

Small Business Regulatory Review Board Meeting

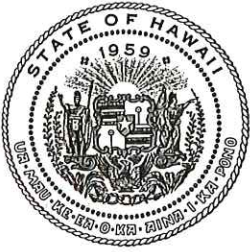
Wednesday, June 20, 2018

10:00 a.m.

No. 1 Capitol District Building

250 South Hotel Street, Honolulu, HI

Conference Room 436



SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)
No. 1 Capitol District Bldg., 250 South Hotel St. 5th Fl., Honolulu, Hawaii 96813
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Website: dbedt.hawaii.gov/sbrb

Tel 808 586-2594

AMENDED - AGENDA

Wednesday, June 20, 2018 ★ 10:00 a.m.

No. 1 Capitol District Building

250 South Hotel Street - Conference Room 436

David Y. Ige
Governor

Luis P. Salaveria
DBEDT Director

Members

Anthony Borge
Chairperson
Oahu

Robert Cundiff
Vice Chairperson
Oahu

Garth Yamanaka
2nd Vice Chairperson
Hawaii

Harris Nakamoto
Oahu

Nancy Atmospera-Walch
Oahu

Kyoko Kimura
Maui

Reg Baker
Oahu

Mary Albitz
Maui

William Lydgate
Kauai

Director, DBEDT
Voting Ex Officio

I. Call to Order

II. Approval of May 16, 2018 Meeting Minutes

III. New Business

A. Discussion and Action on Proposed Amendments to Chapters I – V, **Board of Water Supply Rules and Regulations**, in compliance with Sections 54 – 26, Hawaii Revised Statutes, for the Adoption of New Water Rates and Charges, promulgated by Board of Water Supply, City and County of Honolulu - **Discussion Leader – Tony Borges**

B. Discussion and Action on Proposed New Hawaii Administrative Rules (HAR) Title 20, Chapter 26, **Public and Commercial Activities on Mauna Kea Lands**, promulgated by University of Hawaii – **Discussion Leader – Nancy**

IV. Old Business

A. Discussion and Action on the Small Business Statement After Public Hearing and the Proposed Amendments to HAR Title 12 Subtitle 8, Hawaii Occupational Safety and Health Division, promulgated by Department of Labor and Industrial Relations – **Discussion Leader – Kyoko Kimura**

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

- B. Re-Discussion and Action on Proposed Amendments to HAR Title 19 Chapter 20.1, **Commercial Services at Public Airports**, promulgated by Department of Transportation – **Discussion Leader – Kyoko Kimura**
- C. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 15 Chapter 218, **Kakaako Reserved Housing Rules**, promulgated by Department of Business Economic Development and Tourism / Hawaii Community Development Authority – **Discussion Leader – Mark Ritchie**
- V. **Executive Session under Section 92-5(4), HAR**
 - A. Consultation with the Board's attorney regarding questions and issues that pertain to the Board's powers, duties, privileges, immunities, and/or liabilities under Chapter 201M, Hawaii Revised Statutes (HRS); the Governor's Administrative Directive 18-02, and Chapter 84, Code of Ethics, HRS
- 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
- VII. **Next Meeting:** Scheduled for Wednesday, July 18, 2018, at 10:00 a.m., Capitol District Building, Conference Room 436, Honolulu, Hawaii
- VIII. **Adjournment**

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

II. Approval of May 16, 2018 Meeting Minutes

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING - Draft

May 16, 2018

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

- I. **CALL TO ORDER:** Chair Borge called the meeting to order at 10:00 a.m., with a quorum present.

MEMBERS PRESENT:

- Anthony Borge, Chair
- Garth Yamanaka, 2nd Vice Chair
- Kyoko Kimura
- Reg Baker
- Mary Albitz
- William Lydgate
- Mark Ritchie

ABSENT MEMBERS:

- Robert Cundiff, Vice Chair
- Harris Nakamoto
- Nancy Atmospera-Walch

STAFF: DBEDT
Dori Palcovich

Office of the Attorney General
Dawn Apuna

II. **APPROVAL OF APRIL 18, 2018 MINUTES**

Mr. Baker made a motion to accept the April 18, 2018 minutes, as presented. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

III. **NEW BUSINESS**

- A. Discussion and Action on Proposed Amendments to HAR Title 4 Chapter 66, Pesticides, promulgated by Department of Agriculture (DoAg)

Ms. Victoria Matsumura, Environmental Health Specialist at DoAg, stated that of the chapter's 56 proposed rule changes, 8 were identified as having small business impact. Of the 8 changes, the most significant change was a new, one-time licensing fee for pesticide devises.

Fee increases apply to permits, examinations, educational services, and certifications. The department head currently has the authority to waive or reduce the fees for businesses that have financial hardship; in the past, this authority was delegated to the branch manager. While a repeal process is not included in the rules, it was explained there have never been any instances where a repeal was required.

Testifier, Mr. Tim Lyons, Executive Director of the Hawaii Pest Control Association, which represents 95% of the State's total licensed pest control companies, complimented DoAg for an admirable job in formulating the proposed rule changes; however, the Association has one concern. Under Section 4-66-60(c) (1) (3), HRS, it requires that submission of a speaker's biography and break-out presentation for continuing education purposes be made in 30 days.

Mr. Lyons stated that 10 days would be a more manageable period of time; the rules also do not allow for leeway in the time when submitting the required speaker information if a change is needed from the original speaker to a new speaker within that 30-day period. The Board of Agriculture was approached with this proposal, but to no avail.

Chair Borge applauded DoAg's willingness to work with the stakeholders during the rule promulgation period. He agreed with Mr. Lyons that the 30-day submission for a speaker's information is quite lengthy.

Mr. Ritchie made a motion to encourage dialogue between the agency and stakeholders prior to going to public hearing regarding the timeframe under Section 4-66-60(c)(a)(3) that will be mutually acceptable to all. Ms. Kimura seconded the motion, and board members unanimously agreed.

IV. OLD BUSINESS

B. Discussion and Action on Proposed Amendments to HAR Title 19 Chapter 20.1, Commercial Services at Public Airports, promulgated by Department of Transportation (DOT)

Discussion leader, Ms. Kimura, reminded the members that a memorandum was sent to DOT after last month's board meeting with several questions to be addressed. Mr. Ross Higashi, Deputy Director for DOT Airports Division thanked the members and introduced Ms. Rosemary Neilson-Nenezich, DOT's Operations Manager and Mr. John Price, deputy attorney general. He explained that a consultation meeting was held on May 11th where ten stakeholders, who attended this board's meeting last month, were present.

Mr. Higashi was following up on last month's meeting due to this Board deferring any action pending conferring with the stakeholders and answering the Board's questions raised at the last meeting to establish a level playing field for all companies that provide transportation services at the airport in order to eliminate double standards in the permitting process and discuss consistency with trade dress logos and insurance coverage requirements.

Further, in consideration of the concerns raised at the last meeting and from the stakeholder consultation meeting, DOT has decided to redraft the rule amendments and cancel the public hearings scheduled for the end of May in order for DOT to clarify the concerns in a fair manner. The new proposal is expected to be completed by mid- to late-June; Chair Borge appreciated DOT responding back to this Board.

Testifier, Mr. Noel Trainor, retired general manager at Hilton Hawaiian Village, expressed the importance of this Board, discussed his professional background, and commented on Hawaii's tourism, Hawaii's taxi service industry and the need for effective rules.

Testifier, Mr. Robert DeLuz, owner of Robert's Taxi, attended the DOT stakeholder's meeting but expressed concerns as to whether extending the rule changes would automatically extend the pilot program that will allow for an extended period of time for TNC's (transportation network companies) to provide service at the airports. He suggested that if a fair playing field is not met, that the pilot program should cease until it is. In response, Mr. Higashi expressed that his team is doing its best, and working as fast as it can to meet an August 31, 2018 deadline while carrying out the State's internal and legal processes.

Mr. Boyd Sakai, Deputy Chief with the Attorney General's Investigative Division stated that as a friendly reminder the State wants to treat the grounds transportation service industry fairly. However, there have been reports in the past where people have not been following the existing rules, and he reminded everyone that the designated pick-up areas for Uber and Lyft drivers will be enforced if they are violated.

Testifier, Ms. Dale Evans, President and CEO of Charlie's Taxi, distributed her written testimony, describing concern with the administrative rules that "allows the arbitrary change of rules at will by DOT director." She noted that there is a disparity in requirements with the proposed rules and existing Chapter 19-38.1, On-Demand Taxi Service at Public Airports;" this is because the taxi drivers have to follow these rules and the TNC's do not. Further, she explained that, as a small business owner, she will insist that DOT rule requirements include the Uber and Lyft businesses.

Testifier, Ms. Lisa Gonzales, TNC driver for Uber, drives her own car three days a week; on the days that she does not work, she does not believe she should be permitted to keep a permit decal on her vehicle and that the trade dress from Uber is sufficient.

Testifier, Mr. David Chun, attended DOT's stakeholder consultation meeting. He noted that instead of discussing this Board's five areas of concern, DOT discussed the following: 1) how the rule changes increase permittee's operating costs; 2) how the rule changes restrict permittee's operations, and 3) suggestions for another rule change that achieves the same policy objective. Going forward, Mr. Chun would like to have the five areas of concern posed by this Board be considered in a serious manner, and while he appreciated DOT's gesture for setting up the consultation meeting, he believes the attendees received little, if no, feedback.

Testifier, Ms. Lynda Kernaghan, TNC driver for Lyft and Uber, expressed that although the TNC drivers are "small businesses," the drivers are never asked to attend any of the stakeholder meetings; as such, TNC drivers' point of view is not heard. Chair Borge responded that as a small business, TNC's concerns should be heard and addressed.

Ms. Tabatha Chow, Senior Operations Manager for Uber in Hawaii, stated that she supports changes to the rules and is looking forward to continuing to focus on the policy and work with DOT's Airports Division which has worked very hard at hearing concerns and communication from the stakeholders as to how the rules should be written.

In response to Mr. Baker's inquiry as to how meetings with DOT are transmitted to Uber drivers, Ms. Chow explained that Uber officials have been present at the DOT/stakeholder meetings but the drivers had not been involved; however, Uber management has engaged the drivers in communications on policy, distributed surveys, etc. Mr. Andrew Meana, Senior Manager for Uber in Hawaii, confirmed that Uber drivers were provided with notice of on-going meetings at DOT. Testifier, Mr. Michael Johnson, TNC driver for Lyft and Uber, stated that receipt of information is slowly improving as drivers have been included in policy changes.

Testifier, Mr. Arthur Hughes owner of Island Limo, one of Uber's first partners, expressed concern with the requirement differences in the existing rules versus the pilot program requirements for TNC's. Another testifier, Mr. Timothy, TNC driver for Lyft and Uber, offered to work together with the TNC's, the taxi drivers and DOT to help resolve the differences.

Testifier, Mr. Brenten Yamane, owner of Kanoa Transportation, and a commercial operator with Uber, explained the difference between commercial partners and Umbers, and noted that there is currently not an equal playing field with all the commercial drivers at the airport. He does not believe that Uber is doing anything to help his type of commercial business.

Testifier, Mr. Rodney Sato, Managing Member of Shangri-La Company, LLC, and a former state deputy attorney general explained that, in the past, ground transportation companies were not treated fair at the airports. He attended DOT's stakeholder meeting and believes it was "a waste of his time" because DOT did not address this Board's concerns.

Chair Borge stated that based on the discussions today, there appears to be sufficient information for DOT to address this Board's concerns outlined in its memorandum to arrive at valid solutions. He has faith in DOT to address all the concerns and points brought up at the recent meetings and he looks forward to reviewing the redrafted rules. He added that this Board is willing to convene a meeting prior to the scheduled June 20th board meeting, if needed, to move forward with the public hearings. He announced that upcoming agendas and past and current minutes can be found on the Board's website.

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

DBEDT staff stated that the Small Business Conference held in Maui was excellent, as it was last year, and reminded the members that DBEDT staff met the newest board member, Ms. Albitz, at last year's meeting. The speakers were dynamic and brochures were distributed to attendees at the event.

Chair Borge requested that DBEDT staff draft a press release announcing the newest members to this Board. He will be meeting with DBEDT Director Luis Salaveria this afternoon to request funds for the Board's proposed website.

B. Voting and Action on Board Chair, pursuant to Section 201M-5(c), HRS, and Voting and Action on Vice Chair and Second Vice Chair

Mr. Lydgate made a motion to vote for a continuation of one year for the existing three officers, Mr. Anthony Borge as Chair, Mr. Robert Cundiff as Vice Chair, and Mr. Garth Yamanaka as Second Vice Chair. Ms. Albitz seconded the motion, and the Board members unanimously agreed.

It was announced that Ms. Kimura will be leaving this Board, effective June 30, 2018, as she will serve as a board member of Hawaii Tourism Authority; best wishes to Ms. Kimura.

VI. **NEXT MEETING** – The next meeting is scheduled for Wednesday, June 20, 2018, in Conference Room 436, 250 South Hotel Street, Honolulu, Hawaii at 10:00 a.m.

VII. **ADJOURNMENT** – Mr. Baker made a motion to adjourn the meeting and Mr. Ritchie seconded the motion; the meeting adjourned at 11:52 a.m.

III. New Business

- A. Discussion and Action on Proposed Amendments to Chapter I – V, **Board of Water Supply Rules and Regulations**, in compliance with Sections 54-26, Hawaii Revised Statutes, for the Adoption of New Water Rates and Charges, promulgated by Board of Water Supply, City and County of Honolulu

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

Department or Agency: Board of Water Supply (BWS), City and County of Honolulu

Administrative Rule Title and Chapter: HRS § 54-26; BWS Rules and Regulations, Chapters I - V

Chapter Name: _____

Contact Person/Title: Mr. Ernest Lau, P.E./ Manager and Chief Engineer

Phone Number: 748-5061

E-mail Address: elau@hbws.org **Date:** June 12, 2018

A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved. **The Board of Water Supply (BWS) is considering adopting new water rates and charges.**

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☺)

The current rules can be accessed at boardofwatersupply.com

(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

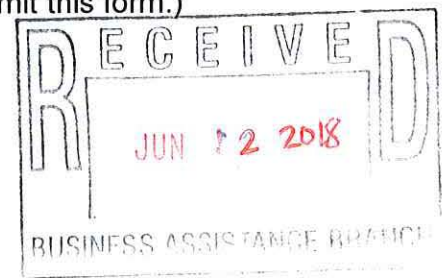
* "Small business" is defined as a "for-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that: (1) Is domiciled and authorized to do business in Hawaii; (2) Is independently owned and operated; and (3) Employs fewer than one hundred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

* * *



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

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

All small businesses that receive water service from the Board of Water Supply (BWS) will be affected by the funding that is necessary for the operations and maintenance, including all agriculture, non-potable and recycled water customers.

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.

BWS is proposing rate increases for a 5-year period with the first increase to take effect July 1, 2019 and the last increase in this schedule occurring on July 1, 2022. Increases in the dollar amounts of direct costs experienced by small business customers will vary depending on the size of their water meter and actual water use. We expect the cumulative increase over 5 years for non-residential customers, which includes small businesses, to range between 6% to 9%. Cumulative 5-year increases in agricultural water bills are expected to range between 3% to 13%. There are no indirect costs to any of our customers as a result of this proposed changes. See Attachment 1: Proposed Non-Residential, Agricultural, Non-Potable and Recycled Water Customer Water Rates

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.

Current and proposed rates are provided in Attachment 2. The last time water rates were increased was July 1, 2015.

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

Please see Attachment 1, Proposed Non-Residential, Agricultural, and Non-Potable Water Customer Water Rates; including the Proposed Fire Meter Standby Charge, see Attachment 3. Increases in bills will vary depending on the size of the water meter and actual water use. We expect the cumulative increase over 5 years for non-residential customers, which includes small businesses, to range between 6% to 9%. Cumulative 5-year increases in agricultural water bills are expected to range between 3% to 13%.

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

The BWS is self-supporting and receives nearly all of its revenue from water sales to its customers. The BWS has developed 30-year Water Master Plan (WMP), Infrastructure Investment Plan, and Long Range Financial Plan. Together, these plans identify necessary investments in infrastructure, watershed protection, and conservation; financing strategies to balance needs with costs; and the additional revenues required to fund these investments. Implementing these plans is required in order to fulfill our mission of providing safe, dependable, and affordable water now and into the future, and all customers' water rates will increase, including our small business customers. See Attachment 4: Investing in Oahu's Water Future

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

The BWS assessed the condition of its water system, conducted a rate study and cost of service study in developing the WMP; projected future water demands; and outlined projects to address wear, age, growth, and sustainability. The resulting Infrastructure Investment Plan is a multi-decade strategy that identifies specific infrastructure projects and when they should be implemented, based on risk. The Long Range Financial Plan determined the revenue increase required to implement these plans. See Attachment 5: Water Master Plan Summary, Attachment 6: Infrastructure Investment Plan Summary, and Attachment 7: Long Range Financial Plan Summary.

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 monies will be used.

Over the 5-year period, BWS expects to collect an additional \$60 million above what will be collected under the existing water rates and charges. This will be used to fund operations and infrastructure investments. The BWS will utilize bond financing and State Revolving Fund loans to leverage our ratepayer's money, reduce impacts to water rates, and share payment for these investments with both current and future customers. The use of monies is provided in Attachment 6: Over the Next 10-years

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 BWS considered alternative rate structures for non-residential (including small business) customers and determined the uniform rate per 1,000 gallons, regardless of usage, to be the most equitable, easiest to understand, and least expensive to implement. It was also decided to continue to provide substantially discounted rates to agricultural (60% of cost of service), non-potable (70%), R-1 (70%) and R-O (83%) customers.

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

The proposed changes to water rates do not impose changes in water use requirements or restrictions in water use. The BWS encourages all customers to use water efficiently and practice good water conservation to reduce usage.

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.

Acting on the advise of our Stakeholder Advisory Group, the relatively low increases in non-residential and agricultural water rates have been achieved, in part, by moving our residential customers closer to full cost recovery.

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

Please see Attachment 8, the BWS engaged a Stakeholder Advisory Group of nearly 30 community leaders, each lending constituent-based ideas and values to the Water Master Plan's development. See attached BWS Stakeholder Advisory Group. Other outreach efforts are included 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.

Recommendations from small business were sought through the Stakeholder Advisory Group, which included the Chamber of Commerce, the Building Industry Association, the Honolulu Board of Realtors and agriculture representatives. Recommendations made included retaining the uniform rate per 1,000 gallons of usage, switching to a monthly customer charge based on meter size, and moving single-family residential customers closer to full cost of service recovery, and continuing to provide a discounted rate to agricultural, non-potable and recycled customers. All of these recommendations were incorporated.

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.

No.

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.

Not Applicable.

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

Not Applicable.

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

Not Applicable.

- 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.

Not Applicable.

- 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.

Not Applicable.

* * *

Small Business Regulatory Review Board / DBEDT

Phone: (808) 586-2594

Email: DBEDT.sbrrb.info@hawaii.gov

This Statement may be found on the
SBRRB Website at:

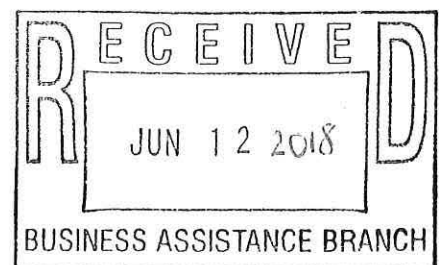
<http://dbedt.hawaii.gov/sbrrb/small-business-impact-statements-pre-and-post-pubic-hearing>



WATER FOR LIFE
Ka Wai Ola

RULES AND REGULATIONS

Subject to Revisions
01/25/2010



Rules and Regulations

These Rules and Regulations have been adopted pursuant to the authority expressed in Section 7-105(j) of the Revised Charter of the City and County of Honolulu; and, in accordance with procedures established and prescribed in Hawaii Revised Statutes, Chapter 91.

These Rules and Regulations represent a compilation, recodification and general amendment to those previously existing rules and regulations governing the Board of Water Supply.

Reprinted 2010 with amendments

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Definitions

For the purpose of these Rules and Regulations, unless it is plainly evident from the context that a different meaning is intended, certain words and phrases used herein are defined as follows:

"APPROVED RECYCLED WATER USE SITE" refers to an area approved by the Department on which recycled water is applied.

"BOARD" shall mean the policy-making body, consisting of seven members, of the Board of Water Supply.

"MANAGER" shall mean the Manager and Chief Engineer of the Board of Water Supply or his authorized representative.

"BOARD OF LAND AND NATURAL RESOURCES" shall mean the policy-making body, consisting of six members, of the State Department of Land and Natural Resources.

"CESSPOOL" refers to an excavation in the ground which receives domestic sewage and/or discharges of a drainage system or part thereof, so designed as to retain the organic matter and solids discharging therein, but permit the liquids to seep through the bottom or sides.

"CHIEF ENGINEER" shall mean the Director and Chief Engineer of the Department of Public Works, City and County of Honolulu.

"CITY" shall mean the City and County of Honolulu.

"CONSERVATION DISTRICT" refers to those lands within the City and County of Honolulu bounded by the Conservation District line as established under the provisions of Act 187, S.L.H. 1961, and Act 205, S.L.H. 1963 and subsequent amendments thereto.

"CONSUMER" shall mean the person, firm, corporation, association, governmental department, or other legal entity whose name appears on the records of the Board of Water Supply as the party responsible and liable for receiving water service.

"CROSS-CONNECTION" shall mean any actual or potential connection or structural arrangement between a public or a consumer's potable water system and any other source or system through which it is possible to introduce into any part of the potable system any used water, industrial fluid, gas or substance other than the intended potable water with which the system is supplied. By-pass arrangements, jumper connections, removable sections, swivel or change-over devices and other temporary or permanent devices, through which or because of which "backflow" can or may occur, are considered to be cross-connections.

"DAILY RECORDS" means information and data collected during a defined and consistently observed 24-hour time period such as 6:00 am to 5:59 am.

"DEPARTMENT" shall mean the governmental unit known as the "Board of Water Supply."

"DESIGNATED GROUNDWATER CONTROL AREA" means an area in which the State's Board of Land and Natural Resources finds that the groundwater must be regulated and protected for its best utilization, conservation, and protection in order to prevent threat of exhaustion, depletion, waste, pollution, or deterioration by salt encroachment or an area in which the Board of Land and Natural Resources finds that the groundwater must be regulated and protected in order to protect the groundwater resources from exhaustion, depletion, waste, pollution, or deterioration by salt encroachment.

"DEVELOPER" shall mean an owner or other person or legal entity with written authorization from the owner who intends to improve or to construct improvements upon his property. The term shall also mean a subdivider.

"DEVELOPMENT" shall mean the improvement of, or construction of improvements on, a lot. The term shall include subdivisions, planned development projects, cluster developments, site development plans and condominium projects.

Planned development projects, cluster developments and site development plans shall be as defined under the Comprehensive Zoning Code (CZC) of the City and County of Honolulu.

"DIRECTOR" shall mean the Director of Land Utilization of the Land Utilization Department, City and County of Honolulu.

"DISPOSAL WELL" refers to any excavation that is drilled, cored, bored, washed, driven, dug, jetted or otherwise constructed into the ground for the diversion, injection, or disposal of wastewaters or other liquid wastes into any underground formation, except for shallow excavations in soil formations used for the disposal of irrigation tail water.

"DOH GUIDELINES" refers to Hawaii Department of Health's *Guidelines for the Treatment and Use of Recycled Water*.

"DOMESTIC USE" or "DOMESTIC WATER" refers to water meeting the requirements of P.L. 93-523 the "Safe Drinking Water Act" and all amendments thereto.

"HEAD LEVEL" means the groundwater elevation in feet at designated monitoring points in relation to sea level or as calculated by reference to bulkhead pressure measurements.

"INDIVIDUAL HOUSEHOLD AEROBIC TREATMENT UNIT" refers to a watertight receptacle which receives the discharge of domestic sewage, and is constructed so as to retain solids, digest organic matter through a period of detention and aeration, and allows the aerated effluent to discharge outside the tank into a subsurface disposal field or seepage pit.

"IRRIGATION TAIL WATER" refers to water remaining after irrigation of agricultural lands which the user intends to dispose of.

"MAIN" or "MAIN PIPE" shall mean the supply or distribution pipe to which service laterals are connected.

"NO PASS ZONE" means areas in which the installation of waste disposal facilities, which may contaminate groundwater resources used or expected to be used for domestic water supplies, shall be prohibited.

"NONPOTABLE WATER" shall mean water that does not meet State Department of Health drinking water standards.

"OWNER" imports the plural as well as the singular, and includes both the person, permittee operator, firm, partnership, association, estate, corporation or other legal entity that:

- a. Owns the land on which the well is or will be located.
- b. Operates the well under a lease, license or other similar form of agreement.

"PERMITTED USE" refers to the use or uses of land as permitted and defined under Regulation No. 4, Department of Land and Natural Resources, State of Hawaii.

"PESTICIDES" refer to toxic chemicals used to control insects, other pests and unwanted vegetation.

"PONDING" means retention of piped recycled water on the surface of ground or man-made surface for a period of 2 hours following the cessation of an approved recycled water use activity.

"PREVIOUS 12-MONTH MONTHLY AVERAGE" means the recorded consumption for billing during the last complete 12-month billing period prior to the declaration of a low water condition by the Board divided by twelve (12). Once the previous 12-month monthly average has been established for each consumer, it shall remain in effect, unchanged, for the duration of the declared low water condition or conditions.

"PRIVATE WATER SYSTEM" shall mean mains, valves, hydrants, pumps, tanks, and all appurtenances beyond the master meter which are necessary to provide water and fire

protection, and which shall be owned, operated, and maintained by the Association or other legal entity.

"PRIVATE WELL" means any well that is not owned by the Department.

"PROJECT WATER SYSTEM" shall mean the water system, to and within any development, including mains, valves, hydrants, laterals, pumps, tanks, reservoirs and all appurtenances necessary to provide water and fire protection for such development and, where necessary, sources of supply.

"PUBLIC WATER SYSTEM" shall mean the water system owned and operated by the Department.

"RECYCLED WATER" refers to oxidized wastewater that is filtered and disinfected to achieve bacterial concentrations consistent with DOH Guidelines for R-1 Water.

"REFUSE DISPOSAL DUMPS" refer to any specific land site where solid wastes or refuse of any type, except rocks, soil and agricultural leaf trash, are deposited, and where the site is not thereafter managed as a sanitary landfill.

"RESTRICTED WATERSHED" ("RW") shall refer to those areas defined by the State of Hawaii Department of Land and Natural Resources Regulation No. 4, dated October 2, 1964, and any subsequent legal revisions of said definition; such areas being delineated on maps on file at the Office of the Department of Land and Natural Resources and the Office of the Lieutenant Governor, State of Hawaii.

"SANITARY LANDFILL" refers to a method of disposing of refuse on land by confining the refuse to the smallest practical area, reducing the refuse to the smallest practical volume, and covering the refuse with a layer of earth at the conclusion of each day's operation.

"SEPTIC TANK" refers to a water-tight receptacle which receives the discharge of domestic sewage, designed and constructed so as to retain solids, digest organic matter through a period of detention, and allow the liquids to discharge outside the tank into a subsurface disposal field or one or more seepage pits.

"SERVICE LATERAL" shall mean the main tap, pipes, fittings, valves and appurtenances from the main to, and including, the meter box and consumer's shut-off valve.

"SERVICE LIMIT" shall mean the maximum elevation to which adequate water service is available. The service limit shall be that elevation which is 100 feet below the spillway elevation of the supplying reservoir for the area.

"SEWAGE DISPOSAL SYSTEM" refers to an individual household treatment unit such as a cesspool, septic tank, or individual household aerobic treatment unit, with the effluent discharging into subsurface disposal fields or into one or more seepage pits.

"SEWAGE TREATMENT PLANTS" refer to man-made structures which subject wastewater to treatment by physical, chemical, or biological processes, or to a combination of such processes, for the purpose of removing or altering objectionable constituents, rendering it less offensive or dangerous to humans or other forms of life, and includes the reclamation of such wastewater at a level of quality suitable for reuse in some beneficial way.

"STABILIZATION POND" refers to a pond designed for the treatment of sewage by natural biological processes, with or without the addition of supplemental aeration or chemicals.

"STATE" shall mean the State of Hawaii, except where reference is clearly to another State, Territory, or possession of the United States.

"SUBDIVIDER" shall mean a person, firm, corporation, partnership, association, trust or other entity, or any combination thereof, who is the owner of the land to be subdivided or consolidated, or the duly authorized agent or lessee of the owner.

"SUBDIVISION" shall mean the division of land into two or more lots, parcels, sites, or other divisions of land, including designation of easements, for the purpose, whether immediate or future, of sale, lease, rental, transfer of title to or interest in, any or all of such lots, parcels, sites, easements or other division. The term shall include resubdivision, and, when appropriate to the context, shall relate to the land subdivided.

"TEST BORINGS" refer to holes drilled for geologic-hydrologic exploration and not originally intended as water producing wells.

"USER" means any person, firm, corporation, association or agency receiving recycled water service.

"USER SUPERVISOR" refers to a person who is responsible for the day-to-day management and operations and maintenance of recycled water on the approved use site.

"WASTAGE OF WATER" is defined as causing, or permitting, the water in any well to reach any porous substratum, or to flow from the well upon any land, or directly into any stream, or other natural water course or channel, or into the sea or any bay, lake or pond, or into any street, road, or highway, unless to be used for beneficial purposes; provided, that this section shall not be so construed as to prevent the beneficial use of water by direct flow, or from storage reservoirs served by wells for irrigation, domestic and other useful purposes, except for driving machinery; provided, that water may be used for driving machinery, in case it is utilized afterwards for irrigation or other useful purposes.

"WASTEWATER" refers to water discharged after it has been used in some beneficial way, and which the user intends to dispose of in some manner. This definition excludes irrigation tail water to be disposed of as provided under the definition of "Disposal Well."

"WATER SYSTEM FACILITIES CHARGE" shall mean the fee to be paid by developers and consumers as their share of the cost of developing water system facilities.

"WATER RESOURCES" refer to all waters on or below the ground surface, regardless of quality.

"WELL" is defined to be, but not limited to, any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed into the ground for the location, exploration, diversion, or acquisition of any groundwater by natural pressure or artificial means; provided, that if and whenever groundwater is encountered in an excavation, for whatever purposes made, such excavation shall be considered a well and subject to these Rules and Regulations.

"WATER SERVICE" shall mean the complete installation of pipes, fittings, appurtenances and meter necessary to provide service to a consumer. This term also refers to the delivery of water to consumers.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976; am BWS Res. No. 472, 1979; am BWS Res. 475, 1980; am BWS Res. No. 502, 1982; am BWS Res. No. 528, 1985; am BWS Res. No. 598, 1991; am BWS Res. No. 610, 1992; am BWS Res. No. 722, 2001]

CHAPTER I: WATER AND WATER SYSTEM REQUIREMENTS FOR DEVELOPMENTS

Sec. 1-101 Availability of Water

1. General Requirements

a. Extensions from and connections to the public water system will be approved by the Department where pressure conditions permit; provided, that the water meters are within the service limit except as provided for in Sec. 2-217, Elevation Agreement, and the Department has sufficient pressure and water supply available for domestic use and fire protection and can assume new or additional service without detriment to those presently being served.

b. The developer will be required to pay for and install, in accordance with these Rules and Regulations and the Standards of the Department, adequate water system facilities for the development.

2. Main Extension. If the Department's facilities in the area are inadequate, or where facilities are not readily available to serve a development, the developer must extend a water main from the nearest adequate facility. The water main so constructed, connecting the project water system to the nearest adequate public water system, is termed a main extension.

3. Water Supply to Areas Where No Public Water Supply Exists. In areas where there is no public water supply available to serve the development, plans and specifications for providing water sources, including wells, tunnels, shafts, pumps, buildings, mains and other appurtenant structures and devices, shall be in conformance with the Standards of the Department, and shall be approved by the Manager in their entirety prior to construction.

4. Availability of Water for Subdivision Applications. The Department will inform the Director as to the availability of water for subdivision applications referred to the Department.

5. Availability of Water for Proposed Developments. The Department may issue water commitments to proposed developments as follows:

a. Areas with Adequate Water Supply. The Department may issue advance water commitments to proposed developments in areas where the water system has adequate supplies to assume new or additional services.

b. Areas with Limited Additional Water Supply. The Department may restrict the issuance of advance water commitments to proposed developments in areas where the water system has limited additional supplies to assume new or additional services.

c. Areas with No Additional Water Supply. The Department shall not issue water commitments to proposed developments in areas where the water system has no additional supplies to assume new or additional services. The only exception shall be the issuance of a single 5/8-inch meter to proposed developments on existing single vacant lots.

The Department may establish guidelines for issuance of water commitments as indicated in Section 1-101, 5. a. and b.

6. Availability of water for large landscaped areas such as golf courses, parks, schools, cemeteries, and highways. If a suitable nonpotable water supply is available, the Department shall require the use of nonpotable water for irrigation of large landscaped areas.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976; am BWS Res. No. 468, 1979; am BWS Res. No. 472, 1979; am BWS Res. No. 485, 1981; am BWS Res. No. 530, 1985; am BWS Res. No. 598, 1991; am BWS Res. No. 610, 1992]

Sec. 1-102 Water System Facilities Charges

Water system facilities charges shall be levied against all new developments requiring water supplies from the Department's system or additional water supplies from the existing services. Developers shall pay the water system facilities charges before water services are made available to the developments. A schedule of such charges is included in the Department's Schedule of Rates and Charges for the Furnishing of Water and Water Service.

The Department may negotiate water system facilities charges other than those in the schedule when it is determined that the schedule is inappropriate. The Department may also negotiate agreements with developers for payment of the actual costs of the installation of the necessary water system facilities or require the installation of the facilities by the developer in lieu of payment of water system facilities charges.

Water system facilities charges will not be levied on developments where the developer installs at his cost, a complete water system including source and transmission and daily storage facilities.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976; am and renum BWS Res. No. 468, 1979; am BWS Res. No. 472, 1979; am BWS Res. No. 528, 1985]

Sec. 1-103 Increase in Size of Water Mains

1. Increase in Size of Water Main Extensions for Service to Other Areas. Whenever the Department finds it is necessary that the water mains proposed to deliver water to a development should be of a greater capacity, in order to supply water and fire protection to other property, the Department will require the installation of a larger size main.

2. Increase in Size of Water Mains Within Developments for Benefit of Other Areas. Whenever, in order to provide for existing or future services beyond the boundaries of a development, the Department finds that the mains to be installed within the

development should be of greater capacity than would otherwise be required, the Department will require the installations of larger size mains.

3. Reimbursement of Additional Costs of Mains. When the developer is required to install a larger size main, for the reasons set forth in the preceding paragraphs, the department will reimburse the developer as soon as practicable after acceptance by the Department of the completed work for the additional cost of the installation over and above the cost of the mains that would have been required; provided, however, that in no case shall reimbursement be made of any portion of the cost of an 8-inch or lesser size main; provided that reimbursement will not be made where such larger main or mains will serve only those areas under the same ownership as the development under consideration.

After the installation has been completed and accepted by the Department, the developer shall furnish the Department with itemized costs incurred by him in the installation of the said larger mains. The eligibility for reimbursement of each item shall be left to the discretion of the Department.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 1-104 Sizes of Mains, Hydrant Spacing, Fire Protection

1. Sizes of Mains. Any development within the City and County of Honolulu shall provide water mains designed to deliver water in adequate quantities and pressures for domestic use and fire fighting.
2. Hydrant Spacing. The Department will determine the spacing and location of all hydrants. All fire hydrants required for adequate fire protection will normally be located within the development.
3. Fire Protection. The standards for fire protection, insofar as water supply is concerned, will be determined by the Department.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 1-105 Laterals, Dead-Ends, Alterations to Public Water System Contours

1. Laterals. Where water main construction is necessary, the developer shall provide each lot in a subdivision with a service lateral. As an alternate, one service lateral may be installed for each two lots.
2. Dead-Ends. Where water mains would result in dead-ends, interconnections may be required by the Department.
3. Alterations to Public Water System. All work and materials in connection with the change in location or grade of any part of the existing public water system made necessary by the development shall be at the expense of the developer.

