

## SMALL BUSINESS REGULATORY REVIEW BOARD

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

Tel 808 586-2594  
Fax 808 586-2572

### AGENDA

**Wednesday, March 19, 2014 ★ 9:30 a.m.**

**No. 1 Capitol District Building**

**250 South Hotel Street - Conference Room 436**

**Neil Abercrombie**  
*Governor*

**Richard C. Lim**  
*Director, DBEDT*

**Mary Alice Evans**  
*Deputy Director, DBEDT*

#### Members

**Chu Lan Shubert-Kwock**  
*Chairperson*  
*Oahu*

**Anthony Borge**  
*Vice Chair*  
*Oahu*

**Leslie Mullens**  
*2<sup>nd</sup> Chairperson*  
*Maui*

**Howard Lum**  
*Oahu*

**Barbara Bennett**  
*Kauai*

**Kyoko Y. Kimura**  
*Maui*

**Craig Takamine**  
*Hawaii*

**Harris Nakamoto**  
*Oahu*

**Richard C. Lim**  
*Director, DBEDT*  
*Voting Ex Officio*

#### **I. Call to Order**

#### **II. Introduction of new Board Member**

#### **III. Approval of February 19, 2014 Meeting Minutes**

#### **IV. Old Business**

##### **A. Discussion and Action on the Small Business Statement After Public Hearing for Proposed Amendments Promulgated by the Liquor Commission of the City and County of Honolulu in the sections noted below and attached in Exhibit 1:**

1. Section 3-80-1.1 Definitions
2. Section 3-81-17.53 License Fees; When Due and How Calculated
3. Section 3-81-17.54 Gross Sales Reports
4. Section 3-81-17.55 Additional License Fees on Gross Sales
5. Section 3-82-31.8 Recorking
6. Section 3-82-38.5 Registration of Employees
7. Section 3-82-38.8 Semi-Annual Submission of Employee List
8. Section 3-82-38.9 Licensee and Manager in Charge of Premises
9. Section 3-82-38.25 Restrictions or Conditions on Licenses
10. Section 3-82-41.2 Transfer of Corporate Stock; Notification Regarding Limited Partners, Limited Liability Company Managers or Members
11. Section 3-83-53.1 License Applications; Notice of Hearing; Affidavits
12. Section 3-83-61.1 Renewal of Existing License
13. Section 3-83-62 Architectural Requirements/Alteration of Licensed Premises
14. Section 3-84-72.2 Premises Lighting; Doors
15. Section 3-84-78.01 Conduct of Employees
16. Section 3-84-78.06 Solicitation of Business Outside of Premises
17. Section 3-84-78.52 Stacking of Drinks
18. Section 3-85-91.12 Licenses Under Safekeeping

##### **B. Discussion and Action on the Small Business Statement After Public Hearing for Proposed New Rules Promulgated by the Liquor Commission of the City and County of Honolulu in the sections noted below and attached in Exhibit 1:**

1. Section 3-81-20 General Right of Inspection
2. Section 3-82-38.26 Bottle Service for On-Premise Consumption
3. Section 3-82-41.3 Management or Operating Agreements
4. Section 3-84-73.1 Quality of Liquor

- C. Discussion and Action on the Small Business Statement After Public Hearing for Proposed Amendments Promulgated by the Department of Agriculture for Hawaii Administrative Rules (HAR) Title 4 Chapter 143, Standards for Coffee - Exhibit 2

**V. New Business**

- A. Discussion and Action on Proposed New Rules Promulgated by the County of Kauai's Planning Commission in the Kauai County Code, Chapter 8, Article 17, Relating to Transient Vacation Rentals – Exhibit 3
- B. Discussion and Action on Proposed New Rules Promulgated by the County of Kauai's Planning Commission in the Kauai County Code, Chapter 8, Interpretive Administrative Zoning Ordinance Rules and Regulations Relating to Chapters 8, 9, and 10 – Exhibit 4
- C. Discussion and Action on Proposed New Rules Promulgated by the County of Kauai's Planning Commission in the Kauai County Code, Chapter 8, Processing and Review of Use Permits Concerning the Construction and Operation of Fruit and Vegetable Stands in the Agriculture and Open Zoning Districts – Exhibit 5
- D. Discussion and Action on Proposed Amendments Promulgated by Department of Commerce and Consumer Affairs on HAR Title 16 Chapter 99, Relating to Real Estate Brokers and Salespersons – Exhibit 6
- E. Discussion and Action on Proposed Amendments Promulgated by Department of Land and Natural Resources in sections noted below and attached in Exhibit 7:
  - 1. HAR Title 13 Section 233-26 Charges for Parking
  - 2. HAR Title 13 Section 256-16 Thrill Craft Operations; General Provisions
- F. Discussion and Action on Proposed New Chapter Promulgated by Office of the Lieutenant Governor on HAR Title 2 Chapter 15, Time Share Board Commissioners of Deeds – Exhibit 8
- G. Discussion and Action on Proposed Amendments Promulgated by Department of Agriculture for HAR Title 4 Chapter 60 Milk Control Rules - Exhibit 9

**VI. Legislative Matters**

- A. Update on Senate Bill 2487 SD1, Relating to the Small Business Regulatory Flexibility Act – Requires members of the small business regulatory review board to receive training by the appropriate division of the department of the attorney general. Clarifies the contents of the annual report of the small business regulatory review board must submit to the legislature. Sunsets the small business regulatory review board and Chapter 201M, Hawaii Revised Statutes, the Small Business Regulatory Flexibility Act, on 06/30/2019
- B. Update on Governor's Message No. 503, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Harris Nakamoto, for a term to expire June 30, 2015

**VII. Administrative Matters**

- A. Update on Board's Fiscal Year 2015 Supplemental Budget Request
- B. Discussion and Action on Proposal to Revise the Small Business Impact Statement
- C. Chair's Report – Exhibit A

**VIII. Next Meeting:** Scheduled for Wednesday, April 16, 2014, at 9:30 a.m., Conference Room 436, Capitol District Building, Honolulu, Hawaii

**IX. 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.

# March 19, 2014 ~ SBRRB Meeting Checklist

Member Attendance				
	Airline Preference	From	Details	Attend
Chu Lan Shubert-Kwock <i>Agenda</i>	NA	Oahu	Parking Pass	✓
Howard Lum <i>Agenda</i>	NA	Oahu	Parking Pass	✓
Craig Takamine <i>S Agenda</i>	HA	Hawaii	Parking Pass	✓
Barbara Bennett <i>Agenda</i> <i>See Fl. Plans (attachment)</i>	HA	Kauai	Parking Pass	✓
Kyoko Kimura <i>Agenda</i> <i>See Fl. Plans (attachment)</i>	HA	Maui	Parking Pass	✓
Mark Ritchie <i>Director's ex officio</i> <i>Handled</i>	NA	Oahu	NA	✓
Anthony Borge	NA	Oahu	Parking Pass	No
Leslie Mullens <i>Agenda</i>	NA	Maui	Parking Pass	✓
Harris Nakamoto <i>Agenda</i>	NA	Oahu	Parking Pass	✓

STAFF				
Margaret Ahn	✓ <i>Agenda</i>			Yes
Dori Palcovich	✓			Yes

Pre Meeting Checklist	
Conference Room #436 (Confirm each month)	X
Make 15 copies of rule packages for board packets - continuous	✓
Poll board attendance <i>Working on</i>	✓
Prepare TAF for Director's approval - ASAP	✓✓
Airline booking ASAP - Linda <i>Need to do Craig's</i>	✓✓
Draft Agenda to Chair <i>Approved 3-7-14</i>	✓
Post approved agenda on SBRRB website & State Calendar & Lte. Governor's Office <i>Partners</i>	✓✓
Send Agendas to those people who requested it	✓
Mail approved agenda to board members, M. Ahn	✓
Mail board packets Tues or Wed. March 14th or 12th	✓✓
3-4 Days prior to meeting, send DAGS an email (or fax) re: Board members parking and attending SBRRB meeting - IMPORTANT	✓

Post Meeting Checklist	



# Visitors Sign-in-Sheet - Small Business Regulatory Review Board - March 19, 2014

	Name	Title	Organization	Email	Phone
1	Nicole L. Reid	Owner	Manifest	admin@manifesthawaii.com	388-2909
2	Bill Comerson	Spokesman	Hawaii Biz Business Assoc	bill@ejlounge.com	223-3997
3	Dee Crowell		Kauai Planning Dept	dcrowell@kauai.gov	241-4050
4	Jen Kahanu	Administrator	HDOA	Jeri.M.Kahanu@goi.hawaii.gov	832-0705
5	Grant Tomita	Mill Comptrol Specialist	HDOA	grant.m.tomita@hawaii.gov	832-0590
6	Anna Hilari	Admin	CIQ	ahilari@hawaii.gov	7687302
7	Miles Ino	EO	DCCA/PVL	miles.i.ino@dcca.hawaii.gov	586-2643
8	Diane Fujimura	SEES	DCCA/PVL	dfujimura@dcca.hawaii.gov	" "
9					
10					
11					
12					
13					
14					
15					
16					



Question of Chair Recusing  
bill to: Palcovich Dori

03/17/2014 09:46 AM

History:

This message has been forwarded.

Dori Palcovich and Members of the Board.

It should be consider whether the chair Chu Lan Schubert Kwock would recuse herself during that portion of the hearing regarding the Liquor Commission rule amendments. Ethical standards would suggest that it would be a wise course of action as she has been a Honolulu liquor commissioner in the recent past. She remains close to the commission in attending some of their annual conferences and social agendas and has had continued appearances within their hearings in recent years.

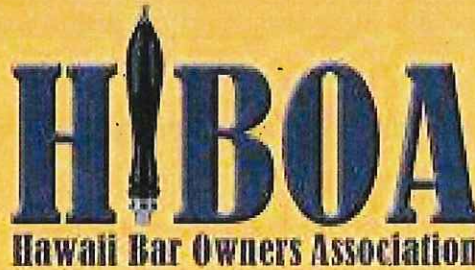
With regard to direct interaction she voted to deny a liquor license to E & J Lounge Operating Co., Inc., in 2005, the company of Bill Comerford spokesman for the Hawaii Bar Owners Association. That decision was appealed and eventually brought to the Hawaii State Supreme Court who decided 5 to 0 that the Liquor Commission had not followed state law and a proper hearing process in denying that license. To accept such a recusal would eliminate any ethical question in the SBRRB's decision.

We do not wish to affront Chair Kwock in any manner before the Board and thus suggest such a recusal before the 3/19/14 meeting.

I am available to discuss any particulars on his matter on Tuesday and can be reached at 808-223-3997.

Sincerely,

Bill Comerford  
Spokesman  
Hawaii Bar Owners Association  
Bill@ejlounge.com



3/14/14

Testimony in regard to Proposed Rules and Amendments of Liquor Commission Rules

From Bill Comerford, Spokesman for the Hawaii Bar Owners Association

Honorable Chair and Members of the Small Business Regulatory Review Board,

On behalf of the members of our group I would like to commend the overall efforts of the commission to put forth a very fair, reasonable and concerted presentation of these proposed rule changes. From the initial presentation at the end of last year to these proposed rules and amendments there is clear evidence of the commission's interaction with the industry. These rules are a great deal more clear and concise. Given that, there remain some areas that should provide more clarity or discussion of intent.

Of particular note would be the amendments regarding General Right of Inspection, Conduct of Employees and Restrictions or Conditions on Licenses.

1/ **§3-81-20. General Right of Inspection.**

2/ **§3-84-78.01. Conduct of Employees.**

3/ **§3-82-38.25. Restrictions or Conditions on Licenses.**

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1/

**§3-81-20. General Right of Inspection.**

**Without notice, search warrant, or other legal process, a licensee shall provide an investigator immediate access to every part of the licensed premises for the purpose of making an examination or inspection thereof of items related to the licensee's compliance with the liquor laws or rules. Except as prohibited by laws governing confidential or protected information, said examination or inspection shall include, but not be limited to, any books and records of the**



licensee kept on the licensed premises which relate to the licensee's compliance with the liquor laws or rules. Items discovered during such examination or inspection shall be used for the purpose of enforcement of the liquor laws or rules.

