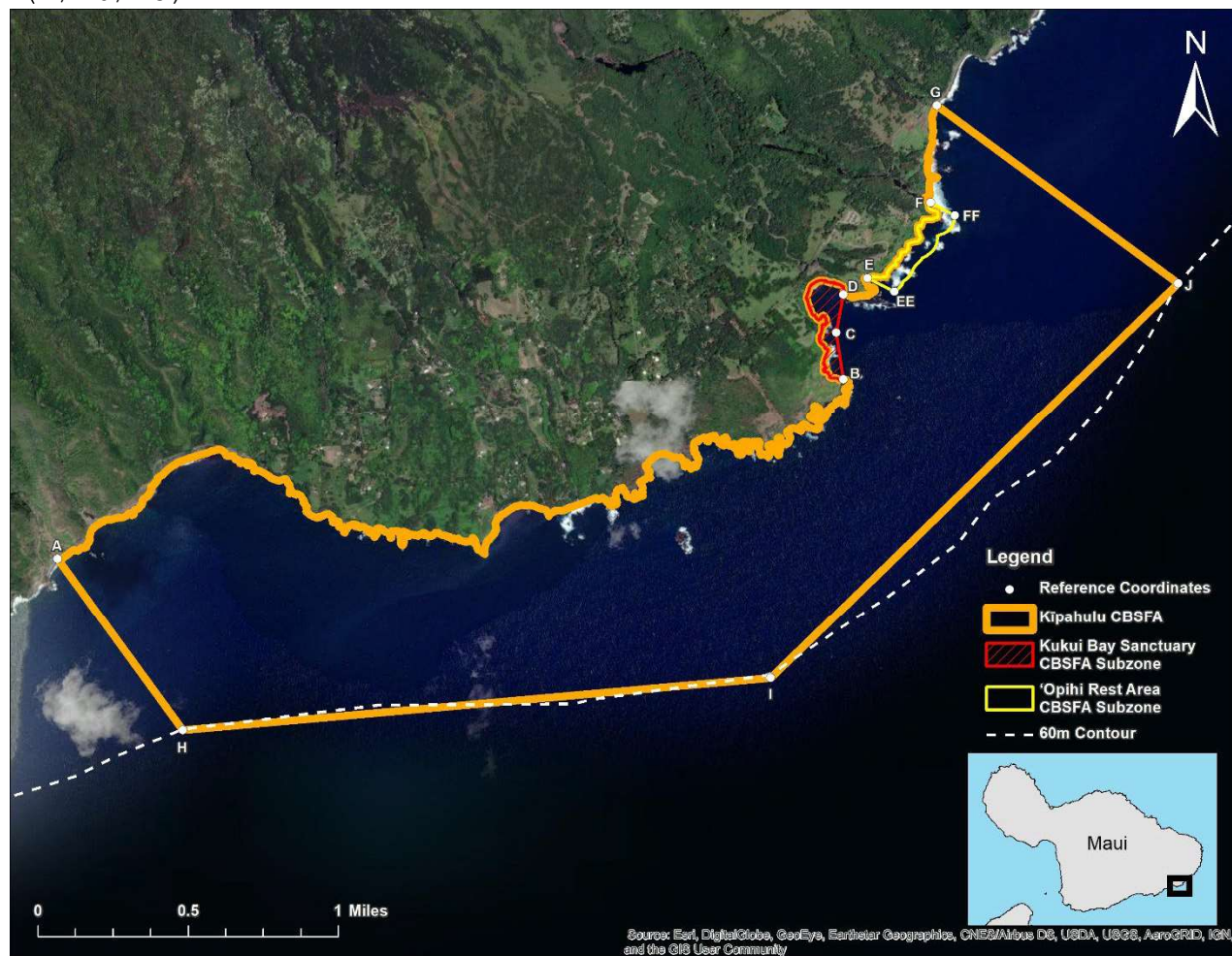
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Deputy Attorney General