4. Contours. When required by the Department, contours or elevations shall be furnished by the developer, based upon City and County datum.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 1-106 Construction Plans

1. Preparation of Plans. All construction plans shall be prepared by a registered engineer. Preliminary and final maps of developments to be reviewed by the Department shall fully conform to the definitions and requirements of the Rules and Regulations of the Planning Commission of the City.

2. Information to be shown on Construction Plans. The construction plans, insofar as the water system is concerned, shall show the following on standard size sheets measuring 22" x 36":

- a. Name of development, name of developer, name of engineer, and location of development.
- b. Date, North arrow, scale, tax key.
- c. The proposed water system, complete in both plan and profile, reflecting the inter-relationship with street lines, lot lines, curb grades, sewers and drains, both existing and proposed, as well as any other features, natural or artificial.
- d. Plan views drawn to a scale of one inch equals 40 feet or one inch equals 20 feet. Profile views drawn to a vertical scale of one inch equals 4 feet or larger. Manhole, fire hydrant, lateral and other details drawn to a scale of one half inch equals one foot or larger.
- e. The designation, including alignment and width, of all easements for parts of the water system which will not be in street areas to be dedicated to the public.
- f. A general layout map showing the entire development on one sheet with locations of lots and streets within the development and its vicinity, together with existing and proposed water systems.
- g. A small key location inset or vicinity map showing the proposed development in relationship to streets and water mains in the area.
- h. In cases in which the owner or developer also owns areas contiguous to the proposed development, or separated therefrom by a street, a sketch of the future street and lot pattern and the water system proposed to serve such contiguous areas shall be furnished for study with the construction plans.
- i. All plans shall have the approval block at the lower right hand corner of the drawings except when the approval signature is on the title sheet.

3. Service Limit. Whenever a lot or lots within a development are at or near the service limit, the contour line of the service limit shall be shown on the construction drawings and subdivision map. A reasonable buildable area below the service limit shall be provided for the lot or lots in the development.

4. Approval of Plans. No construction of a water system, or any portions thereof, shall be undertaken prior to approval of the final construction plans by the Manager, the Director,

the Chief Engineer, and the State Department of Health. After said approval, the developer shall transmit three sets of all final construction plans to the Department.

5. Delays in Construction. If any period exceeding two years, or such extension as may be granted, passes without substantial progress in the construction of the water facilities, after approval of plans by the Department, the plans thereof shall be resubmitted to the Department for review and for making such changes as of Standards or amendments to these Rules and Regulations.

6. Filing of Tracings. Upon completion of the construction of a development, the developer must submit to the Department for filing, as-built construction plan tracings of the water system.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976; am BWS Res. No. 562, 1988]

Sec. 1-107 Materials and Construction Standards, Installation of Water Service, Inspection of Work

1. Materials and Construction Standards. All materials, design and construction procedures, and workmanship, with respect to any project water system, or any portion thereof, shall be in accordance with the requirements and standards of the department and with the requirements of the State Department of Health and all other applicable legal authority. The Manager shall determine the capacity and location of any of the component parts of the water system.

2. Installation of Water Service. No water service will be approved, except a service for construction purposes, until the project water system has been completed and accepted by the Department. Private water systems installed above the service limit will not be accepted by the Department.

3. Inspection of Work. The Manager, or any employee representing him, shall have free access at all times to all installations made for the development and shall be given any assistance requested as well as every facility, information, and means of thoroughly inspecting the work to be done and the materials used or to be used.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976; am BWS Res. No. 610, 1992]

Sec. 1-108 Ownership of Installed Water System

As a condition precedent to connecting the project water system to the public water system, the developer shall convey the water system, except when a private water system is proposed, to the Department and said system thereafter will be maintained and operated as a part of the public water system; provided, however, that the Department may refuse to operate and maintain facilities installed without the Department's prior approval. Prior to the commencement of water service, and as a prerequisite to such service, the developer shall deliver to the Department perpetual easements for all portions of the water system installed in other than publicly owned property. The developer shall also convey, without cost to the Department, fee simple title to all sites on which are located tanks, reservoirs, sources of supply, and pumps constructed by the developer and

connected to the public water system together with easements for access, water pipeline, and other necessary utility purposes.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976; am BWS Res. No. 472, 1979; am BWS Res. No. 610, 1992]

Sec. 1-109 Modification of Requirements

When conditions pertaining to any development are such that the public may be properly served with water and fire protection without full and strict compliance with these Rules and Regulations, or where the development site or layout is such that the public interest will be adequately protected, such modification thereof as is reasonably necessary or expedient, and not contrary to law or the intent and purpose of these Rules and Regulations, may be made by the Department.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 1-110 Construction Agreement and Bond

To secure approval prior to construction of the required improvements, insofar as the construction of the project water system is concerned, and excepting private water systems, the developer shall enter into an agreement with the City and the Department to make, install and complete all of the required improvements within a specified time and file with the Director a surety bond or other security, as hereinafter specified, to assure the City and the Department the actual construction and installation of the improvements and utilities shown on the approved construction plans.

The agreement shall specify, insofar as the project water system is concerned, and excepting private water systems, that the developer will complete the same to the satisfaction of the Manager, and shall provide that if the developer shall fail to so complete such work within the time specified, or such extension as may be mutually agreed upon, the Department may complete the same and recover the full cost and expense thereof from the developer.

The bond or other security to be filed with the Director with the aforesaid agreement shall be one of the following (provided, that in all instances where a surety bond is filed, it shall be executed by the developer, as principal, and by a surety company authorized to transact a surety business in the State, as surety):

1. A surety bond in a sum equal to the cost of the work required to be done as estimated by the Manager; payable to the City and the Department, and conditioned upon the faithful performance of all work required to be done by the developer, and upon the further condition that should the developer fail to complete all work required to be done within a specified time, the Department may cause all work which is not finished to be completed, and the parties executing the bond shall be firmly bound for the payment of all costs therefor; or
2. Where the developer has entered into a contract with a reputable contractor, and has filed with the Director all three of the following: (a) a certified copy of his said contract and specifications, (b) a certified copy of the performance bond of his contractor, and (c) a surety bond in a sum equal to at least 50 percent of the cost of all work required to be done by the developer as estimated by the Manager and payable and conditioned as above set forth; or
3. The developer shall make a deposit of money with the Director, or a responsible escrow agent designated by the Director as agent of the city and the Department, in an amount equal to the cost of the construction of said improvements as estimated by the Manager. Under this arrangement, the agreement may provide for approved progress payments to be made to the contractor for materials used and services and labor performed out of said deposit as the work progresses; provided, that said progress payments shall at no time exceed the value of the completed portion of said improvements; or
4. In lieu of said surety bond or deposit in escrow mentioned in paragraphs numbered 1, 2 and 3 above, the developer may deposit with the Director bonds or other negotiable

securities acceptable to the Manager in the amount provided by paragraphs numbered 1, 2 or 3 respectively, of this Section.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976; am BWS Res. No. 610, 1992]

Sec. 1-111 Repair and Replacement of Improvements

The developer shall enter into an agreement with the City and the Department and shall file with the Director, a surety bond to insure the repair and replacement of subdivision improvements excluding private water systems, for a period of one year from the date of acceptance by the City of the dedication. The amount of the surety bond shall be ten percent of the cost of construction as estimated by the Chief Engineer, Director of Recreation and Manager.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976; am BWS Res. No. 610, 1992]

Sec. 1-112 Use of Nonpotable Water Required for Large Landscaped Areas

1. If the Department determines that a suitable nonpotable water supply is available, the Department shall require existing services to use nonpotable water for irrigation of large landscaped areas such as golf courses, parks, schools, cemeteries, and highways.
2. Upon such notification by the Department, the existing service holder(s) has no more than five (5) years to complete the conversion to nonpotable irrigation as may be required by the Department unless otherwise approved by the Manager. Failure to comply with these requirements may result in discontinuation of water service and/or penalties as authorized in section 2-205, 2b, and Section 5-501 of these Rules and Regulations.

[Eff 12/1/1991; BWS Res. No. 598, 1991]

Sec. 1-113 Review of Construction Plans and Building Permit Applications

1. General Requirements. The applicant, the Owner¹ (in situations where the applicant is not the owner), and the architect and/or engineer shall ultimately be responsible for producing complete plans and specifications which comply with the following requirements as applicable: Section 1-106, Construction Plans of the Department's Rules & Regulations, Water System Standards; the latest checklist for construction plans and building permit application submittals to meet fire protection requirements and water service for domestic use; water allocation requirements; and approved master plans.

If plans are determined to be incomplete, they will be returned without further review.

¹ Owner is defined as: 1) the fee simple owner; or (2) buyer of a property if a letter or authorization from the seller is submitted; or (3) lessee/tenant if a letter of authorization from the fee owner is submitted.

Notwithstanding approval, the applicant or the Owner (in situations where the applicant is not the owner) is responsible for all costs incurred during the construction of the project to comply with current Water System Standards or costs caused by a defect of reason, error, omission or negligence on part of the architect/engineer.

2. Maximum Time Limits. First reviews of building permit applications and plans and plan review of construction drawings and specifications for non-City projects submitted to the Department for approval shall be completed within the maximum time limits specified below.

<u>PERMITS</u>	<u>*Maximum Time Limit</u>
<u>Category I</u>	
Excavation Clearance	1 full working day
Test Boring	
Driveway construction	
Swimming pool/spas	
<u>Category II</u>	
One (1) single-family dwelling on a vacant lot	2 full working days
<u>Category III</u>	
Non-residential development	6 full working days
Second single-family dwelling	
Ohana dwelling	
Multi-family high/low-rise development	
Addition/renovation to all existing residential development	
Variance for surface encroachment	

* All projects shall be evaluated for complexity upon submission of the building permit applications and plans and maximum time limits may not apply under conditions noted below.

<u>PLANS REVIEW FOR NON-CITY PROJECTS</u>	<u>Maximum Time Limit</u>
<u>Category I</u>	
On-Site Fire Hydrants, Offsite Utility and Water System Improvements for One-Lot Developments	8 working days*
New 3" and Larger Meters for One-Lot Developments	
Projects under Ordinance 2412 requirements	
<u>Category II</u>	
New Utility Lines or other improvements that require water system adjustments	10 working days
Subdivision Water System Improvements for two to 50-lot developments, including On-site and Off-site fire hydrants	

Any other projects with valuation for water system improvements below \$49,999

Category III

Water System Improvements for 51 to 500 lots

16 working days

Transmission Mains (up to one mile/5,280 linear feet)

Exploratory Wells

And any projects with valuation for water system improvements between \$50,000 to \$999,999

Category IV

Water System Improvements for more than 500 lots

20 working days

Reservoirs and other Infrastructure improvements

Booster & Pump Stations

New Wells

Transmission Mains (more than one mile long)

And any other projects with valuation for water system improvements between \$1,000,000 to \$9,999,999

* Applications affecting property that is subject to a zoning variance, or that fall within a potential slide area, special district or shoreline setback area shall be evaluated for complexity upon submission of construction plans and may be placed within a higher category. The applicant shall verify with the Department of Planning and Permitting if the project is subject to these requirements.

The maximum time limits shall begin upon receipt of the application and shall stop when the applicant is called for pick-up except under the following conditions:

Additional Plans. The Department may request the submission of additional sets of plans in order to accommodate the maximum time limit requirements. The Maximum Time Limit requirement starts on the day when the Department receives the required number of plans for review. Maximum time limits shall be extended by one day for each day the additional sets are due for up to three (3) working days.

If additional plan sets are not received within this period, all plan submittals then in receipt by the Department shall be returned without review.

Extensions. Extensions from the maximum time limit may be granted in the event of a national disaster, state emergency, or union strike, which would prevent the Department from reviewing permits or plans, or when adequately justified by the Department and mutually acceptable to the Department, the applicant, and/or owner.

Inapplicability. Maximum time limits shall not apply:

Where submittals fail to meet basic adequacy requirements noted in Section 1-113.1 above; or

Where the project is required to install/improve off-site facilities that are determined to be non-existent/inadequate, respectively, to accommodate the project; or

Where plans need to be coordinated with other City agencies; or

Where submittals are withdrawn by the applicant prior to completion of the review; or

Where the scope of work on subsequent submittals differs from the first submittal of plans; or

Where the area of the development is under moratorium by the Board; or

Where the applicant failed to obtain necessary discretionary permits or approvals (water allocations, and approved water master plans.

Second Review. Maximum time limits for a second review shall be one-half of the maximum time limits specified above. Plans that are not approved after the second submittal shall be subject to the provisions of Section 1-113.4.

3. Automatic Approval. Failure to complete review within the maximum time limits and applicable conditions as specified above shall result in automatic approval in accordance with the requirements of Chapter 91, Hawaii Revised Statutes. Automatic approval shall not be construed to be an approval of any violation of applicable codes, regulations, ordinances, standards, or waiver/inapplicability of any applicable charges.

4. Resubmittal of Plans. For plans that require more than one review, subsequent plan reviews shall be limited to revisions unless the scope of work is revised in which case plans will be subject to first plan review.

Applicants with plans not approved after a second plan review, may either:

Submit an Automatic Approval Form. A licensed architect or engineer may, on behalf of the applicant, submit an Automatic Approval form (provided by the Department) attesting that the remaining revisions have been addressed along with revised plans (not applicable only to Category IV, Plan Review projects). If it is found that plans are given the automatic approval without the necessary corrections in compliance with comments on second plan review, the Department will notify the applicant to take appropriate corrective measures at no cost to the Department. The Department may restrict the type of projects eligible for Automatic Approval based on the complexity of the scope of work; or

Request a Plan Approval by Appointment. The applicant may schedule an appointment with the plan reviewer(s) to discuss remaining comments. The applicant, the Owner (in situations where the applicant is not the owner), and the architect and/or engineer (for stamped plans) shall attend the appointment to discuss comments and resolve issues on the plans. Subsequent to the appointment, revised plans may be submitted and will be subject to the maximum time limits established for the first plan review, as established in Section 1-113.2.

[Eff 1/1/2000; BWS Res. No. 699, 2000]

CHAPTER II: WATER SERVICE TO CONSUMERS

Sec. 2-201 Application for Water Service

1. Any prospective consumer adjacent to a distributing main, where pressure conditions permit except as provided for in Sec. 2-217, Elevation Agreement may obtain water service; provided, that the Department has a sufficient water supply developed and available for domestic use and fire protection to take on new or additional service without detriment to those already served.
2. Each prospective consumer may be required to sign an application form for water service.
3. The consumer shall be responsible for payment of all charges for water service at the designated location. Charges will begin when the water service is established, and will continue until due notification from the consumer, or until discontinued by the Department for failure of the consumer to comply with these Rules and Regulations.
4. When an application for water service is made by a consumer who was responsible for and failed to pay bills previously rendered by the Department, regardless of location and within the statutory period of limitations, the Department may refuse to furnish water service to such applicant until the outstanding bills are paid.
5. A consumer taking possession of a property and using water without having made application for the transfer of water service shall be held liable for the water delivered from the date of the last recorded meter reading. If proper application for transfer is not made, and if accumulated bills for water service are not paid upon presentation, the water service may be discontinued five business days after written notice is given to the consumer.
6. The Department may require a deposit from any consumer or prospective consumer to guarantee payment of bills for service are other obligations to the Department.
 - a. The amount of the deposit may be the maximum estimated charge for service for two consecutive billing periods, or as may reasonably be required by the Department in cases involving service for short periods or special occasions, but shall be not less than \$10.00.
 - b. No interest on these deposits shall be accrued, or paid, to the consumer.
 - c. The deposit shall be retained as long as it is necessary to ensure payment of obligations to the Department.
 - d. If the deposit has not been returned by the time the consumer discontinues service or pays all outstanding obligations, the deposit shall be returned less all unpaid or outstanding charges.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976; am BWS Res. No. 472, 1979; am BWS Res. No. 530, 1985; am BWS Res. No. 659, 1996]

Sec. 2-202 Installation of Water Service

1. Installation. Water service will be installed at the expense of the applicant. The Department will determine the size and location of all water services and the number of houses, buildings or dwelling units to be served by a single service.
2. Installation Charge. Installation charges shall be based on the cost of installation as established by the Department. Said charges shall be available for inspection at the offices of the Department.
3. Water System Facilities Charge. In addition to the installation cost, a water system facilities charge shall be levied against all new water service connections to the system or connections requiring additional water supplies from existing water services. A schedule of such charges is included in the Department's Schedule of Rates and Charges for the Furnishing of Water and Water Service. The charge shall be paid by the applicant prior to installation of water service.

Water system facilities charges will not be levied in developments where the developer has installed at his cost a complete water system including source and transmission and daily storage facilities.
4. Consumer's Supply Pipe. The consumer shall install and connect at his expense his supply pipe to the shut-off valve or outlet installed by the Department.
5. Location of Water Service. An applicant for water service to property fronting on private roads, lanes, etc., where there is no public water system, must extend his supply pipe to the nearest public street on which a water main exists. All meters shall be installed in the public sidewalk areas wherever possible.
6. Alteration to Public Water System. All work and materials in connection with the change in location or elevation of any part of the existing public water system, made necessary by the installation of the new service connection, shall be at the expense of the applicant.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976; am BWS Res. No. 472, 1979; am BWS Res. No. 528, 1985]

Sec. 2-203 Meter Reading and Rendering of Bills

1. All water supplied by the Department will be measured by means of suitable meters registering in gallons.
2. Meters will be read and bills rendered monthly or bimonthly as determined by the Department. Special readings may be made, when necessary, for closing accounts or other reason. If a meter cannot be read, an estimated bill will be rendered, said bill to be calculated whenever possible on prior consumption.
3. Closing bills for short periods of time from the last meter reading date will ordinarily be determined by the amount of water actually used, as indicated by the meter reading, plus a proration of the service charge. In prorating service charge, the billing period for monthly bills shall be considered to be 30 days, and bimonthly bills to be 60 days. After July 1, 1980, there shall be no proration of service charge.

4. Readings of Separate Meters Not Combined. For the purpose of computing charges, all meters serving the consumer's premises shall be considered separately, and the readings thereof shall not be combined except in cases where the Department, because of operating necessity, installs two or more meters in parallel to service the same consumer's supply pipe.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976; am BWS Res. No. 472, 1979]

Sec. 2-204 Payment of Bills

1. All bills shall be due and payable upon presentation to the consumer. Payment shall be made at the offices of the Department or, at the Department's option, to duly authorized collectors of the Department.

2. Any bill which is not paid within 30 days after the date of the bill shall be deemed delinquent. Water service may be discontinued five business days after written notice is given to the consumer.

3. A service fee for handling a dishonored check may be made in accordance with fees established by the Department.

4. A late payment charge may be applied to any delinquent balance payable to the Department. The late payment charge shall be assessed at the rate of one percent for each month or fraction thereof against the delinquent balance, beginning 30 days after the date of the bill.

5. For the purposes of this section, 'delinquent balance' includes any loan, fee, charge, or other liquidated sum which is 30 days past due to the Department, regardless of whether there is an outstanding judgment for that sum, and whether the sum has accrued through contract, subrogation, tort, operation of law, or administrative order.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976; am BWS Res. No. 659, 1996]

Sec. 2-205 Discontinuation of Water Service

1. Consumer About to Vacate Premises. Each consumer about to vacate any premises supplied with water by the Department shall give notice of his intention to vacate, specifying the date service should be discontinued; otherwise, the consumer shall be responsible for all water service furnished to such premises until the Department has received a notice of discontinuance. Before buildings are demolished, the Department should be notified so the water service can be closed.

2. Water service may be discontinued for any of the following reasons:

a. Nonpayment of Bills. Water service may be discontinued for nonpayment of a bill five business days after written notice is given to the consumer.

b. Noncompliance with Rules and Regulations. If the consumer fails to comply with any of these Rules and Regulations, the Department will have the right to discontinue service.

c. Unauthorized Use of Water. The Department may refuse or discontinue water service to any premises or consumer in order to protect itself against fraud, abuse or unauthorized use of water. For unauthorized use of water a surcharge may be assessed as established by the Department.

d. Wasteful Use of Water. Where negligent or wasteful use of water exists on any premises, the Department may discontinue service if such conditions are not corrected within five business days after giving the consumer written notice of said conditions.

e. Service Detrimental to Others. The Department, may refuse to furnish water, and may discontinue the service to any premises, where the demands of the consumer will result in inadequate service to others.

3. Where discontinuation of water service for any of the above reasons is proposed, the Department shall, prior to the proposed shut off, give to the water consumer at least five (5) business days notice. This notice shall specify to the consumer a reason for the proposed shut off as well as inform the consumer of the right to dispute the shut off by making appropriate inquiry to the Department at an address and/or phone number which shall be provided in the notice. The notice shall further inform the consumer that (1) once water has been shut off there will be a service fee charged for reinstatement of water service, and (2) in cases where the landlord pays the water bill, the consumer may transfer service to his or her name.

4. Procedures for contesting shut off:

a. If the consumer wishes to dispute a proposed shut off, the consumer must, within five (5) business days from the date of the notice of shut off, request a billing conference of the Customer Service Division. Once a billing conference is requested, it shall be scheduled at the earliest reasonable opportunity for the consumer and in no case more than ten (10) days from the request and the consumer shall be given the option of having the conference over the phone or in person with the Customer Service employee who will conduct the billing conference.

b. At the billing conference the consumer shall have the right to submit evidence, present and cross examine witnesses, and bring in an interpreter, or representative to aid in presenting his case. The consumer shall have the right to see the Department's records concerning his account, and the consumer has the right to reasonable explanation by the Customer Service employee for any matter concerning the proposed shut off. The Customer Service employee conducting the billing conference shall not have previously been involved in the case, shall not be swayed or effected in any manner by other Department personnel, and shall exercise impartial judgment in deciding the merits of the consumer's case.

The Customer Service employee conducting the billing conference shall be empowered to correct any errors in the billing, and to take whatever remedial action is necessary including a stay in order to make a just and fair resolution of the matter. The Customer Service employee conducting the conference shall make a final written decision within three (3) working days of the conference.

c. If the consumer is dissatisfied with the decision by the Customer Service employee conducting the billing conference, the consumer shall have the right within five (5) business days of receipt of the written decision to appeal the matter as follows: first,

to the head of the Collection and Credit Section; second, to the Chief of the Customer Service Division whose decision shall be the final agency decision. However, the amount due must be paid into an escrow trust account after the billing conference with the Customer Service employee and will not be postponed pending the appeal with the head of the Collection and Credit Section or with the Chief of the Customer Service Division. In conducting an appeal all upper management personnel shall exercise the same impartial judgment required of the employee conducting the billing conference.

5. Where the water consumer is a tenant, the delinquent service holder is the tenant's landlord, and a discontinuation of the tenant's water service is proposed, the following special conditions will be observed:

a. Prior to shut off, notice to the tenant shall be accomplished by delivery of notice of discontinuation of water services described in Section 2-205 (3) to the tenant in person or to the premises being serviced.

b. At the same time the tenant shall also be notified that (s)he has the right and opportunity to place water service in his/ her own name. If the tenant consumer places water service in his/her own name and the changeover in service can be accomplished without serious mechanical and financial burden, the tenant will not be held responsible for the landlord's unpaid water bills.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976; am and renum BWS Res. No. 462, 1978; am BWS Res. No. 659, 1996]

Sec. 2-206 Restoration of Water Service

If water service is turned off because of failure to pay a bill, or for violation of any of these Rules and Regulations, all outstanding accounts against the consumer must be paid before service is restored. For the restoration of service, a charge based on the cost of turning on the water service must be paid by the applicant. Said charge shall be as established by the Department.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 2-207 Nonregistering Meters

If a meter fails to register due to any cause except nonuse of water, an average bill may be rendered. Such average bill will be subject to equitable adjustment, taking into account all factors before, during, and after the period of said bill.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 2-208 Meter Tests and Adjustment of Bills

1. Meter Tests. Any consumer, who for any reason questions the accuracy of the meter serving his premises, may request a test of the meter. The consumer, if he so requests, will be notified as to the time of the test and may witness same.

2. Adjustment of Bills for Meter Inaccuracy. If, as the result of test, the meter is found to register more than two percent fast under conditions of normal operation, the Department

will refund to the consumer the overcharge based on past consumption, for a period not exceeding six months, unless it can be proved that the error was due to some cause, the date of which can be fixed. In such latter event, the overcharge shall be computed back to, but not beyond, such date.

3. **Underground Leak Adjustments.** The Department may grant adjustments for excessive bills resulting from leakage in underground piping. This adjustment will be one-half of the excess consumption over a normal bill and will be granted only when repairs are made within two weeks after the consumer has been notified of the underground leak. For good cause shown to the Department, an extension of time to make repairs may be granted.

4. **Control and Maintenance.** The consumer has sole control of the water delivered through the meter and will be responsible for maintenance and repairs to pipes and fixtures on the consumer's side of the meter.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976; am and renum BWS Res. No. 477, 1980]

Sec. 2-209 Conservation Measures and Interruption of Water Supply

1. The Department will exercise reasonable diligence to deliver water to the consumer and avoid shortages or interruptions in service, but will not be liable for any interruption, shortage, insufficiency of supply, or any loss or damage occasioned thereby.

2. Whenever, in the Department's opinion, special conservation measures are advisable in order to forestall water shortages the Department may restrict the use of water by any means or method of control.

3. The Department reserves the right at any and all times to shut off water from the mains without notice for the purpose of making repairs, extensions, alterations, or other reason. Consumers dependent upon a continuous supply of water shall provide emergency water storage and any check valves or other devices necessary for the protection of plumbing or fixtures against failure of pressure or supply of water in the Department's mains. Repairs or improvements will be pursued as rapidly as practicable and, insofar as practicable, at such times as will cause the least inconvenience to the consumer.

4. The Department will not be liable or responsible for any damage to person or property caused by spigots, faucets, valves and other equipment that may be open when water is turned on at the meter, either when turned on originally or when turned on after a temporary shutdown.

5. The Department shall restrict the serving of drinking water to any customer unless expressly requested at any restaurant, hotel, cafe, cafeteria, or other place where food is sold, served or offered for sale. These restrictions shall not apply to catered groups of 25 people or more. Failure to comply with these requirements may result in the imposition of a fifty dollars (\$50.00) special assessment for each violation, or in the discontinuation of water service and/or penalties as authorized in Section 2-205, 2b, and Section 5-501 of these Rules and Regulations.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976; am BWS Res. No. 597, 1991]

Sec. 2-210 Pressure Conditions

When the pressure of the Department's supply is higher than that for which individual fixtures are designed, the consumer shall protect such fixtures by installing and maintaining pressure reducing and relief valves. The Department will not be liable for damage due to pressure conditions caused by or arising out of the failure or defective condition of such pressure regulators and relief valves or for damage that may occur through the installation, maintenance, or use of such equipment.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 2-211 Damage to Department's Property

1. Any damage to water mains, service connections, valves, fire hydrants, or other property of the Department shall be paid for by the person, persons or legal entity responsible for the damage.
2. The consumer shall be liable for any damage to a meter or other equipment or property of the Department caused by the consumer or his tenants, agents, employees, contractors, licensees or permittees, and the Department shall be promptly reimbursed by the consumer for any such damage upon presentation of a bill therefor. In the event settlement for such damage is not promptly made, the Department reserves the right to discontinue water service to such premises.
3. When a meter is found to have been damaged by hot water or steam emanating from the premises served, the consumer shall pay all costs required to repair the meter.
4. No obstruction shall be placed on or around any water meter, fire hydrant, or valve so as to render it inaccessible.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 2-212 Ingress To and Egress From Consumer's Premises

Any officer or employee of the Department shall have the right of ingress to and egress from the consumer's premises at all reasonable hours, and at any hour during an emergency, for any purpose reasonably connected with the furnishing of water or other Departmental service and the exercise of any and all rights secured to the Department by law or these Rules and Regulations. In case any such officer or employee is refused admittance to any premises, or, being admitted, shall be hindered or prevented from carrying out his duties, the Department may cause the water service to be turned off at said premises five business days after written notice is given the consumer.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 2-213 Cross-Connection Control and Backflow Prevention

1. Prohibition of Certain Connections and Installations. In order to provide proper sanitary protection to the Department's water supply, and to comply with the applicable statutes, rules and regulations of the United States Environmental Protection Agency and of the State Department of Health, as presently adopted and from time to time amended, no cross-connections with other water supplies, or other physical connections, shall exist, or be installed, located, maintained or operated, which could permit backflow of contaminated water from the consumer's premises into the Department's water supply system, except as provided below:

a. Cross-Connections with Other Water Supplies. Existing water supplies which are in active use and cross-connected to the Department's system will be allowed only under the following conditions:

(1) Where such water supplies are regularly analyzed by the Department, or other agencies satisfactory to the Department, meet the requirements of the State's Safe Drinking Water Regulations and have no cross-connections which could permit backflow of contaminated water into those water supplies.

(2) Where such water supplies do not meet the requirements of (1) above, are not normally under pressure, and are maintained solely for fire fighting purposes, and, where adequate protection against backflow to the Department's water system is provided by mechanical means, or other methods or devices, satisfactory to the Department.

b. Other Physical Connections. Other physical connections may be permitted if, in the judgment of the Department, adequate protection can be provided the water supply of the Department against backflow by the installation of mechanical, or other methods or devices, approved by the Department, and installed, maintained and operated by the consumer in a manner satisfactory to the Department at all times; provided, however, that the Department may require the consumer to eliminate or rearrange designated plumbing or piping connections or fixtures, or to install a backflow device at the meter or other location, subject to the approval of the Department, whenever (1) the consumer is engaged in the handling of dangerous or corrosive liquids or industrial or process waters, highly contaminated water or sewage, or is engaged in the medical or dental treatment of persons who might have diseases transmittable by water; or, whenever (2) in the judgment of the Department there exists a danger of backflow into the Department's mains because of the possibility of unauthorized connections being created through noncompliance or inadvertence by reason of the complexity of the system or systems; or, because of failure by the consumer to provide adequately qualified personnel and supervision for maintenance and extension of the consumer's piping system or systems; or, for any other reason or cause deemed sufficient in the Department's discretion.

2. Separate Pressure System. The Department will require the installation of mechanical, or other methods or devices, on the consumer's side of the meter to prevent backflow whenever the consumer maintains a separate pressure system or a separate storage

facility; or, in any way increases the pressures of the water within his premises above the pressure furnished by the Department; or, has such equipment or arrangement of piping, storage or industrial methods or processes as might under certain conditions raise the pressure of the water within his premises above the pressure of the water in the mains of the Department. Plans for all such installations must be approved by the Department.

3. Location of Protective Devices. Any device installed for the prevention of backflow as may be required under these Rules and Regulations, shall unless the Department approves otherwise in writing, be located above ground, and in such location as to be safe from flooding or submergence in water or other liquids, properly protected from external damage, freely accessible, and with adequate working room for testing and repairing.

All such devices shall be tested at least once annually, and as often as required by the Department in those instances where successive tests indicate repeated failure. Repairs, replacement of parts, etc., shall be made whenever deemed necessary by the Department at the expense of the consumer. Making annual tests shall be the responsibility of the consumer, and shall be performed only by the consumer or such other qualified person or persons as may be acceptable to the Department. Records of all tests shall be made on forms prescribed by the Department, and a copy of each such record shall be promptly furnished to the Department. Failure of the consumer to make the proper tests and submission of records may, at the discretion of the Department, result in the Department's making the tests, needed repairs, and replacements, and charging the costs thereof to the consumer.

4. Conformance with Laws and Ordinances. The several conditions relative to installation and maintenance of cross-connections and other physical connections referred to in this Section shall be subject to the changing requirements of State and Federal health and environmental statutes, rules, regulations or other authority, and of the City and County of Honolulu Building Code.

5. Discontinuance of Water Service for Noncompliance. Failure on the part of the consumer to comply with the Department's requirements relative to cross-connections and backflow prevention will be sufficient reason for discontinuing water service until such time as the Department is satisfied the requirements have been met.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976; am BWS Res. No. 472, 1979]

Sec. 2-214 Fire Service

1. Fire service will be furnished as a public service only where adequate provision is made to prevent diversion of water through such service for other purposes. The fire connection shall be paid for by the consumer. After the water is turned on, the Department assumes no liability for loss or damage of any kind whatsoever that may occur to the premises served, as a consequence of fluctuation in pressure or any other cause.

2. No charge will be made for water used through such service for fire protection purposes, but any water lost through leakage or used in violation of the conditions contained herein shall be paid for by the consumer at the regular schedule of water rates

and charges. The Department may disconnect and remove the said service if water is used for other than fire protection purposes or if leaks are not corrected. Whenever such disconnection is in effect, the Department shall not be in any way liable for loss or damage sustained due to the disconnection of service.

A ten-day written notice of the Department's proposed disconnection with reasons therefore will be given to the consumer before disconnection is effected by the Department.

3. Service charges will be in accordance with rates established by the Department.

4. All fire services will be metered by a detector meter of a type approved by the Department. All services shall become the property of the Department after installation.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976; am BWS Res. No. 472, 1979]

Sec. 2-215 Fire Hydrants

1. Use of Fire Hydrant. Any use of a fire hydrant, or tampering therewith, or the taking of water therefrom for purposes other than fire protection by persons other than authorized employees of the Fire Department or the Department is prohibited, except upon prior application to the Department.

2. Damage to Hydrant or Property. Any damage to fire hydrants, and the consequent resulting loss or damage to property, or any injury to persons arising from or out of the damage to fire hydrants shall be paid for by the person or legal entity responsible for the damage.

3. Change in Hydrant Location. The Department will, if it approves the request for a change in location of a hydrant, change such location, provided, the cost of all labor, material, equipment and all other charges are paid by the person requesting such change.

4. Maintenance of Private Hydrants. The consumer shall, at his own expense, test periodically and maintain in good and safe working condition all private hydrants under his control and not under the jurisdiction of the Department.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 2-216 Resale of Water

Unless specifically agreed upon, the consumer shall not resell any water received by him from the Department.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 2-217 Elevation Agreement

1. Where pressure conditions permit, two or more residential units may be constructed on an existing lot which is located above the service limit. The meter serving the lot shall be located within the service limit of the system. The water system within the lot, if required, shall provide for fire protection in accordance with the requirements of the Fire Department.

2. Where pressure conditions within the distributing main adjacent to the lots above the service limit is less than 40 psi, the existing vacant lots may be serviced provided only one single-family home is constructed on the lot. For existing lots that are located along the water main between a reservoir and the service limit, a maximum of two (2) single-family homes will be allowed.

3. Where pressure conditions permit, subdivisions served by a private water system will be permitted above the service limit. The master meter serving the private water system shall be located within the service limit of the system. As a condition of providing water service to subdivisions above the service limit with private water systems, the Department will require the formation of an Association, which shall be organized and managed so that it substantially conforms with the requirements of Section 514A-83.6 Hawaii Revised Statutes. The Association shall name the Department as an additional insured in its general liability insurance policy and shall be financially responsible for the operation and maintenance of the private water system.

4. Where the floor elevation of a unit is less than 70 feet below the spillway elevation of the reservoir, a receiving tank with air gap, in accordance with the Department's requirements, and a pump shall be installed. The consumer shall permit the Department to inspect the installation for compliance with departmental requirements.

5. The prospective consumers or associations shall enter into an agreement with the Department agreeing to accept such water service as the system is able to provide and to hold the Department harmless for all claims due to any inadequacy of water supply.

The Department will record the agreement at the Bureau of Conveyances.