**SUMMARY:** The proposed new rule expands on the general right of inspection authorized by HRS §281-20.

**Response:**

*This section of the rules has been classified reserved for more than 20 years.*

*We brought up the status of an owner's camera systems?*

*How can one interpret that as records?*

*There is no law stating we must have camera systems, they are not legally part of the records required by law. Should they be accessible to inspectors? Liquor law would allow them the right to inspect records regarding liquor law not to expand beyond that.*

*Does this not violate constitutional rights to self incriminate?*

*My personal status on this is that they are my records purchased to protect my business against lawsuits and not meant to be used against me when made public property. They may subpoena them but they may not inspect them or remove them from the premises without my consent. It might make it necessary for me to remove them thus benefiting nobody.*

*The section under state law following it, 281-21 addresses subpoenas and thus shows that some things are subject to subpoena and not general inspection. I believe cameras are in that area, subject to subpoena not as part of general inspection. We have been in lawsuits as a result of video being released to the inspectors where the liquor commission found no fault in our actions but the subject material as public record has been used to bring lawsuits against us with the intent to force sizeable defenses by our insurance companies thus resulting in settlements that cost us sizable settlements and increased cost of insurance.*

**Conclusion**

***Let's stay within the defined limits of the law in examining books and records and not seek to expand the web of government in items that protect the industry against lawsuits. Cameras and their recordings should not be inspected without consent, they should be requested.***

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Of particular note would be the amendments regarding conduct of employees

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**§3-84-78.01. Conduct of Employees.**

**(f) No employee while on duty shall engage in violent, quarrelsome, disorderly, lewd, immoral, or unlawful conduct on the premises.**

**SUMMARY:** The proposed amendment applies the conduct prohibition in HRS §281-78(b)(6) to employees.

**Response:**

*First the law reads 281-78 Prohibitions*

***(b) At no time under any circumstance shall any licensee or its employee:***

***(6) Fail to timely prevent or suppress any violent, quarrelsome, disorderly, lewd, immoral, or unlawful conduct of any person on the premises;***

*The proposed rule totally confuses the intent of the law to suppress any of those actions by patrons or unruly customers.*

*One must sometimes meet violence with controlled force to protect every other person on the premises whether patron or employee.*

*By making this a rule you will open every location up to multiple lawsuits as every one of these behaviors is interpretive. If you are physically struck, by rule you could not respond. If there is an altercation no force may be used to control it thus endangering the remainder of your customers. The intent is understood here but this is the most problematic section of the rules that endangers a licensee's future existence. Are they disciplining the employee or are they punishing the licensee if this should occur? Is this an expansion of the law's provisions? Is there a better way of achieving what is desired here? Is this a mandatory good behavior clause that is being asked of your worst offenders and yet may jeopardize all operators?*

*Each action is completely interpretive subject to any individual's interpretation. What is immoral? What is lewd? When does a joke become too dirty? If one raises one's voice is he quarrelsome?*

*Rules should be clear and not open to interpretation. This section under Employee conduct goes beyond the intent of the law and leaves every licensee under the whims of the moral effrontery of any inspector, patron or commissioner.*

*Would not all strip clubs and nude bars be unable to operate under valid licenses?*

*Any use of force against any patron will result in a lawsuit for operating against the rule. The law's intent was for the staff to immediately suppress that violence this rule leaves the*



*staff and patrons defenseless to others violent, quarrelsome and disorderly actions. This perverts the intent of the law. We are peacekeepers and as such sometimes find force necessary that should be used sparingly and appropriately.*

### **Conclusion**

***Do not accept this rule.***

***Do not limit the ability of the staff to control the room, we understand the intent but this is an unrealistic request for everybody to be nice. It is wishful thinking with regard to patrons under the influence. By putting it into the rules it makes every well intended action subject to legal consequences by law enforcement or law suit and fails the intent of the law to subdue the inappropriate actions of the patrons.***

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### **3/ limits of licenses at transfer**

#### **25. Restrictions or Conditions on Licenses.**

(a) Pursuant to HRS Section 281-61(b), the Commission may, at any time, fine, suspend, revoke, or place restrictions or conditions on any license issued under HRS 281 and the Rules of the Commission for the purpose of preventing activities within the licensed premises, or adjacent areas under the licensee's control that are potentially injurious to the health, safety, and welfare of the public. Such adjacent areas include areas such as, but not limited to, stages, entertainment areas, lanais, and parking areas.

(b) The Commission may place such restrictions or conditions on any license issued pursuant to HRS 281 or these Rules (i) at the time the license is initially issued or transferred or (ii) at any other time upon petition of the Administrator to the Commission and after notice and hearing in accordance with HRS 281 and these Rules.

(c) Licensee shall comply with any restrictions or conditions placed on the license by the Commission pursuant to this Rule.

**SUMMARY:** The proposed amendment expands the time when restrictions or conditions may be placed upon a license, to include at the time of license transfer.

#### **Response:**

*We ask some questions on the rule's intent.*

*Are those restrictions instituted against the licensee or the license?*

*Do the restrictions then always remain with the license?*

*Do the restrictions upon the license apply to the new operator upon transfer?*

*Is there any legal conflict here regarding constitutional rights?*



*Is there the potential to remove prior restrictions?*

*Is there ever a clean slate for a new operator?*

*As a small business person one can see that this limits the ability to sell the business and may also limit the potential to change any business due to the restrictions.*

### **Conclusion**

***Wise judgment must be used and we cannot rely upon restrictive actions as often the businessman is put into a lose/lose situation. There is no winning if the restrictions can not be removed and must remain in a transfer. Many recent bars in Waikiki have been restricted out of existence by no fault of their own. Smoking bans have put their customers outside thus disturbing the peace till 4am. The restrictions then limit their hours and thus they cannot operate successfully yet they can't sell the operation either since the next operator can't bypass the restrictions. The end result is closed operations that cannot be sold and remain empty for many years to come. The rules must have some relief.***

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The above rules would need some continued work to determine clearer understandings of the issues from both the commission and the industry.

I will be present at the hearing and would be available to testify or discuss any of the matters listed above on behalf of our membership. I would also be available at any future time to help in these matters.

Please consider my responses, comments and conclusions on behalf of the Hawaii Bar Owners Association as small business owners here in Hawaii in your decisions and comments upon the proposed rules. Let me conclude with a big thank you to the current Administration and Commission in their desire to create workable rules for the industry. Accept my comments with the understanding that balance and clarity makes for good rules, good government and good actions by the regulated. Under clear rules business has a game plan and the ability to grow and spur an economic benefit for everyone.

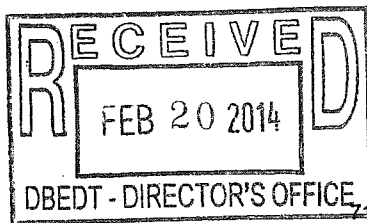
Thank you,



Bill Comerford  
Spokesman for the Hawaii Bar Owners Association  
10 Marin Lane, Honolulu, HI 96817  
[Bill@ejlounge.com](mailto:Bill@ejlounge.com) 808-223-3997

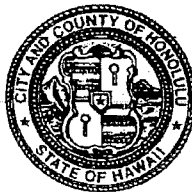
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## Exhibit 1



LIQUOR COMMISSION  
**CITY AND COUNTY OF HONOLULU**  
1 KAPIOLANI BOULEVARD, SUITE 600 • HONOLULU, HAWAII 96813-5249  
PHONE: (808) 768-7300 or (808) 768-7355 • FAX: (808) 768-7311  
E-mail address: liquor@honolulu.gov • INTERNET: www.honolulu.gov/liq

KIRK CALDWELL  
MAYOR



MICHAEL S. YAMAGUCHI  
CHAIRMAN

IRIS R. OKAWA  
VICE CHAIR

WESLEY F. FONG  
COMMISSIONER

JOSEPH V. O'DONNELL  
COMMISSIONER

JOSEPH M. MAGALDI, JR.  
COMMISSIONER

ANNA C. HIRAI  
ACTING ADMINISTRATOR

February 19, 2014

Chu Lan Shubert-Kwock, Chair  
Small Business Regulatory Review Board  
Department of Business, Economic Development & Tourism  
No. 1 Capitol District Building  
250 South Hotel Street  
Honolulu, Hawaii 96813

Re: Proposed Amendment to Rules §3-80-1.1 "Definitions"; §3-81-17.53 "License Fees; When Due and How Calculated"; Rule §3-81-17.54 "Gross Sales Reports"; Rule §3-81-17.55 "Additional License Fees on Gross Sales"; §3-82-31.8 "Recorking"; §3-82-38.5 "Registration of Employees"; §3-82-38.8 "Semi-Annual Submission of Employee List"; §3-82-38.9 "Licensee and Manager in Charge of Premises"; §3-82-38.25 "Restrictions or Conditions on Licenses"; §3-82-41.2 "Transfer of Corporate Stock; Notification Regarding Limited Partners, Limited Liability Company Managers or Members"; §3-83-53.1 "License Applications; Notice of Hearing; Affidavits"; §3-83-61.1 "Renewal of Existing License"; §3-83-62 "Architectural Requirements/Alteration of Licensed Premises"; §3-84-72.2 "Premises Lighting; Doors"; §3-84-78.01 "Conduct of Employees"; §3-84-78.06 "Solicitation of Business Outside of Premises"; §3-84-78.52 "Stacking of Drinks"; §3-85-91.12 "Licenses Under Safekeeping"

Proposed New Rules §3-81-20 "General Right of Inspection"; §3-82-38.26 "Bottle Service for On-Premise Consumption"; §3-82-41.3 "Management or Operating Agreements"; §3-84-73.1 "Quality of Liquor"

Chair Kwock and Members of the Small Business Regulatory Review Board:

The Liquor Commission, City and County of Honolulu ("Commission"), held a public hearing on the above-referenced proposed amended and new Rules of the Liquor Commission, City and County of Honolulu ("Proposed Amendments") on Thursday, December 12, 2013 ("Public Hearing"). At the Public Hearing, both written and oral testimony was accepted on the Proposed Amendments. Due to a scheduling break during the December holidays, and the desire to have decision making on the Proposed Amendments conducted by the full five-member Commission, decision making was not scheduled until the Thursday, January 30, 2014 meeting.<sup>1</sup>

<sup>1</sup> A last minute cancellation resulted in only four members attending. As further delay on decision making was not tenable, the Commission proceeded to decision making with just four members.

In response to the testimony presented and other considerations, and after consultation with the Acting Administrator and Corporation Counsel, the Commission adopted the Proposed Amendments in the form attached as Exhibit A to its October 23, 2013 Small Business Impact Statement, with the following **REVISION** (collectively, "Revised Amended Rules"):

**§3-82-41.2. Transfer of Corporate Stock; Notification Regarding Limited Partners, Limited Liability Company Managers or Members.**

- (a) Prior to the date of transfer or change in ownership of a corporation, the corporate licensee shall submit an application for stock transfer and secure the approval, in writing, of such transfer or change of ownership from the Commission. The request for approval shall include the following:
- (1) The stock purchase offer or similar document;
  - (2) Information regarding the consideration to be paid for the transfer and the effective date of the transfer of stock;
  - (3) Personal history, FBI Fingerprint card, and criminal history record clearance, as explained in §3-82-45.1, on forms prescribed by the Commission, of each new stockholder holding twenty-five percent (25%) or more of corporate stock, officer or director; and
  - (4) Upon the approval of the proposed transfer of stock by the Commission, the corporate licensee shall submit an executed copy of the stock purchase agreement to the Commission not more than fifteen days after the effective date of the transfer of stock or approval by the Commission, whichever is earlier.
- (b) Corporate licensees shall notify the Commission, in writing, within thirty days of any change of officers or directors and submit a personal history of the new officer or director, on forms prescribed by the Commission. Limited liability company licensees shall notify the Commission, in writing, ~~[within thirty days of]~~ **prior to** any change of managers of manager-managed limited liability companies or of any change of members in a member-managed limited liability companies and submit a personal history of the new manager or member, on forms prescribed by the Commission. All newly appointed or elected principals, who are natural persons, of any class license, except as exempted by §3-82-45.1, must be fingerprinted or submit fingerprints on a Honolulu Liquor Commission fingerprint card and submit a personal history and affidavit, and must request a Criminal History Clearance from the Hawaii Criminal Justice Data Center within thirty days of appointment or election, unless the period is extended or the requirement is waived by the Commission, for just cause. Principals that are not natural persons must submit whatever documentation establishes the entity (for example, Articles of Incorporation or Organization, or Partnership Agreement), and a list of principals of the entity. Limited partnerships and manager-managed limited liability company licensees shall notify the Commission, in writing, within thirty days of any change of limited partners ~~HOLDING TWENTY-FIVE PERCENT OR MORE INTEREST~~ or members and submit a personal history of the

- new limited partner ~~HOLDING TWENTY-FIVE PERCENT OR MORE INTEREST~~ or member, on forms prescribed by the Commission.
- (c) The transfer of an aggregate of fifty-one (51%) percent of the stock of cabaret licenses which, pursuant to Section 281-31(l), Hawaii Revised Statutes, are permitted to have entertainment by dancers, shall be considered a transfer of the license for purposes of determining whether the licensee may continue to have such entertainment.
  - (d) Stock transfer applicants shall provide documentation from the Department of Commerce and Consumer Affairs of proof of the existence of a valid corporation.

The full text of the Revised Amended Rules is attached as Exhibit A hereto.

The Commission reviewed and fully considered all testimony on the Proposed Amendments, including the position of the Commission's administration, in an attempt to accommodate the different interests involved and to arrive at a decision that would be equitable to licensees but also meet the Commission's and the public's regulatory and public safety expectations. This decision making necessarily involves a balancing of interests – that of the licensee to conduct business under its liquor license in a manner that is not unreasonably burdensome or illogical from a regulatory standpoint, and that of the agency and the public to have liquor license activities conducted in a proper and safe manner.

While the Commission considered testimony advocating further revision to certain of the Proposed Amendments, the Commission determined that at this time, and except as noted above, additional changes to the Proposed Amendments were not warranted. Instead, the Commission decided to proceed with the Revised Amended Rules, and to monitor their effect, both in terms of operational impact to licensees and effectiveness in promoting certain regulatory objectives, to determine whether the Revised Amended Rules need further refinement in the future.

Further information required by Section 201M-3, Hawaii Revised Statutes, follows:

### ***How Opinions or Comments From Affected Small Businesses Were Solicited***

As required by Chapter 201M, Hawaii Revised Statutes ("Hawaii Small Business Regulatory Flexibility Act" or "Act"), Commission administration participated in small discussion groups and provided copies of the Proposed Amendments to representatives of the principal classes of licenses set forth in §281-31, Hawaii Revised Statutes ("HRS"), and to practitioners who represent licensees of all classes before the Commission ("Representatives").<sup>2</sup> The Representatives were asked to review the Proposed Amendments and provide input on the impact of the Proposed Amendments on their respective license class. In addition, the Commission reviewed, discussed, and revised the Proposed

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<sup>2</sup> Review materials were sent to approximately 25 individuals. Comments were received from two (2) wholesale dealer licensees; Hawaii Food Industry Association (Retail Liquor Dealers); Hawaii Bar Owners Association; Hawaii Lodging & Tourism Association; Kyo-ya Company Ltd. hotel licensees; Seven-Eleven (Hawaii), Inc.; five (5) attorneys; and two (2) liquor license consultants.