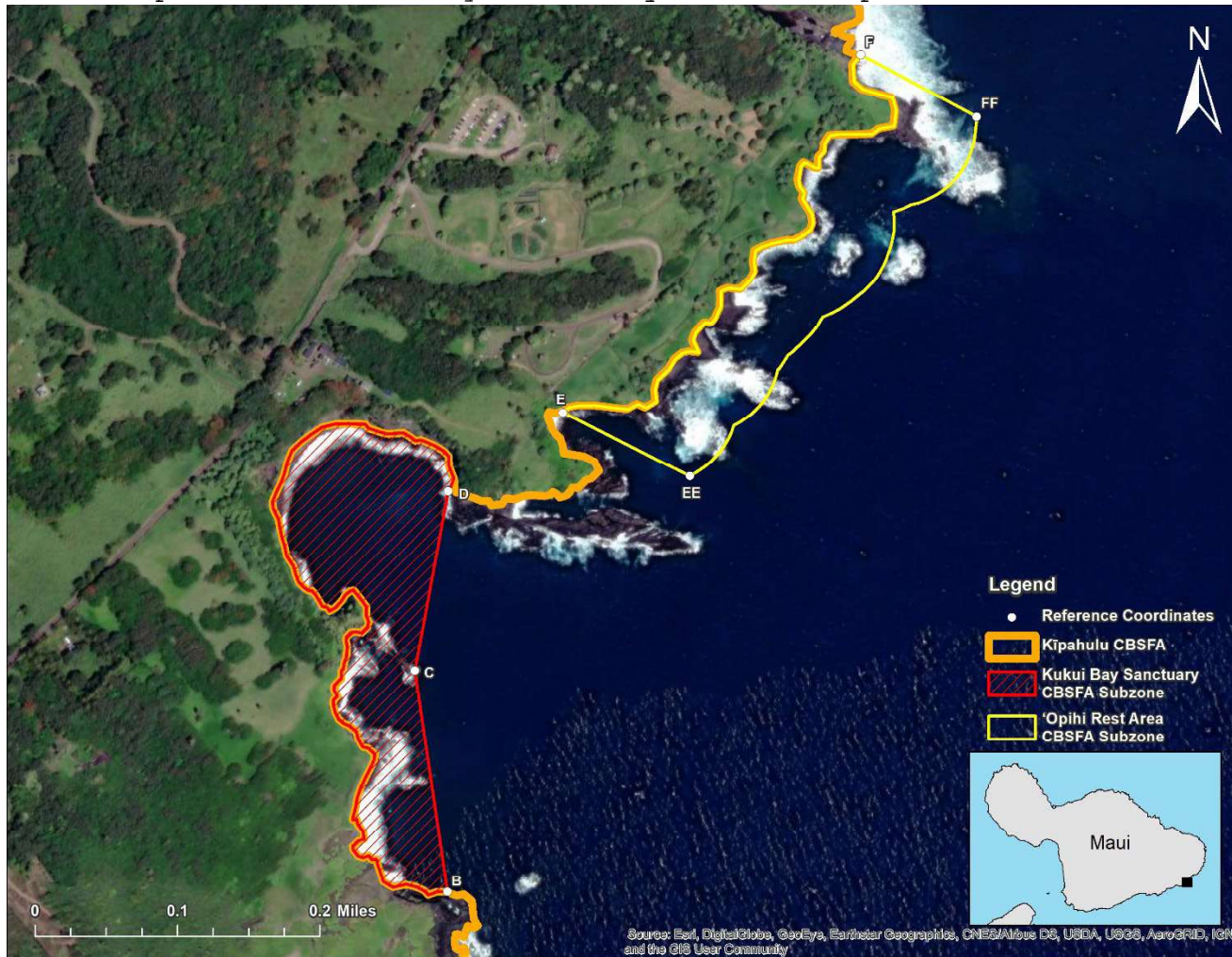
**EXHIBIT A:** "COMMON NATIVE LIMU SPECIES OF HAWAI'I" (4/20/23)

Phylum	Species	Hawaiian/Common Name
Rhodophyta	<i>Ahnfeltiopsis flabelliformis</i>	Nei, kō'ele'ele, kō'ele
Rhodophyta	<i>Ahnfeltiopsis concinna</i>	'Aki'aki, 'eleau (Maui)
Rhodophyta	<i>Asparagopsis taxiformis</i>	Kohu, līpehe, līpehu, līpa'akai
Rhodophyta	<i>Gracilaria coronopifolia</i>	Manaua, short ogo (Japanese)
Rhodophyta	<i>Gracilaria parvispora</i>	Manaua loloa, long ogo (Japanese)
Rhodophyta	<i>Grateloupia filicina</i>	Huluhuluwaena, pakeleawa'a
Rhodophyta	<i>Halymenia hawaiiiana</i>	Lepe-o-Hina, lehelehe'ilio, lepelepe-o-Hina, limu-pepe-o-Hina, pā'ū-o-Hi'iaka
Rhodophyta	<i>Laurencia dotyi</i>	Līpe'epe'e, līpēpē
Rhodophyta	<i>Laurencia nidifica</i>	Māne'one'o
Rhodophyta	<i>Laurencia succisa</i>	Līpe'epe'e, līpēpē
Rhodophyta	<i>Pyropia vietnamensis</i>	Pāhe'ehe'e, līpahe'e, līpahe'ehe'e, līpāhoe, pahe'e
Chlorophyta	<i>Codium edule</i>	Wāwae'iole
Chlorophyta	<i>Codium reediae</i>	'A'ala'ula
Chlorophyta	<i>Ulva lactuca</i>	Pālahalaha
Chlorophyta	<i>Ulva prolifera</i>	'Ele'ele
Ochrophyta (Class: Phaeophyceae)	<i>Dictyopteris australis</i>	Līpoa
Ochrophyta (Class: Phaeophyceae)	<i>Dictyopteris plagiogramma</i>	Līpoa
Ochrophyta (Class: Phaeophyceae)	<i>Sargassum aquifolium</i>	Kala
Unknown	Unknown (Description: Looks like limu kohu, except it flattens when taken out of the water; doesn't have a strong smell like limu kohu and tastes spicy)	Pehu