[Eff 9/5/1979; BWS Res. No. 472, 1979; am and renum BWS Res. No. 530, 1985; am BWS Res. No. 591, 1991; am and renum BWS Res. No. 610, 1992]

CHAPTER III: PROTECTION, DEVELOPMENT AND CONSERVATION OF WATER RESOURCES

Sec. 3-301 Waste Disposal Facilities

1. All plans proposing the following waste disposal facilities must have the written approval of the Manager:

- a. Sewage disposal systems.
 - (1) Cesspools.
 - (2) Septic tank systems.
 - (3) Individual household aerobic treatment units.
- b. Disposal wells.
- c. Sanitary landfills.
- d. Refuse disposal dumps.
- e. Sewage treatment plants.
- f. Stabilization ponds.
- g. Any other wastewater disposal facilities.

2. The Department may establish "No Pass Zones" which shall be delineated on "No Pass Zone" maps. These maps shall be used as guidelines in implementing this Section.

3. The Manager may at his discretion, withhold his approval, if there is any basis to expect that the operation of the proposed waste disposal facility and any wastewater therefrom may to any degree affect the quality and/or quantity of water resources used or expected to be used for domestic water.

4. If the Manager disapproves a proposal, he shall inform the applicant in writing of the facts and reasons upon which his disapproval is based and afford the applicant an opportunity for an informal appeal hearing. Any applicant who is aggrieved by the Manager's decision and desires reconsideration of such decision shall petition the Manager in writing within 30 days from the date of receiving such decision. The applicant should base his request for reconsideration on pertinent technical data, including boring logs which indicate that the proposed waste disposal facility in the "No Pass Zone" would not contaminate groundwater resources used or expected to be used for domestic water supplies. If after the hearing, the request for reconsideration is disapproved by the Manager, the applicant may appeal the decision to the Board, which shall have the power to affirm, modify or reverse the decision of the Manager so appealed from. Such appeal shall be taken within 30 days after the final decision of the Manager.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976; am and renum BWS Res. No. 502, 1982]

Sec. 3-302 Surface Waters

The subject of surface waters shall be governed by the appropriate and applicable Federal and State statutes, rules, regulations, directives and standards as currently exist and as may, from time to time hereafter be amended.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 3-303 Use of Pesticides

1. Any person planning to use pesticides on lands within the "RW" (Restricted Watershed) Conservation District Subzone, Department lands and installations, must obtain written approval from the Manager in addition to any other approval or permit required by law.
2. The Manager may prohibit or restrict the use of pesticides in any area when there is a reasonable basis to expect the pesticide will affect the quality of water resources used or expected to be used for domestic water.
3. If the Manager proposes to prohibit or restrict the use of pesticides in an indicated area, he shall inform the users of pesticides in the area of those facts and reasons upon which his prohibition or restriction is based, and afford the users an opportunity to be heard before taking action.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 3-304 Protection of Water Resources

1. Pursuant to the applicable provisions of the Revised Charter of the City and County of Honolulu, any proposed amendments to the "General Plan" and "Development Plan" of the City and County of Honolulu shall be reviewed by the Manager.
2. Whenever applications for any land use activity within the Conservation District in the City, whether permitted or not by State or City agencies, are submitted to the Manager for his review, the Manager shall investigate the effects the proposed use may have on water resources.
3. The Manager may recommend disapproval, within 30 days, if he finds any reason that the proposed activity could affect water resources and may be a detriment to the water resources used or expected to be used for domestic water.
4. If the Manager recommends disapproval, he shall inform the applicant of those facts and reasons upon which his disapproval is based, and shall afford the applicant an opportunity for informal hearing before the Manager prior to making a final decision.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 3-305 Application for Drilling, Modifying, Recasing, or Reusing Wells

1. An application for drilling each new well to develop water; modifying, recasing or changing the use to other than originally practiced or approved of an existing well from which water is to be drawn; or reusing for water development purposes any well which has been unused for a period of five years or more, shall be made to the Manager in writing, signed by the Owner, and shall include such of the following as are pertinent:

a. Name, signature and post office address of the applicant and/or the Owner of the property on which the well is located. In the event that the Owner of the land on which the well is located and the Owner of the well are not the same, written notarized permission from the Owner of the land shall be filed with the application.

b. A plan or drawing showing the proposed work, and a plot plan showing the well location referenced to the nearest property corner, City survey monument or government triangulation station.

c. A statement of the nature, purpose and extent of the proposed usage of the water and/or the facility.

d. A map showing the land area to be served from the well.

e. Specifications for the proposed work, including:

(1) The length, nominal diameter, thickness, material, type of joints and kind of casing or lining.

(2) A plan of the well showing:

(a) main control valve, fittings, appurtenances required by Section 3-309 of these Rules and discharge pipes leading from the well;

(b) size, type, capacity and kind of pumps or tanks, if any;

(c) buildings and manholes;

(d) plan and description of meter or other facility or method of recording output;

(e) a vertical cross section of the well including details of casing or lining, grouting of annular space, and open hole.

(3) The elevation of the top of the well control valve, or of the top of the casing, and the approximate elevation of the ground at the well head.

2. A fee of One Hundred Dollars (\$100.00) shall accompany each application for the drilling or excavation of each new well for water development. In addition, before the permit is granted, a permittee bond for each new well, meeting the following requirements, shall be submitted to the Manager:

a. The amount of the bond shall be set by the Manager but in no case shall the amount be greater than \$25,000.

b. The amount of bond as set by the Manager shall include the cost of sealing the well in accordance with these Rules and Regulations should it be necessary to abandon the well for any reason prior to its completion.

c. The bond shall be effective for a period covering the life of the drilling contract plus 30 days.

d. The payee of the bond shall be the Department, and the payor shall be the Owner of the well or his agent.

3. Application forms for drilling, modifying, recasing, or reusing wells may be obtained at the offices of the Department.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 3-306 Permit for Drilling, Modifying, Recasing, or Reusing Wells

1. An application for drilling each new well to develop water; modifying, recasing, or changing the use of an existing well from which water is to be drawn; or reusing for water development purposes any well which has been unused for a period of five years or more will be reviewed and acted upon by the Manager within thirty (30) calendar days after receipt.

2. Before a permit is granted, the Owner will be required to furnish an agreement to perform the work in accordance with these Rules and Regulations, and thereafter to operate and maintain the well in accordance with the laws of the State of Hawaii and these Rules and Regulations.

3. The Manager shall classify all wells, guided by Figures 1 and 2, included herein, and by the fundamental criteria that the primary purpose of these Rules and Regulations is to assure public safety, water conservation, prevention of groundwater degradation and/or pollution, and the obtaining and recording of geologic and hydrologic information. The Manager may reclassify any well while work is in progress if the geologic and hydrologic information that then becomes available does not substantiate his original classification. The Manager's classification of the well shall be the basis of application of these Rules and Regulations.

4. The Manager may refuse to grant a permit to drill a new well or to modify, reuse, or recase an existing well if there is a reasonable basis to expect that the proposed work will affect groundwater resources by:

a. Causing or bringing about overdraft conditions, or

b. Excessive lowering of the ambient groundwater table, or

c. Causing or bringing about excessive salt water intrusion, excessive mineralization or other degradation of water quality, or

d. Interfering with the operations of existing established water sources.

5. If the Manager elects to refuse a permit, he shall inform the applicant of the facts and reasons upon which his refusal is based and afford the applicant an opportunity for informal hearing before taking action.

6. This permit shall be valid for a period of one year (365 calendar days) from the date of issuance.

7. The Owner or his authorized representative shall notify the Manager when drilling work, including the installation of the casing, is completed, but prior to installing any equipment or appurtenances on or in the well.

8. No work, as stated in paragraph 1 above, shall commence without a permit.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 3-307 Suspension of Permit and Correction of Defects

1. Whenever it shall appear that any well work for which a permit has been granted by the Manager is not being done in accordance with the conditions of the permit or agreement mentioned in Section 3-306, the Manager shall notify the Owner to appear before him at a time and place designated in the Notice to show cause why the permit should not be suspended or revoked and the well sealed, or put in proper condition by the Owner. The Notice shall contain a brief statement of the grounds for suspension or revocation. After such hearing the Manager shall render his order as to revocation, suspension or continuation of the permit. The order shall be subject to appeal as provided in Section 5-502.

2. Whenever the Manager shall find that any well is not being maintained or operated in accordance with these Rules and Regulations, the Manager shall notify the Owner of such well to take whatever steps may be necessary to remedy the defect at the Owner's expense within a time specified in such Notice. If the Owner fails to comply with such Notice, and remedy the defect within the specified time, the Manager may do such work as may be necessary to put the well in proper condition at the expense of the Owner, or he may take necessary action to enforce the penalty provided by law.

3. The Notice provided in the preceding paragraphs 1 and 2 may be served by delivery to the Owner, or by delivery thereof to his last known place of business or residence, or by registered mail addressed to his last known post office address, not less than ten (10) days nor more than thirty (30) days before the date set for hearing, or time specified for correcting the defect, as the case may be.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 3-308 Well Casing

1. Whenever there is any reasonable basis to anticipate that any well subject to these Rules and Regulations could result in wastage or contamination of water resources, the Manager shall require the well to be cased, recased, lined or relined.

2. For all new and/or modified wells wherein casing is required, the casing and joints shall be of a quality conforming with the latest American Water Works Association specifications, or any other material approved by the Manager. If the casing is of steel material, it shall conform to the following minimum thickness.

TABLE OF CASING THICKNESS

Nominal Diameter of Casing (In.)	Casing Thickness (In.)
2	0.154
2-1/2	0.203
3	0.216
3-1/2	0.226
4	0.237
6 - 8	0.250
10	0.312
12	0.312
14	0.312
16	0.375
18	0.375
20	0.375

For well diameters greater than 20",
casing thickness shall be as specified by the Manager.

The well owner shall insure that proper precautions are taken during installation to prevent collapse.

3. In all new and/or modified wells wherein casing is required, the annular space shall be grouted in a manner approved by the Manager from a depth set by the Manager to the ground surface.

4. Joints in the steel casing may be either welded or of the screwed type with external sleeves. Welded joints are to be made by a State certified welder. External sleeve joints shall be screwed to refusal before being lowered into the ground. The threads of the pipe casing and the sleeves shall be cleaned of any rust, dirt or grease and given a coating of approved metal preservative. After the joint has been made up, all exposed surface of the joints, sleeves and uncovered threads are to be given a final coating of the same preservative.

5. The lower end of the casing shall be set at such depth and by such method, chosen by the contractor and approved by the Manager, as will minimize the possibility of leakage and insure that any loose material will not enter or ravel into the well. Tests for leakage in and around the casing shall be conducted under the direction of the Manager after drilling or recasing is completed. For the purposes of such tests a suitable standpipe shall be temporarily installed by the Owner at his own expense when so requested by the Manager.

6. Should a well casing be found to be leaking and causing wastage of water or contamination of water resources, the Owner must either stop the leak or seal the well at his own expense, and in a manner satisfactory to the Manager.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 3-309 Other Requirements for Wells

1. For all new wells constructed after March 1972 from which water is to be drawn, the Owner shall provide and maintain the following at his own expense:

a. Devices satisfactory to the Manager for measuring and recording total draft. Where the well is one of a battery of interconnected wells, a centralized measuring and recording facility may be installed.

b. Means to determine water level satisfactory to the Manager.

c. Adequate access and clearance for well drilling equipment.

2. For all new artesian wells constructed after March 1972, wherein the static water level can rise to the well head, the Owner shall provide and maintain the following equipment at his own expense in addition to that required in paragraph 1 above:

a. A valve of the same diameter as the well casing, so arranged as to facilitate the introduction of instruments for inspection and test purposes, the valve shall be capable of stopping the flow from the well and shall be installed directly at the top of the well casing.

b. A valve or petcock 1/4" or larger shall be installed below the valve required in paragraph (2a) above, for periodic testing of the well or sampling of the water under static conditions.

c. Clearance at the well to permit the well casing to be extended above the altitude of the static artesian head.

3. The replacement of pumps or other equipment at a well for its control and operation that will materially increase the output from the well shall be subject to the approval of the Manager, measured by the criteria set forth in Section 3-306(4). The Manager's decision whether or not to approve shall be made within two weeks after receipt of the notification.

4. The Manager shall be notified at least 48 hours before the Owner removes pumps or other devices installed in the well bore. When such devices are removed, the Manager shall be allowed access to the cleared well for inspection and measurements. In emergencies, the Manager shall be notified as soon as practicable after the devices are removed.

5. The Owner of any well subject to these Rules and Regulations shall be responsible for providing adequate safeguards at the well at his own expense, so that any person permitted to be on such property where the well is located shall not be exposed to any dangerous hazard or nuisance.

6. For all wells constructed prior to March 1972, wherein the static water level can rise to the well head, the Owner shall provide and maintain an operable control valve to prevent unnecessary wastage.

Sec. 3-310 Log of Well, Length of Casing and Depth of Well

1. The Owner shall require that the well driller maintain a continuous log of the drilling of the well, including a description and samples of the materials encountered, together with the depths to the top and bottom of each change in geologic characteristics. The log shall include a record of water levels encountered, any changes thereof, and the rate of flow at the surface, if any, for different depths of drilling.

2. Within ninety (90) calendar days after construction of each well, the Owner shall submit a Driller's Report to the Manager on forms approved by the Manager.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 3-311 Qualifications of Well Drillers

The drilling, modifying, recasing, reusing, or sealing of any well shall be done only under the direct supervision of personnel properly certified by the Department of Regulatory Agencies, State of Hawaii.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 3-312 Inspection of Work

The Manager may supply an inspector, whose duties shall be to obtain and report the progress of the work of drilling, modifying, recasing, reusing, or sealing of wells. The Manager and his assistants or inspectors shall have free access to all parts of the work at all times, and shall be given any assistance required and every facility, information and means of thoroughly inspecting the work and the materials used or to be used.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 3-313 Utilization of Well Water

1. All water wells shall be operated in a manner that will readily and effectively prevent wastage and pollution of water. The Manager may exclude high-level tunnels from the provisions of this section if it is specifically determined in each case that wastage of water therefrom cannot be reasonably corrected.

2. The Manager may limit the amount of water drawn from any well covered under these Rules and Regulations if there is a reasonable basis to expect that the overdraft will:

- a. Cause or bring about overdraft conditions, or
- b. Excessively lower the ambient groundwater table, or
- c. Cause or bring about excessive salt water intrusion, excessive mineralization, or other degradation of water quality, which may render a domestic water source unfit for such purposes, or
- d. Interfere with the operations of existing established water sources.

3. If the Manager proposes to limit draft from any well, he shall inform the Owner of sufficient facts and reasons upon which his limitation is based, and afford the Owner an opportunity for informal hearing before taking action.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976; am BWS Res. No. 475, 1980]

Sec. 3-314 Data Relating to Wells

1. Every Owner or user of any well in the City shall, upon request of the Manager, disclose the location of such well and all other facts or information within his knowledge or possession relating to such well. He shall include a statement of the manner in which the well is being used or operated, the volume of water being drawn or flowing therefrom, and the method and means of control thereof.

2. Owners of wells in existence on October 1, 1959 shall not be required to alter or augment existing facilities or appurtenances to obtain data, but shall assist the Manager, when required, in installing facilities or altering or augmenting existing facilities at the discretion and cost of the Department in order that such data may be obtained.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 3-315 Test Borings

1. The driller shall notify the Manager prior to any test boring work.

2. The driller shall submit a completed information form within ten (10) calendar days after giving notice of proposed test borings. Forms may be obtained at the offices of the Department.

3. If information discloses that there is any reasonable basis to anticipate that the test borings would cause contamination or wastage of groundwater resources, the driller shall complete the work at his own expense in a manner satisfactory to the Manager.

4. No fee is required for test borings.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 3-316 Abandonment and Sealing

1. Every Owner or user of any well in the City and County who fails to demonstrate actual use of the well for a period of five (5) years, shall be notified that said well is verified as abandoned.

2. Abandoned wells shall be sealed by the owner at his own expense within a reasonable period after notification. The sealing method chosen by the Owner shall be approved in writing by the Manager and shall assure protection of groundwater resources against wastage and contamination.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976; am BWS Res. No. 472, 1979]

Sec. 3-317 Access to Wells and Appurtenances

Any member and any authorized representative or employee of the Department shall have free access to all wells and their appurtenances at any reasonable time for the purpose of inspecting or testing or securing such hydrologic or other information as the Manager may deem necessary.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 3-318 Low Groundwater Level Conditions

1. Caution Low Groundwater Condition

A caution low groundwater condition exists:

- a. At any time during the period in which three or more of the groundwater head levels at the areas listed in Schedule I fall below the levels designated in Column A of said schedule for said areas.
- b. Whenever chloride content rises 8 ppm but less than 12 ppm over three consecutive months at sufficient sources to hamper operations.

The Board may at any time during the period in which a caution low groundwater condition exists:

- a. Inform the public that a Caution Low Groundwater Condition exists.
- b. Conduct an intensive public appeal for water conservation through the mass media.
- c. Institute voluntary irrigation and other water use schedules to reduce water consumption.
- d. Send letters to large consumers and other private well operators asking them to cut back their usage.

2. The Manager shall, at each regular Board meeting while a caution low groundwater condition exists, report to the Board the status of the head and chloride levels of the Department's facilities; the weekly average of daily pumpage; the effectiveness of the voluntary conservation measures being advocated; recommendations to increase or decrease public appeals to conserve water, and such other information which the Board may desire or require from time to time to evaluate the status of the low groundwater condition and make modification to the voluntary conservation measures being advocated.

3. Alert Low Groundwater Condition

An alert low groundwater condition exists:

- a. At any time during the period in which three or more of the groundwater head levels at the areas listed in Schedule I fall below the levels designated in Column B of said schedule for said areas.
- b. Whenever chloride content rises 12 ppm but less than 16 ppm over three consecutive months at sufficient sources to hamper operations.

The Board may at any time during the period in which an alert low groundwater condition exists:

- a. Declare that an alert low groundwater condition exists. An alert low groundwater condition shall continue to exist, once it is declared by the Board, until such time as the Board declares that the condition is terminated.
- b. Implement mandatory restrictions within the scope of these Rules and Regulations.
- c. Punish offenders within the scope of these Rules and Regulations.

4. Critical Low Groundwater Condition

A critical low groundwater condition exists:

- a. At any time during the period in which three or more of the groundwater head levels at the areas listed in Schedule I fall below the level designated in Column C of said schedule for said areas.
- b. Whenever chloride content rises 16 ppm or more over three consecutive months at sufficient sources to hamper operations.

The Board may at any time during the period in which a critical low groundwater condition exists:

- a. Declare that a critical low groundwater condition exists. A critical low groundwater condition shall continue to exist, once it is declared by the Board, until such time as the Board declares that the condition is terminated.
- b. Implement mandatory restrictions within the scope of these Rules and Regulations.
- c. Punish offenders within the scope of these Rules and Regulations.

5. The Manager shall, at each regular Board meeting while a declared alert or critical low groundwater condition as provided herein is in effect, report to the Board the status of the head and chloride levels of the Department's facilities; the weekly average of daily pumpage; the effectiveness of the restrictions and allotments in force; recommendations to increase or reduce restrictions and allotments; and such other information which the Board may desire or require from time to time to evaluate the status of the low groundwater condition and make modifications to the restrictions and allotments imposed.

[Eff 8/14/1978; BWS Res. No. 459, 1978; am BWS Res. No. 475, 1980; am BWS Res. No. 624, 1994]

Sec. 3-319 Mandatory Restrictions Related to Alert Low Groundwater Condition

1. Board of Water Supply Consumers

During an alert low groundwater condition period, the Board may set lawn and ground cover water irrigation restrictions on any of the Department's consumers. Such restrictions may relate to the time when such irrigation may take place and the quantity of water used and may be different for the various classes of the Department's consumers as the Board shall determine. In addition, the Board may establish water allotments for commercial, residential, industrial, military,

governmental, and agricultural consumers. The allotment shall not be less than 90% of the previous 12-month monthly average or less than 350 gallons/day for single family and duplex residences.

2. Private Wells

During an alert low groundwater condition period, the Board may ask owners of private wells to comply with maximum monthly water allotments established for each private well or battery of private wells. Such allotments shall be stated as a percentage of the highest average daily draft for each month of the year over the last 5 years prior to the effective date of declaration by the Board.

Example: John Doe Well - Average Daily Pumpage Each Month

Jan.	2.3 mgd	1.7 mgd	*2.4 mgd	2.0 mgd	1.9 mgd
Feb.	1.8 mgd	1.9 mgd	1.8 mgd	*2.0 mgd	1.8 mgd
Mar.	*1.9 mgd	1.8 mgd	1.8 mgd	1.7 mgd	1.8 mgd
Apr.	2.2 mgd	2.0 mgd	*2.6 mgd	2.3 mgd	2.3 mgd
etc.	etc.	etc.	etc.	etc.	etc.

*Highest Average Daily Pumpage for Each Month of the Year Over the Last 5 Years for John Doe Well

Jan.	2.4 mgd.
Feb.	2.0 mgd.
Mar.	1.9 mgd.
Apr.	2.6 mgd.
etc.	etc.

In no case shall the allotment be less than 90% of the highest average daily draft for each month of the year over the last 5 years. Any owner of 2 or more separate wells may regulate the draft of their wells so that aggregate monthly draft will not exceed the combined monthly allotment for all of their wells.

3. Department personnel may issue warnings and citations for violations of mandatory restrictions set by the Board.

[Eff 8/14/1978; BWS Res. No. 459, 1978; am BWS Res. No. 624, 1994]

Sec. 3-320 Mandatory Restrictions Related to Critical Low Groundwater Condition

1. Board of Water Supply Consumers

The Board may declare that one or more of the following restrictions shall apply to any or all classes of the Department's consumers. Such restrictions may relate to the time when the uses listed in this paragraph may occur and the quantity of water used and may be different for the various classes of the Department's consumers as the Board may determine.

- a. Limits on lawn and ground cover water irrigation.
- b. Limits on plant and garden irrigation.
- c. Limits on the washing of cars, boats, trailers, and other vehicles.
- d. Limits on the filling of swimming pools and other types of pools and ponds.
- e. Limits on the washing of sidewalks, walkways, driveways, patios, parking lots, tennis courts, and other hard surfaced areas.
- f. Limits on the operations of fountains.

2. Private Wells

During a critical low groundwater condition period, the Board may ask owners of private wells to comply with maximum monthly water allotments established for each private well or battery of private wells. Such allotments shall be stated as a percentage of the highest average daily draft for each month of the year over the last 5 years prior to the effective date of declaration by the Board. The Board may from time to time increase or decrease the initial percentage limit set for each well or battery of wells provided that in no case shall the percentage be less than 70% of the highest average daily draft for each month of the year over the last 5 years.

Any owner of 2 or more separate wells may regulate the draft on their wells so that the aggregate monthly draft will not exceed the combined monthly allotment for all of their wells.

3. Department personnel may issue warnings and citations for violations of mandatory restrictions set by the Board.

4. Special Rates and Charges Relating to Critical Low Groundwater Condition.

During a critical low groundwater condition period, a surcharge schedule for excess water use shall be established according to the following procedure. The Board shall set water allotments per billing period for each class of the Department's consumers. Such allotments shall be stated as a percentage (which may be greater than 100% but not less than 70%) of the previous 12-month monthly average. In addition the allotment shall not be less than 350 gallons per day for single family and duplex residences. The Board may from time to time increase or decrease the initial percentage limit set for any class of consumers. Allotment percentages may be set at different times and at different levels for the various classes of consumers as the Board shall determine. In determining what percentages to declare for various classes of consumers at various times, the Board shall consider present and predicted weather conditions, the rate of decline of the ground water head levels, the impact on the economy, compliance with regulations by various classes of consumers, new service applications, development of supplementary source, impact on the budget of the Department, and the social impact of proposed restrictions. Water

consumed in excess of the water allotment per billing period for each consumer shall be charged according to the following schedule:

Gallons in excess of Allotment for Meter Sizes 2" and Larger (Monthly or Bi-monthly Billing)	Gallons in excess of Allotment for Meter Sizes 5/8" to 1-1/2" (Monthly Billing)	Gallons in excess of Allotment for Meter Sizes 5/8" to 1-1/2" (Bi-Monthly Billing)	Surcharge
First 25% or part thereof	First 3,000 gallons or part thereof	First 6,000 gallons or part thereof	2 times existing water rate*
Next 25% or part thereof	Next 3,000 gallons or part thereof	Next 6,000 gallons or part thereof	3 times existing water rate*
Next 25% or part thereof	Next 3,000 gallons or part	Next 6,000 gallons or part thereof	4 times existing water rate*
Next 25% or part thereof	Next 3,000 gallons or part	Next 6,000 gallons or part thereof	12 times existing water rate*
All use over 100%	All use over 12,000 gallons	All use over 24,000 gallons	20 times existing water rate*

**If the service is charged by block rates, the surcharge will be charged at the Block Rate that the allotment falls in.*

For residential consumers, the surcharge shall be charged at the block rate that the allotment falls in. Surcharges shall be assessed each consumer after receipt of the first water bill following the establishment of allotments by the Board. Upon termination of allotments by the Board, surcharges shall cease.

[Eff 8/14/1978; BWS Res. No. 459, 1978; am BWS Res. No. 624, 1994]

Sec. 3-321 Penalties

1. Any violation by any person of the restrictions declared by the Board under Sections 3-319 and 3-320 of this Chapter shall be punishable according to Chapter II, Section 2-205 and Chapter V, Section 5-501 of these Rules and Regulations.

2. Any consumer who violates the restrictions declared by the Board under Sections 3-319 and 3-320 of this Chapter or who consumes water in excess of the amount designated below for their class shall be subject to the installation of a flow restriction device by the Department and punishable according to Chapter V, Section 5-501 of these Rules and Regulations. An offender shall pay \$50.00 for the installation and removal of a flow restriction device by the Department. Water service may be discontinued for an offense committed after the installation of a flow restrictor in accordance to Chapter II, Section 2-205.

Class of Consumer	Maximum Allowable Consumption in Excess of Allotment
I. Residential including single family and duplex	I. 5,000 gallons per monthly billing period, 10,000 gallons per bi-monthly billing period.
II. Resort, commercial, multi-family, industrial, agricultural, military, and government.	II. Difference between allotment and previous 12-month monthly average.

[Eff 8/14/1978; BWS Res. No. 459, 1978; am BWS Res. No. 624, 1994]

Sec. 3-322 Procedures for Control of Water Use During Low Groundwater Level Condition

1. Declaration of Low Groundwater Level Condition

The Manager shall inform the public and the Department's consumers of the declaration of an alert or critical low groundwater condition by publishing such declaration in a newspaper of general circulation on the island of Oahu at least once a day for three consecutive days. The alert or critical low groundwater condition shall begin at midnight on the third day of the publication declaring such condition.

2. Notice of Restrictions

The Manager shall inform the public and the Department's consumers of the restrictions being imposed because of an alert or critical low groundwater condition by publishing such restrictions in a newspaper of general circulation on the island of Oahu at least once a day for three consecutive days. The restrictions shall begin at midnight on the third day of the publication declaring such condition and shall terminate at midnight on the first day of a publication terminating such condition.

3. Notice of Water Allotment to Consumers

Each consumer shall be notified of their water bill or by direct mail to the consumer. In cases where a water bill is not sent directly to the person using the water, the consumer shall be responsible for informing the user of the water allotment per billing period applicable to them.

4. Notice of Maximum Monthly Water Allotment to Private Well Operators

Each private well operator shall be notified by mail of their monthly water allotment.

5. Exceptions

Consideration of written applications for exceptions regarding the allotment system or regulations and restrictions on water use set forth in this Chapter shall be as follows:

a. Written applications for exceptions shall be accepted, and may be granted, by the Manager.

b. Grounds for granting such exceptions are:

- (1) Failure to do so would cause an unnecessary and undue hardship to the Applicant, including but not limited to adverse economic impacts such as loss of production or jobs;
- (2) Failure to do so would cause an emergency condition affecting the health, sanitation, fire protection, or safety of the Applicant or the public;
- (3) For single family residences with more than four persons permanently residing in the home, if a written application for an exception is granted as provided herein, the applicable allotment shall be increased by 40 gallons per person per day for each person permanently residing in the home in excess of four persons;
- (4) For multiple residential units with more than two dwelling units where the allotment is less than 280 gallons per day per dwelling unit, if a written application for an exception is granted as provided herein, the applicable allotment shall be 280 gallons for each unit;
- (5) Denial of an application for exception may be appealed in writing to the Board.

6. Termination of Low Groundwater Level Condition

The Board may terminate a declared low groundwater level condition whenever head levels at fewer than five of the area heads listed in Schedule I are within the prevailing condition or whenever chloride content has risen less than 12 ppm over three consecutive months at sources that caused the declared low groundwater level conditions.

The Manager shall inform the public and the Department's consumers of the termination of an alert or critical low groundwater condition by publishing such termination in a newspaper of general circulation on the island of Oahu at least once a day for three consecutive days. The alert or critical low groundwater condition and all restrictions and allotments associated therewith shall terminate at midnight on the first day of a publication terminating such condition.

[Eff 8/14/1978; BWS Res. No. 459, 1978; am BWS Res. No. 624, 1994]

Sec. 3-323 Exemption of Private Wells Within Designated Groundwater Control Areas

New and existing private wells within Designated Groundwater Control Areas only shall be exempt from the provisions of the Rules and Regulations. However, owners of private wells shall be asked to comply with any allotments set by the Board for private wells. Control and regulation of such wells shall be subject to State statutes, rules, regulations, directives, and standards as currently exist and as may, from time to time hereafter, be amended.

Groundwater Head Levels

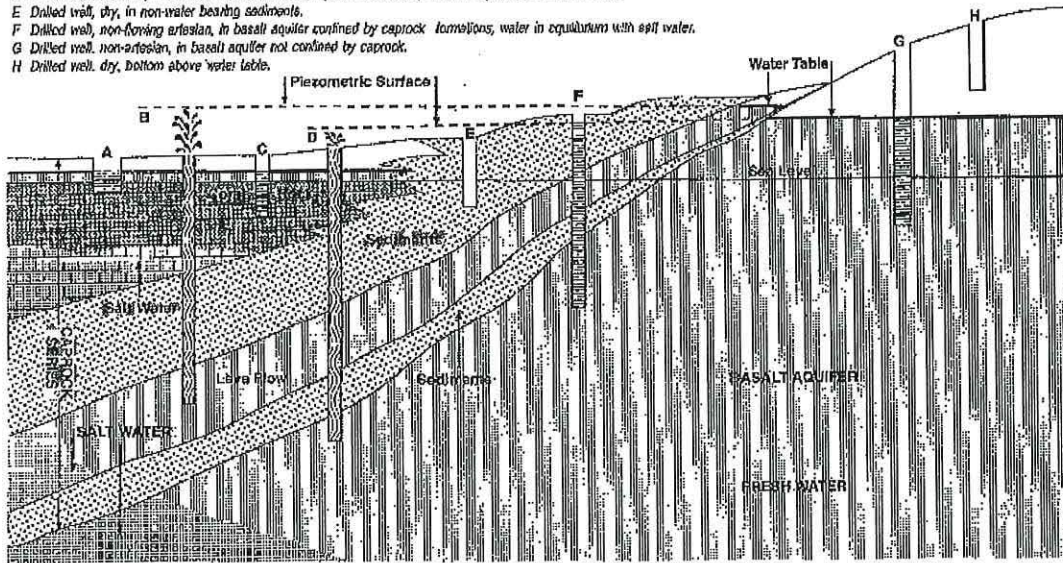
SCHEDULE I

COLUMN A ("Caution" Low Groundwater Conditions)		COLUMN B ("Alert" Low Groundwater Conditions)		COLUMN C ("Critical" Low Groundwater Conditions)	
Area	Head Level (ft.)	Area	Head Level (ft.)	Area	Head Level (ft.)
Kaimuki	23.5	Kaimuki	22.5	Kaimuki	20.5
Beretania	21.0	Beretania	20.0	Beretania	17.5
Kalihi	20.5	Kalihi	19.5	Kalihi	17.0
Moanalua	18.5	Moanalua	17.5	Moanalua	15.0
Halawa	15.5	Halawa	14.5	Halawa	12.0
Kalauao	15.5	Kalauao	14.5	Kalauao	12.0
Pearl City	14	Pearl City	13	Pearl City	12
Waipahu	17	Waipahu	16	Waipahu	15
Hoaeae-Kunia	13	Hoaeae-Kunia	12	Hoaeae-Kunia	11
Makaha	7	Makaha	6	Makaha	4
Waialua	11	Waialua	10.5	Waialua	10
Kaluanui	16	Kaluanui	15	Kaluanui	14
Punaluu	17	Punaluu	16	Punaluu	14
Waihee Tunnel**	15 psi	Waihee Tunnel**	10 psi	Waihee Tunnel**	5 psi

**Bulkhead pressure

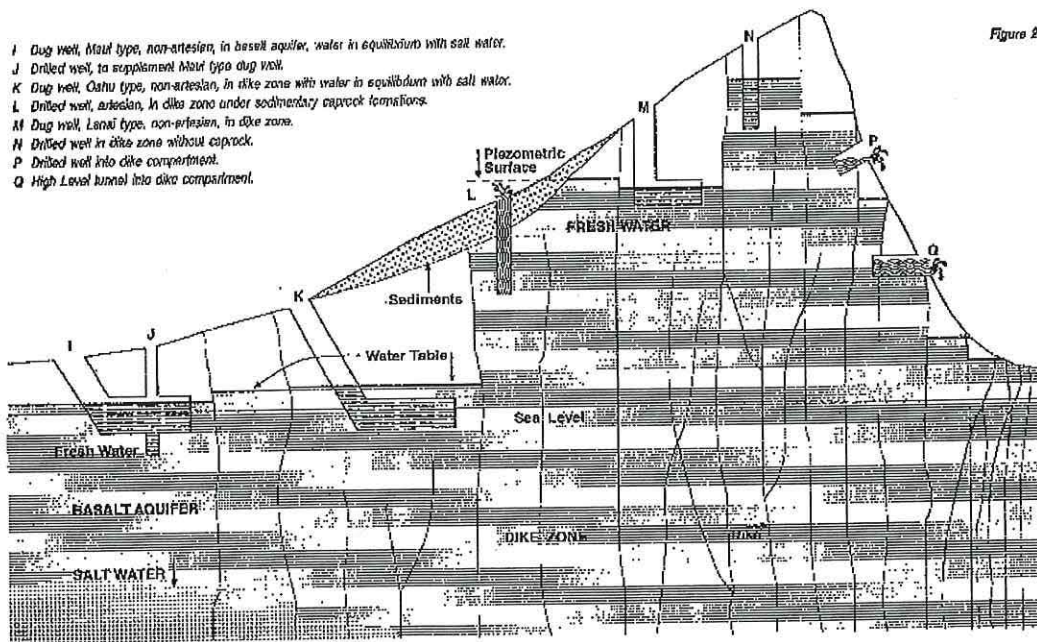
- A Dug well, non-artesian, in formation of caprock series
- B Drilled well, artesian, in water bearing formations of caprock series.
- C Drilled well, non-artesian, in lava or sediments of caprock series.
- D Drilled well, artesian, in lava flows confined under caprock formations, water in equilibrium with salt water.
- E Drilled well, dry, in non-water bearing sediments.
- F Drilled well, non-flowing artesian, in basalt aquifer confined by caprock formations, water in equilibrium with spill water.
- G Drilled well, non-artesian, in basalt aquifer not confined by caprock.
- H Drilled well, dry, bottom above water table.

Figure 1



- I Dug well, Maui type, non-artesian, in basalt aquifer, water in equilibrium with salt water.
- J Drilled well, to supplement Maui type dug well.
- K Dug well, Oahu type, non-artesian, in dike zone with water in equilibrium with salt water.
- L Drilled well, artesian, in dike zone under sedimentary caprock formations.
- M Dug well, Lanai type, non-artesian, in dike zone.
- N Drilled well in dike zone without caprock.
- P Drilled well into dike compartment.
- Q High Level tunnel into dike compartment.