Amendments over the course of several months during the December 2012 to March 2013 time period. After deliberation, on March 14, 2013, the Commission approved for submission to the public hearing process the proposed form of amended and new Rules as set forth in Exhibit A to its October 23, 2013 Small Business Impact Statement.

Just prior to the Commission's appearance before the Small Business Regulatory Review Board ("Board") on November 20, 2013, the Commission published its Notice of Public Hearing on the Proposed Amendments ("Notice") in the Honolulu Star-Advertiser on November 12, 2013.<sup>3</sup> Additionally, a copy of the Notice and the complete text of the Proposed Amendments were posted on the Commission's website, and a copy of the Notice was mailed to each of the 1,400 licensees under the Commission's jurisdiction and the Representatives. Both the Notice and the Proposed Amendments were available at the Commission front counter, as well as being available by mail. The Notice described how oral and/or written testimony could be submitted for consideration at the Public Hearing. Additional oral and written testimony was accepted at the Public Hearing itself.

### ***Summary of Written and Oral Comments/Testimony Received From the Public and Small Business***

Written and oral testimony was submitted on 16 of the Proposed Amendments. The testimony is summarized in the following table:

<b>Rule No.</b>	<b>Short Title Exh. A Pg.</b>	<b>Testimony</b>	<b>Administration's Response and Recommendation to Commission</b>
3-81-17.54	Gross Sales Reports  Pgs. 4-5	Hawaii Bar Owners Assoc. ("HIBOA"): Questioned necessity of recording value of complimentary drinks.	Stated valuation (4x amount of liquor purchased) only comes into play when no sales price exists for the comp'd drink, which should be relatively rare (regular inventory vs. "special customers only" inventory); <b><i>Administration recommends adopt proposed rule amendment as is.</i></b>
3-81-20	Inspection (new)  Pgs. 6-7	HIBOA: Questioned status of camera system records.	Under proposed language, camera system records would be included, unless confidential or protected information; further language revision unnecessary; <b><i>Administration recommends adopt proposed rule amendment as is.</i></b>
3-82-31.8	Recorking  Pg. 7	SBRRB, HIBOA: Recorking should be discretionary with licensee, not mandatory.	Consult with COR whether statutory language <sup>4</sup> permits discretionary recorking; <b><i>if discretionary recorking permitted, Administration will agree to requested revision.</i></b>

<sup>3</sup> Because of the 30-day notice period required by HRS Section 91-3(a)(1), and in an attempt to complete the public hearing before the holiday break, the Commission deemed it prudent to publish the Notice ahead of the Board's November 20, 2013 meeting. If significant Board opposition to proceeding to public hearing was encountered at the November 20 meeting, a continuance would have been effected.

<sup>4</sup> HRS Section 281-31(t) states "Any provision to the contrary notwithstanding, ***a patron may remove*** from any class of licensed premises any portion of wine, liquor, or beer that was purchased on or brought onto the premises of the licensee engaged in meal service for consumption with a meal; provided that it is recorked or resealed in its original container."



Rule No.	Short Title Exh. A Pg.	Testimony	Administration's Response and Recommendation to Commission
3-82-38.9	Manager in Charge Pgs. 10-11	HIBOA: Clarification needed (meaning of 4 year validity).	Clarifications can be addressed through licensee outreach/orientation/etc.; <b>Administration recommends adopt proposed rule amendment as is.</b>
3-82-38.25	Restrictions on License Pg. 11	HIBOA: Clarification needed (intent; procedure).	Clarifications (procedure) can be addressed through inquiry to LIQ staff; <b>Administration recommends adopt proposed rule amendment as is.</b>
3-82-38.26	Bottle Service (new) Pg. 12	HIBOA: Clarification needed (applicability to all on-premises licensees).	Clarifications addressed at public hearing; <b>Administration recommends adopt proposed rule amendment as is.</b>
3-82-41.2	Transfer of Corporate Stock, etc. Pgs. 12-13	Licensee: Notification of limited partnership changes burdensome; should require only if ownership threshold meets 25% or greater.	Proposed rule amendment pertains to limited liability companies only, not limited partnerships; consult with COR whether proposed amendment can be taken up now; <b>if so and Commission agrees, Administration will agree to requested revision.</b>
3-82-41.4	Mgmt. Agreements (new) Pg. 13	HIBOA, Attorney: Clarification needed (submission procedure); questioned if requirement would be retroactive.	Clarifications (procedure) can be addressed through licensee outreach/orientation/etc.; prospective application addressed at public hearing; <b>Administration recommends adopt proposed rule amendment as is.</b>
3-83-53.1	License Applications Pgs. 14-19	HIBOA: Clarification needed (difficulty of predicting future operations).	Administration has revised proposed rule language in response to industry comments; other concerns (dispenser class vs. restaurant class requirements) not the subject of this group of proposed rule amendments; <b>Administration recommends adopt proposed rule amendment as is.</b>
3-83-61.1	Renewal Pgs. 19-20	Licensee: Consider requiring certificate of good standing from State of Hawaii only, versus state of organization; will assure that foreign corporations are properly filing their Hawaii annual reports, etc.	Consult with COR if requesting certificate of good standing solely from State of Hawaii is sufficient safeguard; <b>if so, Administration will agree to the requested revision.</b>
		HIBOA: Clarification needed (procedure).	Administration does not deem this requirement to be burdensome, particularly as local licensees can obtain the good standing certificate online; <b>subject to proposed revision above, Administration recommends adoption as is.</b>
3-83-62	Alterations, Etc. Pg. 21	HIBOA: Clarification needed (procedure).	Administration has not received complaints from licensees that final inspections are not being done promptly; <b>Administration recommends adopt proposed rule amendment as is.</b>
		Licensee: Concern when property owner (not the licensee) makes alterations to the licensed premises.	Do not know how to address by rule as difficult to excuse licensee responsibility for activities being conducted on or to the licensed premises; may have to handle in adjudication context; <b>Administration recommends adopt proposed</b>

Rule No.	Short Title Exh. A Pg.	Testimony	Administration's Response and Recommendation to Commission
			<b><i>rule amendment as is.</i></b>
3-84-72.2	Lighting; Doors  Pg. 21	HIBOA: Clarification needed (who is covered by the rule).	Existing definition of "employee" in rules provides clarification; <b><i>Administration recommends adopt proposed rule amendment as is.</i></b>
3-84-78.01	Conduct of Employees  Pg. 22	HIBOA: Objection, many bases.	This was a Commissioner-proposed rule amendment; consultation with COR recommended; <b><i>Administration will acquiesce with Commission's decision.</i></b>
3-84-78.06	Solicitation  Pg. 22	HIBOA: Clarification needed (define solicitation).	Only comment Administration has received in the past has been problem with defined area, not what constitutes "solicit business"; <b><i>Administration recommends adopt proposed rule amendment as is.</i></b>
3-84-78.52	Stacking  Pg. 23	HIBOA, Licensee: Clarification needed; specifically re: "flights".	Clarifications addressed at the public hearing; further clarifications (procedure) can be addressed through inquiry to LIQ staff; <b><i>Administration recommends adopt proposed rule amendment as is.</i></b>
3-85-91.12	Safekeeping  Pg. 23	HIBOA: Clarification needed (process or procedure).	Clarifications (procedure) can be addressed through inquiry to LIQ staff; <b><i>Administration recommends adopt proposed rule amendment as is.</i></b>

### ***Liquor Commission Response to Comments/Testimony Received***

The Commission made revisions to one (1) of the Proposed Amendments, as described above.

### ***How Many Persons Attended the Public Hearing***

Approximately five (5) persons attended the Public Hearing.

### ***How Many People Orally Testified at the Hearing***

Three (3) persons gave oral testimony at the Public Hearing.

### ***How Many Persons Submitted Written Testimony In Response to the Proposed Rules***

Two (2) persons submitted written testimony at the Public Hearing, of which one (1) also gave oral testimony.

### ***Commission's Rationale for Not Accepting Requested Changes***

With respect to Rule §3-82-31.8 "Recorking", the Commission declined to adopt recommendations that recorking should be discretionary with the licensee, not mandatory. After consultation with its counsel, the Commission determined that the proposed amended language appropriately implemented the directive contained in HRS Section 281-31(t).

With respect to Rule §3-83-61.1 "Renewal of Existing License", the Commission declined to limit proof of good standing solely to certification issued by the State of Hawaii. After consultation with its counsel, the Commission determined that proof of good standing from a business entity's state of organization was an appropriate requirement and not unduly burdensome, and was considered a routine inquiry in many business transactions.

With respect to Rule §3-83-62 "Architectural Requirements/Alteration of Licensed Premises", the Commission declined to make further revisions to accommodate the situation where an entity that is not the license holder makes alterations to the licensed premises. After consultation with administration, the Commission determined that creating exceptions to licensee responsibility for activities conducted on the licensed premises was not feasible; individual circumstances could be addressed at the adjudication hearing if and when a licensee received a violation for unauthorized alterations.


With respect to Rule §3-84-78.01 "Conduct of Employees", the Commission declined to delete the proposed amendment. After consultation with its counsel, the Commission determined that the proposed language was an appropriate corollary to the prohibition contained in HRS Section 281-78(b)(6).5

For the remaining Proposed Amendments for which "clarification" was deemed necessary, the Commission accepted administration's representation that clarifications were satisfactorily addressed at the Public Hearing; or could be addressed in licensee outreach/orientation/education; or could be satisfied through inquiry to Commission staff in the future. Accordingly, no further revision was made to the Proposed Amendments.

\* \* \* \* \*

Please contact the undersigned at 768-7302 or [ahirai@honolulu.gov](mailto:ahirai@honolulu.gov) with any questions regarding this submission. We look forward to further discussion on this matter at the next scheduled meeting of the Board.

Respectfully submitted,

  
ANNA C. HIRAI  
Acting Administrator

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5 "... (b) At no time under any circumstances shall any licensee or its employee: ... (6) Fail to timely prevent or suppress any violent, quarrelsome, disorderly, lewd, immoral, or unlawful conduct of any person on the premises; ..."

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**Attachment: Exhibit A to Small Business Statement After Public Hearing**

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**Proposed Amendments to  
Rules of the Liquor Commission of the City and County of Honolulu (2008)**

**Note:** Material to be repealed is [bracketed].

New material is underscored.

Revisions made pursuant to licensee request are highlighted.

**§3-80-1.1. Definitions.**

"Dancer" means a person who is at least twenty-one (21) years of age and who performs or entertains ~~[either clothed (i.e., "Go-Go" Dancer) or]~~ unclothed or in such attire as to expose to view any portion of the pubic hair, anus, cleft of the buttocks, genitals, or any portion of the female breast below the top of the areola. A dancer performing on a licensed premises shall be deemed an employee of the licensee regardless of whether the dancer is under contract or commission, compensated or not compensated, and shall be considered on duty during the period the dancer is performing and while the dancer remains on the licensed premises between performances.

"Go-Go Dancer" means a person who is at least twenty-one (21) years of age and who performs or entertains clothed and in such attire that does not expose to view any portion of the pubic hair, anus, cleft of the buttocks, genitals, or any portion of the female breast below the top of the areola. A go-go dancer performing on a licensed premises shall be deemed an employee of the licensee regardless of whether the go-go dancer is under contract or commission, compensated or not compensated, and shall be considered on duty during the period the go-go dancer is performing and while the go-go dancer remains on the licensed premises between performances.

"Entertainer" means any musician, singer, comic, any person who operates a system that provides amplified, recorded music for dancing, any person who operates a system that provides music so that customers may sing (i.e., "karaoke machines"), or other person who performs a specialized talent for the customers of a licensed premises, regardless of whether that person is under contract or on commission, registered or not registered, compensated or not compensated. This definition excludes dancers and go-go dancers.

**SUMMARY:** The proposed amendment adds a definition for "go-go dancer", and distinguishes "go-go dancers" from "dancers" and "entertainers".

\*\*\*\*\*

**§3-80-1.1. Definitions.**

"Manager" means the designated person duly registered with the Commission as a manager or assistant manager who is in active charge of the licensed premises [while the premises is open for business] during the time the establishment is licensed to sell or serve liquor.

**SUMMARY:** The proposed amendment conforms the definition of "manager" to Rule §3-82-38.9(a) requirements.

\*\*\*\*\*

**§3-80-1.1. Definitions.**

"Sexual Contact" means any touching of the sexual or other intimate parts of a person ~~[not married to]~~ by the actor, or of the sexual or other intimate parts of the actor by the person, whether directly or through the clothing or other material intended to cover the sexual or other intimate parts.