**Exhibit B:** "Map of the Kīpahulu Community-Based Subsistence Fishing Area, Maui"  
(4/20/23)



**Exhibit C:** "Map of the Kukui Bay Sanctuary and the 'Opihi Rest Area" (4/20/23)



## **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**

- 1. Discussion and Action on Proposed Changes to Section 201M-5 (a) Small business regulatory review board; powers, HRS**
- 2. Presentations to Industry Associations – *No attachments***
- 3. Staff's Small Business Outreach – *No attachments***
- 4. Director Letters and Meetings with State Agencies and Counties – *No attachments***

## Proposed Options to Section 201M-5, HRS

### Option 1

If you want to clarify that SBRRB has the authority on its own to review legislation affecting small businesses, the following is a suggested revision to the first sentence of HRS 201M-5(a):

*There shall be established within the department of business, economic development, and tourism, for administrative purposes, a small business regulatory review board to review any proposed new or amended rule or legislation affecting small businesses.*

### Option 2

If you want to clarify that SBRRB has the authority to review legislation affecting small businesses in response to a request from small business owners, then the following is a suggested revision to the fourth sentence of HRS 201M-5(a) and to the first sentence of HRS 201M-5(f):

*The board may also consider any request from small business owners for review of any rule proposed, amended, or adopted by a state agency or for review of any legislation affecting small businesses and to make recommendations to the agency or the legislature regarding the need for a rule change or legislation.*

*The board shall submit an annual report to the legislature twenty days prior to each regular session detailing any requests from small business owners for review of any rule proposed, amended, or adopted by a state agency or for review of any legislation affecting small businesses, and any recommendations made by the board to an agency or the legislature regarding the need for a rule change or legislation.*



**§201M-5 Small business regulatory review board; powers.** (a) There shall be established within the department of business, economic development, and tourism, for administrative purposes, a small business regulatory review board to review any proposed new or amended rule. If the board determines that a proposed rule will not have a significant economic impact on a substantial number of small businesses, the board shall submit a statement to that effect to the agency that sets forth the reason for the board's decision. If the board determines that the proposed rule will have a significant economic impact on a substantial number of small businesses, the board may submit to the agency suggested changes in the proposed rule to minimize the economic impact of the proposed rule, or may recommend the withdrawal of the proposed rule. The board may also consider any request from small business owners for review of any rule 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 rules, the board may make recommendations to the county council or the mayor for appropriate action.

(b) The board shall consist of eleven members, who shall be appointed by the governor pursuant to section 26-34; provided that:

- (1) Three members shall be appointed from a list of nominees submitted by the president of the senate;
- (2) Three members shall be appointed from a list of nominees submitted by the speaker of the house of representatives;
- (3) Two members shall be appointed from a list of nominees submitted by the board;
- (4) Two members shall be appointed by the governor;
- (5) The director of business, economic development, and tourism, or the director's designated representative, shall serve as an ex officio, voting member of the board;
- (6) The appointments shall reflect representation of a variety of businesses in the State;
- (7) No more than two members shall be representatives from the same type of business; and
- (8) There shall be at least one representative from each county.

For the purposes of paragraphs (1) and (2), nominations shall be solicited from small business organizations, state and county chambers of commerce, and other interested business organizations.

(c) Except for the ex officio member, all members of the board shall be either a current or former owner or officer of a business and shall not be an officer or employee of the federal, state, or county

government. A majority of the board shall elect the chairperson. The chairperson shall serve a term of not more than one year, unless removed earlier by a two-thirds vote of all members to which the board is entitled.

(d) A majority of all the members to which the board is entitled shall constitute a quorum to do business, and the concurrence of a majority of all the members to which the board is entitled shall be necessary to make any action of the board valid.

(e) In addition to any other powers provided by this chapter, the board may:

- (1) Adopt any rules necessary to implement this chapter;
- (2) Organize and hold conferences on problems affecting small business; and
- (3) Do any and all things necessary to effectuate the purposes of this chapter.

(f) The board shall submit an annual report to the legislature twenty days prior to each regular session detailing any requests from small business owners for review of any rule adopted by a state agency, and any recommendations made by the board to an agency or the legislature regarding the need for a rule change or legislation. The report shall also contain a summary of the comments made by the board to agencies regarding its review of proposed new or amended rules. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §§3, 5; am L 2007, c 217, §4; am L 2012, c 241, §3; am L 2017, c 174, §3; am L 2018, c 18, §5; am L 2019, c 247, §1]

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