Figure 2



[Eff 3/31/1980; BWS Res. No. 475, 1980; am BWS Res. No. 624, 1994; am BWS Res. No. 796, 2010]

Sec. 3-324 Use of Recycled Water

1. Recycled water use sites require written approval from the Department. Recycled water will only be used for the purpose for which the Department gives written approval.
2. Users of recycled water shall comply with the Hawaii Department of Health Guidelines (DOH Guidelines) established to ensure protection of public health and prevent environmental degradation of aquifers and/or surface waters.
3. Minimum distances must be maintained between a recycled water approved use site and drinking water supply wells.
 - a. Irrigation of recycled water must be at least 50 feet away from any drinking water supply well.
 - b. The outer edge of any recycled water impoundments (e.g., reservoirs, golf course ponds, etc.) must be at least 100 feet away from any drinking water supply well.
 - c. Drainage from areas using recycled water must be controlled to prevent the water from coming within 50 feet of a drinking water supply well.
4. Prior to using recycled water on any approved recycled water use site, the Department and the User will jointly develop a memorandum of understanding to delineate responsibility for compliance with the rules and regulations in the remainder of this section.
5. Best management practices will be used to mitigate or prevent the occurrence of certain conditions when using recycled water on approved recycled water use sites, including the conditions outlined below:
 - a. Mitigation of the ponding of water for more than two hours following the cessation of recycled water irrigation.
 - b. Prevention of contact of recycled water with drinking water fountains.
 - c. Mitigation of discharge, runoff, or overspray outside the boundaries of the approved recycled water use site.
 - d. Mitigation of conditions conducive to proliferation of mosquitoes and other disease vectors, and to avoid creation of a public nuisance or health hazard.
6. Standard hose bibs will not be used on recycled water system piping.
7. A Management Reuse Plan is required for the approved recycled water use site to delineate responsibilities of operation and maintenance of the site. A template for the preparation of a Management Reuse Plan is available from the Department.
 - a. A User Supervisor is required for each approved recycled water use site. Any change in the User Supervisor will require approval by the Department.
 - b. The User Supervisor:
 - i. Should be knowledgeable about the entire recycled water system within his/her responsibility;

- ii. Should be knowledgeable about all applicable conditions of recycled water use;
 - iii. Will be responsible for installing, operating, and maintaining the recycled water system;
 - iv. Will be responsible for preventing potential hazards;
 - v. Will be responsible for implementing the DOH Guidelines; and
 - vi. Will be responsible for coordinating with the Department's cross-connection control program.
- c. The Management Reuse Plan will include operation criteria for irrigation.
- i. Rationale for scheduling irrigation.
 - ii. How to determine when to stop irrigation.
 - iii. The number of fields that can or should be irrigated at the same time.
 - iv. The order in which fields should be irrigated.
 - v. The sequence to follow when starting and stopping the irrigation system.
 - vi. How to control flow and pressure.
- d. The Management Reuse Plan will include a contingency plan that identifies actions and precautions to be taken to protect public health in the event of a non-approved use, such as an overspray or runoff from the approved recycled water use site, and ponding of recycled water.
8. A public education plan will be developed to inform persons about the use of recycled water in areas where they are likely to come in contact with it.
- a. When spray irrigation is used, the Department and user property manager will comprise a reuse committee. The intent of this committee is to identify, document, and notify the Department of Health of inappropriate use of recycled water.
 - b. Signs with conspicuous pictorial and text warning will be approved by the Department and will be posted in all areas where recycled water is used. The wording will be of sufficient size to be clearly read by the public. Examples of approved signs are available from the Department.
9. Information will be provided to employees who work in an approved recycled water use site. Information will include oral and written information that:
- a. Recycled water is being used.
 - b. Recycled water is not suitable for drinking and that drinking recycled water may result in potential illness.
10. Daily records of operation and maintenance information will be maintained, including:
- a. The volume of recycled water flow applied to the approved recycled water use area.
 - b. The volume of any supplemental water flow applied to the approved recycled water use area.

- c. The total area irrigated.
 - d. The cycle or number of applications per day.
 - e. The total volume of recycled water and supplemental water applied to the approved recycled water use are in gallons per acre per day.
 - f. The total daily precipitation.
 - g. The number of incidents of ponding for more than 2 hours.
 - h. The number of incidents of runoff from the approved use area.
 - i. The stress condition of the crop.
 - j. Days when irrigation does not occur.
 - k. Freeboard of any recycled water storage impoundment.
11. Cross-connections of recycled water supplies and potable water supplies are prohibited. Additional information and restrictions about cross-connections can be found in Sec. 2-213.

[Eff 1/1/2002; BWS Res. No. 722, 2001]

CHAPTER IV: RULES GOVERNING PARKING AT THE BOARD OF WATER SUPPLY

Sec. 4-401 Off-Street Parking Areas

The following areas are designated for off-street parking as indicated:

1. Visitor Parking

Areas in the back of the Public Service Building and in front of the Engineering Building, shown as Areas A and B in Appendix A, attached.

2. Employee Parking

Areas makai of Lusitana Street bounded by Alapai, Lisbon and Lauhala Streets, respectively, which are shown as Areas C, D & E, in Appendix A.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 4-402 Parking Authorization

Except as specified otherwise by appropriate signs and/or markings, parking in the above-designated areas is authorized only as follows:

1. Areas A and B - For bona fide visitors on Departmental business.

2. Areas C, D and E - For bona fide employees of the Department, whose vehicles display the required decal evidencing the issuance of a parking permit by the Manager or his authorized representative.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 4-403 Parking Hours

Except as otherwise specifically authorized, the off-street parking areas shall be open Monday through Friday, inclusive, from 6:30 a.m. to 5:30 p.m., holidays excepted.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 4-404 Removal of Unauthorized Vehicles

The Manager or his authorized representative is hereby authorized to remove or cause to be removed at the vehicle owner's expense any vehicle parking within the areas described in Section 4-402 when:

1. Such vehicle is parked by a person who is not a bona fide visitor on Departmental business.

2. Such vehicle does not display the required decal evidencing the issuance of a parking permit by the Manager or his authorized representative.

3. Such vehicle is not parked wholly within a designated stall and straddles an adjoining stall.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

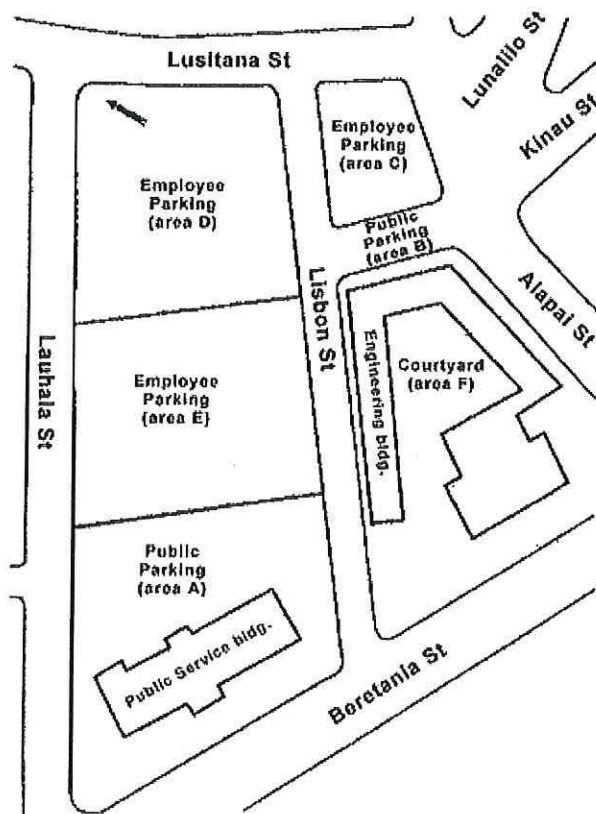
Sec. 4-405 Authorization to Initiate Parking Fees

The Manager is hereby authorized to establish and institute parking fees for employees of the Department when such fees are deemed appropriate; provided however, that such fees shall be comparable to the parking rates established for employees at the City Hall Complex.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 4-406 Authorization to Establish Other Parking Areas

The Manager is hereby authorized to establish and designate other areas within the Department's premises for off-street parking and to apply the applicable provisions of these rules accordingly.



[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

CHAPTER V: GENERAL PROVISIONS

Sec. 5-501 Penalty

Any person who shall violate any provision of any of the foregoing Rules and Regulations shall be guilty of a misdemeanor, pursuant to Chapter 1, Article 3, Section 1-3.1 of the Revised Ordinances of Honolulu, as amended and upon conviction thereof shall be punished for each offense as prescribed by law, except that in cases where such offense shall continue after due notice, each day's continuance of the same shall constitute a separate offense.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 5-502 Appeals

Appeals to the Board as prescribed in Sections 7-105(k) and 7-118 of the Revised Charter of the City and County of Honolulu shall be conducted in accordance with procedures established under Sections 91-9, -10, -11 and -12 of the Hawaii Revised Statutes.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 5-503 Repeal of Rules

The Rules and Regulations and all amendments thereto previously adopted by the Board are hereby repealed.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 5-504 Severability

If any rule, section, sentence, clause, or phrase of these Rules and Regulations, or the application thereof to any person, circumstance, or property is held to be unconstitutional or invalid, the remaining provisions or applications of these Rules and Regulations to other persons, circumstances, or property shall not be affected, and to this end the provisions of these Rules and Regulations are severable. The Board hereby declares that it would have adopted these Rules and Regulations as presently promulgated, irrespective and notwithstanding the fact that any one or more of said rules, sections, sentences, clauses, or phrases might be declared unconstitutional or invalid.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

Sec. 5-505 Rules Inoperative, When

If any provision of these Rules and Regulations jeopardizes the receipt by the State, City and County of Honolulu, or Department of any federal grant-in-aid or other federal allotment of money, the provision shall, insofar as such funding is jeopardized, be deemed inoperative.

[Eff 5/10/76; am, renum and comp BWS Res. No. 427, 1976]

III. New Business

- B. Discussion and Action on Proposed New HAR
Title 20, Chapter 26, **Public and Commercial
Activities on Mauna Kea Lands**, promulgated
by UH



University of Hawai'i at Hilo

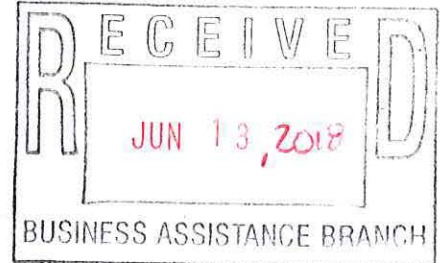
640 N. A'ohoku Place, Room 203, Hilo, Hawai'i 96720

Telephone (808) 933-0734 Facsimile (808) 933-3208

Mailing Address: 200 W. Kawili Street, Hilo, Hawai'i 96720

June 13, 2018

Ms. Dori Palcovich, Administrator
Small Business Regulatory Review Board
P.O. Box 2359
Honolulu, Hawaii 96804



**Subject: Proposed Chapter 20-26, Hawai'i Administrative Rules, entitled
"Public and Commercial Activities on Mauna Kea Lands"**

Dear Ms. Palcovich:

I am transmitting for the Small Business Regulatory Review Board's ("SBRRB") review and consideration, proposed Chapter 20-26, Hawai'i Administrative Rules ("HAR"), entitled "Public and Commercial Activities on Mauna Kea Lands."

Pursuant to Act 132 (2009), codified as Hawaii Revised Statutes §§ 304A-1901, *et seq.*, the University of Hawai'i was directed by the legislature "to regulate public and commercial activities on Mauna Kea lands," "to provide effective protection of cultural and natural resources from certain public activities, and to help ensure public health and safety." The legislature specifically identifies "[c]ommercial tour activities," as an example of "commercial activities that could be covered by administrative rules."

At its regular meeting on Thursday, June 7, 2018, the University Board of Regents unanimously approved agenda item V.C.4, which authorizes the University to request Governor's approval to hold public hearings regarding the subject rules. Governor's Administrative Directive No. 18-02, dated January 1, 2018, requires an agency to (1) complete a Small Business Impact Statement, and (2) submit the Impact Statement and proposed rules to the SBRRB prior to requesting public hearings. Both the Impact Statement and proposed rules are attached.

As noted in the Impact Statement, the proposed rules would regulate, among other things, commercial activities. However, commercial tours currently taking place under previous permits issued by the Department of Land and Natural Resources would not be impacted during the effective date of those

Ms. Dori Palcovich
Page 2
June 13, 2018

permits, and the proposed rules do not establish fees at this time. The legislature set fines for violating the rules under Act 132, which were incorporated into the proposed rules.

Thank you for your time and consideration.

Sincerely,



Stephanie Nagata
Director

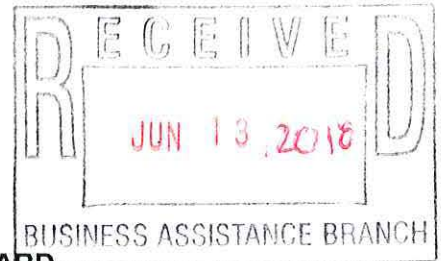
Attachments:

Attachment "A", Small Business Impact Statement

Attachment "B", Proposed Chapter 20-26, Hawai'i Administrative Rules, entitled
"Public and Commercial Activities on Mauna Kea Lands"

c: Marcia Sakai, UH-Hilo Chancellor
Gregory Chun, Senior Advisor on Maunakea
Jesse K. Souki, UH Associate General Counsel

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



Department or Agency: University of Hawai'i
Administrative Rule Title and Chapter: Title 20, Chapter 26
Chapter Name: Public and Commercial Activities on Mauna Kea Lands
Contact Person/Title: Stephanie Nagata, Director, Office of Maunakea Management
Phone Number: 808-933-0734
E-mail Address: omkm@hawaii.edu **Date:** June 13, 2018

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

* * *

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.

Anyone wishing to conduct "commercial tours," which is defined under the proposed rules as, "the transport of people for compensation for the purpose of engaging in public activities within the UH management areas, including but not limited to transport by cars, sport utility vehicles, trucks, taxis, vans or buses."

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

The proposed rules do not set fees; however, HAR § 20-26-6 provides a mechanism for establishing fees if these rules pass. Those interested in operating commercial tours are required to obtain commercial tour activity permits or enter into a concession agreement with the University, under HAR § 20-26-66. Commercial tour activity permits, formerly granted by the Department of Land and Natural Resources ("DLNR") in force as of the effective date of these rules shall remain in effect through their stated expiration, HAR § 20-26-66(h). Those conducting commercial tours without a valid permit will be fined in an amount set by Act 132, HAR § 20-26-73.

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.

HAR § 20-26-66(h), provides that existing fees, previously set by DLNR for specifically permitted commercial tour operators, will remain in "effect through their stated expiration dates."

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

Future fees will be set by public meeting, concession agreements, and/or agreement with another public agency to manage commercial tour activities and transportation, pursuant to HAR §§ 20-26-6 and 20-26-66.

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

The proposed rules do not set fees. Act 132 prescribes fines.

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

Fees would be set with public input and/or concession agreement based on criteria in HAR § 20-26-66. Act 132 sets fines, which are incorporated in HAR § 20-26-73.

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 University does not expect any additional costs to manage commercial tour activities, since it already manages permits issued by DLNR that were transferred to the University. The rules formally empower the University to regulate commercial activities consistent with the legislature's direction "to provide effective protection of cultural and natural resources from certain public activities, and to help ensure public health and safety." Act 132 directs that all monies collected are deposited into the Mauna Kea lands management special fund for managing Mauna Kea lands, under HRS § 304A-2170.

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 were developed with input from commercial tour operators. Future fees will be developed in an open meeting. If concession agreements are entered into, it will be open and fair. Outside of these rules, improvements are being made to visitor facilities to ensure the safety of visitors and mitigate impacts to natural, cultural, and scientific resources.

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

Under HAR § 20-26-66, the University will determine the number of permits that can be sustained without impacting resources. Whether by permit, lottery, and/or concession agreement, interested operators will have equal opportunity to show that they can operate tours and comply with the legislature's mandate to minimize impacts to resources.

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 rules allow any qualifying commercial tour operator an opportunity. The primary obligation of the University, as directed by the legislature in Act 132, is "to regulate public and commercial activities on Mauna Kea lands," "to provide effective protection of cultural and natural resources from certain public activities, and to help ensure public health and safety." HAR § 20-26-66, provides flexibility for operators to propose how they plan to mitigate the impacts of their operations based on criteria.

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

The Office of Maunakea Management ("OMKM") took the lead for the University in developing the rules. Among other things, OMKM held several outreach and community meetings, which included input from commercial tour operators.

- 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.

No specific recommendations were made by businesses regarding these rules. However, outside of the rules, OMKM has worked collaboratively with legally permitted tour operators.

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 legislature mandated, through Act 132, that the University strive for consistency with the state Forrest Reserve and Natural Area Reserve rules administered by DLNR. Those rules also require permits for commercial activities.

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

This Statement may be found on the
SBRRB Website at:

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

UNIVERSITY OF HAWAI'I

Adoption of Chapter 20-26
Hawai'i Administrative Rules

(Date)

1. Chapter 20-26, Hawai'i Administrative Rules, entitled "Public and Commercial Activities on Mauna Kea Lands," is adopted to read as follows:

"HAWAI'I ADMINISTRATIVE RULES

TITLE 20

UNIVERSITY OF HAWAI'I

SUBTITLE 1

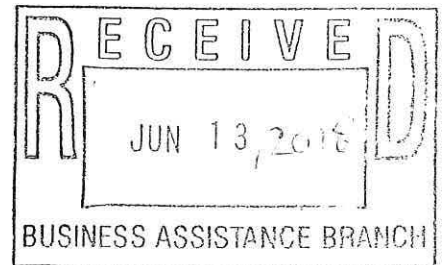
UNIVERSITY OF HAWAI'I

BOARD OF REGENTS

CHAPTER 26

PUBLIC AND COMMERCIAL ACTIVITIES ON MAUNA KEA LANDS

Subchapter 1 General Provisions



- \$20-26-1 Purpose
- \$20-26-2 Definitions
- \$20-26-3 Applicability and implementation, generally
- \$20-26-4 Consistency with other rules
- \$20-26-5 Orientation
- \$20-26-6 Fees
- \$20-26-7 Mauna Kea lands management special fund
- \$20-26-8 Delegation of authority
- \$\$20-26-9 to 20-26-20 (Reserved)

Subchapter 2 Public Activities

- \$20-26-21 Traditional and customary rights
- \$20-26-22 Preservation of resources
- \$20-26-23 Preservation of property
- \$20-26-24 Preservation of scientific and educational resources
- \$20-26-25 Litter and sanitation
- \$20-26-26 Fire use restrictions
- \$20-26-27 Explosives
- \$20-26-28 Firearms or other weapons
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- \$20-26-30 Unmanned aerial vehicles, drones and air toys
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- \$20-26-34 Audio devices and noise
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- \$20-26-36 Use of drugs or alcohol
- \$20-26-37 Use of tobacco
- \$20-26-38 Camping
- \$20-26-39 Access
- \$20-26-40 Snow play
- \$20-26-41 Scattering of cremated remains
- \$20-26-42 Interference with government function
- \$20-26-43 Compliance with laws
- \$\$20-26-44 to 20-26-50 (Reserved)

Subchapter 3 Commercial Activities

- \$20-26-51 Commercial activities generally

§20-26-52 Selling, advertising, and solicitation
§§20-26-53 to 20-26-60 (Reserved)

Subchapter 4 Permits for Public and Commercial
Activities

§20-26-61 General provisions
§20-26-62 Group use permits
§20-26-63 Permits for public assemblies and
Meetings
§20-26-64 Research permits
§20-26-65 Special use permits
§20-26-66 Commercial tour activity permits
§20-26-67 Commercial film and recordings
§20-26-68 Period of validity and renewal of permit
§§20-26-69 to 20-26-70 (Reserved)

Subchapter 5 Administration and Enforcement

§20-26-71 Purpose of subchapter; statement of policy
§20-26-72 Applicability
§20-26-73 Violations, penalties, costs,
administrative fines, sanctions, and
collection
§20-26-74 Enforcement
§20-26-75 Appeals process, information requests and
submittals, and petitions for declaratory
rulings
§20-26-76 Enforcement and stay of final decision
§20-26-77 Severability

SUBCHAPTER 1

GENERAL PROVISIONS

§20-26-1 Purpose. The purpose of these rules is to provide for the proper use, management, and protection of cultural, natural, and scientific resources of the UH management areas; to promote public safety and welfare by regulating public and

commercial activity within the UH management areas; to ensure safe and appropriate access to the UH management areas for the public; and to foster co-management with the department of land and natural resources in UH management areas. [Eff] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-2 Definitions. As used in these rules, unless context requires otherwise:

"Authorized agent" means a person, persons, or entity authorized by the president or the president's designee, to act on the president's behalf under this chapter.

"Board" means the board of regents of the University of Hawai'i.

"Camping" means the use of UH management areas (other than designated facilities at Halepōhaku) for living accommodation purposes such as sleeping activities, or making preparations to sleep (including but not limited to the laying down of bedding for the purpose of sleeping), or storing personal belongings, or using any tents or shelter or other structure or vehicle for sleeping or carrying on cooking activities, between one hour after sunset and sunrise. The activities indicated constitute camping when it reasonably appears, in light of the circumstances, that the participants, in conducting these activities, are in fact using the area as a living accommodation regardless of the intent of the participants or the nature of any other activities in which they may also be engaged.

"Commercial activity" means a use or purpose designed for profit, which includes the exchange or buying and selling of goods, or the providing of services, or relating to or connected with trade, traffic or commerce in general; provided, however, that the use of land for utility purposes shall not be considered a commercial activity. Commercial activities include but are not limited to activities

whose base of operations are outside the boundaries of the UH management areas, or provide transportation to, from, or within the UH management areas.

"Commercial tours" means the transport of people for compensation for the purpose of engaging in public activities within the UH management areas, including but not limited to transport by cars, sport utility vehicles, trucks, taxis, vans or buses.

"Compensation" includes, but is not limited to, monetary payments, barter, or services in-kind. Bona fide sharing of resources or expenses among participants in scientific research-related activities, including but not limited to astronomical observatory operations, does not constitute compensation.

"Comprehensive management plan" means the Mauna Kea comprehensive management plan approved by the board of land and natural resources, including any sub-plans, as may be amended.

"Drone" means an unmanned aircraft, ship, or vehicle guided by remote control or onboard computers.

"Forest reserve" means lands set apart as forest reserve pursuant to section 183-11, Hawai'i Revised Statutes.

"Game mammals and birds" means those animals that have been designated as such by the department of land and natural resources.

"Halepōhaku" means the Halepōhaku (also known as Hale Pōhaku) mid-level facilities as described in the lease between the board of land and natural resources and the university.

"Hazardous materials" means any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof or subsequently enacted.

"Kahu Kū Mauna" means the advisory community-based council that advises the Maunakea Management Board, OMKM, and the chancellor of the University of Hawai'i at Hilo on Hawaiian cultural matters affecting the UH management areas.

"Law enforcement officer(s)" means any federal, state, or county government employee with law enforcement powers.

"Mauna Kea" or "Maunakea" refers to the dormant volcano on the island of Hawai'i standing approximately 4,205 meters above sea level; its peak is the highest point in the state of Hawai'i.

"Maunakea Management Board" or "MKMB" means the community-based advisory body established by the board to provide the Hawai'i Island community with a direct voice to the university for the management of the UH management areas.

"Motorized vehicle" means a vehicle of any shape or form that depends on a gas, electric, or other fuel motor for propulsion.

"Natural area reserve" means an area designated as a part of the Hawai'i natural area reserves system, pursuant to chapter 195, Hawai'i Revised Statutes.

"Non-motorized vehicle" means a vehicle of any shape or form that depends on human, animal, wind, spring, and other non-motorized means for propulsion.

"Office" or "OMKM" means the office of Maunakea management.

"Person" includes individuals, partnerships, corporations, associations, or public or private organizations of any character other than government agencies.

"President" means the president of the university, or the president's designee.

"Private vehicle" means any vehicle not operated for governmental purposes, including but not limited to private cars and trucks, rental cars and trucks, commercial tour vehicles, taxis, limousines, buses, and other transportation for hire. It does not include vehicles operated by employees or agents of government agencies on official business, but can include any vehicle, including a government vehicle,

if operated by an employee or agent of a government agency when not acting in an official capacity.

"Public activities" means activities of the general public that are not governed by contract or other legal agreement with the university, other than a permit issued under these rules or the rules of the department of land and natural resources, if applicable.

"Solicit" means to ask, implore, plead for; to endeavor to obtain by asking; to importune; or to try to obtain.

"UH management areas" are those lands defined as "Mauna Kea lands" under section 304A-1901, Hawai'i Revised Statutes.

"University of Hawai'i", "University", and "UH" means the state university established under article X, section 5 of the Hawai'i Constitution and section 304A-101, Hawai'i Revised Statutes, which is governed by the board.

"Written permit" or "written permission" means a permit or permission issued under this chapter by the president. [Eff _____] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-3 Applicability and implementation, generally. (a) These rules shall apply to all public activities and commercial activities in the UH management areas as defined in these rules.

(b) These rules do not apply to education and research activities and support functions carried out by:

- (1) The university;
- (2) Persons under an agreement with the university; or
- (3) Government entities under an agreement with the university.

(c) Where overlapping jurisdictions within UH management areas are present, including but not limited to department of land and natural resources administrative rules pertaining to conservation

districts, forest reserves, historic preservation, hunting, and natural area reserves, those rules shall govern.

(d) This chapter shall be implemented in consultation with the department of land and natural resources, to allow hunting and recreation in those areas designated by the department of land and natural resources as regulated by department of land and natural resources hunting rules.

(e) The president or president's designee may seek the advice of the Maunakea management board and the Kahu Kū Mauna pursuant to the comprehensive management plan and consistent with the timelines and procedures of this chapter. [Eff]
(Auth: HRS §§304A-105, 304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-4 Consistency with other rules. These rules shall not be interpreted so as to be inconsistent with other rules applicable within UH management areas, including but not limited to conservation district rules, and where applicable, forest reserves, hunting, historic preservation, and natural area reserves rules. [Eff]
(Auth: HRS §§304A-105, 304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-5 Orientation. As set forth in the comprehensive management plan, all persons accessing the UH management areas shall be required to complete an orientation regarding cultural and natural resources, safety matters, and other relevant information prior to entering the UH management areas. [Eff]
(Auth: HRS §§304A-105, 304A-1903)
(Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-6 Fees. Fees, as established by the board, may be charged for permits, parking, entrance, and for the use of facilities and programs related to the UH management areas. [Eff] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-1902, 304A-1903, 304A-2170)

§20-26-7 Mauna Kea lands management special fund. (a) All payments collected pursuant to these rules shall be deposited into the Mauna Kea lands management special fund.

(b) The proceeds of the Mauna Kea lands management special fund shall be used as provided in chapter 304A, Hawai'i Revised Statutes. [Eff] (Auth: HRS §§304A-105, 304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-2170)

§20-26-8 Delegation of authority. The board delegates its authority to administer this chapter to the president, who may further delegate that authority to a designee. [Eff] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§§20-26-9 to 20-26-20 (Reserved).

SUBCHAPTER 2

PUBLIC ACTIVITIES

§20-26-21 Traditional and customary rights. (a)

This chapter is subject to the right of native Hawaiians to exercise protected customary and traditional rights as provided for in Article XII, section 7 of the Hawai'i Constitution, consistent with the laws of the state of Hawai'i.

(b) The University recognizes the spiritual, cultural, and historical significance of Maunakea to native Hawaiians and the protected customary and traditional rights referenced under subpart (a) of this section. Where such customary and traditional rights have minimal or no impact on existing cultural, natural, or scientific resources, no permit or approval is required under this chapter. If such activity is found to impact cultural, natural, or scientific resources, OMKM, after consulting with Kahu Kū Mauna and the Office of Hawaiian Affairs, may restore the site to its condition prior to such activity.

(c) Where a particular activity may impact existing cultural, natural, or scientific resources, persons proposing to conduct such activities are encouraged to consult with OMKM and Kahu Kū Mauna to obtain a special use permit, under section 20-26-65. OMKM shall assist applicants and allow protected customary and traditional practices to the greatest extent possible.

(d) This section does not eliminate the need for other applicable permits and approvals issued by other government entities. [Eff] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-1903)

§20-26-22 Preservation of resources. The following activities are prohibited within the UH management areas:

- (1) Removing, injuring, disturbing, or killing any form of plant or animal life, either in whole or in part, except game mammals and birds hunted according to rules of the department of land and natural resources;

- (2) Introducing any form of plant or animal life, except dogs when permitted by the hunting rules of the department of land and natural resources and legally authorized service animals when accompanying their handlers;
- (3) Removing, damaging, or disturbing any natural feature or resource;
- (4) Removing, damaging, or disturbing any geological or paleontological features or substances;
- (5) Removing, damaging, or disturbing any historic or prehistoric property or remains;
- (6) Removing, damaging, or disturbing any private or university property, sign, marker, or structure;
- (7) Entering into any cave, as defined in section 6D-1, Hawai'i Revised Statutes, or any portion thereof, except as allowed by the department of land and natural resources;
- (8) Having or possessing the following tools, equipment or implements: cutting or harvesting tools or gear, including but not limited to chainsaws, axes, loppers, any mechanized or manual sawtooth tool, seed pickers, or machete, that may be used for the taking, injuring, or killing of plant life, and hunting gear or tools that may be used for the taking, injuring, or killing of wildlife; except as permitted by the hunting rules of the department of land and natural resources or in accordance with a special term or condition of a written permit;
- (9) Engaging in any improvement or construction, except as authorized by written permit and, if applicable, a permit issued by the department of land and natural resources, or by the board of land and natural resources;
- (10) Engaging in activity in a group larger than ten (10) in size, except by written permit;
- (11) Hiking, conducting nature study, or

- conducting any activity on pu'u (cinder cones) unless on designated trails or roads, except by written permit; or
- (12) Introducing any materials from outside the UH management areas, including but not limited to manmade and natural items such as balls, plastic flowers, glass, metal and rocks, except by written permit and, if applicable, a permit issued by the department of land and natural resources. [Eff _____] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-23 Preservation of property. The following activities are prohibited within the UH management areas:

- (1) Entering, occupying, or using any building, structure, facility, motorized vehicle, machine, equipment, or tool without permission from its owner or the university;
- (2) Removing, damaging, disturbing, defacing, or attempting to remove, damage, disturb or deface any building, structure, facility, motorized vehicle, machine, equipment, or tool without permission from its owner or the university; or
- (3) Entering and remaining within any portion of the UH management areas developed or used by the university for educational or research purposes, after being asked to leave the area by an authorized agent or law enforcement officer. [Eff _____] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-24 Preservation of scientific and educational resources. The following activities are prohibited within the UH management areas:

- (1) Using any electro-magnetic device, including but not limited to radio transmitters and cellular telephones, except for use in an emergency;
- (2) Using wireless communication technologies, except for use in an emergency;
- (3) Using artificial illumination, except for headlights on licensed motorized vehicles; or
- (4) Conducting any other activity that materially interferes with the scientific and educational operations of the astronomical facilities or research equipment or with the protection of the scientific resources. [Eff]
(Auth: HRS §§304A-105, 304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-25 Litter and sanitation. The following activities are prohibited within the UH management areas:

- (1) Littering, or depositing any garbage, trash, refuse, waste material, or rubbish in any place other than receptacles provided for this purpose;
- (2) Depositing any bodily waste in areas without comfort stations without digging a hole and covering all signs of the waste;
- (3) Depositing any bodily waste, without use of a comfort station, within 200 feet of any body of water, building, road, or trail; or
- (4) Leaving or abandoning any items, including but not limited to, vehicles, appliances, garbage or trash, or other forms of waste, debris, personal effects, or unattended items. [Eff] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-26 Fire use restrictions. The following acts are prohibited within the UH management areas: Starting or maintaining a fire or depositing or discarding any potential fire-producing material such as matches, cigarette butts, embers, or coals, except as otherwise provided in this chapter. [Eff] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-27 Explosives. The following acts are prohibited within the UH management areas: Using or possessing fireworks, firecrackers, or explosive devices. [Eff] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-28 Firearms or other weapons. Firearms, bows and arrows, knives with blade length greater than three (3) inches, and other weapons are prohibited within the UH management areas, except when permitted by the hunting rules of the department of land and natural resources or for use by law enforcement officers. The use and possession of any such weapons are subject to all applicable federal, state, and county statutes, ordinances, and rules. [Eff] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-1903)

§20-26-29 Vehicles and transportation. (a) The following acts are prohibited within the UH management areas:

- (1) Exceeding posted speed limits;
- (2) Driving, operating, or using any motorized or non-motorized vehicle in areas and on roads or trails unless designated for that

use;

- (3) Launching or landing an air conveyance of any shape or form, including but not limited to aircraft, gliders, hang gliders, helicopters, balloons, parachutes, parasails, or other similar means of transportation in any portion of the UH management areas not designated for that purpose, including but not limited to roads or trails, provided that the department of land and natural resources may allow these uses under its applicable rules after consultation with the university or unless used for emergency purposes;
 - (4) Parking any motorized or non-motorized vehicle or trailer except in designated areas;
 - (5) (5) Operating any motorized or non-motorized vehicle in violation of existing state or county traffic regulations, including but not limited to having a valid vehicle license plate, registration and safety check as required;
 - (6) Operating any motorized or non-motorized vehicle on a closed roadway or in violation of any usage restriction established pursuant to these rules; or
 - (7) Failing to comply with any posted sign or any posted equipment requirement based on roadway conditions, such as a requirement to use or carry tire chains when snow or ice is present or anticipated.
- (b) Only vehicles equipped with low-range four-wheel-drive are allowed north of Halepōhaku.
 - (c) Vehicles left unattended in closed areas or for longer than forty-eight (48) hours may be impounded by an authorized agent at any time.
 - (d) All impounded vehicles shall be towed to a place of storage. Towing, storage, and other related costs shall be assessed pursuant to section 290-11, Hawai'i Revised Statutes. [Eff]

(Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-30 Unmanned aerial vehicles, drones and air toys. The following acts are prohibited within the UH management areas: using or operating unmanned or remote controlled terrestrial vehicles, aerial vehicles, drones, or air toys, including but not limited to kites, balloons, boomerangs, gliders, rockets, and model aircraft. [Eff]
(Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-31 Outdoor sports activities. The following acts are prohibited within the UH management areas:

- (1) Engaging in any outdoor sport or play involving objects thrown, hit, or driven, of any shape or size that could result in injury to others or damage to existing structures or equipment, that are likely to be lost or misplaced, or inconsistent with section 20-26-21; or
- (2) Formally or informally organized contests, meets, or competitions. [Eff] (Auth: HRS §304A-1903)
(Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-32 Hazardous materials. Introducing, using, disposing, releasing, spilling, or transporting any hazardous materials is prohibited within the UH management areas, other than fuel or lubricants contained within a licensed motorized vehicle or as otherwise used in the ordinary course of lawful activities in a manner sanctioned by law and compliant with all applicable legal requirements. [Eff] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-33 Animals. (a) Dogs, cats, and other animals are prohibited within the UH management areas except for hunting dogs when permitted by department of land and natural resources hunting rules and legally authorized service animals when accompanying their handlers.

(b) All dogs used for hunting shall be crated, caged, or leashed or otherwise under restrictive control during transportation while in transit at all times, to and from hunting areas in the UH management areas, except under written authorization by the department of land and natural resources for management activities.