**SUMMARY:** The proposed amendment eliminates an irrelevant personal status from the definition of "sexual contact".

\*\*\*\*\*

**§3-80-1.1. Definitions.**

"Employee" means any person who performs a service usually or normally done, on or within a licensed premises, regardless of whether that person is under contract or commission, registered or not registered, compensated or not compensated. **This excludes a customer who brings into the premises, purchases from the licensee, or obtains from the licensee wine or distilled spirits in its original container, or a pitcher of beer, and pours wine or distilled spirits from the original container, or beer from a pitcher, to create an unmixed serving of liquor for himself or others who sit at the pourer's table and consume the serving of liquor at the pourer's table.**

"Bartender" means a person who prepares or mixes alcoholic drinks in accordance with established recipes and procedures, collects and receives payment for drinks served as all or part of his duties, and is responsible for the cleanliness and orderly condition of the bar area. This excludes people who only open or pour draught or bottled beer or wine. **This also excludes a customer who brings into the premises, purchases from the licensee, or obtains from the licensee wine or distilled spirits in its original container, or a pitcher of beer, and pours wine or distilled spirits from the original container, or beer from a pitcher, to create an unmixed serving of liquor for himself or others who sit at the pourer's table and consume the serving of liquor at the pourer's table.**

**SUMMARY:** The proposed amendment excludes customers who serve themselves and their table guests from the definition of "employee" and "bartender".

\*\*\*\*\*

**§3-81-17.53. License Fees; When Due and How Calculated; Refund Offset.**

- (a) The fee for any license renewed shall be due with the renewal application and payable on or before June 30 of each year. For any license other than special, transient vessel (per day), caterer, temporary or renewed licenses, the fee shall



- be due and payable on the date the license is issued. The fee for a license issued July 1 shall be for a full year. The fee paid for a license issued on any other date shall be prorated from the first day of the month in which the license is issued to the end of the license year.
- (b) License fees required to be paid on June 30 of each year, or on such other date as provided by this rule, shall be the fees prescribed by §3-81-17.51 for each respective class and kind of license.
  - (c) The license fee for a special and caterer license shall be based on the calendar day ending and expiring at midnight.
  - (d) **If a licensee fails to effect its renewed license following payment of the license fee, refund of the fee to the licensee shall be reduced by any outstanding assessments and/or penalties for liquor law or rule violations.**

**SUMMARY:** The proposed amendment authorizes the reduction of any refunded license fee by a licensee's outstanding assessments and/or penalties.

\*\*\*\*\*

**§3-81-17.54. Gross Sales Reports.**

- (a) All licensees, except vessel, transient vessel (per day), and special, shall file a report as directed by the Commission showing the true and accurate gross sales of liquor **and purchases of liquor. The report shall be signed by the owner, partner, corporate officer, member, or authorized agent and submitted with the original signature of the authorized party.** The gross sales report shall also indicate the additional license fee due and payable which exceeds the minimum fees established by §3-81-17.51.
- (b) All tour and cruise vessel licensees shall file ~~[with the Commission]~~ a report **on a prescribed form as directed by the Commission** showing the true and accurate declaration of liquor purchases ~~[as directed by the Commission and]~~. **The report shall be signed by the owner, partner, corporate officer, member, or authorized agent and submitted with the original signature of the authorized party. The gross sales report shall also indicate** the additional fee due and payable which exceeds the minimum fees established by §3-81-17.51.
- (c) The report shall be completed and filed not sooner than July 1 nor later than July 31 of each year, or at such other times as the Commission may direct. In cases of a transfer of a license, the report shall be filed by the transferor before the actual transfer of the license. Where licenses are revoked, canceled, or expired by term, a final report shall be filed within thirty-one (31) days following such revocation, cancellation or expiration. All reports shall be filed on or before the required filing dates by delivering them to the office of the Liquor Commission or by depositing them, properly addressed and stamped, in the United States mail. A postmark shall be evidence as to the time and date a report is mailed. The Commission shall not be responsible for failure of the post office to postmark the mailed report in a timely manner. A report received through the mail after the

filing dates shall be considered late if received more than seven (7) calendar days after the postmark.

- (d) All licensees, except vessel, transient vessel (per day), and special, shall produce within three (3) calendars days for Commission inspection books or records showing all income, purchases and expenses of their liquor licensed business. These books and records, including but not limited to daily sales records and invoices, shall be made available for inspection and/or auditing by the Commission, through its auditors or otherwise, at any time and shall be preserved for a period of four years, except that the Commission may, in its discretion, consent to destruction of those books and records within the period or may require that they be kept longer.
- (e) Gross sales from off-premises catering shall be included in the gross sales report of the Restaurant, Hotel, or Condominium Hotel licensee.
- (f) Licensees who give complimentary drinks shall report the value of those drinks in their annual gross sales report.

**SUMMARY:** The proposed amendment clarifies report content requirements, and specifies who may sign the gross liquor sales report on behalf of a licensee.

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**§3-81-17.54. Gross Sales Reports.**

- (a) All licensees, except vessel, transient vessel (per day), and special, shall file a report as directed by the Commission showing the true and accurate gross sales of liquor. The gross sales report shall also indicate the additional license fee due and payable which exceeds the minimum fees established by §3-81-17.51.
- (b) All tour and cruise vessel licensees shall file with the Commission a report showing the true and accurate declaration of liquor purchases as directed by the Commission and the additional fee due and payable which exceeds the minimum fees established by §3-81-17.51.
- (c) The report shall be completed and filed not sooner than July 1 nor later than July 31 of each year, or at such other times as the Commission may direct. In cases of a transfer of a license, the report shall be filed by the transferor before the actual transfer of the license. Where licenses are revoked, canceled, or expired by term, a final report shall be filed within thirty-one (31) days following such revocation, cancellation or expiration. All reports shall be filed on or before the required filing dates by delivering them to the office of the Liquor Commission or by depositing them, properly addressed and stamped, in the United States mail. A postmark shall be evidence as to the time and date a report is mailed. The Commission shall not be responsible for failure of the post office to postmark the mailed report in a timely manner. A report received through the mail after the filing dates shall be considered late if received more than seven (7) calendar days after the postmark.
- (d) All licensees, except vessel, transient vessel (per day), and special, shall produce within three (3) calendars days for Commission inspection books or records showing all income, purchases and expenses of their liquor licensed

business. These books and records, including but not limited to daily sales records and invoices, shall be made available for inspection and/or auditing by the Commission, through its auditors or otherwise, at any time and shall be preserved for a period of four years, except that the Commission may, in its discretion, consent to destruction of those books and records within the period or may require that they be kept longer.

- (e) Gross sales from off-premises catering shall be included in the gross sales report of the Restaurant, Hotel, or Condominium Hotel licensee.
- (f) Licensees who give complimentary drinks shall report the value of those drinks in their annual gross sales report. **If there is no sales price related to the complimentary drink, the licensee shall report the complimentary drink's value at four (4) times the amount of liquor purchased.**

**SUMMARY:** The proposed amendment establishes a value for gross liquor sales reporting purposes for complimentary drinks when there is no established sales price for the drink.

\*\*\*\*\*

#### **§3-81-17.54. Gross Sales Reports.**

- (a) All licensees, except vessel, transient vessel (per day), and special, shall file a report as directed by the Commission showing the true and accurate gross sales of liquor. The gross sales report shall also indicate the additional license fee due and payable which exceeds the minimum fees established by §3-81-17.51.
- (b) All tour and cruise vessel licensees shall file with the Commission a report showing the true and accurate declaration of liquor purchases as directed by the Commission and the additional fee due and payable which exceeds the minimum fees established by §3-81-17.51.
- (c) The report shall be completed and filed not sooner than July 1 nor later than July 31 of each year, or at such other times as the Commission may direct. In cases of a transfer of a license, the report shall be filed by the transferor before the actual transfer of the license. Where licenses are revoked, canceled, or expired by term, a final report shall be filed within thirty-one (31) days following such revocation, cancellation or expiration. All reports shall be filed on or before the required filing dates by delivering them to the office of the Liquor Commission or by depositing them, properly addressed and stamped, in the United States mail. A postmark shall be evidence as to the time and date a report is mailed. The Commission shall not be responsible for failure of the post office to postmark the mailed report in a timely manner. A report received through the mail after the filing dates shall be considered late if received more than seven (7) calendar days after the postmark.
- (d) All licensees, except vessel, transient vessel (per day), and special, shall produce within three (3) calendars days for Commission inspection books or records showing all income, purchases and expenses of their liquor licensed business. These books and records, including but not limited to daily sales records and invoices, shall be made available for inspection and/or auditing by

the Commission, through its auditors or otherwise, at any time and shall be preserved for a period of four years, except that the Commission may, in its discretion, consent to destruction of those books and records within the period or may require that they be kept longer.

- (e) Gross sales from off-premises catering shall be included in the gross sales report of the Restaurant, Hotel, or Condominium Hotel licensee.
- (f) Licensees who give complimentary drinks shall report the value of those drinks in their annual gross sales report.
- (g) **In addition to the report for the period ending June 30<sup>th</sup>, wholesale licensees shall complete and file an interim gross sales of liquor report for the period July 1 to December 31. The interim report is due not later than [January 31<sup>st</sup>] March 1<sup>st</sup> of the following year. The Commission may direct the wholesale class to file additional interim gross sales of liquor reports, and establish the respective due date(s).**

**SUMMARY:** The proposed amendment adds an interim gross sales reporting requirement to the wholesale license class, with authority to direct additional interim reports. Wholesale licensees requested additional time in which to file. The extension to March 1<sup>st</sup> will not unduly hamper Administration in determining the upcoming fiscal year's deductible in the license renewal cycle.

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**§3-81-17.55. Additional License Fees on Gross Sales.**

- (a) The additional license fee based on gross sales of liquor shall be due and payable thirty-one (31) days after expiration, revocation or cancellation of the license under which the additional license fee accrued. In case of a license transfer, the additional license fee chargeable against such licenses shall become due and payable before the actual transfer of the license. If the deductible for the fiscal year has not been calculated, the prior year's deductible (prorated) will be applied to gross liquor sales to determine if any additional license fee is due. **~~[At the end of the fiscal year, the current year's deductible will be applied to the total gross liquor sales to determine the additional license fee. Any amount due will be assessed to the current licensee; any refund will be returned to the current licensee.]~~**
- (b) If the license is issued after July 1, any additional license fee based on gross sales of liquor shall be determined by prorating the deductible for the year.

**SUMMARY:** The proposed amendment clarifies the application of the deductible to the transferor's interim and final gross liquor sales reports.

\*\*\*\*\*

**§3-81-20. General Right of Inspection.**

**Without notice, search warrant, or other legal process, a licensee shall provide an investigator immediate access to every part of the licensed premises**

for the purpose of making an examination or inspection thereof of items related to the licensee's compliance with the liquor laws or rules. Except as prohibited by laws governing confidential or protected information, said examination or inspection shall include, but not be limited to, any books and records of the licensee kept on the licensed premises which relate to the licensee's compliance with the liquor laws or rules. Items discovered during such examination or inspection shall be used for the purpose of enforcement of the liquor laws or rules.

**SUMMARY:** The proposed new rule expands on the general right of inspection authorized by HRS §281-20. Added language was suggested in response to objections to the overly broad scope of the proposed new rule.

\*\*\*\*\*

### **§3-82-31.8. Recorking.**

Unless inconsistent with Chapter 281 of the Hawaii Revised Statutes or the Rules of the Liquor Commission, any [~~Class 2 Restaurant, Class 6 Club, Class 11 Cabaret, Class 12 Hotel, Class 14 Brewpub, and Class 15 Condominium Hotel~~] licensee engaged in meal service [may] shall allow a patron who has purchased or brought unto the licensed premises [a bottle of] wine, liquor or beer for consumption with a meal[,] to remove the partially consumed [~~bottle of wine~~] product from the licensed premises, which shall be recorked or resealed in its original container.

**SUMMARY:** The proposed amendment conforms the recorking rule to statutory changes made to HRS §281-31(t). After discussion with licensees, the general consensus was that the proposed amendment (three (3) different versions were provided for discussion) most closely tracked the statutory language in HRS §281-31(t). Objections to the mandatory recorking requirement due to potential liability under other provisions of the liquor laws or rules was addressed by the added language. It is expected that some licensees will continue to object to the requirement being mandatory, which Administration believes is required by the statute.

\*\*\*\*\*

### **§3-82-38.5. Registration of Employees.**

- (a) All dispenser, cabaret, hotel, club, brewpub, or condominium hotel licensees shall employ only persons in that section of the licensed premises where liquor is sold, served or consumed who are registered with the Commission prior to the start of employment. For restaurant licensees, only managers and bartenders are required to be registered prior to the start of employment. Licensees shall ensure that any bartender currently employed in these classes of licenses successfully completes the server-training program within ninety (90) days of the publication of these rules. A temporary registration is allowed for each employee who has an unexpired certificate of registration. This temporary registration shall

not exceed three (3) consecutive days, and will only become effective if the licensee timely advised the Commission by facsimile time stamp of the temporary employment. Further, the employee temporarily registered with the Commission must permanently register not later than the first working day after the temporary registration expires. An employee need not obtain a new certificate of registration because of a name change only. This rule shall apply to the registration of employees under a temporary license based upon a new license application as stated in §3-82-32.1. However, this rule shall not apply to employees under a temporary license based upon a transfer license application where the employee is registered under the pre-existing license.