(c) Dogs, cats, or other domestic animals will be removed in the interest of public safety and the protection of resources. [Eff]
(Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-34 Audio devices and noise. Creating noise or sound within UH management areas, either vocally or otherwise, including but not limited to public address systems, radios, television sets, musical instruments, or use of any noise producing devices, such as electric generating plants or other equipment driven by motors or engines, in a manner and at times that create a nuisance is prohibited. [Eff] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-35 Public safety. The following acts are prohibited within the UH management areas:

- (1) Disorderly conduct, as defined in section 711-1101, Hawaii Revised Statutes; or
- (2) Engaging in activities that would obstruct

or impede public or vehicular access, or harass visitors to UH management areas, either verbally or with physical contact.

[Eff] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-36 Use of drugs or alcohol. The following acts are prohibited within the UH management areas:

- (1) Using or possessing narcotics or drugs, except as legally prescribed by a physician, or over-the-counter medication in accordance with applicable law; or
- (2) Using or possessing alcohol in public areas.
[Eff] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-37 Use of tobacco. The following acts are prohibited within the UH management areas, unless in designated areas: Smoking tobacco or nicotine products, including but not limited to cigarettes or cigars, pipes, or utilizing e-cigs, e-cigarettes, vapor and other such tobacco or nicotine delivery devices that create a vapor. [Eff] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-38 Camping. Camping is prohibited within the UH management areas.
[Eff] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-39 Access. (a) Roadway access control. Upon approval of the board of land and natural resources, a gate or other access control structure may be installed as set forth in the comprehensive management plan to manage vehicular access to portions of the UH management areas.

(b) Closed areas, road closures or usage limitations.

- (1) The president's designee may close or limit access to all or portions of the UH management areas, when needed for protection from hazardous conditions, including but not limited to inclement weather conditions, construction or maintenance activities on or near the roadway or at observatory sites, transportation of wide, heavy, or otherwise hazardous loads, or roadway congestion. Notice of road closures or usage limitations shall be provided through signage, road blocks, closed gates, or other means reasonably calculated to provide public notice of the location and extent of closure. The road shall remain closed until it is determined the hazardous condition no longer exists.
- (2) Access by private vehicles may be restricted for public safety and welfare, for the protection of resources, and to reduce congestion. Restrictions may include, but are not limited to, setting a maximum number of private vehicles allowed within the UH management areas at a time, restricting the areas in which private vehicles may operate, or utilizing shuttle vehicles in lieu of private vehicles.
- (3) No person shall operate a vehicle on a closed roadway or in violation of a usage restriction.

(c) Closed areas, public access hours. Public access hours for the UH management areas shall be adopted as set forth in the comprehensive management plan, provided that hunting shall be allowed pursuant

to department of land and natural resources hunting rules. All persons shall abide by the officially posted signs designating public access hours.

(d) Closed areas, management and public safety.

(1) The president's designee may close any portion of the UH management areas as necessary or appropriate for the protection of the resources of the area or the safety and welfare of persons or property, by posting appropriate signs indicating the extent and scope of closure.

(2) All persons shall abide by the officially posted signs designating closed areas.

(e) Public access policies and procedures. The president may establish policies and procedures for the implementation of this chapter, which shall be posted on the OMKM website and made available for inspection at its offices upon request. [Eff

] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-40 Snow play. (a) Skiing, snowboarding, sledding and other similar winter or snow sports may be restricted to maintain public safety and welfare, to prevent damage to resources, and to minimize conflicts among visitors. The use of devices that are not equipped with braking mechanisms or which do not provide directional control on snow or ice is prohibited.

(b) Skiing, snowboarding, sledding or other forms of snow recreation or snow activities may be prohibited in specific designated zones or areas in order to maintain public safety and welfare, and protect resources.

(c) Formally or informally organized contests, meets, or competitions, snow play tours, or other similar events for skiing, snowboarding, sledding or other forms of snow recreation or snow activities are prohibited.

(d) Operating a snowmobile, an all-terrain vehicle, or other motorized vehicle used for snow recreation is prohibited anywhere in the UH management areas.

(e) Towing persons on skis, sleds, or other sliding devices by any motorized vehicle is prohibited. [Eff] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-41 Scattering of cremated remains. The scattering of cremated human remains is allowed within the UH management areas, consistent with this chapter and policies and procedures established by the president. [Eff] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-42 Interference with government function. The following acts are prohibited within the UH management areas:

- (1) Threatening, resisting, intimidating, or intentionally interfering with an authorized agent or law enforcement officer engaged in the performance of its official duties under this chapter;
- (2) Disobeying or refusing to heed the lawful instructions or orders of an authorized agent or law enforcement officer in the performance of its official duties to manage public access and movement, to maintain public safety and welfare, or to protect resources;
- (3) Knowingly giving a false or fictitious report or other false information:
 - (A) To a person investigating an accident or violation of these rules, or
 - (B) In an application for a permit;
- (4) Knowingly giving a false report for the purpose of misleading an authorized agent or

law enforcement officer in the conduct of their official duties, or making a false report that causes a response by an authorized agent or law enforcement officer to a fictitious event. [Eff]
(Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-43 Compliance with laws. All persons entering the boundaries of the UH management areas shall comply with all federal, state, and county laws, ordinances, and rules. [Eff] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304a-1903)

§§20-26-44 to 20-26-50 (Reserved).

SUBCHAPTER 3

COMMERCIAL ACTIVITIES

§20-26-51 Commercial activities generally. Soliciting or engaging in commercial activities of any kind within the UH management areas without a written permit is prohibited. [Eff] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903, 304A-1904)

§20-26-52 Selling, advertising, and solicitation.
(a) Selling of goods of any nature is prohibited within the UH management areas.
(b) Posting or distribution of commercial notices or advertising material of any nature, or soliciting

the purchase or sale of goods or services, including but not limited to transportation, is prohibited within the UH management areas.

(c) Any commercial notice or advertising material soliciting the purchase or sale of goods or services for a commercial activity that has received a permit pursuant to these rules, including but not limited to transportation, shall conspicuously provide the permit number and the name of the permittee to whom the permit is issued. [Eff _____] (Auth: HRS §304A-1903) (Imp: §§304A-103, 304A-105, 304A-1903).

§§20-26-53 to 20-26-60 (Reserved).

SUBCHAPTER 4

PERMITS FOR PUBLIC AND COMMERCIAL ACTIVITIES

§20-26-61 General provisions. (a) The president's designee may issue the following types of permits:

- (1) Group use;
- (2) Permits for public assemblies and meetings;
- (3) Research activities not otherwise permitted by, or excluded from, these rules;
- (4) Special use;
- (5) Commercial tour activity; and
- (6) Commercial film and recordings.

(b) All permits shall be subject to the following provisions:

- (1) Permits may be suspended, canceled, revoked or terminated at any time upon violation of these rules or any conditions of the permit, which may include failure to comply with applicable federal, state, or county statutes, ordinances, and rules; or for

public safety reasons arising from weather or other natural or human-created conditions in the UH management areas.

- (2) Permits are not transferable.
- (3) Persons or organizations to which permits are issued shall be responsible for compliance with all conditions stipulated in the permit.
- (4) All persons eighteen (18) years of age or older shall be eligible to secure a permit and all persons under eighteen (18) years of age shall be allowed use of the area, provided that they are under the direct supervision of one (1) adult for every ten (10) minors during daylight hours and one (1) adult for every five (5) minors for night hours.
- (5) The size of groups as well as the length of time any permit is in effect may be limited.
- (6) All payments of fees and charges, as established under section 20-26-6, shall be in U.S. funds, and by cash, check, cashier's check, certified check, postal money order, bank money order, or other methods approved by the president's designee, provided that personal or business checks may be used to pay for activities that will occur thirty (30) or more days after the date of payment.
- (7) Permits shall be subject to such other procedures, terms, and conditions as may be established from time to time by the president's designee to carry out the provisions of chapter 304A, Hawai'i Revised Statutes, this chapter, or any applicable federal, state, or county statute, ordinance, or rule. Conditions may include, but are not limited to, restricting access to certain areas for public safety, requiring execution of a liability waiver, setting protocols for invasive species prevention, requiring compliance with protocols to prevent the accidental

- introduction of non-native species, or designating approved transportation methods.
- (8) All permittees shall, upon request, show the permit to an authorized agent, law enforcement officer, or the president's designee to manage and regulate public and commercial activities within the UH management areas.
 - (9) Permits shall not create a property interest in favor of the permittee.
 - (10) Persons crossing UH management areas to access the adjacent Mauna Kea Ice Age Natural Area Reserve or Mauna Kea Forest Reserve, shall obtain a permit from the department of land and natural resources, if required, and make said permit available for an authorized agent, law enforcement officer, or the president's designee's inspection upon request.

(c) Permit applications shall be submitted in the form prescribed by the president's designee. The president's designee may determine numbers of permits to be issued based on consideration of impacts of permitted activities on resources, and public safety and welfare.

(d) Permits may be canceled or terminated at any time without advance notice when:

- (1) A state of emergency is declared by the Governor or other proper authority;
- (2) Natural or civil disturbances occur or threaten to occur, including but not limited to, tsunamis, floods, earthquakes, storms, riots, and demonstrations;
- (3) The permittee violates permit conditions or provisions of this chapter;
- (4) The permitted activity damages or threatens serious damage to the integrity of the resources of the UH management areas or threatens the safety of the permittee or the general public;
- (5) Fees are not paid when required; or

(6) Applicant's prior record or conduct within the UH management areas are contrary to university or department of land and natural resources' policy to protect the resources of the UH management areas, including but not limited to failure to pay fines issued under this chapter.

(e) The president's designee may impose fines for failure to comply with the terms of a permit.

(f) The department of land and natural resources is not required to obtain permits under this chapter, provided that the department of land and natural resources consults with the president's designee on its activities. [Eff] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-1903)

§20-26-62 Group use permits. (a) Any group larger than ten (10) members shall be required to obtain a group use permit.

(b) Applications for group use permits shall identify the maximum size of the group and the planned day and duration of the group activity and shall be submitted at least fifteen (15) calendar days in advance of the date the permit is to be in effect.

(c) Applications for group use permits shall be evaluated for compatibility with the functions and purpose of the UH management areas, for consistency with existing approved management plans; for the potential effect on the surrounding resources, the existing facilities, and the public's use of the UH management areas; for compatibility with existing approved uses; for compatibility with scheduled or ongoing construction, repairs, or maintenance activities; and for the applicant's prior record of non-compliance with permit conditions, or of violations. Additional information from the applicant may be required to make this evaluation. Failure to provide additional information when requested may be grounds for permit denial.

(d) Any other restrictions or conditions may be imposed by the president's designee to protect the integrity, condition, and safety of, or access to the UH management area; provided restrictions and conditions may include but are not limited to, the size of the area available for the activity, location of the activity, the type of activity, seasonal and weather restrictions, intensity of the activity or the requirement to hire licensed security services or first aid/cardiopulmonary resuscitation (CPR) certified personnel deemed necessary by the president's designee.

(e) Fees may be assessed in accordance with section 20-26-6 and additional terms and conditions necessary to protect the resources of the UH management areas and to protect safety and welfare may be imposed. Conditions may include but are not limited to insurance and licensing requirements and applicable county, state, or federal oversize and overweight vehicle and load standards. [Eff] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-63 Permits for public assemblies and meetings. (a) Public assemblies, meetings, gatherings, demonstrations, parades, and other such events, resulting in assemblies of ten (10) or more persons, are allowed in the UH management areas, provided a permit for such event has been issued by president's designee.

(b) An application for such a permit shall set forth the name of the applicant, the date, time, duration, nature, and place of the proposed event, an estimate of the number of persons expected to attend, a statement of equipment or facilities to be used and any other information required by the permit application form. Permittees shall display a copy of the application containing the required information in plain view during the event at the permitted location.

(c) The president's designee may deny an application if:

- (1) A prior application for a permit for the same time and place has been made that has been or will be granted and the activities authorized by that permit do not reasonably allow multiple occupancy of that particular location;
- (2) It reasonably appears that the event will present a clear and present danger to public health and safety; or
- (3) The event is of such nature or duration that it cannot reasonably be accommodated in the particular location applied for, when taking into account such things as probable damage or unreasonable interference with resources, structures, and operations that are allowed, permitted, or authorized within the UH management areas.

(d) If an application is approved, the president's designee will issue a written permit. If an application is denied, the applicant shall be informed in writing, with the reason(s) for the denial.

(e) The permit may contain such conditions as are reasonably consistent with protection and use of the UH management areas for the purposes for which the areas are managed. It may contain reasonable limitations on equipment to be used and the time and area within which the event is allowed.

(f) Permits are issued on a first come, first served basis. No permit shall be allowed for a period in excess of seven (7) consecutive days.

(g) An approved and issued permit may be revoked under any of the conditions listed in subparagraph (c) of this section. Such a revocation shall be made in writing, with the reason(s) 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 (72) hours.

(j) Violation of the terms and conditions of a permit issued in accordance with this section may result in the suspension or revocation of the permit. [Eff _____] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-64 Research permits. (a) Research permits may be issued to engage in activities for scientific, educational, or management purposes, that may otherwise be prohibited by this chapter.

(b) Applications for research permits shall adequately describe the planned research activity, including but not limited to the scope, duration, and location of the research and shall be submitted at least one hundred twenty (120) calendar days in advance of the date the permit is to be in effect.

(c) Applications for research permits shall be evaluated for duplication with existing or previously approved research, for compatibility with the functions and purpose of the UH management areas, for consistency with existing approved management plans; for the potential effect on the surrounding resources, the existing facilities, and the public's use of the UH management areas; for compatibility with existing approved uses; and for the applicant's prior record of non-compliance with permit conditions, or of violations. Additional information may be required from the applicant to make this evaluation. Failure to provide additional information when requested may be grounds for permit denial.

(d) Fees shall be assessed in accordance with section 20-26-6, and additional terms and conditions necessary to protect the resources of the UH management areas and to protect safety and welfare may be imposed. [Eff _____] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-65 Special use permits. (a) Special use permits may be issued to engage in activities otherwise prohibited by this chapter.

(b) Special uses are all types of uses, other than group use, public assemblies and meetings, research, commercial tour activities, and commercial film and recordings which are considered compatible with the functions and purpose of the UH management areas and are consistent with the approved management plans for the UH management areas.

(c) Applications for special use permits shall adequately describe the planned use, including but not limited to the scope, duration, and location of the activity, and shall be submitted at least forty-five (45) calendar days in advance of the date the permit is to be in effect.

(d) Each special use permit application shall be evaluated on its own merits for compatibility with the functions and purpose of the UH management areas, for consistency with existing approved management plans; for the potential effect on the surrounding resources, the existing facilities, and the public's use of the UH management areas; for compatibility with existing approved uses; for compatibility with scheduled or ongoing construction, repairs, or maintenance activities; and for the applicant's prior record of non-compliance with permit conditions, or of violations. Additional information may be required from the applicant to make this evaluation. Failure to provide additional information when requested may be grounds for permit denial.

(e) Fees shall be assessed in accordance with section 20-26-6, and additional terms and conditions necessary to protect the resources of the UH management areas and to protect safety and welfare may be imposed. [Eff] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-66 Commercial tour activity permits. (a) Commercial tour activity permits for conducting

commercial tours or transporting passengers for hire within the UH management areas may be issued by the president's designee.

(b) Permits for commercial tours or passenger transportation for hire may be issued under such terms and conditions as shall be determined by the president's designee.

(c) Each permit application shall be evaluated on its own merits for compatibility with the functions and purpose of UH management areas; for consistency with existing approved management plans; for the potential effect on the surrounding resources, the existing facilities and infrastructure, and the public's use of the UH management areas; for compatibility with existing approved uses; for compatibility with scheduled or ongoing construction, repairs, or maintenance activities; and for the applicant's prior record of non-compliance with permit conditions, or of violations. In addition, each permit application shall also be evaluated for the quality of the educational aspects of the activity, the comprehensiveness of planned staff training, the inclusion of safety protocols, and the extent to which additional practices are incorporated to ensure customer and public safety and welfare and to protect the resources of the UH management areas. Additional information may be required from the applicant to make this evaluation. Failure to provide additional information when requested may be grounds for permit denial.

(d) The president's designee shall establish a number of available permits under this section. If qualified applications outnumber available permits, the permits shall be allocated by drawing or lottery.

(e) The president's designee may elect to manage commercial tour activities through issuance of one (1) or more concession agreements in lieu of, or in addition to, commercial tour activity permits. Any such concession agreements shall be consistent with these rules and applicable law.

(f) The president's designee may enter into an agreement with another public agency to manage commercial tour activities and transportation of passengers for hire within the UH management areas, on such terms and conditions deemed appropriate, which shall be consistent with these rules and applicable law. Such an agreement may be in lieu of, or in addition to, written permits or concession agreements for such purposes.

(g) Fees shall be assessed in accordance with section 20-26-6 and additional terms and conditions necessary or appropriate to reduce congestion, protect the resources of the UH management areas and protect safety and welfare may be imposed, including but not limited to insurance and licensing requirements, and loading restrictions.

(h) Commercial tour activity permits in force as of the effective date of these rules shall remain in effect through their stated expiration dates or such earlier termination date as may apply in accordance with their terms. Upon expiration, any future application shall be submitted in accordance with these rules. [Eff] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-67 Commercial film and recordings. (a) Use for commercial purposes of video, digital, film, still photography, or any other visual and audio recordings taken within the UH management areas is prohibited without a written permit issued by the Hawai'i film office of the department of business, economic development and tourism.

(b) The president's designee shall review all permit applications involving the UH management areas that are submitted to the Hawai'i film office of the department of business, economic development and tourism. The president's designee shall recommend approval or denial of each permit application, may require specific conditions, and may request fees, insurance, performance bonds, or deposits to cover

administrative and personnel expenses or potential damages to resources associated with the proposed activity. [Eff] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-68 Period of validity and renewal of permit. (a) Permits shall be valid for the term set forth therein, as established the president's designee. Upon expiration of the stated term, the permit and all rights of the permittee thereunder shall automatically terminate.

(b) No permit shall be renewed unless the permittee has submitted a timely application to renew the permit, all the conditions or covenants of the original issuance, including but not limited to the requirement of prompt payment of fees or charges, have been met, and the rules governing the UH management areas have been fully complied with.

(c) The renewal of an existing permit is discretionary, and applications for renewal of an existing permit shall be evaluated by the criteria provided in these rules for the issuance of new permits. [Eff] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§§20-26-69 to 20-26-70 (Reserved).

SUBCHAPTER 5

ADMINISTRATION AND ENFORCEMENT

§20-26-71 Purpose of subchapter; statement of policy. This subchapter shall govern the university's practices and procedures relating to the

administrative proceedings for civil violations of these rules and the assessment of administrative sanctions for such violations. This subchapter shall effectuate and carry out the purposes and policies of section 304A-1903, Hawai'i Revised Statutes, and shall be construed and interpreted in the manner most favorable to the promotion of justice, expeditious processing, and cost-effective resolution in every case involved. [Eff _____] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903, 304A-1904)

§20-26-72 Applicability. (a) This subchapter shall apply to violations of this chapter and permits issued under this chapter.

(b) Any criminal prosecution against a person shall not preclude the university from imposing administrative sanctions pursuant to this subchapter against the same person for any civil violation committed in the same course of conduct.

(c) Any administrative proceeding against a person under this subchapter shall not preclude the state from pursuing a separate criminal prosecution against the same person for a criminal offense committed in the same course of conduct, or any collateral proceeding before the department of land and natural resources. [Eff _____] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903, 304A-1904)

§20-26-73 Violations, penalties, costs, administrative fines, sanctions, and collection. (a) An authorized agent, law enforcement officer, or the president's designee shall impose one or more of the following sanctions for violations of these rules or permits issued pursuant to these rules:

- (1) Immediate expulsion from the UH management areas;

- (2) Exclusion from the UH management areas for a specific period or until the violation has been corrected;
 - (3) An administrative fine determined in accordance with subparagraph (b) of this section;
 - (4) A monetary assessment to recover costs of mitigation or restoration required as a result of the violation and to recover the costs of enforcement proceedings;
 - (5) Revocation or suspension of a permit; and
 - (6) Imposition of additional permit conditions.
- (b) Administrative fines shall be assessed as follows:

- (1) For a first violation, not more than \$2,500;
- (2) For the second violation within five (5) years of a previous violation, not more than \$5,000; and
- (3) For the third violation within five years of a previous violation and any subsequent violation, not more than \$10,000.

(c) Each day that the violation continues shall constitute a separate offense.

(d) The costs of any enforcement proceedings, including the costs of contested case proceedings, may be assessed against a party found to be in violation.

(e) For parking violations, the driver or registered owner of the motorized vehicle, or both, shall be subject to the applicable penalties described above.

(f) All payments shall be in U.S. funds, and by cash, check, cashier's check, certified check, postal money order, bank money order, or other methods approved by the president's designee.

(g) Any action taken to impose or collect penalties provided for in this chapter shall be considered a civil action. [Eff]

(Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-1903, 304A-1904)

§20-26-74 Enforcement. (a) Citations. An authorized agent or law enforcement officer shall have the power(s) to issue a citation for any violation of the provisions of this chapter:

- (1) Law enforcement officer(s) may use a form of citation that is authorized for use for violations of Hawai'i Administrative Rules, ordinances, or Hawai'i Revised Statutes;
- (2) In every case when a citation is issued, a copy of the same shall be given to the violator or in the case of a parking, standing or stopping violation a copy of the same shall be affixed to the vehicle, as provided in paragraph (5);
- (3) Every citation shall be consecutively numbered and each copy shall bear the number of its respective origin;
- (4) Whenever a vehicle is in violation of any provision, other than a parking, standing, or stopping provision, of this chapter, any law enforcement officer and any authorized agent shall take the name, address and driver's license number of the alleged violator and the license plate number of the vehicle or vehicle identification number of the vehicle involved, and shall issue to the alleged violator in writing a citation, notifying the alleged violator to answer to the citation in writing at the address provided and by the date indicated; and
- (5) Whenever any motor vehicle is parked, standing, or stopped in violation of this chapter, an authorized agent or the law enforcement officer finding the vehicle shall conspicuously affix to the vehicle a citation. The citation shall be addressed to the registered owner of the vehicle, but need not identify the registered owner by name, so long as the citation identifies the vehicle by its license plate number or vehicle identification number. The citation shall instruct the registered owner to

answer to the citation in writing at the address provided and by the date indicated. The registered owner of a vehicle shall be responsible and accountable for the illegal parking, standing, or stopping of the vehicle when:

- (A) The registered owner committed the illegal parking, standing, or stopping of the vehicle; or
 - (B) Another person committed the illegal parking, standing, or stopping of the vehicle, but the registered owner gave the person explicit or implicit permission to use the vehicle at the time of the violation.
- In any proceeding for violation of a parking, standing, or stopping provision of this chapter, the license plate number or vehicle identification number of the parked, standing, or stopped vehicle shall constitute prima facie evidence that the registered owner of the vehicle was responsible and accountable for the illegal parking, standing, or stopping of the vehicle. [Eff _____] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-75 Appeals process, information requests and submittals, and petitions for declaratory rulings.

(a) Requests for formal hearings shall be submitted in writing within seven (7) days after issuance of a citation or the president's designee's written decision regarding a permit on a form to be provided by the president's designee. These forms shall be made available by the president's designee at OMKM's office and on OMKM's website.

(b) The following rules of practice including both informal and formal procedures are adopted:

- (1) Informal procedures. Persons who believe that they have received a citation in error, whose vehicle was removed by an authorized agent, or who disagree with a written decision by the president's designee regarding a permit may file a written request for an informal review with the president's designee within fifteen (15) days of the issuance of the citation or of the removal of a vehicle. Upon review the written request, the president's designee shall issue a written decision that shall be final and binding. No further appeal is permitted; and
- (2) Formal procedures. A person requesting a formal hearing on a citation or decision by the president's designee in accordance with subsection (a) shall be afforded an opportunity for hearing after reasonable notice as provided by chapter 91, Hawai'i Revised Statutes. The hearing under this section shall be treated as a contested case hearing under chapter 91, Hawai'i Revised Statutes, and shall be conducted in accordance with the statutory requirements for contested case hearings, as follows:
 - (A) The hearing shall be conducted by the president's designee or a hearing officer appointed by the president's designee;
 - (B) Upon receipt of a written request for a formal hearing, the president's designee or the hearing officer shall issue a written notice, which notice shall include a statement of:
 - (i) The date, time, place, and nature of hearing;
 - (ii) The legal authority under which the hearing is to be held;
 - (iii) The particular sections of the

statutes, rules, and procedures involved;

- (iv) An explicit statement in plain language of the issues involved and the facts alleged by the authorized agent or law enforcement officer issuing the citation in support thereof, provided that if the president's designee or the hearing officer is unable to state the issues and facts at the time the notice is served, the initial notice may be limited to a statement of the issues involved, and thereafter upon application a bill of particulars shall be furnished; and
- (v) The fact that any party may retain counsel if so desired.

The written notice of hearing shall be provided to all parties to the proceeding at least fifteen (15) days before the hearing;

- (C) Opportunity shall be afforded each party to present evidence and argument on all issues involved. Every party shall have the right to conduct a cross-examination as may be required for a full and true disclosure of the facts and shall have the right to submit rebuttal evidence;
- (D) Any procedure in a contested case may be modified or waived by stipulation of the parties and informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default;
- (E) For the purpose of preserving a record of the proceedings before the president's designee or the hearing officer, the proceedings shall be

either tape-recorded or recorded verbatim by a certified shorthand reporter. It shall not be necessary to transcribe the record unless requested for purposes of rehearing or court review;

- (F) Within a reasonable time following the closure of the hearing on the contested case, the president's designee or the hearing officer shall prepare findings of fact and conclusions of law, and a decision on the case. The proposed findings, conclusions, and decision shall be served on the parties. A party may file written exceptions and present written or oral arguments to the president's designee or the hearing officer. Any exceptions and written arguments shall be filed not more than fifteen (15) days from the date of the proposed decision with the president's designee;
- (G) In rendering the final decision, the president's designee shall consider the whole record of the contested case or the portions thereof as may be cited by the parties. No matters outside the record shall be considered in making a decision, except as provided in this chapter;
- (H) Every decision and order adverse to a party to the proceeding shall be in writing or stated in the record and shall be accompanied by separate findings of fact and conclusions of law. Parties to the proceedings shall be notified by delivering or mailing a certified copy of the decision and order and accompanying findings and conclusions within a reasonable time to each party;

- (I) If a party does not appear at the date, time, and place appointed for the hearing, either before the president's designee or the hearing officer, the party may be denied another hearing on the matter; and
- (J) Judicial appeals from the final decision of the president's designee in a contested case under this chapter shall be in accordance with chapter 91, Hawai'i Revised Statutes.

(c) The public may obtain information or make submittals or requests relative to this chapter by addressing a letter to the president's designee.

(d) Petitions for declaratory rulings as to the applicability of any statutory provision concerning this chapter shall be in the form of a letter to the president's designee stating the interest of the petitioner in the matter, the reasons for requesting the ruling and the specific nature of the ruling being requested. The president's designee shall render in writing a declaratory ruling or other order disposing of the matter. [Eff _____] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903)

§20-26-76 Enforcement and stay of final decision. (a) Unless otherwise stated in a final decision, payment and performance of all administrative fines, other monetary assessments, and non-monetary sanctions shall be due and enforceable within thirty (30) calendar days of the service of the final decision imposing such fines and sanctions.

(b) Upon request filed by a party, the president's designee may stay enforcement of a final decision pending a judicial review of the case. The decision as to the request for stay is final.

(c) The university may take any legal action to collect any overdue monetary sanctions or enforce any non-monetary sanctions imposed in an administrative

proceeding under this chapter. [Eff]
(Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-
105, 304A-1903, 304A-1904, 304A-1005)

§20-26-77 Severability. These rules are declared to be severable and if any portion or the application thereof to any person or property is held invalid for any reason, the validity of the remainder of these rules or the application of the remainder to other persons or property shall not be affected."
[Eff] (Auth: HRS §304A-1903) (Imp: HRS §§304A-103, 304A-105, 304A-1903, 304A-1904, 304A-1005)

2. The adoption of chapter 20-26, Hawai'i 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 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.

JAN NAOE SULLIVAN
Chairperson, Board of Regents
University of Hawaii

APPROVED AS TO FORM:

University of Hawaii

Carrie K. S. Okinaga, Esq.
Vice President for Legal Affairs and
University General Counsel

Department of the Attorney General

Diane Erickson
Deputy Attorney General

DUPLICATE 10/13/19

IV. Old Business

A. Discussion and Action on the Small Business Statement After Public Hearing and the Proposed Amendments to Title 12 Subtitle 8 Proposed Amendments to HAR Title 12, Subtitle 8, Hawaii Occupational Safety and Health Division, promulgated by DLIR, as follows:

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

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

Department or Agency:

Administrative Rule Title and Chapter:

Chapter Name:

Contact Person/Title:

Phone Number:

E-mail Address:

Date:

- 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.)

* * *

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

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

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

1. A description of how opinions or comments from affected small businesses were solicited.
2. A summary of the public's and small businesses' comments.
3. A summary of the agency's response to those comments.
4. The number of persons who:
 - (i) Attended the public hearing:
 - (ii) Testified at the hearing:
 - (iii) Submitted written comments:
5. Was a request made at the hearing to change the proposed rule in a way that affected small business?
 - (i) If "Yes" was the change adopted? **Yes** **No**
 - (ii) If No, please explain the reason the change was not adopted and the problems or negative result of the change.

* * *

Small Business Regulatory Review Board / DBEDT

Phone: (808) 586-2594 / Email: DBEDT.sbrrb.info@hawaii.gov

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

Public Hearing Questions and HIOSH's Response to Proposed Amendments to HIOSH Standards

May 18, 2018, 1:00 pm

Norman Ahu, HIOSH Administrator:

Okay, it is 1 o'clock. We are opening the public hearing for our adoption of the mandated federal standards. They have been published in the newspaper Friday, April the thirteenth. Which summarizes all the standards that were adopted. Interested persons may present at the public hearing a written or oral views, arguments and objections concerning the proposals and we will take notes. So, please state your name, title, company, and I thought it was supposed to if you were pro or against. So the floor is now open, for you guys in the back.

Shannon Alivado, GCA of Hawaii Director of Government Relations:

Thank you. Thank you so much. I'll follow instruction. My name is Shannon Alivado on behalf of the General Contractors Association (GCA). First of all we wanted to thank the department, particularly Director Ahu, for accommodating some of the concerns we brought up earlier during the process with respect to these administrative rules. GCA would like to continue to work with the department as you implement these and also towards solutions in actual enforcement and implementation. And with that, I did have a concern that came to our attention late. And I am not certain where in the proposed rules it is because I actually was trying to search for it so maybe a follow up is probably more efficient. But there was a concern regarding a requirement that would require employers to provide five years of OSHA 300 logs within four hours upon request. I don't know if the four hours is actually twenty-four hours or if I am in error but I just wanted to raise that as a concern and mainly it's because of the revocation of the Volks rule that they don't find that this may be appropriate for the HIOSH rules. So, if there is a conflict that may exist we ask that the department look at that and correct it as appropriate if necessary. And at that time that is all we have. I have submitted written testimony as well.

Norman Ahu, HIOSH Administrator:

Thank you. Anyone else? Thank you, Shannon.

Nicole Bennett, HIOSH Program Specialist:

Before you leave, since there is no one here. In terms of the Volks rule, that standard was already passed last year. The five-year, four-hour requirement was already passed last in the one we did last year 2017, the one with Doreen. So, it is not an amendment, it's already in there. The Feds are aware of both decisions with the Volks rules in regards to that six month (statute of limitations) issues but it's more "do we have the jurisdiction to ask for something in the 6 months' time frame". But HIOSH doesn't have that six-month limitation. And because we don't have it clearly written out that it (statute of limitations) has to be in the past 6 months, then it's not quite applicable to us. I had questions at the stakeholders meeting, so I brought that up when I was talking with the Feds last week and because we don't have that same six-month time statute that they do, then it doesn't quite apply. But they are still looking into it.

Shannon Alivado, GCA of Hawaii Director of Government Relations:

Okay. If I needed it, can I get that in writing so that I can reference it to members if they ask?

Nicole Bennett, HIOSH Program Specialist:

Yeah. I do think it is in one of the questions but I already have your email so I can email it to you.

Shannon Alivado, GCA of Hawaii Director of Government Relations:
Yeah, so I can just let them know.

Norman Ahu, HIOSH Administrator:
Thank you, Shannon. Is there anyone else? Okay, we declare the hearing closed and will still accept written testimony.

Hearing Ended at approximately 1:15pm.

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



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

May 18, 2018

Delivered via Hand-Delivery

HIOSH

Department of Labor and Industrial Relations, State of Hawaii
830 Punchbowl Street, Room 423
Honolulu, Hawaii 96813

**SUBJECT: COMMENTS REGARDING PUBLIC HEARING ON AMENDMENTS TO HAR
TITLE 12, SUBTITLE 8, HIOSH DIVISION, PROMULGATED BY DLIR**
Public Hearing Date: Friday, October 18, 2018, 1:00 p.m.

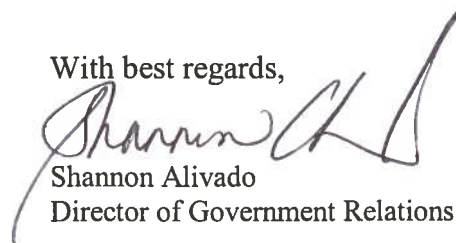
Dear HIOSH,

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

There is an understanding that the new proposed administrative rules may require that employers are required to provide five years of OSHA 300 logs within four hours upon request. The GCA questions whether this is proper given that the United States Congress revoked the "Volks Rule" whereby OSHA is precluded from citing employers for not maintaining the OSHA 300 logs beyond six months. Therefore, if the proposed HIOSH requirement requires five years of OSHA 300 logs be produced upon request, we point out that this would be in conflict with the existing requirements. Thus, we request that provision be corrected or deleted. On April 3, 2017, President Trump has signed into law House Joint Resolution 83, which repeals the "Volks Rule," an Occupational Safety and Health Administration (OSHA) rule which imposed on employers continuing obligations to make and maintain accurate records of recordable injuries and illnesses. The rule previously became effective on January 18, 2017.

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

With best regards,



Shannon Alivado
Director of Government Relations

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

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

Hawaii Administrative Rules

(Date of Adoption)

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

"HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 8

HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION

PART 1

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

CHAPTER 50

GENERAL PROVISIONS AND DEFINITIONS

§12-50-1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Shall" means mandatory.

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

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

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

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

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

§12-50-5

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

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

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

§12-50-7 REPEALED. [R 3/29/99]

§12-50-8 REPEALED. [R 3/29/99]

§12-50-9 REPEALED. [R 2/13/12]

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

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

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

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

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

"HAWAII ADMINISTRATIVE RULES"

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 8

HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION

PART 1

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

CHAPTER 52.1

RECORDING AND REPORTING OCCUPATIONAL INJURIES AND
ILLNESSES

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

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

§12-52.1-1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§12-52.1-1

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

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

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

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

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

Non-Mandatory Appendix A to Subpart B-
 Partially Exempt Industries
 March 17, 2017

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

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

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

§12-52.1-2 Incorporation of federal standard.

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

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

"HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 8

HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION

PART 1

GENERAL LEGAL AND ADMINISTRATIVE PROVISIONS
FOR OCCUPATIONAL SAFETY AND HEALTH

CHAPTER 56

PROGRAM FEES AND LIBRARY POLICIES

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

§12-56-1

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

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

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

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

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

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

§12-56-6

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

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

§12-56-6 REPEALED. R 11/2/12

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

"HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 8

HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION

PART 2

GENERAL LEGAL AND ADMINISTRATIVE PROVISIONS
FOR OCCUPATIONAL SAFETY AND HEALTH

CHAPTER 60

GENERAL SAFETY AND HEALTH REQUIREMENTS

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

§12-60-50

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

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

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

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

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

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

~~[Exception+]~~ Exception: Employers with less than ~~[25]~~ ten (10) employees need not comply with subsection (b) (1) ~~[below]~~.