- (b) Certificates of registration issued by the Commission shall be valid only for the licensed premises for which the employee registers and the license number of the premises shall be printed on the certificate of registration. Employees may be employed to work at more than one licensed premises; however, a separate certificate of registration shall be required for each licensed premises. Certificates of registration for employees, except for dancers, **bartenders or managers** shall be valid for four (4) years from the date of issue. **For bartenders or managers, certificates of registration shall be valid for four (4) years from the date of successful completion of the server training program required under sub-paragraph (f) of this rule (including passing the examination).**
- (c) Persons who apply to the Commission for registration shall present:
  - (1) Positive identification in the form of either a passport, a laminated driver's license with photograph, or other laminated government identification with a photograph;
  - (2) Proof of a Social Security number;
  - (3) A current satisfactory tuberculosis (TB) clearance report.
- (d) Each person registered shall be photographed and issued a certificate of registration which shall be valid until the expiration date indicated thereon or when recalled, suspended, or revoked by the Commission. The certificate of registration shall be retained by each employee and not surrendered to or held by the employer. A processing fee shall be charged for each certificate of registration issued to cover the cost of materials and processing.
- (e) Licensees shall ensure that all employees who are required to register with the Commission have their certificate of registration for the licensed premises readily available for inspection while on duty at that licensed premises.
- (f) All dispenser, cabaret, restaurant, tour or cruise vessel, annually licensed transient vessel, hotel, club, brewpub, or condominium hotel licensees shall employ only bartenders who have successfully completed the server-training program administered by the Commission, including an examination and instruction in the following areas:
  - (1) Identifying and dealing with intoxicated persons,
  - (2) Reviewing liquor laws and rules, and
  - (3) Dangers of driving while intoxicated.

In these classes, the licensees shall ensure that individuals currently employed as a bartender successfully complete the server-training program within ninety



- (90) days of publication of these rules. A person may be issued a certificate of registration as a bartender for the same or another licensed premises and need not retake the server-training program if that person had successfully completed the server-training program within the past ~~two (2)~~ **four (4)** years.
- (g) If an employee has been issued a manager's certificate of registration for a particular licensed premises, the employee with the manager's certificate need not be issued a separate employee's certificate of registration of another category, except dancers, for the same licensed premises.
  - (h) Entertainers are not required to be registered as employees pursuant to this rule.
  - (i) The licensee shall ensure that any employee who performs duties of a hostess, as defined in §3-80-1.1, in a class 5 Dispenser, Category 4 licensed premises, is duly registered as a hostess with the Liquor Commission. Licensed premises not authorized Category 4 (hostess) shall not have employees registered or performing duties as hostesses, except as defined in §3-80-1.1.
  - (j) For hotel and condominium hotel licensees, only managers, bartenders and staff who handle, serve or sell liquor are required to be registered as employees pursuant to this rule.

**SUMMARY:** The proposed amendment clarifies the expiration date for registration cards held by bartenders and managers.

\*\*\*\*\*

**§3-82-38.8. Semi-Annual Submission of Employee List.**

All ~~[retail,]~~ brewpub, tour or cruise vessels, dispenser, cabaret, hotel, club, restaurant, and condominium hotel licensees shall submit to the Commission, semi-annually on a date and in such manner as the Commission may direct, the name of every person then employed on the licensed premises who is registered with the Commission or who is subject to registration. The employment of a person who had previously registered for a particular premises and whose name does not appear on the licensee's semi-annual list of employees shall be considered terminated and the registration of that person shall be voided. A person whose registration with the Commission for a particular premises has expired and who then applies for re-registration shall be considered an original applicant and shall appear in person at the Commission's office to complete this registration. It shall be presumed evidence of a violation of §3-82-38.5, Registration of Employees; §3-82-38.6, Dancers; and §3-82-38.9, Managers; that an unregistered employee's name appears on any employee time card or employment records.

**SUMMARY:** The proposed amendment corrects the incorrect inclusion of retail licensees in this rule's requirements.

\*\*\*\*\*

**§3-82-38.9. Licensee and Manager in Charge of Premises.**

- (a) Each dispenser, cabaret, tour or cruise vessel, annually licensed transient vessel, restaurant, club, hotel, caterer, brewpub, and condominium hotel licensee shall have a duly registered manager in active charge of the licensed premises during the time the establishment is licensed to sell or serve liquor.
  - (1) Managers on catered premises shall be registered with the hotel, restaurant, or condominium hotel licensee performing the catering.
  - (2) Retail (class 4) licensees shall have a duly registered manager or assistant manager assigned to each licensed premises (or group of premises if ownership has multiple properties) to insure employees are knowledgeable in applicable Commission laws and rules. It is not required that these managers be present at all times but shall assume responsibility for training and monitoring their assigned stores. These managers shall complete the server-training program and pass the examination prior to being assigned those duties or within one hundred eighty (180) days after publication of these rules, if currently performing those duties.
- (b) A person shall successfully complete the server-training program and pass the examination administered by the Commission before that person can be registered with the Commission as a manager or permitted to renew the manager's certificate of registration. However, a person may be issued a manager's certificate of registration for the same or another licensed premises and need not retake the server-training program and pass the examination if that person had successfully completed the server training program within the past **[two] four** years.
- (c) Certificates of registration issued by the Commission shall be valid only for the licensed premises in which the manager is registered. A person may be employed to work as a manager at more than one licensed premises, however, that person shall have a manager's certificate of registration for each licensed premises. Retail licensees shall be exempt from the "one certificate-one premises" limitation.
- (d) Certificates of registration for managers shall be valid for four (4) years from the date of **[issue] successful completion of the server training program required under sub-paragraph (b) of this rule (including passing the examination)**. Any person registered as a manager for a licensed premises may also perform any other duties at the same premises, except for performing as a dancer, which does require a separate registration, or sit with customers in the case of a cabaret. Managers of licensed cabarets are not permitted to sit with customers during hours of operation.
- (e) Persons who apply to the Commission for registration as a manager for a particular premises shall present:
  - (1) Positive identification in the form of either a passport, a laminated driver's license with photograph, or other laminated government identification with photograph;
  - (2) Proof of a Social Security number;
  - (3) Proof that the applicant is at least twenty-one (21) years of age;

- (4) A letter from the licensee certifying that the applicant will be or is a manager of the licensed premises;
- (5) A current satisfactory tuberculosis (TB) clearance report.
- (f) Each person registering as a manager shall be photographed and issued a certificate of registration which shall be valid for use only at the designated licensed premises until the expiration date or until recalled, suspended or revoked by the Commission. The certificate of registration shall be retained by each manager and not surrendered to or be held by the employer. A processing fee shall be charged for each certificate of registration issued to cover the cost of materials and processing.
- (g) Licensees shall ensure that all managers who are required to register with the Commission shall have the manager's certificate of registration for the licensed premise readily available for inspection while on duty at that premises.
- (h) All retail, dispenser, cabaret, tour or cruise vessel, restaurant, club, hotel, brewpub, and condominium hotel licensees shall ensure that responsible managers have successfully completed the server-training program administered by the Commission, including passing an examination and instruction in the following areas:
  - (1) Identifying and dealing with intoxicated persons,
  - (2) Reviewing liquor laws and rules, and
  - (3) Dangers of driving while intoxicated.

**SUMMARY:** The proposed amendment clarifies the expiration date for registration cards held by bartenders and managers.

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**§3-82-38.25. Restrictions or Conditions on Licenses.**

- (a) Pursuant to HRS Section 281-61(b), the Commission may, at any time, fine, suspend, revoke, or place restrictions or conditions on any license issued under HRS 281 and the Rules of the Commission for the purpose of preventing activities within the licensed premises, or adjacent areas under the licensee's control that are potentially injurious to the health, safety, and welfare of the public. Such adjacent areas include areas such as, but not limited to, stages, entertainment areas, lanais, and parking areas.
- (b) The Commission may place such restrictions or conditions on any license issued pursuant to HRS 281 or these Rules (i) at the time the license is initially issued or transferred or (ii) at any other time upon petition of the Administrator to the Commission and after notice and hearing in accordance with HRS 281 and these Rules.
- (c) Licensee shall comply with any restrictions or conditions placed on the license by the Commission pursuant to this Rule.

**SUMMARY:** The proposed amendment expands the time when restrictions or conditions may be placed upon a license, to include at the time of license transfer.

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**§3-82-38.26. Bottle Service for On-Premise Consumption.**

**Service of wine or distilled spirits in its original container is permitted at premises licensed for on-premise consumption. The seal of the original container shall be broken at the time of service.**

**SUMMARY:** The proposed new rule permits bottle service at on-premises consumption licensed premises.

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**§3-82-41.2. Transfer of Corporate Stock; Notification Regarding Limited Partners, Limited Liability Company Managers or Members.**

- (a) Prior to the date of transfer or change in ownership of a corporation, the corporate licensee shall submit an application for stock transfer and secure the approval, in writing, of such transfer or change of ownership from the Commission. The request for approval shall include the following:
  - (1) The stock purchase offer or similar document;
  - (2) Information regarding the consideration to be paid for the transfer and the effective date of the transfer of stock;
  - (3) Personal history, FBI Fingerprint card, and criminal history record clearance, as explained in §3-82-45.1, on forms prescribed by the Commission, of each new stockholder holding twenty-five percent (25%) or more of corporate stock, officer or director; and
  - (4) Upon the approval of the proposed transfer of stock by the Commission, the corporate licensee shall submit an executed copy of the stock purchase agreement to the Commission not more than fifteen days after the effective date of the transfer of stock or approval by the Commission, whichever is earlier.
- (b) Corporate licensees shall notify the Commission, in writing, within thirty days of any change of officers or directors and submit a personal history of the new officer or director, on forms prescribed by the Commission. Limited liability company licensees shall notify the Commission, in writing, **[within thirty days of] prior to** any change of managers of manager-managed limited liability companies or of any change of members in a member-managed limited liability companies and submit a personal history of the new manager or member, on forms prescribed by the Commission. All newly appointed or elected principals, who are natural persons, of any class license, except as exempted by §3-82-45.1, must be fingerprinted or submit fingerprints on a Honolulu Liquor Commission fingerprint card and submit a personal history and affidavit, and must request a Criminal History Clearance from the Hawaii Criminal Justice Data Center within thirty days of appointment or election, unless the period is extended or the requirement is waived by the Commission, for just cause. Principals that are not natural persons must submit whatever documentation establishes the entity (for example, Articles of Incorporation or Organization, or

Partnership Agreement), and a list of principals of the entity. Limited partnerships and manager-managed limited liability company licensees shall notify the Commission, in writing, within thirty days of any change of limited partners **holding twenty-five percent or more interest** or members and submit a personal history of the new limited partner **holding twenty-five percent or more interest** or member, on forms prescribed by the Commission.

- (c) The transfer of an aggregate of fifty-one (51%) percent of the stock of cabaret licenses which, pursuant to Section 281-31(l), Hawaii Revised Statutes, are permitted to have entertainment by dancers, shall be considered a transfer of the license for purposes of determining whether the licensee may continue to have such entertainment.
- (d) Stock transfer applicants shall provide documentation from the Department of Commerce and Consumer Affairs of proof of the existence of a valid corporation.

**SUMMARY:** The proposed amendment corrects the inconsistency between the requirements of HRS §281-41(e) and this rule as it applies to limited liability companies, and revises the notification requirement for limited partners.

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### **§3-82-41.3. Management or Operating Agreements.**

**Licensee shall apply for and secure approval for any management or operating agreement from the Commission, in writing, prior to such agreement taking effect, subject to the following conditions:**

- (a) **The agreement shall be restricted to permitting the operator to manage and operate the licensed premises on behalf of the licensee, and the licensee shall remain responsible for and maintain exclusive control of the licensed premises.**
- (b) **The agreement shall be for the entire licensed premises, unless otherwise approved by the Commission.**
- (c) **If the agreement is effected without the prior approval of the Commission, the Commission may in its discretion revoke or suspend the license, or assess and collect a penalty, or reprimand the licensee.**
- (d) **In conjunction with its request for approval, the licensee shall submit an executed copy of the agreement, and can be subject to submittal of any or all documents required under Rule §3-83-53.1, and shall be subject to a hearing before the Commission.**
- (e) **If the Commission finds that any proposed person or any principal of the agreement is an unfit or improper person to hold a liquor license in the person's or principal's own right pursuant to Section 281-45, Hawaii Revised Statutes, it shall not approve the agreement.**

**The term "management agreement" or "operating agreement" shall include any agreement, verbal or written, where through such agreement the licensee allows an operator to manage and operate the licensed premises on behalf of the licensee.**



**SUMMARY:** The proposed new rule establishes a procedure for Commission review and approval of management or operating agreements (based upon Maui County's rule). Concern was expressed whether the rule requirements would be prospective. Because rule amendments typically are prospective without specific language making them retroactive, no additional language was added to this proposed amendment. If not made prospective, licensees also were concerned about existing management or operating agreements, i.e., what "grandfathering" or notification requirements would be applicable to them. A suggestion was made to have Hotel class licensees subject to an "amnesty period" when penalty-free notification could be made of existing management or operating agreements; if this is done administratively (similar to what was previously done with officer/director notifications), no additional revisions would be required.