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

(1) Written safety and health program.

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

(B) The program ~~[should]~~ shall at a minimum:

- (i) Set forth policies, procedures, and practices that recognize and protect employees from occupational safety and health hazards.
- (ii) Establish and communicate a clear goal for the safety and health program and the mechanisms ~~[which]~~ that will be utilized in meeting this goal.

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

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

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

correction of unsafe performance, and, if necessary, through a clearly defined and communicated disciplinary system.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Specific written consent" means a written authorization containing:

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

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

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

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

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

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

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

(2)

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

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

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

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

¹When the daily noise exposure is composed of two or more periods of noise exposure of different levels, their combined effect shall be considered, rather than the individual effect of each. If the sum of the following fractions: $C1/T1+C2/T2+Cn/Tn$ exceeds unity, then ~~[7]~~ the mixed exposure shall be considered to exceed the limit value. Cn indicates the total time of exposure at a specific noise level, ~~[an]~~ a Tn indicates the total time of exposure permitted at that level. Exposure to impulsive or impact noise shall not exceed 140 dB peak sound pressure level. ~~["]~~

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

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

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

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

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

material or harmful physical agents on the health of employees.

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

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

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

successive exposures at the PEL-
STEL.

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

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

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

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

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

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

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

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

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

Limits for Air Contaminants¹ (Continued)

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

Limits for Air Contaminants¹ (Continued)

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

Limits for Air Contaminants¹ (Continued)

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

Limits for Air Contaminants¹ (Continued)

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

Limits for Air Contaminants¹ (Continued)

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

Limits for Air Contaminants¹ (Continued)

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

Limits for Air Contaminants¹ (Continued)

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

Limits for Air Contaminants¹ (Continued)

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

Limits for Air Contaminants¹ (Continued)

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

Limits for Air Contaminants¹ (Continued)

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

Limits for Air Contaminants¹ (Continued)

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

Limits for Air Contaminants¹ (Continued)

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

Limits for Air Contaminants¹ (Continued)

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

Limits for Air Contaminants¹ (Continued)

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

Limits for Air Contaminants¹ (Continued)

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

Limits for Air Contaminants¹ (Continued)

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

Limits for Air Contaminants¹ (Continued)

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

Limits for Air Contaminants¹ (Continued)

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

Limits for Air Contaminants¹ (Continued)

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

Limits for Air Contaminants¹ (Continued)

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

Limits for Air Contaminants¹ (Continued)

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

Limits for Air Contaminants¹ (Continued)

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

Limits for Air Contaminants¹ (Continued)

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

Footnotes to Exhibit A:

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

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

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

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

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

- c. Ppm are in parts of vapor or gas per million parts of contaminated air by volume at 25°C and 760 torr.
- d. Mg/m³ are approximate milligrams of substance per cubic meter of air.
- e. The final benzene standard in section 1910.1028 applies to all occupational exposures to benzene except some sub segments of industry where exposures are consistently under the action level (e.g., distribution and sale of fuels, sealed containers and pipelines, coke production, oil and gas drilling and production, natural gas processing, and the percentage exclusion for liquid mixtures); for the excepted sub segments, the benzene limits in Exhibit B apply:
- f. Coal tar pitch volatiles mean the fused polycyclic hydrocarbons that volatilize from the distillation residues of coal, petroleum, (excluding asphalt, CAS 8052-42-4 and CAS 64742-93-4), wood, and other organic matter.
- g. Cotton dust refers to lint-free dust as measured by the vertical elutriator, cotton-dust sampler described in the Transactions of the National Conference on Dust, p. 33 by J.R. Lynch, (May 2, 1970). The PEL-TWA in the exhibit applies to respirable dust as measured by a vertical elutriator cotton dust sampler or equivalent instrument. The time-weighted average applies to the cotton waste processing operations of waste cycling (sorting, blending, cleaning, and willowing) and garreting. See also section 1910.1043.
- h. Fibrous glass dust means particles <7µm in diameter.
- i. Oil mist as sampled by a method that does not collect vapor.
- j. Compliance with the Subtilisins PEL-TWA is assessed by sampling with a high volume sampler (600-800 liters per minute) for at least 60 minutes.
- k. For control of tetraethyl lead and tetramethyl lead in general room air, biologic monitoring is essential for personnel monitoring.
- l. Most Occupational exposures to EGDN actually involve mixtures of EGDN and nitroglycerin (NG). This EGDN:NG mixture has a PEL-STEL of 0.1 mg/m³.
- m. See Exhibit B from the exposure limits for any operations or sectors where the exposure limits in 29 C.F.R. §1910.1026 are stayed or otherwise not in effect.
- n. If the exposure limit in 29 C.F.R. §1910.1026 is stayed or is otherwise not in effect, the exposure limit is ceiling of 0.1 mg/m³.

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

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

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

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

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

"HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 8

HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION

PART 3

CONSTRUCTION STANDARDS

CHAPTER 110

GENERAL SAFETY AND HEALTH REQUIREMENTS

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

§12-110-1

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

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

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

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

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

protect the employees and the affected general public as well.

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

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

~~[Exception:]~~ Exception: Employers with less than ~~[25]~~ ten (10) employees and not doing contract work with the State ~~[of Hawaii]~~ worth in excess of \$100,000 need not comply with subsection (b) (1) ~~[below]~~.

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

- (1) Written safety and health program.

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

- (B) The program shall at a minimum:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Exception: Projects employing less than three (3) persons, need not comply with subsection (c).

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

- (1) The date and start time of the inspection;
- (2) The name of the employee conducting the inspection;

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- (3) The scope (project areas) of the inspection, including the names of all contractors and subcontractors covered by the scope of the inspection;
- (4) A brief description of all potential and actual hazards noted during the inspection;
- (5) Name and title of the person responsible for correcting the identified hazards noted during the inspection;
- (6) Information regarding how the hazard was eliminated, corrected, or abated including the inspector's recommendations for preventing the recurrence of the hazards.

(d) Warning signs shall be posted prohibiting unauthorized persons from operating potentially hazardous machines or equipment. [Eff 7/12/82; am 9/27/84; am 11/2/12; am and comp]
(Auth: HRS §396-4) (Imp: HRS §396-4)

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

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

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

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

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

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

§12-110-50 Standards. (a) Incorporation of federal standard. Title 29, Part 1926 of the Code of

Federal Regulations, [2012] 2017 Edition published as of July 1, [2012,] 2017, by the U.S. Government Printing Office, U.S. Superintendent of Documents, Washington, DC 20402-0001, is made a part of this chapter except as provided in [subsection] subsections (b) through (e).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

surface. For the purposes of this subpart, skylights and smoke domes that do not meet the strength requirements of [~~section 1926.754(e)(3)~~] 29 C.F.R. §1926.754(e)(3) shall be regarded as openings.

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

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

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

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

Commencement of steel erection. A steel erection contractor shall not erect steel unless it has received written notification and documentation supporting the determination that the concrete in the footings, piers, and walls or the mortar in the masonry piers and walls has attained,

~~[on the basis of]~~ based on an appropriate ASTM standard test method of field-cured samples, either ~~[75]~~ seventy-five (75) percent of the intended minimum compressive design strength or sufficient strength to support the loads imposed during steel erection.

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

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

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

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

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

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

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

- (J) Ground conditions around the hoisting equipment for proper support, including ground settling under and around outriggers, ground water accumulation, or similar conditions;
 - (K) The hoisting equipment for level position; and
 - (L) The hoisting equipment for level position after each move and setup.
- (10) [~~29 CFR 1926.753(e)(1)(iv)~~] 29 C.F.R. §1926.753(c)(1)(iv) is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

- (A) The permanent floors shall be installed as the erection of structural members progresses, and there shall be not more than eight stories between the erection floor and the upper-most permanent floor, except where the structural integrity is maintained as a result of

the design and is included in the site-specific erection plan.

- (B) At no time shall there be more than four (4) floors or [~~48~~] forty-eight (48) feet (14.6 m), whichever is less, of unfinished bolting or welding above the foundation or uppermost permanently secured floor, except where the structural integrity is maintained as a result of the design and is included in the site-specific erection plan.
 - (C) A fully planked or decked floor or nets shall be maintained within two stories or [~~30~~] thirty (30) feet (9.1 m), whichever is less, directly under any erection work being performed.
- (16) [~~29 C.F.R. 1926.756(a)(1)~~] 29 C.F.R. §1926.756(a)(1) is amended to read as follows:

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

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

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

in the [~~site-specific~~] site specific erection plan.

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

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

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

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

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

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

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

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

- (22) [~~29 CFR 1926.760] 29 C.F.R. §1926.760~~ is amended to read as follows:

(A) General requirements.

- (i) Each employee including connectors, engaged in a steel erection activity who is on a walking/working surface with an unprotected side or edge [~~10~~] ten (10) feet (3.1 m) or more above a lower level shall be protected

- from fall hazards by guardrail systems, safety net systems, personal fall arrest systems, positioning device systems or fall restraint systems.
- (ii) Perimeter safety cables. On multi-story structures, perimeter safety cables shall be installed at the final interior and exterior perimeters of the floors as soon as the metal decking has been installed. Perimeter safety cables shall meet the criteria for guardrail systems in 29 C.F.R. 1926 Subpart R Appendix G.
 - (iii) Employees performing leading edge work in controlled decking zones shall be protected from fall hazards as provided in subparagraph (B).
- (B) Controlled Decking Zone (CDZ). A controlled decking zone may be established where fall protection systems as described in subparagraph ~~[(A)(1)]~~ (A)(i) have been determined to be infeasible. The burden of proving infeasibility is that of the employer. For each CDZ, the following shall apply:
- (i) Leading edge work is being performed at heights of ~~[10]~~ ten (10) feet (3.1 m) or more and up to ~~[30]~~ thirty (30) feet (9 m) above the next lower level.
 - (ii) The boundaries of a CDZ shall be designated and clearly marked by control lines or the equivalent.
 - (iii) Control lines provide a visible, tangible reference and constant reminder to employees working in a CDZ.
 - (iv) A control line for a CDZ shall be

- erected not less than [~~6~~] six (6) feet (1.8 m) nor more than [~~90~~] ninety (90) feet (27.4 m) from the leading edge.
- (v) A control line for a CDZ shall not be more than [~~90~~] ninety (90) feet (37.4 m) wide.
 - (vi) Control lines shall extend along the entire length on the unprotected or leading edge and are approximately parallel to the unprotected or leading edge.
 - (vii) Control lines consist of ropes, wires, tapes, or equivalent materials, and supporting structures such as guardrail system, wall, stanchion, or other suitable anchorage.
 - (viii) Each line shall have a minimum breaking strength of [~~200~~] two hundred (200) pounds [(90.0 kg)] ninety (90).
 - (ix) Each line shall be rigged and supported in such a way that its lowest point (including sag) is not less than [~~39~~] thirty-nine (39) inches (1.0 m) from the walking/working surface and its highest point is not more than [~~45~~] forty-five (45) inches (1.3 m) from the walking/working surface.
 - (x) A painted line on the walking/working surface is not equivalent to control lines and may not be used to demonstrate, define, or mark the boundary of a CDZ.
 - (xi) A sign or other warning indicator positioned at the entrance to a CDZ is not an equivalent to

- control lines and may not be used in lieu of control lines or its equivalent.
- (xii) Each employee working in a CDZ shall have completed CDZ training in accordance with [~~section 1926.761~~] 29 C.F.R. §1926.761.
 - (xiii) Each employee working in a CDZ shall have completed CDZ training in accordance with [~~section 1926.761~~] 29 C.F.R. §1926.761.
 - (xiv) Unsecured decking in a CDZ shall not exceed 3,000 square feet (914.4 m²).
 - (xv) Safety deck attachments (see definitions) shall be performed in the CDZ from the leading edge back to the control line and shall have at least two attachments for each metal decking panel.
 - (xvi) Final deck attachments and installation of shear connectors shall not be performed in the CDZ.
 - (xvii) A current and accurate list of employees who are authorized to work in the CDZ shall be maintained at the site. Authorized employees shall further be separately identified such that non-authorized access to the CDZ can be immediately noted and promptly addressed. Employees not authorized to work in the CDZ shall not be permitted to enter the CDZ.
- (C) Criteria for fall protection equipment.
- (i) Guardrail systems, safety net systems, personal fall arrest systems, positioning device systems, and their components shall conform to the criteria in 29

C.F.R. §1926.502 (see 29 C.F.R. 1926 Subpart R Appendix G [~~to this chapter~~]).

- (ii) Fall arrest system components shall be used in fall restraint systems and shall conform to the criteria in 29 C.F.R. §1926.502 (see 29 C.F.R. 1926 Subpart R Appendix G [~~to this chapter~~]), except that the anchorages for a fall restraint system shall be capable of supporting at least 3,000 lbs (4.5 kN) per employee attached. Either body belts or body harnesses shall be used in fall restraint systems.
 - (iii) Perimeter safety cables shall meet the criteria for guardrail systems in 29 C.F.R. §1926.502 (see 29 C.F.R. 1926 Subpart R Appendix G [~~to this chapter~~]).
- (D) Custody of fall protection. Fall protection and fall protection components provided by the steel erector shall not remain in the area where steel erection activity has been completed, unless responsibility has been assumed by the controlling contractor or its authorized representative:
- (i) Has directed the steel erector to leave the fall protection in place; and
 - (ii) Has inspected and accepted control and responsibility of the fall protection prior to authorizing persons other than steel erectors to work in the area.
- (23) [~~29 CFR 1926.761~~] 29 C.F.R. §1926.761 is amended to read as follows:

The following provisions are supplemental to the requirements regarding the hazards addressed in this chapter.

- (A) Training personnel. Training required by this section shall be provided by a qualified person(s).
- (B) Fall hazard training. The employer shall train each employee exposed to a fall hazard in accordance with the requirements of this section. The employer shall institute a training program and ensure employee participation in the program.
 - (i) The recognition and identification of fall hazards in the work area;
 - (ii) The use and operation of the fall protection systems to be used by the employer and in the systems that may be encountered on the jobsite; e.g., guardrail systems (including perimeter safety cable systems), personal fall arrest systems, positioning device systems, fall restraint systems, safety net systems, and other protection to be used;
 - (iii) The correct procedures for erecting, maintaining, disassembling, and inspecting the fall protection systems to be used;
 - (iv) The procedures to be followed to prevent falls to lower levels and through or into holes and openings in walking/working surfaces and walls; and
 - (v) The fall protection requirements of this chapter.
- (C) Falling object or [~~falling/flying~~] falling or flying load hazard training. The employer shall provide a training program for all employees exposed to

falling object [~~and/or~~] or
[~~falling/flying~~] falling or flying load
hazards[~~-~~] or both: The program shall
include training and instruction in the
following areas:

- (i) How to recognize falling/flying objects hazards in the work area;
 - (ii) The consequences, including the likely injuries, from being hit or struck by falling/flying objects or loads;
 - (iii) What means, methods, [~~and/or~~] or protective systems or combination will be used to provide protection from falling/flying objects or loads;
 - (iv) The employees' specific responsibilities with respect to identifying hazards, identifying when protective systems have been compromised, and what actions to take to assist in their own and other employees' safety.
- (D) Reliance on a third party provider of training. The employer may not rely on a third party or former employer of current employees unless the employer has determined through testing and evaluation of employees that the past training has met the requirements of this chapter. Generic training must be supplemented with site-specific information and an opportunity to practice using the equipment that is specific to the jobsite.
- (E) Retraining. When the employer has reason to believe that any affected employee has already been trained does not have the understanding and skill required by this chapter, the employer shall retrain or provide [~~re-training~~] retraining or additional training.

Circumstances where retraining or additional training is required include, but ~~is~~ are not limited to, situations where:

- (i) Changes in the workplace render previous training obsolete; ~~or~~
- (ii) Changes in the types of fall protection systems or equipment to be used render previous training obsolete; or
- (iii) Inadequacies in an affected employees knowledge or use of fall protection systems, hazard controls, or equipment to be used indicate that the employee had not retained the requisite understanding or skill.

(F) Special training programs. In addition to the training required in paragraphs (1) and (2), the employer shall provide special training to employees engaged in the following activities.

- (i) Multiple lift rigging procedure. The employer shall ensure that each employee who performs multiple lift rigging has been provided training in the ~~following areas:~~
 - ~~(a) The nature of the hazards associated with multiple lifts; and~~
 - ~~(b) The proper procedures and equipment to perform multiple lifts required by section 1926.753(e).~~

nature of the hazards associated with multiple lifts, and the proper procedures and equipment to perform multiple lifts required by 29 C.F.R. §1926.753(c).
- (ii) Connector procedures. The

employer shall ensure that each connector has been provided training in the ~~[following areas:~~

- ~~(a) The nature of the hazards associated with connecting; and~~
 - ~~(b) The establishment, access, proper connecting techniques and work practices required by sections 1926.756(c) and 12-110-50(p).]~~
- nature of hazards associated with connecting as well as the establishment, access, proper connecting techniques, and work practices required by 29 C.F.R. §1926.756(c) and 12-110-50(p).

(iii)

Controlled Decking Zone Procedures. Where CDZs are being used, the employer shall assure that each employee has been provided training in the ~~[following areas:~~

- ~~(a) The nature of the hazards associated with work within a controlled decking zone; and~~
 - ~~(b) The establishment, access, proper installation techniques, and work practices required by sections 1926.760 and 1926.754(e).]~~
- nature of the hazards of working within a controlled decking zone as well as the establishment, access, proper installation techniques, and work practices required by 29 C.F.R. §1926.754(c) and §1926.760.

(G) Certification of training.

- [1] (i) The employer shall certify that each affected employee has been trained or evaluated and determined to be trained as required by this section.

[2] (ii) The written certification record shall contain the name or other unique identity of the employee trained, the date(s) of the training or the evaluation of prior training, and the signature of the person who conducted the training or the signature of the employer.

[3] (iii) The latest training certification shall be maintained and made readily available to employees, employee representatives and the director. [4]

- (24) [~~29 CFR 1926,~~] 29 C.F.R. §1926, Subpart R Appendix A, subsection (a) is amended to read as follows:

[~~A~~] General. This appendix serves as a guideline to assist employers who elect to develop a [~~site specific~~] site specific erection plan in accordance with [~~section 1926.752(e)~~] 29 C.F.R. §1926.752(c) with alternate means and methods to provide employee protection in accordance with [~~CFR sections 1926.752(e), 1926.753(e)(5), 1926.754(b)(1)&(2), 1926.756(a)(1), 1926.756(b), 12-110-50(b)(16), 1926.757(a)(2), 1926.757(a)(4), and 1926.757(e)(4)~~] 29 C.F.R. §1926.752(e), §1926.753(c)(5), §1926.754(b)(1)&(2), §1926.756(a)(1), §1926.756(b), §1926.757(a)(2), §1926.757(a)(4), §1926.757(e)(4) and 12-110-50(b)(16).

- (25) [~~29 CFR 1926.1427(a)(4)~~] 29 C.F.R. §1926.1427(a)(4) is amended to read as follows:

[~~A~~] Whenever operator qualification or certification is required under 29 C.F.R. §1926.1427, the employer must provide the

qualification or certification at no cost to operators who are employed by the employer on November 8, 2011.

- (26) [~~29 CFR 1926.1427~~] 29 C.F.R. §1926.1427 is amended by the deletion of paragraphs (b), (c), and (d). Operators in Hawaii are required to be certified under the requirements of chapter 12-48, Hawaii Administrative Rules.
- (27) [~~29 CFR 1926.1427(f)~~] 29 C.F.R. §1926.1427(f) is amended to read as follows with [~~29 CFR 1926.1427(f)(4)(i), (ii), and (iii)~~] 29 C.F.R. §1926.1427(f)(4)(i), (ii), and (iii) deleted:

[~~(A)~~] Continuous monitoring. The operator-in-training must be monitored by the operator's trainer at all times.

- (28) [~~29 CFR 1926.1427(k)(1)~~] 29 C.F.R. §1926.1427(k)(1) is amended to read as follows:

[~~(A)~~] The provisions of this section are applicable November 8, 2011. [~~operators~~] Operators who were not required to be certified under [~~Chapter 45~~] chapter 48, Hawaii Administrative Rules, as of May 18, 2011 must comply with [~~paragraph~~] subsection (f) beginning November 9, 2012.

- (29) [~~29 CFR 1926.1427(k)~~] 29 C.F.R. §1926.1427(k) is amended by the deletion of subparagraph (k)(2).
- (30) [~~29 CFR 1926.1430 (c)(2)~~] 29 C.F.R. §1926.1430 (c)(2) is amended to read as follows:

[~~(A)~~] Transitional Period. During the [~~one-year phase-in~~] one year phase in period for operator certification or qualification, as provided in 29 C.F.R. §1926.1427(k), employers must train each operator which has not yet been certified or qualified in the

§12-110-50

areas addressed in 29 C.F.R. §1926.1427(j)."
[Eff 2/13/12; am 11/2/12; am and
comp) (Auth HRS §396-4)
(Imp: HRS §396-4)

Historical Note: Section §12-110-50 is based
substantially upon Part 3. [Eff 2/26/93, am 11/5/93,
am 7/25/94, am 8/10/95, am 1/26/96, am 9/21/96, am
11/16/96, am 2/8/97, am 10/23/97, am 7/6/98, am
3/29/99, am 12/29/00, am 1/10/03, am 5/21/04, am
5/5/05, am 9/1/05, am 3/31/06, am 12/21/06, am
4/19/07, am 8/26/07, am 5/2/08, am 7/27/09; R 2/13/12]

6. Chapter 12-170, Hawaii Administrative Rules, entitled "Shipyards", is amended and compiled to read as follows:

"HAWAII ADMINSTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 8

HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION

PART 5

OCCUPATIONAL SAFETY AND HEALTH STANDARDS
FOR SHIPYARD EMPLOYMENT

CHAPTER 170

SHIPYARDS

§12-170-1 Incorporation ~~by reference~~ [of federal standard]

§12-170-1 Incorporation of federal standard. Title 29, Part 1915 of the Code of Federal Regulations, [2012] 2017 Edition published as of July 1, [2012,] 2017, by the U.S. Government Printing Office, U.S. Superintendent of Documents, Washington, DC 20402-0001, is made a part of this chapter." [Eff 3/23/01; am 1/10/03; am 9/01/05; am 3/31/06; am 12/21/06; am 4/19/07; am 8/26/07; am 5/02/08; am 7/27/09; am 2/13/12; am 11/2/12; am and Comp] (Auth: HRS §396-4) (Imp: HRS §396-4)

7. Chapter 12-180, Hawaii Administrative Rules, entitled "Marine Terminals", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 8

HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION

PART 6

MARINE TERMINALS

CHAPTER 180

MARINE TERMINALS

§12-180-1 Incorporation ~~by reference~~ [of federal standard]

§12-180-1 Incorporation of federal standard.
Title 29, Part 1917 of the Code of Federal

Regulations, [~~2012~~] 2017 Edition published as of July 1, [~~2012,~~] 2017, by the U.S. Government Printing Office, U.S. Superintendent of Documents, Washington, DC 20402-0001, is made a part of this chapter." [Eff 3/23/01; am 12/21/06; am 5/02/08; am 7/27/09; am 2/13/12; am 11/2/12; am and comp]
(Auth: HRS §396-4) (Imp: HRS §396-4)

8. Chapter 12-190, Hawaii Administrative Rules, entitled "Safety and Health Regulations for Longshoring", is amended and compiled to read as follows:

"HAWAII ADMINSTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 8

HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION

PART 7

SAFETY AND HEALTH REGULATIONS FOR LONGSHORING

CHAPTER 190

LONGSHORING

§12-190-1 Incorporation ~~by reference~~ [of federal standard]

§12-190-1 Incorporation of federal standard.
Title 29, Part 1917 of the Code of Federal Regulations, [~~2012~~] 2017 Edition published as of July

§12-190-1

1, [~~2012,~~] 2017, by the U.S. Government Printing Office, U.S. Superintendent of Documents, Washington, DC 20402-0001, is made a part of this chapter." [Eff 3/23/01; am 12/21/06; am 5/02/08; am 7/27/09; am 2/13/12; am 11/2/12; am and comp]
(Auth: HRS §396-4) (Imp: HRS §396-4)

9. Chapter 12-208, Hawaii Administrative Rules, entitled "Other Safety and Health Standards", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 8

HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION

PART 8

OTHER SAFETY AND HEALTH STANDARDS

CHAPTER 208

OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR AGRICULTURE

§12-208-1 Incorporation of federal standard

Historical note: Chapter 12-208 is based substantially upon section 12-67.2-1 [Eff 12/29/01; R 2/13/12], section 12-73.1-1 [Eff 12/29/01; am 4/29/02; am 12/21/06; am 4/19/07; R 2/13/12], and section 12-80.1-1 [Eff 12/29/01; R 2/13/12]

§12-208-1

§12-208-1 Incorporation of federal standard.

Title 29, Part 1928 of the Code of Federal Regulations, [~~2011~~] 2017 Edition published as of July 1, [~~2011,~~] 2017, by the U.S. Government Printing Office, U.S. Superintendent of Documents, Washington, DC 20402-0001, is made a part of this chapter." [Eff 2/13/12; am and comp] (Auth: HRS §396-4) (Imp: HRS §396-4)

10. Material, except source notes, to be repealed is bracketed and stricken. New material is underscored.

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

12. These amendments to and compilation of chapters 12-50, 12-52.1, 12-56, 12-60, 12-110, 12-170, 12-180, and 12-190, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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

LEONARD HOSHIJO
Director of Labor and
Industrial Relations

APPROVED AS TO FORM:

Deputy Attorney General

IV. Old Business

- B. Discussion and Action on HAR Title 19, Chapter 20.1, **Commercial Services at Public Airports**, promulgated by DOT

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



Department or Agency: Department of Transportation, Airports Division
Administrative Rule Title and Chapter: 91-20.1, HAR
Chapter Name: Commercial Services at Public Airports
Contact Person/Title: Ross H. Higashi, Deputy Director of Transportation (Airports)
Phone Number: (808) 838-8602
E-mail Address: ross.higashi@hawaii.gov Date: May 21, 2018

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

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

- I. Rule Description: New Repeal Amendment Compilation
- II. Will the proposed rule(s) affect small business? Yes No (If No, 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.

All existing and prospective prearranged ground transportation permit holders that meet the definition of small businesses, including taxis, buses, limousines, and stretch outs, as well as drivers contracted with transportation network companies, will be required to comply with the proposed rule amendments. The proposed amendments allow for additional service providers to operate at public airports and for greater flexibility in operations for all service providers.

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 are no increases in direct costs expected resulting from adoption of the proposed rule amendments. However, the introduction of additional service providers to the public airports will likely increase competition among service providers which may impact revenue to each company.

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.

The proposed rule creates a new category of service provider and establishes a fee for that category. The fee is equal to the fee assessed to taxis, buses, limousines, and stretch outs.

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

The new fee for the new category is a \$100 annual permit fee plus 7% of gross receipts earned at the Daniel K. Inouye International Airport in Honolulu and 3% of gross receipts earned at all other airports.

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

The proposed rule creates a new category of service provider and establishes a fee for that category.

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

The new fee is based on and equal to the fee assessed to taxis, buses, limousines, and stretch outs.

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 DOT Airports Division does generates approximately \$1.4 million, or 0.57% of its operating revenue from all its ground transportation service providers. There are few costs associated with implementing the proposed rule amendments and the Airports Division will realize additional revenue from the additional operators at the public airports. The fiscal impact is positive, but nominal. However, the fiscal impact is not the driving factor for the rule change.

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 DOT considered testimony and input provided by several existing service providers to re-draft the proposed rule language to ensure the rules are applied equitably to all providers, with the small businesses in mind. The re-draft increases options for greater flexibility in operations as a mitigating technique.

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

The proposed rule amendment are not considered restrictive. There is broad support for the proposed rule amendment from drivers contracted with transportation network companies, all of whom are independent contractors and small businesses.

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 proposed rule amendment actually allows for greater flexibility for all prearranged ground transportation permit holders, provided that other criteria and conditions are met. For example, companies will have the option of using its own logo or trade dress as an identifier instead of the DOT-issued decal and transponder if the company can provide data on its business operations on the airport premises.

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

At the recommendation of the SBRRB, the DOT held a consultation meeting on May 10 with representatives from existing small businesses in order to better understand how the proposed rule amendments must ensure fairness and a level playing field for all, and how to eliminate double-standards in the permitting process with regard to the use of company logos and trade dress (instead of DOT-issued decals and transponders) and consistent insurance requirements.

- 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.

Small business recommended changes regarding use of company logos and trade dress (instead of DOT-issued decals and transponders) and consistent insurance requirements; both were incorporated into the re-draft of the proposed rule amendments.

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.

No. The proposed rule amendments DO NOT include provisions that are more stringent than comparable 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

This Statement may be found on the
SBRRB Website at:

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

Amendment and Compilation of Chapter 19-20.1
Hawaii Administrative Rules

_____, 2018

1. Chapter 19-20.1, Hawaii Administrative Rules, entitled "Commercial Services at Public Airport", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 19

DEPARTMENT OF TRANSPORTATION

SUBTITLE 2

AIRPORTS DIVISION

CHAPTER 20.1

COMMERCIAL SERVICES AT PUBLIC AIRPORT

Subchapter 1 General Provisions

\$19-20.1-1	Applicability
\$19-20.1-2	Definitions
\$19-20.1-3	Permit or authorization required
\$19-20.1-4	Payment of fees
\$19-20.1-5	Records; audit of records; reports
\$19-20.1-6	Insurance
\$19-20.1-7	Entry to air operations area
\$19-20.1-8	Airport activity
\$19-20.1-9	Revocation of permit; termination
\$19-20.1-10	Subordination to sponsor's assurance agreement
\$19-20.1-11	Indemnification and hold harmless
\$19-20.1-12	Severability
\$19-20.1-13	Enforcement

\$19-20.1-14 Penalty

Subchapter 2 Aircraft Ground Handling

\$19-20.1-15 Scope
\$19-20.1-16 Definitions
\$19-20.1-17 Fee
\$19-20.1-18 Exemption
\$19-20.1-19 Statement of contracted services

Subchapter 3 Baggage Pickup and Delivery

\$19-20.1-20 Scope
\$19-20.1-21 Definitions
\$19-20.1-22 Fees
\$19-20.1-23 Restrictions

Subchapter 4 Commercial Photography

\$19-20.1-24 Scope
\$19-20.1-25 Definition
\$19-20.1-26 Fees
\$19-20.1-27 Soliciting prohibited
\$19-20.1-28 News media exempt

Subchapter 5 Greeting Services for Hire

\$19-20.1-29 Scope
\$19-20.1-30 Definition
\$19-20.1-31 Fees
\$19-20.1-32 Soliciting prohibited

Subchapter 6 In-flight Catering

\$19-20.1-33 Scope
\$19-20.1-34 Definition
\$19-20.1-35 Fees

Subchapter 7 Merchandise Delivery

\$19-20.1-36	Scope
\$19-20.1-37	Definitions
\$19-20.1-38	Fees
\$19-20.1-39	Monthly delivery report
\$19-20.1-40	Controls
\$19-20.1-41	Designated areas
\$19-20.1-42	Identification of merchandise
\$19-20.1-43	Safety and security
\$19-20.1-44	Unauthorized storage

Subchapter 8 Porter Services

\$19-20.1-45	Scope
\$19-20.1-46	Definitions
\$19-20.1-47	Requirements to obtain permit
\$19-20.1-48	Fees
\$19-20.1-49	Unauthorized storage
\$19-20.1-50	Motorized passenger carts
\$19-20.1-51	Soliciting prohibited
\$19-20.1-52	Statement of contracted services
\$19-20.1-53	Airline lessees

Subchapter 9 Prearranged Ground Transportation

\$19-20.1-54	Scope
\$19-20.1-55	Definitions
\$19-20.1-56	Fees
\$19-20.1-57	Exemptions
\$19-20.1-58	Taxi services
\$19-20.1-59	Signs
\$19-20.1-60	Restrictions
\$19-20.1-61	Records of off-airport rent-a-car permittees
\$19-20.1-62	Vehicle identification and tracking

SUBCHAPTER 1

GENERAL PROVISIONS

§19-20.1-1 Applicability. This chapter shall apply to the following types of commercial services permitted at or in public airports:

- (1) Aircraft ground handling;
- (2) Baggage pickup and delivery;
- (3) Commercial photography;
- (4) Greeting services for hire;
- (5) In-flight catering;
- (6) Merchandise delivery;
- (7) Porter services; and
- (8) Prearranged ground transportation.

[Eff 5/4/02; comp] (Auth: HRS
§261-12) (Imp: HRS §261-7)

§19-20.1-2 Definitions. Unless the context clearly indicates otherwise, as used in this chapter:

"Aircraft" means airplanes, airships, dirigibles, helicopters, gliders, amphibians, seaplanes and any other contrivance now or hereafter used for the navigation of or flight in air space.

"Airline lessee" means any aircraft operator that has entered into a lease with the department for the use of land or facilities at a public airport.

"Air operations area" means any portion of a public airport, from which access by the public is prohibited by fences or appropriate signs, and which is not leased or demised to anyone for exclusive use and includes runways, taxiways, all ramps, cargo ramps and apron areas, aircraft parking and storage areas, fuel storage areas; maintenance areas, and any other area of a public airport used or intended to be used for landing, takeoff, or surface maneuvering of aircraft or used for embarkation or debarkation of passengers.

"Department" means the department of transportation of the State.

"Director" means the director of the department of transportation or his duly authorized representative.

"Gross receipts" includes all moneys paid or payable to the person providing one of the commercial services, specified in section 19-20.1-1, at a public airport, regardless of whether the order, reservation or payment for the commercial service is made within or without the public airport. The term "gross receipts" excludes any general excise taxes upon a consumer or tips collected by the person providing the commercial service at a public airport. (For prearranged ground transportation services, the term "gross receipts" also excludes public service company taxes, commissions to travel agents, revenues from arrival sightseeing [~~en route~~] en route to the hotel in excess of two hours or its equivalent, and receipts reportable under other commercial service permits, provided all such exclusions are segregated and identified in the accounting process of the [person] permittee providing prearranged ground transportation services at a public airport.)

"Passenger" means any person who arrives or departs from a public airport aboard an aircraft except for persons comprising the flight crew of the aircraft.

"Permittee" means any person authorized to provide or facilitate any of the commercial services, specified in section 19-20.1-1, in or at a public airport under a permit or other written authorization from the director.

"Person" means any individual, firm, partnership, corporation, trust, association, company, joint venture, or any other legal entity [~~including any assignee, receiver, trustee, employee, or similar representative~~] and collectively its respective authorized employees, contractors, assignees, receivers, trustees, agents, or other similar representative.

"Public airport" means that area of land and water under governmental jurisdiction which is used for landing and taking-off of aircraft, any appurtenant areas which are used for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

"Solicit" means to ask, implore, plead for; to endeavor to obtain by asking; to importune; to seek actively though silently; or to try to obtain.

"State" means the State of Hawaii.

[Eff 5/4/02; am and comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-3 Permit or authorization required.

Any person providing or facilitating any of the commercial services specified in section 19-20.1-1 in or at a public airport shall do so only upon receipt of a permit or other written authorization from the director which shall be issued upon payment of the applicable fees. A permit shall not be assigned or otherwise transferred. A permit shall not be issued to applicants who are in arrears in the payment of taxes, fees or other charges to state agencies.

[Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-4 Payment of fees. (a) The required fees for each type of commercial services are specified in the applicable subchapter.

(b) Time of payment.

(1) Annual fees shall be paid annually in advance of providing or facilitating commercial services at or in public airports; and

(2) Monthly fees (including percentage fees) shall be paid on or before the twentieth day of the succeeding month.

(c) Any amount payable which is not paid when due shall bear interest at the rate of one percent per month or the maximum rate of interest allowable by law.

(d) Payments due under this chapter shall be made at or sent to the airports division, department of transportation, [~~Honolulu~~] Daniel K. Inouye International Airport, Honolulu, Hawaii 96819; or any of its offices located at Hilo International Airport, Hilo, Hawaii 96720; Ellison Onizuka Kona International Airport at Keahole, Kailua-Kona, Hawaii 96740; Kahului Airport, Kahului, Hawaii 96732; or Lihue Airport, Lihue, Hawaii 96766. [Eff 5/4/02; comp]
(Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-5 Records; audit of records; reports.

(a) This section shall apply to permittees who are required to pay percentage fees.

(b) The permittee shall maintain up-to-date records and books in accordance with a recognized system of bookkeeping and such records and books shall reflect a segregation of airport revenue in the general ledger, reconciled and supported by original source documents. Such records including original source documents shall be kept for three years in the state following the end of the permit year.

(c) The State shall be granted access, at all reasonable times, to all books, accounts, records and reports including gross income tax reports and data from a digital network or software application service showing daily receipts; and at any reasonable time on twenty- four hours' notice the permittee will permit a complete audit to be made by the State's accountant or by a certified public accountant of the permittee's entire business affairs and records relating to the business conducted at, from or in connection with the airport for the term of the permit. The permittee will cooperate fully in the making of any inspection, examination or audit. Should such audit by the State's accountant or by a certified public accountant

disclose that fees have been underpaid by two percent or more for any period under examination, the State shall, in addition to the remedies provided in subsection (e) of this section, be entitled to reimbursement of the reasonable cost of any such audit in addition to the deficiency. If such audit by the State's accountant or by a certified public accountant shall disclose that fees have been underpaid by five percent or more for the period under examination, the state shall, in addition to the foregoing rights, have the right, upon ten days' notice, to revoke the authorization to conduct the applicable commercial service at public airports.

(d) The permittee shall, on or before the twentieth day of the succeeding month, file with the director, on forms prescribed by the director, a report of its gross receipts for the previous month certified to by a qualified representative of the permittee; the certifier shall state that it has examined the books, records, and other evidence of the gross receipts of the permittee for the period reported and that to its knowledge the statement is true and correct. The statement shall be in such form and contain such details and breakdowns as the State may require. Payment of requisite fees shall be submitted with the report. Any amount payable which shall not have been paid when due shall bear interest at the rate of one percent per month

(e) Without prejudice and in addition to any other remedies the State may have for such default, if the permittee shall fail to promptly furnish any monthly report, the State may have such report prepared by an accountant to be selected by the State, at the expense and on behalf of the permittee. The permittee shall furnish to such accountant all records requested for the purpose of preparing such reports, and the permittee shall pay to the State all expenses incurred by the State in securing such reports. Furthermore, the State may select procedures which would produce a reasonable gross receipts expectation, and assess percentage fees based upon gross receipts so computed. In the event that records have not been

prepared and kept in accordance with this chapter, the State shall, in addition to all other payments required herein, be entitled to demand and receive an additional payment of ten percent of the gross receipt fee for the periods involved. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-6 Insurance. (a) [~~The permittee shall maintain and keep in force adequate insurance as determined by the director to protect both the department and the permittee against claims for public liability and property damage.~~] The permittee shall maintain and keep in force adequate insurance as determined by the applicable state or county insurance law, or as otherwise determined by the director at all times when a permittee is at a public airport in connection with providing a commercial service or actually providing or facilitating a commercial service. The insurance shall serve to protect both the department and the permittee against claims for public liability and property damage. The current insurance requirements shall be posted at each Airports Division district office. The following types of insurance are required, as applicable:

- (1) Automobile liability insurance. To provide coverage against all losses arising out of the person's operation of the registered vehicles, including motorized passenger carts, on airport premises and resulting in injury to persons or damage to property. (Commercial photography and greeting services for hire permittees are exempt from this requirement.)
- (2) Comprehensive general liability policy; owners, landlords and tenants or manufacturers and contractors liability policy. To provide coverage against claims arising out of the person's operation on

airport premises resulting in injury to persons or damage to property.

(b) The permittee shall provide the department with a certificate of insurance naming the permittee as the insured and the department as additional insured to the extent of liability arising out of the named insured's operations at the public airport with a [~~thirty day~~] thirty-day advance notice by the insurer to the department of material changes in coverage or cancellation. Upon demand by the department, the permittee or any person applying for a permit shall produce the insurance policy for inspection. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-7 Entry to air operations area. Except as may be authorized by the director, no person providing or facilitating commercial services at any public airport shall be permitted entry into the air operations area. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-8 Airport activity. (a) Each permittee's activity shall be limited to the area designated by the director. The director may change the designated areas when such action is deemed necessary and in the best interest of safety to persons or property.

- (b) The permittee shall:
- (1) Maintain its designated activity area in a safe and clean condition in compliance with all applicable statutes, laws, ordinances, rules and regulations;
 - (2) Be liable for the fair value of any janitorial or maintenance service for cleaning or repairing airport premises necessitated by the permittee's failure to

properly and adequately maintain its designated area;

- (3) Conduct business in an orderly, courteous and businesslike manner;
- (4) Be suitably dressed or uniformed~~[+]~~, as applicable;
- (5) Furnish service on a fair, equal and not unjustly discriminatory basis to all users thereof, and will charge fair, reasonable and not unjustly discriminatory prices for each unit of service; provided that the permittee may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers; and
- (6) Wear the identification badge (issued under this chapter) in plain sight, while at the airport~~[-]~~, as applicable.

(c) The following provisions shall apply to permittees who are authorized to operate vehicles ~~[under a permit]~~ at a public airport in connection with providing a commercial service authorized by this chapter:

- (1) The permittee shall keep all vehicles and equipment used at any public airport in good mechanical condition, clean and suited for their designated use. The department may ~~[disapprove]~~ disapprove the use by the permittee of any vehicle or equipment which the department deems unsafe or unsuitable for its designated use.
- (2) ~~[All vehicles operating under a permit]~~ All permittees authorized to operate a vehicle at a public airport by this chapter shall be licensed by the state public utilities commission or appropriate governmental regulatory agency, if so required, and at all times display a current safety inspection sticker and current evidence of licensing as required by the applicable regulatory agency of the government.

- (3) The department shall issue decals which shall be placed by the permittee on those vehicles utilized at a public airport that meet the requirements of the department. No vehicle shall be used to provide commercial services authorized by this chapter at any public airport without a decal issued by the department. ~~[Vehicles shall be parked only at locations designated by the director for the permitted activity. Vehicles issued decals shall not be used at any public airport for any purpose other than the activity authorized by the permit.]~~ Prearranged ground transportation permittees shall be exempt from this requirement, but shall be subject to the requirements set forth in section 19-20.1-62.
- (4) All permittees authorized to operate a vehicle at a public airport by this chapter shall do so only for the activity authorized and only at the locations designated by the director for the specified activity. [Eff 5/4/02; am and comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-9 Revocation of permit; termination. A permit issued under this chapter may be revoked by the department for violation of this chapter, upon ten days prior written notice. The permit may be terminated without cause by the department or by the permittee upon thirty days prior written notice. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-10 Subordination to sponsor's assurance agreement. A permit shall be subordinate and subject to the terms and conditions of any sponsor's assurance agreement executed between the State and the United

States of America, which is in force during the term of the permit. [Eff 5/4/02; comp]
(Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-11 Indemnification and hold harmless.

The permittee shall indemnify, defend and hold harmless the department and the State from [~~any action or claim~~] all claims for damages or compensation arising out of the use of the permit or the airport. [Eff 5/4/02; am and comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-12 Severability.

The provisions of this chapter are declared to be severable and if any portion or the application thereof is held to be invalid for any reason, the validity of the remainder of this chapter shall not be affected. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-13 Enforcement.

This chapter may be enforced by police officers or any person deputized pursuant to section 261-17, Hawaii Revised Statutes. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-14 Penalty.

Penalties for violations of this chapter shall be as set forth in section 261-21, Hawaii Revised Statutes. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

SUBCHAPTER 2

AIRCRAFT GROUND HANDLING

§19-20.1-15 Scope. The special provisions set forth in this subchapter shall apply to aircraft ground handling services at public airports. [Eff 5/4/02; comp] (Auth: HRS §261-12)
(Imp: HRS §261-7)

§19-20.1-16 Definitions. Unless the context clearly indicates otherwise, as used in this chapter: "Aircraft ground handling services" shall include the following services performed for arriving or departing aircraft:

- (1) Ramp services, including but not limited to, providing passenger or crew stairs, ground power units, baggage, mail and cargo loading and unloading, air start units, aircraft pushback and towing, air conditioning or heating equipment, and fueling;
- (2) Aircraft cabin cleaning, including, but not limited to, interior cleaning service, lavatory service, and drinking water service;
- (3) Passenger services, including, but not limited to, reservations, ticketing, seat selection, passenger check-in, document processing, passenger boarding, and VIP lounge services;
- (4) Cargo handling, including, but not limited to, warehousing, document processing, cargo buildup or breakdown, loading or unloading, and transportation;
- (5) Aircraft maintenance, including, but not limited to, maintenance, and preventive maintenance; and

(6) Aircraft flight planning and flight dispatch service.

"Aircraft ground services operators" means all persons authorized to perform aircraft ground handling services at public airports and includes permittees, airline lessees, and airport lessees.

"Airport lessee" means any person other than an airline lessee that has entered into a lease with the department for the use of land or facilities at a public airport. [Eff 5/4/02; comp]
(Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-17 Fee. Any person authorized to provide aircraft ground handling services shall, in consideration of using state facilities for conducting business, pay the department an annual administrative expense fee of \$100. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-18 Exemption. Airport or airline lessees authorized by their lease to provide aircraft ground handling services for others at a public airport are exempt from the permit and fee requirements under this chapter. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-19 Statement of contracted services.
The permittee shall provide to the department upon request a statement certified by the serviced airline that a contract for aircraft ground handling services presently exists. This chapter shall become a part of all such contracts to which it applies, and shall be attached to the contracts so that contracting parties are aware of the rights, duties, and responsibilities

of the permittee. [Eff 5/4/02; comp]
(Auth: HRS §261-12) (Imp: HRS §261-7)

SUBCHAPTER 3

BAGGAGE PICKUP AND DELIVERY

§19-20.1-20 Scope. The special provisions set forth in this subchapter shall apply to baggage pickup and delivery services at public airports. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-21 Definitions. Unless the context clearly indicates otherwise, as used in this chapter:

"Baggage pickup and delivery services" means (1) the prearranged pickup of unaccompanied baggage at a public airport and delivery to a destination outside the airport for the benefit of an arriving passenger, or another on behalf of the passenger or (2) the prearranged delivery of unaccompanied baggage from a location outside a public airport to a certain location at or in a public airport which is designated for that purpose by the airport manager for a departing passenger, or for another on behalf of a departing passenger, or (3) the prearranged transfer of unaccompanied baggage from public airport baggage claim areas to curbside or other areas within the public airport, or (4) the prearranged transfer of unaccompanied baggage from curbside or other areas within the public airport to check-in counters or other areas within the public airport where transfer services were arranged for in advance by the passenger or another on behalf of the passenger.

"Unaccompanied baggage" means that baggage which is unclaimed by the passenger at a public airport but

for which prior arrangements have been made (1) by or on behalf of an arriving passenger for the pickup of such baggage from the public airport and delivery to a destination outside the public airport, (2) by or on behalf of a departing passenger for the delivery of such baggage from a location outside the public airport to a certain location at or in the public airport which is designated for that purpose by the airport manager, (3) to transfer such baggage from public airport baggage claim areas to curbside or other areas within the public airport, or (4) to transfer such baggage from curbside or other areas within the public airport to check-in counters or other areas within the public airport. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-22 Fees. Any person providing baggage pickup and delivery services in or at a public airport shall, in consideration of using state airport facilities for conducting business, pay to the department the following fees:

- (1) For each public airport at which baggage pickup and delivery services are provided, an annual administrative expense fee of \$100.
- (2) A percentage fee equal to three and one-half percent of the monthly gross receipts derived by the permittee, from or in connection with providing baggage pickup and delivery services in or at any public airport. The permittee's gross receipts shall include all consideration or compensation, of any kind or nature whatsoever, paid by passengers, customers and clients to the permittee or to any person who is employed by or has a working arrangement with the permittee for providing baggage pickup and delivery services.

- (3) An annual identification badge fee of \$5 per badge.
- (4) An annual registration fee of \$50 for each vehicle in excess of five vehicles registered by a permittee at a public airport for baggage pickup and delivery services. [Eff 5/4/02; comp]
(Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-23 Restrictions. (a) The permittee shall:

- (1) Refrain from the use of profanity, boisterous or rough and disturbing behavior or actions, unsafe use of baggage carts or other equipment, and the playing of radios, prerecorded tapes or discs, or other musical instruments or devices in public areas or areas in which the sounds from such activities may intrude upon public areas;
- (2) Not provide any of the services authorized by the permit, including the placement and use of any vehicle or equipment, in such a manner as to disturb other airport tenants or users; and
- (3) Not solicit gratuities or business in the conduct of baggage pickup and delivery services at public airports.

(b) All business activities conducted by the permittee at any public airport, unless otherwise authorized by the department, shall be limited to those passengers and clients who have made prior arrangements for baggage pickup and delivery service with the permittee. The permittee shall have evidence of such prior arrangements in the form of schedules, passenger manifests, or other similar documentation which identifies the passengers and clients, available for inspection by the director at all times during the period the permittee is engaged in business activities at the public airport, including at the time of all

pickups, deliveries and transfers. [Eff 5/4/02; comp
] (Auth: HRS §261-12) (Imp: HRS §261-7)

SUBCHAPTER 4

COMMERCIAL PHOTOGRAPHY

§19-20.1-24 Scope. The special provisions set forth in this subchapter shall apply to commercial photography services at public airports. [Eff 5/4/02; comp
] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-25 Definition. Unless the context clearly indicates otherwise, as used in this chapter: "Commercial photography" means the taking of still or motion pictures of persons and things by a person for (1) sale for a monetary or any other valuable consideration, or (2) for any other commercial purpose. [Eff 5/4/02; comp
] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-26 Fees. Any person providing commercial photography services in or at a public airport shall, in consideration of using state airport facilities for conducting business, pay to the department the following fees (as applicable):

- (1) For each public airport at which commercial photography services is provided, an annual administrative expense fee of \$100.
- (2) An annual identification badge fee of \$5 per badge;
- (3) A percentage fee equal to ten percent of the person's monthly gross receipts derived from

- providing commercial photography services at public airports;
- (4) A daily fee of \$100 in advance for persons providing commercial photography services on a short-term basis. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-27 Soliciting prohibited. To solicit, offer and provide commercial photography to any person other than to any person for whom commercial photography has been arranged in advance, as provided above, is prohibited. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-28 News media exempt. Commercial photography as defined herein shall not apply to representatives of newspapers, magazines, television stations, or other news media. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

SUBCHAPTER 5

GREETING SERVICES FOR HIRE

§19-20.1-29 Scope. The special provisions set forth in this subchapter shall apply to greeting services for hire at public airports. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-30 Definition. Unless the context clearly indicates otherwise, as used in this chapter:

"Greeting services for hire" means the service of providing, on behalf of or at the request of another person, meeting, welcoming, receiving, salutation, meeting with salutation, farewell or departure services, with or without the bestowal of leis, floral arrangements or other gifts, to airline passengers.

[Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-31 Fees. Any person providing greeting services for hire in or at a public airport shall, in consideration of using state airport facilities for conducting business, pay to the department the following fees:

- (1) For each public airport at which greeting services for hire are provided an annual administrative expense fee of \$100;
- (2) An annual identification badge fee of \$5 per badge; and
- (3) A percentage fee equal to three percent of the person's monthly gross receipts derived from providing greeting services for hire at a public airport. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-32 Soliciting prohibited. To solicit, offer and provide greeting services for hire to any person other than to any person for whom greeting services had been arranged in advance, as provided, is prohibited. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

SUBCHAPTER 6

IN-FLIGHT CATERING

§19-20.1-33 Scope. The special provisions set forth in this subchapter shall apply to in-flight catering services at public airports. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-34 Definition. Unless the context clearly indicates otherwise, as used in this chapter: "In-flight catering services" means the delivery of prepared and packaged food beverages at any public airport for consumption aboard an aircraft while in flight. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-35 Fees. Except for the concessionaries and airline lessees authorized to provide in-flight catering services at public airports, any person providing in-flight catering services in or at public airports shall, in consideration of using state airport facilities for conducting business, pay to the department the following fees:

- (1) An annual administrative expense fee of \$100 in advance of providing in-flight catering services at a public airport; and
- (2) A percentage fee equal to three and one-half per cent of its monthly gross receipts derived from in-flight catering services at public airports. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

SUBCHAPTER 7

MERCHANDISE DELIVERY

§19-20.1-36 Scope. The special provisions set forth in this subchapter shall apply to merchandise delivery services at public airports. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-37 Definitions. Unless the context clearly indicates otherwise, as used in this chapter: "Merchandise" means items, such as fresh fruits, flowers, candies, meat products and ice cream, which are:

- (1) Sold to an airline passenger or the passenger's agent at a location other than a public airport; and
- (2) Delivered to that passenger or that passenger's agent at the airport by the seller or the seller's agent.

Duty free or in-bond goods are specifically excluded from this definition.

"Piece" means the unit in which the merchandise is packaged for an individual airline passenger.

"Time of delivery" means the time the merchandise is delivered into one of the areas designated by the director. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-38 Fees. Any person providing merchandise delivery services in or at a public airport, in consideration of using state airport

facilities for conducting business, shall pay the following fees:

- (1) An annual administrative expense fee of \$100 for each public airport at which merchandise is delivered.
- (2) Except for the first vehicle, an annual fee of \$200 for each vehicle thereafter upon registration of the vehicle with the department and issuance of decal pursuant to this subchapter.
- (3) A monthly fee based on the use of public airport facilities during the month. The monthly fee shall be:
 - (A) Equal to the total number of pieces of merchandise delivered during the month times 25 cents; in other words, 25 cents for each piece of merchandise delivered during the month.
 - (B) Paid on or before the twentieth day of the succeeding month.
- (4) An annual identification badge fee of \$5 per badge.
[Eff 5/4/02; comp] (Auth:
HRS §261-12) (Imp: HRS §261-7)

§19-20.1-39 Monthly delivery report. (a) The permittee shall submit, along with the payment of the monthly fee required under this subchapter, a delivery report for each calendar month, on or before the twentieth day of the succeeding month.

- (b) The monthly delivery report shall include:
 - (1) A listing of every delivery made during the month in chronological order; this listing shall provide the following information for each delivery:
 - (A) Date of delivery;
 - (B) Time of delivery; and
 - (C) Number of pieces of merchandise.
 - (2) The total number of pieces of merchandise delivered during the month.

- (c) The permittee shall be subject to penalties, including revocation of permit, if any false information is provided on the monthly delivery report. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-40 Controls. (a) The department shall conduct regular inspections of permittee activities to help ensure:

- (1) Accurate reporting of the number of pieces of merchandise delivered; and
- (2) Compliance with the provisions of this chapter.

(b) The department shall, upon reasonable notice, be given access to any of the permittee's records, books or documents to verify reports submitted by the permittee. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-41 Designated areas. (a) The permittee shall deliver merchandise only to areas designated by the director.

(b) The permittee shall be allowed to keep the merchandise in the designated areas for a maximum of four hours starting from the time the merchandise is placed in the designated area. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-42 Identification of merchandise. (a) The merchandise for each delivery made at a public airport shall be clearly and conspicuously marked with the:

- (1) Permittee's name; and

(2) Time of delivery.

(b) The merchandise may be marked individually or as a group as long as it is readily identifiable at all times while it is at the airport.

(c) The permittee shall have an authorized representative, wearing the identification badge issued under this chapter, present at all times next to the merchandise, overseeing the merchandise as long as the merchandise is at the airport. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-43 Safety and security. (a) In order to help ensure the public health, safety and airport security, any merchandise shall be removed to a storage area by authorized department personnel if:

- (1) The merchandise is unclaimed after four hours from the time of delivery; or
- (2) The merchandise is left unattended for any amount of time in violation of section 19-20.1-42.

(b) Any merchandise not claimed after two days in storage may be summarily disposed of by the department without notice to the permittee.

(c) The cost of removal, storage or disposal of merchandise shall be assessed to the permittee. The proceeds, if any, from the sale or disposal of any unclaimed merchandise shall be used to offset the cost of removal, storage and disposal and the balance remaining shall be payable to the permittee or passenger upon proof of entitlement thereto. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-44 Unauthorized storage. Permittees shall not keep, place, or store hand trucks, vehicles, carts, or any other equipment or supply item in any area of a public airport except in those locations or

spaces specifically prescribed for such use or activity. Any improper placement or storage shall result in an assessment of a \$10 fine for each item or article which is improperly placed or stored, or in the seizure of the item or article at the owner's risk and expense, plus applicable storage and service fees resulting therefrom, or in both a fine and seizure. Upon seizure of any item or article, the department shall send a written notice by registered or certified mail, with return receipt, to the owner of the item or article at the address on record with the department if the owner is known. The notice shall contain a brief description of the item or article, the location of seizure, and intended disposition of the property if not claimed within ten days after the mailing of the notice. If the owner is not known or cannot be located, the item or article shall be held for forty-five days from date of seizure after which time it shall be disposed of as unclaimed lost property. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

SUBCHAPTER 8

PORTER SERVICES

§19-20.1-45 Scope. The special provisions set forth in this subchapter shall apply to porter services at public airports. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-46 Definitions. Unless the context clearly indicates otherwise, as used in this chapter:
"Accompanied baggage" means baggage which is claimed by a passenger at a public airport.
"Porter" means one who performs porter services.

"Porter services" means the carrying of baggage for passengers at public airports and other services incidental to portorage generally rendered by porters in and about air transportation terminals, including but not limited to:

- (1) The carrying of baggage from baggage claim areas to curbside or to other areas within the airport as requested by the passenger;
- (2) The loading of baggage aboard conveyance used by the passenger in departing the airport;
- (3) The carrying of baggage from curbside to the check-in counters or to other areas within the airport as requested by the passenger; and
- (4) The transporting of handicapped passengers by motorized carts to and from gate areas.

"Portorage" with respect to porter services shall generally mean the handling of accompanied baggage whereas "porterage" with respect to baggage pickup and delivery services shall generally mean the handling of unaccompanied baggage.

"Unaccompanied baggage" means baggage which is not claimed by a passenger at a public airport but for which prior arrangements have been made:

- (1) For pickup at a public airport and delivery to a destination off the airport for arriving passengers; or
- (2) For delivery to a point point at a public airport designated by the director for departing passengers. [Eff 5/4/02; comp] (Auth: HRS §261-12)
(Imp: HRS §261-7)

§19-20.1-47 Requirements to obtain permit. To obtain the permit under this chapter, a person must:

- (1) Pay the fees prescribed by this subchapter; and
- (2) Have an existing written contract with an airline to perform porter services. [Eff

5/4/02; comp] (Auth: HRS
\$261-12) (Imp: HRS \$261-7)

§19-20.1-48 Fees. Except for airline lessees authorized to provide porter services in their leases with the department, no person shall provide porter services in or at a public airport without paying the department the following fees:

- (1) For each public airport at which porter service is provided, an annual administrative expense fee of \$100; and
- (2) An annual identification badge fee of \$5 per badge. [Eff 5/4/02; comp]
(Auth: HRS \$261-12) (Imp: HRS \$261-7)

§19-20.1-49 Unauthorized storage. The permittee shall not keep, place, park, or store hand trucks, baggage carts, motorized passenger carts, or any other equipment or supply item in any area of a public airport except in those locations or spaces specifically prescribed for that use or activity. Any improper placement or storage shall result in an assessment of a \$10 penalty for each item or article which is improperly placed or stored, or in the seizure of the item or article at the owner's risk and expense, plus applicable storage and service fees resulting therefrom, or in both a penalty and seizure. Upon seizure of any item or article, the department shall send a written notice by registered or certified mail, with return receipt, to the owner of the property at the address on record with the department. The notice shall contain a brief description of the item or article, the location of seizure, and intended disposition of the property if not claimed within ten days after mailing of the notice. If following reasonable attempts by the department, the owner cannot be located, the item or article shall be held

for forty-five days from date of seizure after which time it shall be disposed of as unclaimed lost property. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-50 Motorized passenger carts. (a) The department shall issue decals which shall be placed on motorized passenger carts approved for use at a public airport. No carts shall be used to provide porter services at any public airport without a decal issued by the department. Carts shall be operated only on routes and locations designated by the director. Carts issued decals shall not be used on the airport for any purpose other than the transport of handicapped passengers and their escorts to and from gate areas.

(b) No motorized passenger cart shall be operated:

- (1) In a careless or negligent manner or in disregard of the rights and safety of others;
- (2) Without due caution or circumspection, or at a speed or in a manner which endangers or is likely to endanger persons or property;
- (3) While the operator thereof is under the influence of intoxicating liquor, narcotic, or habit forming drug; and
- (4) If the vehicle is so constructed, equipped, loaded or in such other condition as to endanger or be likely to endanger persons or property.

(c) The permittee shall be liable for any injury or damage to persons or property resulting from or attributed to the use of the carts at public airports. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-51 Soliciting prohibited. No porter solicit tips from passengers. [Eff 5/4/02;

comp] (Auth: HRS §261-12) (Imp: HRS
§261-7)

§19-20.1-52 Statement of contracted services.

The permittee shall provide to the department upon request a statement certified by the serviced airline that a contract for porter services presently exists. This chapter shall become a part of all such contracts so that contracting parties are aware of the rights, duties, and responsibilities of the permittee. [Eff 5/4/02; comp] (Auth: HRS §261-12)
(Imp: HRS §261-7)

§19-20.1-53 Airline lessees. (a) With the exception of sections 19-20.1-3 and 19-20.1-48, this chapter shall apply to airline lessees who provide their own porter services.

(b) Airline lessees who provide porter services to other airlines shall be subject to this chapter. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

SUBCHAPTER 9

PREARRANGED GROUND TRANSPORTATION

§19-20.1-54 Scope. The special provisions set forth in this subchapter shall apply to prearranged ground transportation services at public airports. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-55 Definitions. Unless the context clearly indicates otherwise, as used in this chapter:

"Digital network" means any online-enabled application, software, website, or system offered or utilized by a prearranged ground transportation service that enables a customer's direct prearrangement of a ride with a driver and records data that describe for each driver on the network the following:

- (1) The vehicle's registered owner, year, make, model, license plate number, and vehicle identification number or VIN;
- (2) Proof of insurance as required by section 19-20.1-6;
- (3) The total number, date, and time of all rides initiated at a public airport; and
- (4) The total receipts earned by each ride initiated at a public airport and an itemization of all taxes, tips, and other fees included in the receipts.

"Hotel" includes motel.

"Operator" includes any person who is properly and physically qualified to operate and control any motor or other vehicle in connection with any ground transportation service provided at a public airport by a permittee under this chapter. The operator may be a permittee itself or a qualified employee, contractor, assignee, agent, or other similar representative of the permittee.

"Prearranged ground transportation services" includes the providing or facilitating for hire of a motor vehicle, including off-airport rent-a-car vehicles, at any public airport for the purpose of transporting the hirer of, or passenger in, such motor vehicle and personal property where such hire or transportation was contracted or arranged for by the hirer, passenger, or another on behalf of the hirer or passenger, in advance of the hirer or passenger's arrival at the public airport or, upon or after his arrival at the public airport, by communicating with an operator whose place of business is situated outside the public airport, for ground transportation

services to be performed, at least in part, at the public airport.

Prearranged ground transportation services also include passenger transportation services, tours, and courtesy car services for customers and guests upon vehicles owned or leased by the operators even if the services are provided gratuitously or may be an incidental part of another service.

Prearranged ground transportation services do not include the right to solicit, offer, and provide ground transportation services for hire to any person other than to persons for which ground transportation services had been arranged in advance.

"Software application service" shall have the same meaning as the term "Digital network".

"Taxi or taxicab service" includes the service of providing a motor vehicle for hire by the public at, on, or upon a public airport, which motor vehicle shall have a driver other than the hirer and be used for the purpose of transporting the hirer and incidental personal property to a destination and over a route controllable by a hirer.

"Transportation network company" or "TNC" means a person or an entity that uses a digital network or software application service to connect passengers to transportation network company drivers and uses a digital network or software application service to confirm the commercial activity and gross receipts of that activity; provided that the person or entity (1) does not own, control, operate, or manage the personal vehicles used by transportation network company drivers and (2) is not a taxicab company or a for-hire vehicle owner. [Eff 5/4/02; am and comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-56 Fees. Persons authorized to provide prearranged ground transportation services at public airports shall, in consideration of using state

airport facilities for conducting business, pay the following fees as applicable:

- (1) Off-airport rent-a-car service.
 - (A) An annual administrative expense fee of \$100 in advance.
 - (B) An annual fee of \$20 for each off-airport rent-a-car vehicle in the permittee's fleet as of October 1 of each year.
 - (C) An annual registration fee of \$250 for each courtesy vehicle used for transportation of customers to and from any public airport.
- (2) Courtesy vehicle service other than off-airport rent-a-car or hotel firms.
 - (A) An annual administrative expense fee of \$250 in advance.
 - (B) An annual registration fee of \$250 for each courtesy vehicle used for transportation of customers to and from any public airport.
- (3) Taxi, bus, limousine and stretch out.
 - (A) An annual administrative expense fee of \$100, in advance, per permittee providing these prearranged ground transportation services at any public airport.
 - (B) An amount equal to the following percentages of the monthly gross receipts which the operator derives from providing these prearranged ground transportation pickup services at the public airports listed below.
 - (i) Seven percent at [~~Honolulu~~] Daniel K. Inouye International Airport in Honolulu.
 - (ii) Three percent at public airports other than [~~Honolulu~~] Daniel K. Inouye International Airport in Honolulu.
- (4) Hotel courtesy vehicles.

Prearranged ground transportation services between a public airport and a hotel, provided by the hotel for its guests upon vehicles owned or leased by the hotel shall be charged:

- (A) An annual administrative expense fee of \$250 in advance.
 - (B) An annual registration fee of \$250 for each courtesy vehicle used for transportation of customers to and from any public airport.
 - (C) An annual fee of \$2 per sleeping room for rental by the hotel.
- (5) Transportation network company.
- (A) An annual administrative expense fee of \$100, in advance, per permittee providing these prearranged ground transportation services at any public airport.
 - (B) An amount equal to the following percentages of the monthly gross receipts which the TNC driver derives from providing these prearranged ground transportation pickup services, consistent with the data provided by the TNC digital network or software application service, at the public airports listed below.
 - (i) Seven percent at Daniel K. Inouye International Airport in Honolulu.
 - (ii) Three percent at public airports other than Daniel K. Inouye International Airport in Honolulu.
- [Eff 5/4/02; am and comp] (Auth: HRS \$261-12) (Imp: HRS \$261-7)

§19-20.1-57 Exemptions. The director may, in the public interest, exempt all persons providing ground transportation services at certain public

airports from the payment of the fees required under this subchapter. [Eff 5/4/02; comp]
(Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-58 Taxi services. The director reserves the right to revoke any non-exclusive privilege of providing taxi service at any public airport, except prearranged taxi service, and grant an exclusive taxi service concession any person in the manner prescribed by section 102-2, Hawaii Revised Statutes. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-59 Signs. No person shall display any sign that extends more than six inches above the roof, hood, or trunk of any motor vehicle used to provide ground transportation at public airports. Flashing lights and audible devices, other than that required by safety ordinances and regulations are prohibited. The display of any rates or fees on motor vehicles is also prohibited. [Eff 5/4/02; comp]
(Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-60 Restrictions. (a) Permittees and operators shall not solicit passengers or fares on airport premises. Pickup shall be limited to those passengers and clients who have made prior arrangement for the ground transportation service provided or facilitated by the permittee. The permittee, and its employees, agents and operators shall have evidence of such prior arrangements in the form of schedules, passenger manifests or other similar documentation which identifies the passengers and clients, available for inspection by the director at all times during the period the permittee is engaged in business activities

at the public airport, including at the time of all pickups.

(b) Permittees shall not use dispatchers, agents, customer service assistants, operators, employees or any other persons who have a working arrangement with the permittee to engage in any effort to solicit or obtain ground transportation business on any public airport premises. [Eff 5/4/02; am and comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-61 Records of off-airport rent-a-car permittees. Permittees who provide off-airport rent-a-car ground transportation services in or at public airports shall be obligated to maintain a record and original source documents which shall account for all of the vehicles in the permittee' fleet as of October 1 each year, segregated by airport districts. The record, including original source documents, shall be kept for three years in the State following the end of the permit year. The State shall be granted access at all reasonable times to all such records and documents and may make or cause to be made a complete audit to verify the reasonableness of the reported number of vehicles in the permittee's fleet as of October each year. In the event that records and original source documents have not been kept in accordance with this provision, the State, shall in addition to other payments required by this chapter, be entitled to demand and receive an additional payment of ten percent of the total amount payable by the off-airport rent-a-car ground transportation service permittee to the State under this subchapter. [Eff 5/4/02; comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-20.1-62 Vehicle identification and tracking.

(a) Each prearranged ground transportation permittee shall identify each of its vehicles that will be used at a public airport with one of the following:

- (1) A decal issued by the department; or
- (2) The permittee's logo, trade dress, or other company identifier as approved by the director.

The decal, logo, trade dress, or other company identifier shall be affixed to the vehicle at all times the permittee operates the vehicle at a public airport.

(b) If a permittee elects to use a decal issued by the department, the permittee shall be required to have a transponder or other tracking device issued and installed in each vehicle by the department to collect data that describe the activity and movement of the permittee's vehicle while it operates at a public airport. The data may be used to confirm the accuracy of fees and percentage of gross receipts paid by the permittee pursuant to section 19-20.1-56.

(c) If a permittee elects to use its logo, trade dress, or other company identifier, the permittee shall be required to have and use a digital network or software application service. The department shall verify the digital network or software application service meets the criteria set forth in section 19-20.1-55. The logo, trade dress, or company identifier shall be in good taste and shall not be vulgar or offensive. Any changes to the logo, trade dress, or company identifier that will be used at a public airport must also be approved by the director." [Eff 5/4/02; am and comp] (Auth: HRS §261-12) (Imp: HRS §261-7)

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

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

4. These amendments to and compilation of chapter 19-20.1, 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.

for [Signature]

Jade T. Butay
Director of Transportation

APPROVED AS TO FORM:

[Signature]

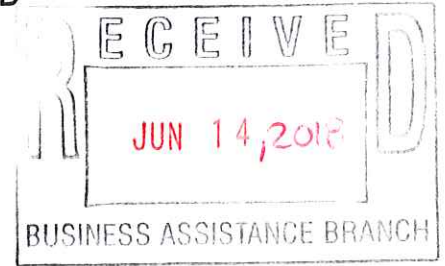
Deputy Attorney General

IV. Old Business

- C. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 15 Chapter 218, Kakaako Reserved Housing Rules, promulgated by DBEDT / HCDA

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

Department or Agency: Hawaii Community Development Authority
Administrative Rule Title and Chapter: Title 15, Chapter 218
Chapter Name: Kakaako Reserved Housing Rules
Contact Person/Title: Deepak Neupane, Director of Planning & Development
Phone Number: 594-0300
E-mail Address: deepak.neupane@hawaii.gov



Date: June 14, 2018

- A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.
- B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7? Yes No

(If "Yes" please provide webpage address and when and where rules may be viewed in person.) <http://hawaii.gov/the-office/administrative-rules/>. Can be viewed at HCDA office at 547 Queen Street, Honolulu, HI 96813 from 7:45 am to 4:30 pm.

(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.)