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**§3-83-53.1. License Applications; Notice of Hearing; Affidavits.**

- (a) An applicant applying for a new license or for the transfer of an existing license of a manufacturer, restaurant, wholesale, retail, dispenser, club, annual transient vessel, tour or cruise vessel, cabaret, hotel, brewpub, or condominium hotel shall file in support of the application:
  - (1) With the application:
    - (i) If the applicant is a sole proprietor or an unincorporated association, a personal history and affidavit for each natural person listed in the application on forms provided by the Commission.
    - (ii) If the applicant is a partnership, the partnership agreement, a certificate of good standing from the Department of Commerce and Consumer Affairs that is not more than 60 days old, and a list of the current partners to the partnership. For each partner, a personal history and affidavit on a form provided by the Commission or, if the partner is not a natural person, the partnership agreement, articles of organization, articles of incorporation, or other agreement, as applicable, of that partner, and a list of current principals of that partner.
    - (iii) If the applicant is a limited liability company, the articles of organization and operating agreement, a certificate of good standing from the Department of Commerce and Consumer Affairs that is not more than 60 days old, and a list of the current managers and current members of the company with their percentage of ownership. For each manager and member, a personal history and affidavit on a form provided by the Commission or, if the manager or member is not a natural person, the partnership agreement, articles of organization, articles of incorporation, or other agreement, as applicable, of that manager or member, and a list of current principals of that manager or member.
    - (iv) If the applicant is a corporation, the articles of incorporation, a certificate of good standing from the Department of Commerce and Consumer Affairs that is not more than 60 days old, and a list of

- current officers, current directors, and current stockholders of 25% or more of the outstanding capital stock of the corporation. For each officer, director, or stockholder of 25% or more of the outstanding capital stock, a personal history and affidavit on a form provided by the Commission or, if the stockholder is not a natural person, the partnership agreement, articles of organization, articles of incorporation, or other agreement, as applicable, of that stockholder, and a list of current principals of that stockholder.
- (v) Except for a condominium hotel license, a floor plan to scale of the licensed premises or proposed licensed premises with the area to be licensed demarcated in red and showing all fixtures, a square footage calculation for the area to be licensed, and the scale and orientation of the plan, and, in the case of an application regarding a license for consumption on the premises, the restrooms for the premises and a preliminary approval stamp from the State Department of Health. If the applicant is applying for a class or category of license that permits dancing, the designated dance floor shall be shown on the floor plan.
  - (vi) A copy of the floor plan required by paragraph (v) on an 8½-inch by 11-inch piece of paper.
  - (vii) A copy of the deed, lease, sublease, assignment of lease, rental agreement, or other conveyance of the use of the property to the applicant permitting the activity for which the license is applied. A copy of the executed document with applicable consents shall be submitted before the license is issued and may be submitted in fulfillment of the requirement of this paragraph.
  - (viii) For applications for new licenses and for the transfer of an existing dispenser or cabaret license, a tax map drawn to a scale of one inch to each forty, fifty, or sixty feet showing the area within 500 feet of the licensed area or proposed licensed area of the premises and also indicating 100 feet from the premises.
  - (ix) For applications for new licenses and for the transfer of an existing dispenser or cabaret license, a list of names and addresses of all property owners, recorded lessees, condominium projects, and cooperative apartment projects within 500 feet of the premises, which list shall also designate those owners, lessees, condominiums, and cooperatives which are within 100 feet of the premises.
  - (x) Except in the matter of a hotel as defined in HRS Section 486K-1, a restaurant, or a convenience store, for applications for new licenses and for the transfer of an existing dispenser or cabaret license, a list of small businesses within 500 feet and of small businesses within 100 feet of the premises.
  - (xi) A full, true, and accurate statement of the complete financial condition of the applicant, which shall not be over six months old, or

- that is less than one year old and certified by the applicant to be substantially correct.
- (xii) Documents substantiating the financial statement and showing sufficient finances to cover proposed expenditures related to the application and including initial operating expenses for the first six months of operation.
  - (xiii) For the transfer of a license, an instrument documenting the consideration for the proposed transfer.
  - (xiv) Except when the applicant will do business under its own name, exactly, for an application for a new license, a Certificate of Registration of trade name from the Department of Commerce and Consumer Affairs or other sufficient documentation of the permitted use of the trade name in accordance with §3-81-17.58, or for an application for the transfer of a license, a statement of what trade name is proposed to be used, which shall be confirmed before the transfer is effected by a Certificate of Registration of trade name or other sufficient documentation.
  - (xv) A description detailing the kind of business that the applicant proposes to operate. **For applications for [new] transferred restaurant licenses, a financial report of gross revenue for the year preceding the application demonstrating that at least thirty percent of the establishment's gross revenue was derived from the sale of foods. For applications for new restaurant licenses if not previously operated as an establishment serving meals to patrons for compensation, a business plan demonstrating the applicant's ability to meet the minimum gross revenue from the sale of foods required of restaurant licensees.**
  - (xvi) A 4-inch by 6-inch photoimage or photograph of the front of the licensed premises or proposed licensed premises and a 4-inch by 6-inch photoimage or photograph showing the licensed premises or proposed licensed premises street location.
  - (xvii) For applications for new condominium hotel licenses or for the transfer of an existing condominium hotel license:
    - a. A list of the condominium hotel guest rooms within the proposed licensed premises as of the application date.
    - b. A copy of the application for registration of the condominium hotel operator approved by the real estate commission, if applicable.
    - c. A floor plan (which may be a copy of all or portions of the recorded condominium map) marked to show:
      - (i) the portion or portions of the licensed premises or proposed licensed premises in which alcoholic beverages will be served, with such portion or portions marked in red and showing all fixtures and any designated dance floor in such portion or

- portions; a square footage calculation of such portion or portions; the scale of the map; and, if liquor will be consumed within such portion or portions, the restrooms for such portion or portions;
    - (ii) the locations of all condominium hotel guest rooms in the condominium hotel (which locations may be indicated by narrative description or coloring of the condominium map); and
    - (iii) the locations of the apartments, common elements and/or limited common elements over which access will be provided to and from the portion or portions of the licensed premises or proposed licensed premises in which alcoholic beverages will be served and the condominium hotel guest rooms (which locations may be indicated by narrative description or coloring of the condominium map).
  - d. A preliminary approval stamp from the State Department of Health for the portion or portions of the licensed premises or proposed licensed premises in which alcoholic beverages will be served.
  - e. The identity of the AOA manager and, if the applicant is not a rental program manager for condominium hotel guest rooms in the condominium hotel, the rental program manager that manages the most condominium hotel guest rooms in the condominium hotel.
- (2) Concurrent with filing the application:
  - (i) A request for criminal history record clearance for liquor license, for each person required to submit a personal history and affidavit, with the Hawaii Criminal Justice Data Center.
  - (ii) A request for zoning clearance with the Department of Planning and Permitting, Aloha Tower Development Corporation, or Hawaii Community Development Authority, as appropriate.
  - (iii) A request for the required list of registered voters, if required, with the City Clerk. A statement that each request has been made, with the date that it was made, shall accompany the application filed with the Commission.
- (3) During the processing of the application:
  - (i) Each person required to submit a personal history and affidavit is required to submit fingerprints on a fingerprint card provided by the Commission. Fingerprints for those principals not fingerprinted by an investigator for the Commission shall be submitted, with a letter of authority by the person who made the fingerprints, with the application or as soon after its submission as possible. The Commission in its discretion may waive part or all of this requirement.
  - (ii) Each applicant required to make a mailing of notification of public hearing following the preliminary hearing shall submit an affidavit of

- mailing on a form provided by the Commission and the master mailing lists for the mailing as provided by law.
- (iii) Each applicant required to notify the registered voters in the area of the premises and each applicant who can be denied its application by a percentage of the voters shall submit the list of registered voters within 500 feet and within 100 feet to the Commission with the affidavit of mailing and the master mailing lists.
- (iv) The zoning clearance shall be submitted to the Commission as soon as possible and before the license is issued or the transfer is effected.
- (v) Each applicant for a new license shall directly notify the chair of the neighborhood board in which the applicant's place of business is to be located, in writing and delivered by certified mail, return receipt requested. The Commission, for just cause, may waive this requirement.
- (b) Except as excused by HRS Section 281-52 or 281-57, an application for a change of location, change of class, change of kind, or change of category will be treated as a new application.
- (c) An applicant for a special license, other than a one-day special license for a fund raising event by a not for profit organization, shall fulfill the requirements of paragraphs (a)(1)(i)-(iv) and (xv), (a)(2)(i) and (ii), and (a)(3)(i), (iv), and (v). Additionally, the applicant shall submit a detailed floor plan and site plan with dimensions, permission of the landlord for the event or other document conveying the use of the premises to the applicant, or permission from the government entity property owner allowing the sale or consumption of liquor on the premises, and a detailed description of the event and kind of business that the applicant proposes to conduct.
- (d) An applicant for a transient vessel license shall file in or with the application:
  - (1) If the application is made by an agent for the owner, a copy of a contract or other document establishing the agent's relationship with the vessel's owner and a document establishing the identity of the agent.
  - (2) The pier and port at which the vessel will berth and the times and dates of arrival and departure.
  - (3) The name, city, and state or country of the vessel's fee titled owner.
  - (4) A personal history and affidavit, partnership agreement, articles of organization, articles of incorporation, or other organizational document of the proposed licensee.
  - (5) If the proposed licensee is not a sole proprietor, a list of the principals of the proposed licensee.
  - (6) A current financial statement of the proposed licensee.
  - (7) A photograph of the vessel.
  - (8) A description of the vessel and deck plans showing proposed liquor outlets, dance floors, and so forth.
- (e) An applicant for a caterer license shall file with the application a detailed floor plan and site plan with dimensions, permission of the landlord for the event or other document conveying the use of the premises to the applicant, or

- permission from the government entity property owner allowing the sale or consumption of liquor on the premises, and a detailed description of the event and kind of business that the applicant proposes to conduct.
- (f) After granting of a new license or the transfer of an existing license other than for special license, transient vessel license, or caterer license and before the license is issued or transferred, the applicant shall request a final inspection of the proposed licensed premises by Commission staff. Before the issuance of a license allowing live music or other entertainment, Commission staff will evaluate the premises regarding its suitability for live music or other entertainment.
  - (g) If a new license is not issued or the transfer of a license is not effected within six months from the date of granting, the Commission will review the granting. The applicant may show good cause why the license has not been effected, and the Commission may, at the hearing, reconsider its granting.
  - (h) If the Commission finds that the applicant has made a false statement as part of the application, it may deny the application, suspend or revoke any current license, or assess and collect a penalty.

**SUMMARY:** The proposed amendment adopts Maui County's practice of requiring restaurant license applicants to establish their ability to meet the sale of foods requirement. A correction was made to distinguish the submission requirements for transfer versus new license applications.

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**§3-83-61.1. Renewal of Existing License.**

The Commission may withhold the issuance of a renewed license for good and sufficient reason, which may include, but is not limited to:

- (a) Failure to pay any outstanding penalties due the Commission;
- (b) Failure to file any outstanding gross liquor sales reports;
- (c) Failure to pay any outstanding additional license fees;
- (d) Failure to comply with any prior Commission orders, which may include, but is not limited to, an order to update or keep current any and all license application documents contained in the Commission's licensee file;
- (e) Complaints from the public or reports from the Commission's investigators indicating that sounds emanating from the licensed premises cause undue disturbance which disrupts the peace and quiet of the neighborhood;
- (f) Complaints from the public or reports from the Commission's investigators indicating that noise created by patrons departing the premises disturbs residents of the neighborhood in which the premises are located;
- (g) A report, investigated and verified by the Commission, indicating that sounds emanating from the premises exceed permissible levels.
- (h) **For licensees who are corporations, limited partnerships, limited liability companies, or limited liability partnerships, failure to maintain the business entity's good standing in the state of its organization. In this regard, business entity licensees shall submit with their license renewal documents a certificate of good standing from the state of its organization**



**that is not more than 60 days old to establish compliance with this requirement.**

**SUMMARY:** The proposed amendment requires a business entity licensee to establish continued good standing in the state of its organization at the time of license renewal. Licensees' objection to this requirement seemed to stem from an additional task imposed during the license renewal process, not so much the substantive requirement itself. Suggestions included: (1) Have LIQ check before issuing the renewed license; (2) Specify that the Commission can waive the requirement for good cause; or (3) See if DCCA will agree to a pre-clearance procedure similar to what DoTax does with tax clearances. As the process for obtaining evidence of good standing is relatively easy, Administration has determined to not make further revisions to the proposed amendment.

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**§3-83-62. ARCHITECTURAL REQUIREMENTS/ALTERATION OF LICENSED PREMISES.**

- (a) Any physical alterations within a licensed premises shall only be made with the prior, written approval of the Commission. Retail licensees are exempt from the prior approval requirement but are required to file an updated floor plan for the premises within five (5) business days of completion of the alteration(s). **Hotel licensees are required to obtain prior approval only for physical alterations made to (i) an area where alcoholic beverages are sold, served, or consumed or (ii) common areas.**
- (b) No licensee that is authorized on-premise consumption shall have an opening or entrance from within the licensed premises into any other enclosed, unlicensed part of the same structure, or into any adjoining, enclosed, unlicensed structure offering entertainment.
- (c) A licensee who applies for **[an] a permanent** increase in the area of the licensed premises where the increase sought is equal to or greater than 50 percent of the current area licensed shall give notice of said application to the chair of the neighborhood board in which the licensee's licensed premises is located, in writing and delivered by certified mail, return receipt requested.
- (d) Alterations, changes, or increases to a condominium hotel licensee's premises which are within (i) condominium hotel guest rooms or (ii) areas that only provide access to and from the portion or portions of the licensed premises in which alcoholic beverages will be served and condominium hotel guest rooms, are exempt from the requirements and restrictions of this Rule.

**SUMMARY:** The proposed amendment specifies that the neighborhood board notification is applicable only to permanent extensions of the licensed premises. A suggestion was made that due to the size and complexity of Hotel class premises, a rule accommodation should be made, similar to what was done for the Condominium Hotel class.