* * *

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

Small Businesses were involved through stakeholder meetings and public hearings.

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

Yes. Regulated term for reserved housing was revised from 30 years to 10 years. Provides for 2nd mortgage option for purchase of reserved housing unit.

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

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

Opinion of small businesses were solicited through stake holder meetings and public hearings.

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

See attached

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

See attached

4. The number of persons who:
 - (i) Attended the public hearing: 125
 - (ii) Testified at the hearing: 39
 - (iii) Submitted written comments: 68

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

(i) If "Yes" was the change adopted? Yes No

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

There was no request made at the public hearing to change the proposed rule in a way that affected small business.

* * *

Small Business Regulatory Review Board / DBEDT

Phone: (808) 586-2594 / Email: DBEDT.sbrrb.info@hawaii.gov

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



Summary of Public Testimony	HCDA Response
<p>Moderate income should be 120% of AMI or below.</p>	<p>The term "moderate income" is not defined for HCDA by statute. HHFDC defines "moderate income" households as those earning above 120% up to 140% of AMI (§15-307-2). City and County of Honolulu. Affordable Housing Rules for Unilateral Agreements defines moderate income household as "a household whose income is greater than 80%, but which does not exceed 140% of the AMI". HUD guidelines also include household income of 140% or greater, depending on the locality, within the definition of "moderate income".</p>
<p>Remove proposed unit size factor.</p>	<p>Section 15-218-19 provides incentive if developers provide larger reserve housing units. The unit type and corresponding factor also act as a higher multiplier factor in determining sales price of the unit for larger units.</p>
<p>Remove Occupancy Guidelines</p>	<p>Section 15-218-20 is a guideline for the developer to be utilized when the number of applications for a reserved housing unit exceed the number and type of reserved housing units available. It allows for families to purchase a reserved housing unit based on family size. It can be modified by the Authority, if necessary.</p>
<p>Since moderate income should be 120% of AMI or below, the maximum sales price should be based on 120% of AMI rather than 140% of AMI</p>	<p>Limiting the weighted average sales price to 120% of AMI as proposed; will result in at least 50% of the required reserved housing units priced at or below 120% of AMI. Similarly, at least 50% of the workforce housing units will be priced at or below 120% of AMI. Limiting the maximum allowable sales price to 120% of AMI, as suggested, will make the project financially unfeasible and/or unattractive to a</p>

<p>Use of price index fails to provide true and accurate representation of the reserved housing units in Kakaako and serves to limit purchaser's upside potential associated with owning reserved housing units.</p>	<p>developer, therefore, impacting the production of reserved or workforce housing units.</p> <p>In the proposed rule amendment, the buyback price is calculated based on annual median sales price percent change for condominiums published by the Honolulu Board of Realtor (HBR). The past 30 year of annual median sales price change data for condominiums published by HBR shows an annual return of 4.7%. The proposed formula for calculating buyback price provides good return to the reserved housing owner on his/her equity in the reserved housing unit. Additionally, buyback by the HCDA will not necessitate the reserved housing owner to engage a real estate broker for the sales, thus resulting in substantive savings for the owner.</p>
<p>Imposing buyback with no term limit and requiring equity sharing with the HCDA could hamper the ability to sell such mortgages into secondary market such as Fannie Mae, Freddie Mac, VA, and FHA.</p>	<p>Buyback and equity sharing provisions have been part of the HCDA reserved housing rules (Mauka Area Rules) since the rules were first adopted in the early 1980s. In the sale and resale of reserved housing units over the years, concerns regarding secondary market such as Freddie Mac, Fannie Mae, VA, or FHA have never been raised. Information obtained from Freddie Mac, Fannie Mae, VA and FHA website indicates that the buyback and equity sharing provisions of the proposed amendment are consistent with the guidelines provided by these agencies. Regulated term for buy back has been changed to 10 years.</p>
<p>Acts as disincentive for owners of reserved housing or workforce housing owners to maintain or make</p>	<p>The intent of the provision is to protect HCDA's shared equity in the unit, which could be achieved by modifying the provision in a manner where the</p>

<p>improvements to the units, especially when combined with the buyback provisions.</p>	<p>amount of subsequent mortgage is no more than the fair market value of the unit minus HCDA equity sharing</p>
<p>Wording in §15-218-35(c) appears to indicate that improvements made by the owner will not be considered in determining buyback price.</p>	<p>The intent is to include the value of owner improvements in calculating buyback price. The language in §15-218-35(c) is modified to include that.</p>
<p>Cash-in-lieu requirement shall not be less than the cost to build a reserved housing or workforce housing unit. Oppose proposed cash-in-lieu formula.</p>	<p>The proposed cash-in-lieu formula is based on a sliding scale. Projects with luxury units will be subject to higher cash-in-lieu payment than projects that are affordable to household incomes closer to 140% of AMI. Several cities, including Boston, San Francisco, and Denver utilize a similar formula.</p>
<p>Decision making on reserved housing rules amendment should be postponed to provide small landowners/stakeholders in the central and mauka area of the Kakaako Community Development District more time to evaluate the impact of the proposed amendments on properties, businesses, and people.</p>	<p>Several meetings were held by HCDA staff and HCDA Reserved Housing Taskforce with stake holders to discuss proposed Reserved Housing Rules amendments. In addition Kakaako Reserved Housing Rules amendment was discussed at the Authority's public meetings on March 1, 2015; May 6, 2015, September 2, 2015; February 3, 2016; July 7, 2016; September 7, 2016; January 4, 2017; and March 1, 2017. Various stakeholders were also contacted by HCDA staff by email and provided information on Kakaako Reserved Housing Rules amendments. In addition 8 separate public hearing were scheduled to collect public testimony, beyond the 2 hearings required by law</p>
<p>It is not prudent to place additional regulation and restrictions on the housing market that benefits working class and first-time home buyers. Buyback and equity sharing provisions may have unforeseen consequences.</p>	<p>The proposed rule amendments provide opportunity for "moderate to low income" households to become home owners. It also ensures long-term affordability of reserved housing units. Without the proposed maximum allowable pricing, qualifying income, equity sharing, and buyback provisions, reserved</p>

<p>To address the current housing crisis there needs to be a shift in focus of how government views housing development and move from regulatory stance to production oriented stance. The proposed amendments revert to inclusionary zoning and exaction process that have proven ineffective over time. Incentivize the developers to build more affordable housing using one or more of the following incentive: (a) access to infrastructure, (b) density bonus, (c) waiver of sewer, water, and permitting fees, (d) waiver of GET, (e) waiver of real property taxes for a fixed period of time.</p>	<p>housing and workforce housing units will be sold at market.</p> <p>The proposed rule amendments provide substantial incentives to the developer for producing reserved housing units. These incentives are: (a) 20% floor area bonus for providing reserved housing, (b) 100% floor area bonus for workforce housing projects, (c) no public facilities dedication fee requirement for reserved housing and workforce housing, (d) flexibility in providing off street parking and loading, (e) additional building height, and (f) flexibility in yard setbacks. Additionally, the HCDA invested over \$225 million in infrastructure improvement in the Kakaako Community Development District to encourage development. Through the provisions of Hawaii Revised Statutes Section 201H-38, a developer can receive exemptions from permit fees and waivers from City & County and HCDA zoning requirements for affordable housing projects. Waiver of GET and property tax is also available for affordable housing projects. There are a number of incentives that are already available to developers for developing affordable housing projects.</p>
<p>Make creative rules that encourage development of affordable housing instead of making the task more difficult by placing increased burden on residential developments community and un-subsidized buyers. Spread affordable housing requirement to all new projects including retail, commercial, and hotel development.</p>	<p>Since over 80% of redevelopment in the Kakaako Community Development District is residential development, imposing reserved housing requirement on commercial, retail, and hotel projects will not result in any significant gain in reserved housing units. It will not lighten the burden on residential projects.</p>
<p>The HCDA should consider amendments to its administrative rules that provide for hardships</p>	<p>The comment pertains to provisions of</p>

concerning share appreciation equity policies and programs. The HCDA may wish to consider amendments similar to those promulgated by HHFDC.

§15-218-35(d) and §15-218-42. §15-218-35(d) has been amended to provide that any subsequent mortgage placed on the reserved housing or workforce housing unit shall not exceed the buyback price established by the Authority. Previously the provision limited the amount of subsequent mortgage placed on the reserved housing unit to 80% of the original sales price. The amended language gives the owner of the reserved housing unit opportunities to benefit from owner's equity in the unit while protecting the Authority's share of equity in the unit. §14-218-42 was amended to include language from Hawaii Administrative Rules §15-307-127 (HHFDC Rules cited in the testimony).

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

Rules Amending Title 15
Hawaii Administrative Rules

_____, 2018

1. Chapter 218 of Title 15, Hawaii Administrative Rules, entitled "Kakaako Reserved Housing Rules", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT [~~7-AND~~] &
TOURISM

SUBTITLE 4

HAWAII COMMUNITY DEVELOPMENT AUTHORITY

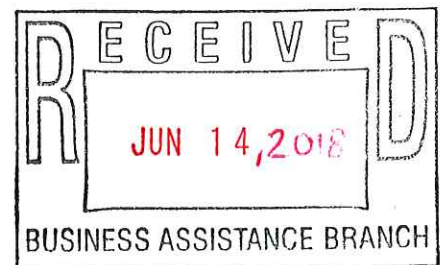
CHAPTER 218

KAKAAKO RESERVED & WORKFORCE HOUSING RULES

Subchapter 1 General Provisions

§15-218-1 Purpose and intent
§15-218-2 Administration
§15-218-3 Severability
§15-218-4 Interpretation by the executive
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- §15-218-44 Factors to be used for determining monthly rent for reserved housing and workforce housing unit for rent
- §15-218-45 Rental of reserved housing or workforce housing unit by reserved housing or workforce housing owner during regulated term
- §15-218-46 Cash-in-lieu
- §15-218-47 Effects of subsequent rule amendments
- §15-218-48 Fees for administering reserved housing and workforce housing program

§§15-218-49 to 15-218-54 Reserved

Subchapter 4 Repealed

§15-218-55 Repealed

Historical note: Chapter 15-218 is based substantially upon Chapter 15-22. [Eff 9/8/86; am and comp 1/28/88; am 7/28/88; am 12/10/88; am 3/9/89; am 7/8/89; am 10/28/89; am 1/29/90; am and comp 2/24/90; am 7/26/90; am 9/15/90; am 10/3/94; am 12/15/94; am 8/14/95; am 11/25/96; am 1/25/97; am 3/27/97; am 6/13/97; am 8/1/97; am 9/19/97; am 8/16/99; am 1/13/00; am 9/15/01; am 6/13/05; R 11/11/11]

continue to be separately and fully effective. [Eff 11/11/11; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-4 Interpretation by the executive director. (a) In administering this chapter, the executive director [~~may~~], when deemed necessary, may render written interpretations to clarify or elaborate upon the meaning of specific provisions of this chapter for intent, clarity, and applicability to a particular situation.

(b) A written interpretation shall be signed by the executive director and include the following:

- (1) Identification of the section of this chapter in question;
- (2) A statement of the problem;
- (3) A statement of interpretation; and
- (4) A justification statement.

(c) A written interpretation issued by the executive director shall be the basis for administering and enforcing the pertinent section of this chapter. All written interpretations rendered pursuant to [~~these rules~~] this chapter shall be public record, and shall be effective on the date signed by the executive director. [Eff 11/11/11; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-5 Definitions. As used in this chapter, the following words and terms shall have the following meanings unless the context shall indicate another or different meaning or intent:

"Area median income" means [~~area median income (AMI) for Honolulu that is provided to Fannie Mae by the Federal Housing Finance Agency;~~] the area median family income (AMI) determined by the United States, Department of Housing and Urban Development annually for the Honolulu metropolitan statistical area as adjusted for household size.

and well-being of a household member subject to proper documentation and credential as a qualified caregiver; or

- (4) No more than five unrelated persons who have lived together for at least one year, who have executed an affidavit, and who have provided proof acceptable to the authority in its sole discretion. Affidavits from family members or neighbors are not acceptable.

"Household income" means the total annual income, before taxes and personal deductions, received by all members of the applicant's household, including[7] but not limited to[7] wages, salaries, overtime pay, commissions, fees, tips and bonuses, compensation for personal services, social security payments, retirement benefits, income derived from assets, cost of living allowance, net income from business or profession, unemployment benefits, welfare benefits, interest and dividend [payments7] payments. Household income shall exclude income of a co-mortgagor who is not a household member, income from employment of minor children including foster children, and income from employment of full-time students under the age of twenty-three years.

"HRS" means the Hawaii Revised Statutes [7].

"HUD" means the United States, Department of Housing and Urban Development.

"Land trust" means a recorded instrument as defined in chapter 558, HRS[7].

"Licensed life care facilities" means licensed assisted living facilities as defined in section 321-15.1, HRS[7].

"Low-income household" means a household whose household income does not exceed eighty percent of the area median income.

"Moderate-income household" means a household whose household income is greater than eighty percent but does not exceed one hundred forty percent of the area median income.

SUBCHAPTER 2

RESERVED HOUSING AND WORKFORCE HOUSING REQUIREMENTS

§15-218-17 Requirement for reserved housing units. (a) Every developer applying for a development permit for approval to construct multi-family dwelling units on a lot greater than 20,000 gross square feet shall provide at least twenty percent of the total number of residential units in the development as reserved housing units. [~~construct and reserve at least twenty per cent of the total residential floor area as reserved housing units. The percentage of residential floor area developed as reserved housing shall be fifteen per cent if the units are developed as rental units.~~] Reserved housing units may be provided as for-sale units or rental units.

(b) [~~Such reserved~~] Reserved housing units shall be sold or rented to persons qualifying under the terms and conditions set forth under subchapter 3. The developer shall execute agreements with the HCDA as are appropriate to conform to this requirement, and [~~such~~] the agreements shall be binding upon the developer and any successors in interest, and shall run with the land. The agreement shall provide that the developer must provide certification to the authority as to the compliance of the requirements herein to qualify for a certificate of occupancy for the project for which provisions of this chapter are applicable.

(c) Occupants of reserved housing units shall have access to and use privileges for the same amenities as all other occupants of the development. Reserved housing units shall be distributed in the building in such a manner that they do not form an isolated section of the project.

(d) If the authority so determines, it may allow the developer to meet the requirement of subsection (a) [~~above~~] through the following alternatives instead

reserved housing requirements shall apply only to the residential dwelling portion of the development.

(h) No construction shall commence for any development within the mauka area on a lot greater than 20,000 square feet unless the development conforms to the provisions of this chapter and the authority has certified that the development complies with the requirements of this chapter.

(i) The authority may require guarantees, may enter into recorded agreements with developers and with purchasers and tenants of the reserved housing units, and may take other appropriate steps necessary to ~~[assure]~~ ensure that ~~[these]~~ the reserved housing units are provided and that they are occupied by qualified persons for the ~~[required duration]~~ regulated term.

(j) The authority may suspend ~~[these]~~ the requirements for reserved housing for a limited duration or modify any provisions of this rule, if, based on market conditions and in its sole judgment, it determines that ~~[these]~~ the requirements of this rule may unduly impede, preclude, or otherwise negatively impact the primary objective of the authority to promote redevelopment within the Kakaako community development district.

(k) When it has been assured to the satisfaction of the authority and it has determined that the proposed development meets the requirements and standards of this section, the authority shall certify the development permit application approved as to the reserved housing requirements of this chapter. [Eff 11/11/11; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-18 Adjustments to height, density, and general development requirements for reserved housing units. (a) Except as otherwise provided, any ~~[developer who applies for a development permit proposing a]~~ multi-family residential development on a lot greater than 20,000 square feet ~~[who]~~ that meets

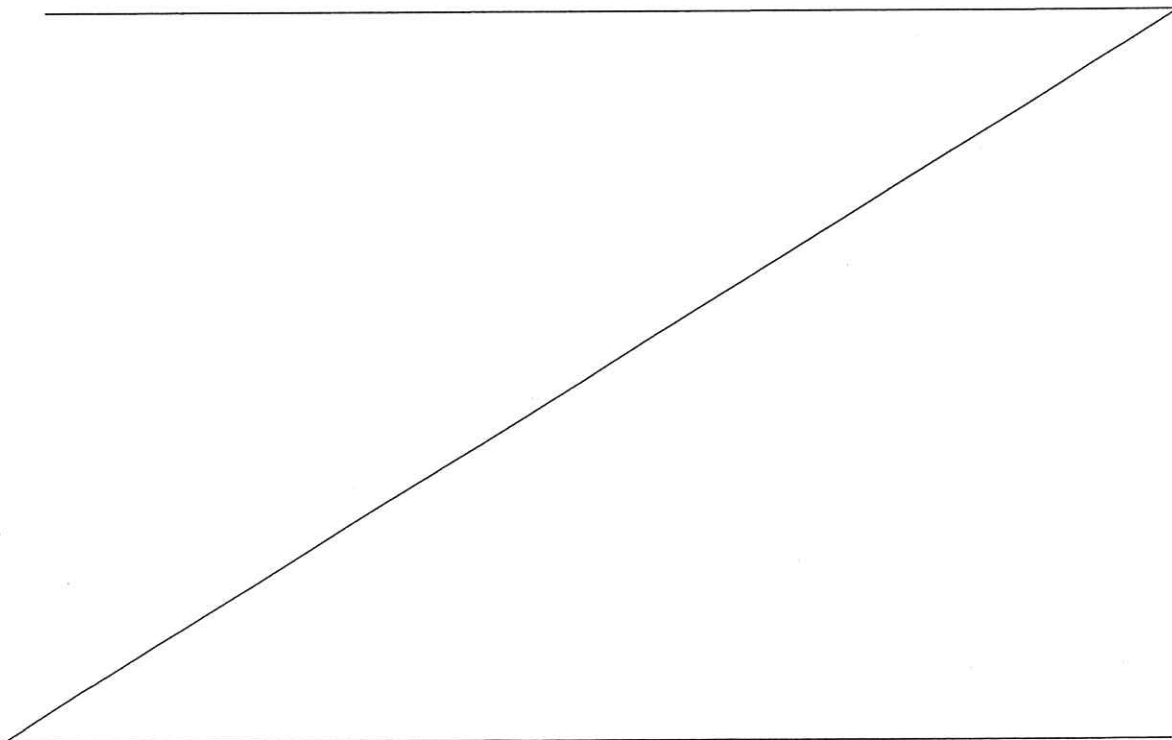
§15-218-19 Unit type and corresponding factor.

The Reserved Housing Unit Type and Corresponding Factor Table below shall be utilized in determining the total number of reserved housing units required to be provided for any development.

RESERVED HOUSING UNIT TYPE AND
CORRESPONDING FACTOR TABLE

<u>Unit Type</u>	<u>Factor</u>
<u>0 Bedroom</u>	<u>0.70</u>
<u>1 Bedroom</u>	<u>0.90</u>
<u>2 Bedrooms</u>	<u>1.00</u>
<u>3 Bedrooms</u>	<u>1.08</u>
<u>3+ Bedrooms</u>	<u>1.16</u>

[Eff and comp] (Auth: HRS §§206E-4,
206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)



purchase or for rent by households earning no more than one hundred forty percent of the AMI shall qualify as a workforce housing project.

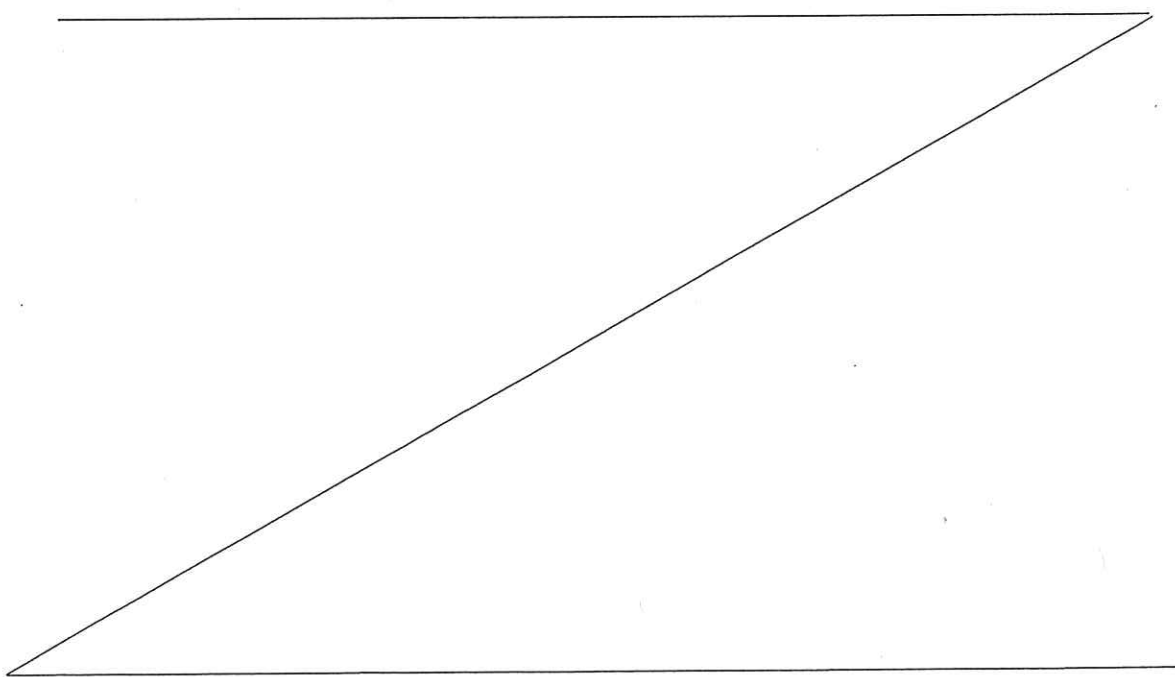
(b) Workforce housing projects shall not be used to satisfy the reserved housing requirement(s) for any residential project(s) that are required to provide reserved housing in accordance with subchapter 2.

(c) Workforce housing project(s) shall receive a floor area bonus of one hundred percent, provided that the bonus floor area shall be used towards the construction of workforce housing project(s) only.

(d) Workforce housing projects shall be exempt from the provisions of Hawaii administrative rules, section 15-217-65.

(e) The authority may also consider modifying off street parking and loading requirements of the mauka area rules for workforce housing projects. [Eff 11/11/11; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

[~~§§15-218-19~~] §§15-218-22 to 15-218-28 (Reserved) [~~-~~]



[+5+] (6) Shall not have a record or history of conduct or behavior, including past rent payments, which may prove detrimental to other tenants or the authority. This criterion shall be applied within parameters set by federal laws on discrimination, including the Americans with Disabilities Act[-]; and

(7) Has sufficient gross income to qualify for the loan to finance the purchase of the reserved housing or workforce housing unit, or in case of a rental reserved housing or workforce housing unit demonstrate an ability to pay rent as established by the authority and meet any additional criteria established by the authority for the respective rental housing development for which the applicant is applying.

(b) Subject to approval of the executive director, a current owner of a reserved housing or workforce housing unit may apply to purchase a larger reserved housing or workforce housing unit provided that:

- (1) The applicant's current household size determined by the number of individuals on title and their dependents, has increased and exceeds the occupancy guideline established in section 15-218-20;
- (2) The applicant has resided in the current reserved housing or workforce housing unit for at least one year; and
- (3) The applicant qualifies to purchase a reserved housing or workforce housing unit in accordance with subsection (a), except that the applicant's current ownership of a reserved housing or workforce housing unit shall not disqualify the applicant under subsection (a)(2), (3), and (4). [Eff 11/11/11; am and comp]
(Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

authority's first option to purchase and shared equity requirements for reserved housing or workforce housing units for sale, and occupancy guidelines [~~permissible household sizes~~];

- (3) A statement that buyers or renters shall be selected on a first-come, first-served or on a lottery basis, whichever is applicable;
- (4) Where and when applications may be obtained and the first date, including time and place, when applications will be accepted, and subsequent dates, times, and places for submission of applications;
- (5) Deadline for submission of applications; and
- (6) In the case of a reserved housing unit and workforce housing for sale, the deposit amount and mode of acceptable payment.

The time period between publication of the notice and the first acceptance of applications shall not be less than fourteen business days. The period shall be computed from the first day of publication of the notice.

(d) Priority shall be given to applicants who have been displaced from housing within the Kakaako community development district as a result of [~~development~~] redevelopment in the mauka area [~~-~~] within a five-year period.

(e) Applicants shall be allowed to select a reserved housing or workforce housing unit based on maximum income limits, qualifying income, preference, occupancy guidelines [~~permissible household sizes~~], and availability of the reserved housing or workforce housing unit.

(f) In the event the developer, or the developer's designated representatives have accepted and processed applications and selected applicants for reserved housing or workforce housing units, a certification shall be submitted to the authority that the selection was made on a first-come, first-served or a lottery basis. Applicants shall be listed in the order in which the applications were accepted and the list shall be available for inspection by the

(c) The assets of the applicant shall not exceed one hundred thirty-five percent of the applicable income limit set forth in subsection (a) [~~above~~]. As used [~~herein~~] in this section, assets include [~~7~~] all cash, securities, and real and personal property at current fair market value, less any outstanding liabilities secured by [~~such~~] these assets. Qualified retirements accounts and gifts of up to twenty percent of the purchase price to assist in the down payment for purchase of a reserved housing or a workforce housing unit shall not be counted towards assets. [Eff 11/11/11; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-33 Occupancy requirements. (a) The following are occupancy requirements for reserved housing and workforce housing units:

- (1) Applicants for reserved housing and workforce housing units shall certify that, if selected, all applicants will be occupants of the [~~reserved~~] unit; and
- (2) The purchaser or lessee shall physically occupy the reserved [~~unit; and~~
- ~~(3) The city and county of Honolulu maximum occupancy limits for a residential dwelling unit shall apply.]~~ housing or workforce housing unit.

(b) Violation of subsection (a) shall be sufficient reason for the authority, at its option, to purchase the unit as provided in section [~~15-218-36~~] 15-218-35 or evict the renter from the unit, as applicable. The authority may require verification of occupancy from the purchaser or the lessee of a reserved housing or workforce housing unit and the purchaser or the lessee shall provide occupancy verification within thirty calendar days from the date of receipt of notification from the authority.

(c) Any deed, lease, agreement of sale, mortgage, or other instrument of conveyance issued by

(b) ~~[The following criteria shall be used in determining price and income equivalencies of units for rent: monthly rent and all utilities and other building operating costs (excluding telephone, cable television and internet service) shall not exceed thirty-three per cent of the renter's gross monthly income.]~~ Annually within forty-five days of HUD's update of area median income (AMI) limits, the executive director shall establish and publish a formula for calculating the applicable sale price of reserved housing and workforce housing units based on the factors enumerated in subsection (a).

(c) The maximum allowable sales price of a reserved housing or a workforce housing unit may be calculated based on an AMI of no more than one hundred forty percent, provided that the weighted average sales price of all reserved housing or workforce housing units in a project shall be the price calculated based on an AMI of no more than one hundred and twenty percent.

[Eff 11/11/11; am and comp] (Auth:
HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4,
206E-5, 206E-7)

§15-218-35 ~~[Term]~~ Terms of reserved housing and workforce housing ~~[requirements.]~~ units for sale. ~~[(a)~~
The regulated term for reserved housing units that are for sale shall be five years from the date of issuance of certificate of occupancy. Reserved housing rental units shall be regulated for fifteen years. The authority may suspend or modify regulated term and qualifying income requirements on a project by project basis, if, in its sole judgment, it determines that these requirements are negatively impacting the sale or rental of reserved housing units as the primary objective of the authority to promote redevelopment within the Kakaako community development district.

unit;

- (4) The authority may purchase the unit either outright, free and clear of all liens and encumbrances; or by transfer subject to an existing mortgage. If by outright purchase, the authority shall ensure that all existing mortgages, liens, and encumbrances are satisfactorily paid by the owner; and
- (5) In any purchase by transfer subject to an existing mortgage, the authority shall agree to assume and to pay the balance on any first mortgage created for the purpose of enabling the owner to obtain funds for the purchase of the unit and any other mortgages which were created with the approval and consent of the authority.

(d) The buyback price shall be determined based on the original fair market value of the reserved housing or workforce housing unit appreciated annually by a corresponding annual median sales price percent change index for condominiums published by the Honolulu Board of Realtors plus the allowable cost of improvements made by the owner, if any, less the authority's share of equity in the unit. The owner shall provide financial documents acceptable to the authority indicating the actual cost of the improvements before the cost shall be eligible for inclusion in determining the buyback price. The buyback price shall be no less than the original sale price of the reserved housing or workforce housing unit. The amount paid by the authority to the seller shall be the difference, if any, between the buyback price determined and the total of the outstanding principal balances of the mortgages and liens assumed by the authority.

(e) Any subsequent mortgage placed on the reserved housing or workforce housing unit by the owner shall require approval from the executive director and shall not exceed the buyback price established by subsection (d).

~~subsection (a)(3), the authority shall have waived its first option to purchase the unit;~~

~~(5) The authority may purchase the unit either outright, free and clear of all liens and encumbrances; or by transfer subject to an existing mortgage. If by outright purchase, the authority shall ensure that all existing mortgages, liens, and encumbrances are satisfactorily paid by the owner; and~~

~~(6) In any purchase by transfer subject to an existing mortgage, the authority shall agree to assume and to pay the balance on any first mortgage created for the purpose of enabling the owner to obtain funds for the purchase of the unit and any other mortgages which were created with the approval and consent of the authority. In these cases, the amount to be paid to the owner by the authority shall be the difference between the price as determined in section 15-218-36 (1) or (2) and the principal balance of all mortgages outstanding and assumed at the time of transfer of title to the authority.]~~

~~[{Eff 11/11/11; R _____} (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)]~~

§15-218-38 Foreclosure. In the event of a foreclosure, any law to the contrary notwithstanding, a mortgagee under a mortgage covering a reserved housing or workforce housing unit ~~[and land or leasehold interest]~~ subject to the restrictions of ~~[sections 15-218-35, 15-218-36, and 15-218-37,]~~ section 15-218-35, shall, prior to commencing mortgage foreclosure proceedings, notify the authority ~~[of (1) any default of the mortgagor under the mortgage within ninety days after the occurrence of the default; and (2) any intention of the mortgagee to foreclose the mortgage under chapter 667, HRS. The authority shall be a party to any foreclosure action, and shall be~~

instrument of conveyance for reserved housing and workforce housing units. [Eff 11/11/11; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-41 Equity sharing requirements.

(a) The authority's share of the equity in the reserved housing or workforce housing unit shall be a percentage of the resale fair market value of the unit. The percentage shall be determined as follows: original fair market value minus the original reserved housing or workforce housing sales price divided by original fair market value. The percentage shall be rounded to the nearest one percent.

~~[The authority's share of the equity in the reserved housing unit shall become due upon resale of the reserved housing unit.]~~

(b) If the authority waives its first option to purchase a reserved housing or workforce housing unit as provided for in section 15-218-35(a), the owner of the reserved housing or workforce housing unit may sell the unit at fair market value. The authority's share of the equity in the reserved housing or workforce housing unit shall become due upon sale of the unit.

~~[The authority's share of the equity in the reserved housing or workforce housing unit shall be the higher of:~~

- ~~-(1) An amount equal to the difference between the original fair market price of the unit as determined by the authority and its original sales contract price; or~~
- ~~-(2) An amount equivalent to the percentage of net appreciation calculated as the difference between the original fair market price of the unit as determined by the authority and its original contract price divided by the original fair market price of the unit.~~

§15-218-42 Deferral of first option to purchase and equity sharing. The authority may [~~consider deferring the equity sharing in case an owner of a reserved housing unit wishes to transfer title to the unit by devise or through the laws of descent to a family member who would otherwise qualify for purchase of a reserved housing unit under this chapter.~~] defer its first option to purchase and equity sharing in the following instances:

- (1) Transfer by devise, descent, or operation of law upon the death of a joint tenant or tenant by entirety;
- (2) Transfer to a relative who meets eligibility requirements upon death of the purchaser;
- (3) Transfer to spouse or children who meet eligibility requirements;
- (4) Transfer due to a property settlement whereby the spouse who meets eligibility requirements becomes the owner;
- (5) Transfer into an inter vivos trust in which the purchasers remain the primary beneficiary and does not affect their rights of occupancy; and
- (6) Transfer into a community land trust or other non-profit organization established to maintain or sustain long-term housing affordability. [Eff 11/11/11; am and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

§15-218-43 Terms of reserved housing and workforce housing for rent. Reserved housing and workforce housing units for rent shall be regulated for a period of thirty years from the date of issuance certificate of occupancy for the project. The maximum allowable rent may be calculated based on an AMI of one hundred and forty percent. The weighted average rent of all reserved housing or workforce housing units in a project shall not exceed the allowable rent

cash payment in lieu of providing the required reserved housing units. The amount of such cash-in-lieu payment shall be the higher of:

- (1) Seven percent of the gross revenue of the development project; or
- (2) The difference between the average fair market value of the unit in the development project and the average reserved housing unit sale price in the development project multiplied by the number of reserved housing units required.

For determining a partial cash-in-lieu payment, a proportional formula shall be utilized. [Eff and comp] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)

~~§15-218-43~~ **§15-218-47 Effects of subsequent rule amendments.** (a) In the case of subsequent rule amendments, reserved housing and workforce housing owners shall be permitted at their election to:

- (1) Remain subject to the rules in effect at the time of the purchase of the unit~~[7]~~; or
- (2) Be governed by the amended rules.

(b) The authority~~[7]~~ or any other entity that the authority transfers the reserved housing or workforce housing to shall notify all reserved housing or workforce housing owners of any change made by law, ordinance, rule, or regulation within one hundred eighty days of ~~[such]~~ the changes. ~~[Such]~~ The notice shall clearly state the enacted or proposed new provisions, the date upon which they are to be effective and offer to each owner of reserved housing units constructed and sold prior to the effective date, an opportunity to be governed by ~~[such]~~ the new provision.

(c) No reserved housing or workforce housing unit owner shall be entitled to modify the restrictions or conditions on use, transfer, or sale of the reserved housing or workforce housing unit, without the written permission of the holder of a duly-recorded first mortgage on the unit and the owner

{Unit Type	Maximum Unit Size (Square Feet)
Studio with one bathroom	500
One bedroom with one bathroom	650
Two bedroom with one bathroom	800
Two bedroom with one and a half bathroom	900
Two bedroom with two bathroom	1,000
Three bedroom with one and a half bathroom	1,100
Three bedroom with two bathroom	1,200
Four bedroom with two bathroom	1,300}

~~—— (b) Workforce housing project(s) shall be exempt from the requirements of sections 15-218-35, 15-218-36, and 15-218-41 of subchapter 3 of this chapter.~~

~~—— (c) Workforce housing projects shall not be used to satisfy the reserved housing requirement(s) for any residential project(s) that are required to provide reserved housing in accordance with subchapter 2.~~

~~—— (d) Workforce housing project(s) shall receive a floor area bonus of one hundred per cent, provided that such bonus floor area shall be used towards the construction of workforce housing project(s) only.~~

~~—— (e) In approving development permit for a qualified workforce housing project the authority may consider modification(s) to the provisions of Hawaii administrative rules, chapter 217, title 15, mauka area rules.~~

~~—— (f) Workforce housing projects shall be exempt from the provisions of Hawaii administrative rules, section 15-217-65.~~

~~Eff 11/11/11; am and comp _____] (Auth: HRS §§206E-4, 206E-5, 206E-7) (Imp: HRS §§206E-4, 206E-5, 206E-7)]~~

~~[§§15-218-56 to 15-218-66 (Reserved)."]~~

V. Consultation with Board's Attorney in Executive Session

- A. Discussion with the Board's Attorney under Section 92-5(4), HAR, to consult with the Board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities to reviewing Chapter 201M, Hawaii Revised Statutes (HRS); Administrative Directive 18-02, and Code of Ethics, Chapter 84, HRS

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