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**§3-83-62. ARCHITECTURAL REQUIREMENTS/ALTERATION OF LICENSED PREMISES.**

- (a) Any physical alterations within a licensed premises shall only be made with the prior, written approval of the Commission. Retail licensees are exempt from the prior approval requirement but are required to file an updated floor plan for the premises within five (5) business days of completion of the alteration(s).
- (b) No licensee that is authorized on-premise consumption shall have an opening or entrance from within the licensed premises into any other enclosed, unlicensed part of the same structure, or into any adjoining, enclosed, unlicensed structure offering entertainment.
- (c) A licensee who applies for an increase in the area of the licensed premises where the increase sought is equal to or greater than 50 percent of the current area licensed shall give notice of said application to the chair of the neighborhood board in which the licensee's licensed premises is located, in writing and delivered by certified mail, return receipt requested.
- (d) Alterations, changes, or increases to a condominium hotel licensee's premises which are within (i) condominium hotel guest rooms or (ii) areas that only provide access to and from the portion or portions of the licensed premises in which alcoholic beverages will be served and condominium hotel guest rooms, are exempt from the requirements and restrictions of this Rule.
- (e) After granting an increase in the area of the existing licensed premises of a licensee, the licensee shall request and pass a final inspection of the premises by Commission staff before the licensee is authorized to occupy and use the granted addition.

**SUMMARY:** The proposed amendment adds a final inspection requirement before a licensee may occupy and use a granted addition to the licensed premises.

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**§3-84-72.2. Premises Lighting; Doors.**

Street or primary entrances to licensed premises shall be kept unlocked during all times that [non-employees] any person other than an on-duty employee is on the premises. Entrances to booths shall be open and unobstructed. The interior and exterior of the licensed premises shall be well and properly lighted.

**SUMMARY:** The proposed amendment conforms the designated individuals to the definition of "customer".

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**§3-84-73.1. Quality of Liquor.**

[Liquor] Straight or unmixed distilled spirits shall only be dispensed from its original container. In the handling and storage of [liquor] straight or unmixed distilled spirits, the transfer of [liquor] product from its original container to any other storage container is prohibited.

**SUMMARY:** The proposed new rule prohibits the transfer of liquor from its original container to any other container. The revision was made to address the specific type of liquor that is the compliance problem, and eliminating wine in carafes and infused drinks from the rule's prohibitions.

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**§3-84-78.01. Conduct of Employees.**

- (a) Licensees shall be strictly accountable for the conduct of all employees on the licensed premises. Any person who performs a service usually or normally done, on or within a licensed premises, regardless of whether that person is under contract or commission, registered or not registered, compensated or not compensated, shall be subject to the constraints of these rules and shall be considered an on duty employee of the licensee. This rule does not apply to vendors, tradesmen, or maintenance people who, in the normal course of their duties, service the licensed premises. For purposes of this rule, an entertainer shall be deemed to be an employee of the licensee during the time the entertainer is performing or while the entertainer is on the platform or stage or in any other area set aside for the performance.
- (b) No employee while on duty shall consume liquor.
- (c) No employee while on duty shall solicit or accept any food or beverage, alcoholic or otherwise, as a gift from or at the expense of a customer.
- (d) Only registered hostesses and managers of licensed hostess bars are permitted to sit with customers during hours of operation. Registered managers and waitresses in licensed cabarets are not permitted to sit with customers during hours of operations.
- (f) No employee while on duty shall engage in violent, quarrelsome, disorderly, lewd, immoral, or unlawful conduct on the premises.

**SUMMARY:** The proposed amendment applies the prohibition in HRS 281-78(b)(6) to employees.

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**§3-84-78.06. Solicitation of Business Outside of Premises.**

No licensee authorized to sell liquor for consumption on the premises, shall solicit business ~~[immediately outside or in the vicinity]~~ within a twenty feet radius of the licensed premises.

**SUMMARY:** The proposed amendment provides an objective measurement for determining where a licensee may solicit business outside of the licensed premises.

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**§3-84-78.52. Stacking of Drinks.**

The stacking of liquor by the licensee for consumption by customers is prohibited. "Stacking" is defined as having more than two standard servings of drinks before a customer at any one time. A standard serving means a drink containing distilled spirits in a container not to exceed [ten] sixteen ounces, or [five] six ounces of wine, or [twelve] twenty-two ounces of beer; provided that a serving in excess of these amounts shall be limited to one per customer. A [pitcher] multiple-serving container, not to exceed sixty ounces, may be served to two or more persons. ~~[No customer shall be permitted to have, for consumption, more than one drink at a time, except that a beer may be served with a straight or unmixed serving of liquor. This rule shall not apply to Commission approved authorized "showroom" facilities which may serve the "minimum" drinks at the same time to lessen disturbance to the show, or at auditoriums, theaters, concert halls, arenas, stadiums and convention halls where a walk-up, concession system of service is employed and there is no tableside or seating service provided by wait help. In these concession-serviced facilities, a customer may purchase a maximum of two drinks at a time.]~~

At last call, [pitcher] multiple-serving container service or any drink exceeding a single standard serving shall be prohibited.

**SUMMARY:** The proposed amendment adopts some of Hawaii County's stacking rule's objective measurements. Volume amounts and container descriptions were revised to comport with standard industry practices (size/type of glassware; common beer bottle sizes; etc.).

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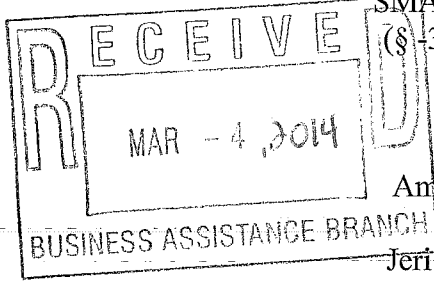
### **§3-85-91.12. Licenses Under Safekeeping.**

Any license held in safekeeping by the Commission shall be considered an active license and the licensee must continue to comply with all Liquor Commission laws and rules unless otherwise directed by the Commission. Any license held in safekeeping beyond June 30 of a license year must receive Commission approval to remain in safekeeping and as otherwise directed by the Commission.

**SUMMARY:** The proposed amendment specifies that licenses held in safekeeping beyond June 30 must receive Commission approval.

- END -

## Exhibit 2



SMALL BUSINESS STATEMENT (after public hearing)  
(§ 3, Section 2, Act 168, Session Laws of Hawaii 1998)

Department of Agriculture  
Quality Assurance Division

Amendments to Chapter 4-143, "Standards for Coffee"

Jeri Kahana, Administrator, Quality Assurance Division

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March 19, 2014

1. *Summarize how the comments or testimonies from small business were solicited.*

Public hearings were scheduled in Lihue, Hawaii, Kahului, Hawaii, Honolulu, Hawaii, Kailua-Kona, Hawaii, and Pahala, Hawaii, and were published in the Honolulu Star-Bulletin, Hilo Tribune-Herald, West Hawaii Today, Maui News and The Garden Island newspapers on August 30, 2013, at least 30 days prior to the hearing. The notice of public hearing was also posted on the Department of Agriculture's website. The public hearing was concluded on October 11, 2013.

2. *Summarize the written and oral comments or testimonies received from the public and small business regarding any proposed rule that affects small business.*

- a. We received many testimonies opposing the repeal of the exemption for less than wholesale quantities. Testifiers claimed that repealing the exemption would require the labeling of less than 10 pound packages with a tamper-proof tag will place undue burden on small-scale businesses.
- b. Testimonies from small farmers stated concerns on the proposed record keeping requirements identified in section 4-143-13, attesting that it places undue burden on the small coffee farmers. Comments referred to placing the burden on farmers who transport, cherry, parchment or green coffee transported to a mill for custom milling where no sale is involved, and the coffee is returned back to the farmer.
- c. Comments were received on the existing language in section 4-143-8 regarding the department's authority to enter any public or private premises including any vehicle or transport to inspect the quality, condition and origin of coffee and enforce the labeling, record keeping, and certification requirements without a warrant or probable cause.
- d. Testifiers supported a certification of origin only, which does not involve determination of grade. Origin only certification was implemented following the passage of Act 345, SLH 1997, in which mandatory certification was required on all green coffee exported out of the geographic region of production. This caused a tremendous backlog of inspections. To expedite the certification demands for



applicants who did not need full grade certification, an “origin only” certification program was implemented. This origin only certification verified that the coffee being inspected met the minimum requirements of Prime grade and allowed to be labeled as 100% Hawaii coffee, or the recognized geographic region of production.

- e. Many testifiers supported the proposed natural coffee standards. One testimony suggested that green coffee mixed with natural coffee should be labeled as offgrade. Others who testified stated that natural coffee commands a higher price than green coffee and mixing green coffee and natural coffee should not be grounds to assign it as offgrade.
  - f. There were several testimonies opposing to the increase from 15% to 20% defect allowance for Prime grade. It was suggested to develop another “sub-Prime 20” grade standard for 20% defects.
  - g. Testifiers in Ka‘u supported the proposed rules changes, and requested recognition of Ka‘u to have an origin name. In addition, several testifiers requested the adoption of a Ka‘u coffee grade standard similar to other regions. This issue was discussed with the Board of Agriculture and it was decided that a Hawaii Island grade would be proposed for other Hawaii Island coffee regions, except for Kona to utilize. One testifier felt that the proposed Hawaii Island grade standard is an acceptable compromise.
  - h. There were two testifiers requesting to retain the Coffee Quality Verification Program. One testifier added that this program should be redefined and utilize part-time certifiers to be called upon for inspection.
3. *Summarize the department’s response to the comments or testimonies received in Item 2.*
- a. The packages of less than wholesale quantity were exempted from mandatory certification. However, since the passage of Act 328 which removed mandatory certification, there is no need for this exemption.
  - b. Our concern is if no paperwork is needed during the transfer of coffee from the farmer to the mill and discrepancy occurs with the return of the coffee back to the owner, or farmer, there would be no record for the transfer of the coffee. For the protection of the farmer and mill, records should be maintained by the mill and the farmer to establish accurate ownership or accurate designation of origin.
  - c. Based on our Deputy Attorney General, language in the administrative rules is needed to provide the department the authority to enter premises to conduct

inspection. Entry into a premise without permission by the company to conduct enforcement investigation will still require a court ordered warrant.

- d. Since the passage of Act 328, SLH 2012, which removed the mandatory certification with voluntary certification, certification of origin is no longer needed. Farmers will be required to attest to the actual origin of the coffee. There is no scientific method known to determine the actual origin of the coffee. Applicants now have a choice to certify or not certify their green coffee. Origin declaration is the responsibility of the coffees' owner. The region of production on Hawaii-grown cherry, parchment, green or natural coffee must be labeled on the bags, or accompanied with a document declaring the geographic region of production.
  - e. We included the addition of mixed natural coffee grade standards (section 4-143-12) similar to natural coffee in the proposed rule.
  - f. We currently utilize 26 quality grade standards for green coffee for Hawaii, Kona, Maui, Molokai and Kauai. An additional 5 green coffee standards for Oahu, 5 green coffee grade standards for Hawai'i Island; 6 grade standards for natural coffee and 6 grade standards for mixed natural coffee are being proposed. This will result in a total of 48 different coffee grade standards. We concerned that the addition "sub-prime 20" grade standards will not be a useful tool in marketing Hawaii-grown coffee. It was suggested and supported by several testifiers that a sunset date on the 20% defects be adopted to allow the farmers' time to combat the CBB. With the assistance being provided to the farmers to control the CBB, we feel that increasing the defect tolerance in Prime grade to 20% permanently will not provide an incentive for the coffee farmers to produce higher quality coffee. We supported a three-year sunset date on 20% Prime grade defects to allow time to evaluate the efforts in controlling CBB.
  - g. The Board of Agriculture decided on the adoption of a Hawaii Island grade standard in lieu of adopting Kau or other additional Big Island regional coffee grade standards.
  - h. Since its adoption in 2001, there have been no coffee millers requesting to implement the Coffee Quality Verification Program. Certification of coffee is voluntary and we feel that there is no need for this activity.
4. *How many persons attended the public hearings?*
- Kauai - 3
  - Oahu - 3
  - Maui - 7
  - Kona - 19

5. *How many persons orally testified at the public hearings?*

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Kauai - 2  
Oahu - 2  
Maui - 2  
Kona - 14

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6. *How many persons submitted written comments or testimonies in response to the proposed rule?*

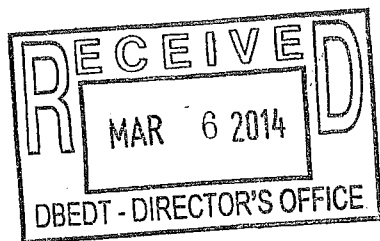
Twenty three written testimony were received.

7. *If there was a request to change the proposed rule at the public hearing in a way that affects small business and no change was made, explain why the request was not accepted.*

Although testimonies opposed the proposed repeal of exemptions mostly affecting small businesses, the proposed repeal was not reinstated. Since the passage of Act 328, SLH 2012 which amended mandatory coffee certification to become voluntary, these exemptions were no longer applicable.

The aforementioned amendments to Chapter 4-143, Hawaii Administrative Rules, was presented to the Board of Agriculture on February 25, 2014.

Attachment II contains the final proposed amendments in Ramseyer format.



STATE OF HAWAII  
DEPARTMENT OF AGRICULTURE  
QUALITY ASSURANCE DIVISION  
1851 AUIKI STREET  
HONOLULU, HAWAII 96819-3100

February 25, 2013

Board of Agriculture  
Honolulu, Hawaii

Subject: Request for (1) acceptance of the minutes of the public hearings, (2) adoption of amendments and compilation of Chapter 4-143, Hawaii Administrative Rules, entitled "Standards for Coffee".

**I. BACKGROUND**

The Division's request for preliminary approval of the proposed amendments and compilation to Chapter 4-143, Hawaii Administrative Rules was presented to the Board of Agriculture on January 29, 2013. The Board of Agriculture granted preliminary approval the proposed amendments and compilation, authorized the Chairperson to schedule public hearings and appoint a hearings officer. The Chairperson received the Governor's preliminary approval to hold public hearing on the proposed rules changes on June 12, 2013.

Notice of public hearings was duly published on August 30, 2013 in the Star Advertiser, Hilo Tribune Herald, West Hawaii Today, Maui News and The Garden Island newspapers; and also posted on the department's website. The public hearings were held as follows:

1. Lihue, Hawaii on October 7, 2013, 9:00 a.m.
2. Honolulu, Hawaii on October 8, 2013, 9:00 a.m.
3. Kahului, Hawaii on October 9, 2013, 9:00 a.m.
4. Kailua-Kona, Hawaii on October 10, 2013, 9:00 a.m.
5. Pahala, Hawaii on October 10, 2013, 5:00 p.m.

All parties desiring to submit additional testimony were notified that written testimony would be received by the Department until October 11, 2013.

The minutes of these hearings are attached for your review. (APPENDIX I).

## **II. HEARINGS OFFICER'S SUMMARY OF THE PUBLIC HEARING TESTIMONIES**

Written testimonies which were not read into the record were received by the following persons and are attached for your review. (APPENDIX II)

1. Thomas Butler, Paradise Found Hawaii Estate Coffee, Kona Coffee Farmers Association, dated October 3, 2013.
2. Sandra Scarr, Daily Fix Coffee, dated October 6, 2013.
3. Donna Meiners, Kona Coffee Farmers Association, dated October 7, 2013.
4. Anita Kelleher, Blue Corner Coffee Farm, dated October 7, 2013.
5. Kally Goschke, Ohi'a Hale – Rare Earth Coffee, dated October 7, 2013.
6. Michael Gough, 'Ihilani Farms, dated October 8, 2013.
7. Michelle D. Joven, Mama's Kona Coffee, dated October 8, 2013.
8. Richard Makrevis, Blue Moon Kona Coffee, dated October 8, 2013.
9. Robert Smith, Smith Farms, dated October 9, 2013.
10. John Giblin, Ohana Farm Orchards, dated October 9, 2013.
11. Clare and Phil Wilson, Huahua Farm, dated October 9, 2013.
12. Louise Hanna, dated October 9, 2013.
13. Howard Hill, Melomountain Farm, dated October 9, 2013.
14. Candi Johnson, 'Ihilani Coffee Company, dated October 9, 2013.
15. Mary Lou Moss, CuppaKona Coffee, dated October 9, 2013.
16. Randy Phillips, Kona View Coffee, dated October 9, 2013.
17. Suzanne Shriner, Lions Gate Farms, dated October 9, 2013.
18. Malian Lahey, Ka'u Specialty LLC, dated October 10, 2013.

19. M. Tsukagoshi, dated October 11, 2013.
20. Robert Coffey, Hawaii Department of Agriculture, dated October 11, 2013.
21. Jeff Ferguson, MauiGrown Coffee Company Store, dated October 12, 2013.
22. Wilfred Yamasawa, Kona Young Farmers, dated October 11, 2013.

ORAL TESTIMONY RECEIVED ON THE PROPOSED AMENDMENTS

W. Katayama, Kauai Coffee Company

Testified that he is in support of the amendments. Although he is support, he would like a modification to the defects relating to insect damage and pinhole damage caused by the Coffee Berry Borer (CBB) and incorporate a sunset date. He also stated that he is concerned with the degradation of the Hawaiian coffee brand and that Hawaii cannot compete on a commodity basis and should be treated as a premium.

Mr. Richard Loero, Kauai Roastery; and consultant to Ka'u Coffee Mill

He stated that he supports the amendments and would not like to see the coffee verification program be repealed and would like to see it continue, for they wish to become a certified mill and do their own verification.

Jim Wayman, Hawaii Coffee Association

Mr. Wayman testified that he was in favor of the rule changes, including the additional amendments being proposed by Edwin Kise.

Derek Lanter, Dole Food Company Hawaii, member of the Hawaii Coffee Association and the Hawaii Coffee Growers Association

Testified in support of the proposed amendments, including the addition of Oahu Coffee and Kau Coffee into the defined geographic regions, the addition of natural coffee as a recognized coffee process, and the additional allowance to offset the impact caused by CBB, and the inspection fee increases.



Kimo Falconer, President and owner, Maui Grown Coffee; President, Hawaii Coffee Growers Association; Board member, Hawaii Coffee Association

Testified that he is in favor to allow defect change from 15% to 20% in Prime grade, but it was mostly based on many farmers in Kona being unable to meet Prime quality and hopes that it can be revisited. He also stated that he does not want to decrease standards, but do need to help the industry.

Sydney Smith, President, Maui Coffee Association; Maliko Estate coffee

Ms. Smith testified in support of adopting standards for natural and honey dried coffee, but would prefer a separate category for each of them since she feels they are quite different and should not be combined. She also supported the addition of new origins, Kau, Hawaii Island and Oahu. She stated that she was not in support of lowering the standards for Prime grade and believes that it would negatively impact the industry.

Edwin Kise, Agricultural Commodities Marketing Specialist, Hawaii Department of Agriculture

Testified to include additional housekeeping changes and corrections, including definitions as it refers to the cherry coffee. Mr. Kise added that he would like to add language restricting movement of coffee bags offered for certification without proper authorization by the department, and to establish a one fifth of a full imperfection for other defects not specified, but affect the quality or condition of the lot. Mr. Kise also stated that he would like the addition that green coffee mixed with natural coffee be labeled as offgrade.

Cecilia Smith, President, Kona Coffee Farmers Association (KCFA)

Testified that the KCFA had grave concerns that the elimination of wholesale quantity definition, which exempted sales of less than 10 pounds of green coffee from certification requirements, and that farmers would now have to attach a tamper-proof tag to even a one pound package of green coffee. Ms. Smith stated that House Bill 280 (Act 328) requires detailed record keeping of cherry, parchment and green coffee transported "with the intent to sell" puts unnecessary record keeping burden on Kona farmers who transport cherry, parchment or green coffee where no sale is involved and serves no practical purpose. In addition, Ms. Smith testified that many small scale coffee farmers utilized "origin only" certification with no expression of grade or cupping and a statement of Kona origin and meeting Prime grade or better. She stated that discontinuing the origin certification will add time and cost with no added benefits to customers.

Greg Stille, President , Hawaii Coffee Association; Board member, Maui Coffee Association; Maui coffee farmer

Testified that he would like to see a sunset on standards, preferably 3 years. He added that reports they have been receiving from the Kona coffee farmers that have been battling CBB and following good husbandry, they are showing that they can win the battle. Mr. Stille stated that the industry should have one set of standards. He also added that natural coffee or mill blend should not be added as sub category and not at a lower classification of coffee.

Joachim Oster, coffee farmer

Mr. Oster testified to reinstate origin certification, as an affordable alternative for small growers, and the definition of "wholesale quantity". He also stated that identification of any defects be performed "with the naked eye and without any optical magnification". He also stated that he would like to see Kau coffee be allowed the same coffee standards as Kona coffee, as a marketing tool for growers and buyers. Mr. Oster opposed the lowering the sizing of Type I green coffee, and repealing the minimum export requirements. He testified that the Coffee Quality Verification Program should not be repealed but redefined to utilize qualified part-time certifiers to assist with inspection and certification.

Bruce Corker, coffee farmer, member of the Kona Coffee Farmers Association

Testified in support of all nine suggested changes to the proposed amendments. Mr. Corker feels that quality standard should be based on what is brewed in the cup, and cited a workshop in which the cupper did a blind test of all grades of coffee and the best turned out to be the off grade. He also added the grade description damages the reputation of Hawaii coffee and buyers look at the taste of coffee than the grade of the coffee. Mr. Corker suggested the department should learn from the Vermont maple syrup grading. He believes coffee should be same, such as "Grade A, large beans", "Grade A, standard beans, and Grade A prime beans.

Roger Kaiwi, Board member, Hawaii Coffee Association; Board member, Kona Coffee Council; Kona farmer and processor

He stated that he would like to see a five-year sunset on the increase of 15% to 20% on Prime grade. If CBB is not under control at that time, to extend rules or if no CBB problem, return to the standards. Mr. Kaiwi stated that blended washed and natural coffee should not go down in grade. He also stated that he recognizes that Ka'u has an origin and would like Ka'u have its own standards.

Jeff Seel, coffee farmer

Mr. Seel testified in favor of small farmer exemption. He stated that the proposed rule changes would create more record keeping requirements and would like to see the reinstatement of the small farmer exemption.

Colehour Bondera, Kanalani Ohana Farm

Testified that he is in opposition to the proposed changes and that it targets small-scale Kona coffee farmers. He stated that the proposed changes will cost time and effort with no clear benefits. He stated concerns that the department needs to be sure that the few coffee processors are not steam rolling over the ability of the farmers to continue to grow coffee.

Dave Bateman, Co-owner of Heavenly Hawaiian Co.; small processor, Kona Coffee Council; Hawaii Coffee Association board member; Kona Coffee Task Force board member

Testified in strong support of the rules and any housekeeping measures. He believes that the rules strive to appropriate balance; will protect, preserve and enhance the quality coffee and protect the integrity of the industry. Mr. Bateman stated that he feels that it brings about efficient changes that will make it easier for officials, small, medium and large sized farmers, coalesces a lot of loose ends, and it protects the industry. He supports a sunset date of five years on the additional defect allowances for CBB and things may change and we need to be fluid and be able to react to these changes.

John Cross, General Manager of Ka'u Coffee Mill

Mr. Cross testified that he supports the proposed rules; however, he requested that rules be amended to include a Ka'u green bean standard. He also stated that a blended natural with washed coffee designation of offgrade is not entirely proper and should be graded at least at natural prime standards.

Lou Daniele, Manager of Ka'u Coffee Mill

Mr. Daniele testified that he is in agreement with standards of grading green coffee. He believes that Ka'u should be an origin name and due to the size of the district, he feels that it is only fair that Ka'u have an origin name. He was glad to see that the standards match or exceed Specialty Coffee Association of America (SCAA) guidelines.

Brenda Iokepa Moses, member of several boards, works at Ka'u Coffee Mill

Testified that she is in agreement with the changes, but shocked to see that Oahu and Hawaii Island has designation, and Ka'u coffee farmers earned the right to have their own coffee graded to their green bean. Ms. Iokepa Moses stated that they have been struggling for 10 years, have the largest district of agricultural land, and deserve to have the Ka'u origin.

John Ah San, coffee farmer

Mr. Ah San testified that he believes a Ka'u district needs to be added to the rules to develop more economic opportunities for them. He added that they are still struggling to make profits and the department should look favorably on them for their efforts to receive recognition of district.

Chris Manfredi, President, Ka'u Farm Bureau, Hawaii Farm Bureau Federation

Testified that the Ka'u Farm Bureau is largely supportive of the proposed changes and has long lobbied for grade standards equal to those available to other origins throughout the State. He stated that they feel that "100% Ka'u, Hawaii Island Prime", etc. designation is an acceptable compromise. Mr. Manfredi also stated they support the enhanced evidentiary recordkeeping that would help prevent false labeling of Ka'u coffee.

COMMENTS

The proposed rules were drafted following several meetings with the department's Quality Assurance Division coffee inspection staff and coffee industry representatives representing various coffee regions, Hawaii Coffee Association, Kona Coffee Council, Hawaii Coffee Growers Association, Kona Coffee Farmers Association, Maui Coffee Association and discuss amendments to the administrative rules.

Testimony received from our Kona staff indicated past occurrences of coffee offered for certification which failed to meet the labeled grade and moved off the premises for distribution prior to notification of the inspection results. This resulted in staff having to track the location of the coffee to ensure that the mislabeled grade statement was obliterated and replaced with the exact grade. We have included language which restricts the movement of coffee being certified prior to notification by the department. There were also some housekeeping deletions/changes primarily in reference to cherry coffee standards which are proposed to be repealed.

We received many testimonies opposing the repeal of the exemption for less than wholesale quantities. Testifiers claimed that repealing the exemption would require the

labeling of less than 10 pound packages with a tamper-proof tag will place undue burden on small-scale businesses. The packages of less than wholesale quantity were exempted from mandatory certification. However, since the passage of Act 328 which removed mandatory certification, there is no need for this exemption.

Testimonies from small farmers stated concerns on the proposed record keeping requirements identified in section 4-143-13, attesting that it places undue burden on the small coffee farmers. Comments referred to placing the burden on farmers who transport, cherry, parchment or green coffee transported to a mill for custom milling where no sale is involved, and the coffee is returned back to the farmer. Our concern is if no paperwork is needed during the transfer of coffee from the farmer to the mill and discrepancy occurs with the return of the coffee back to the owner, or farmer, there would be no record for the transfer of the coffee. For the protection of the farmer and mill, records should be maintained by the mill and the farmer to establish accurate ownership or accurate designation of origin.

Comments were received on the existing language in section 4-143-8 regarding the department's authority to enter any public or private premises including any vehicle or transport to inspect the quality, condition and origin of coffee and enforce the labeling, record keeping, and certification requirements without a warrant or probable cause. Based on our Deputy Attorney General, language in the administrative rules is needed to provide the department the authority to enter premises to conduct inspection. Entry into a premise without permission by the company to conduct enforcement investigation will still require a court ordered warrant.

Testifiers supported a certification of origin only, which does not involve determination of grade. Origin only certification was implemented following the passage of Act 345, SLH 1997, in which mandatory certification was required on all green coffee exported out of the geographic region of production. This caused a tremendous backlog of inspections. To expedite the certification demands for applicants who did not need full grade certification, an "origin only" certification program was implemented. This origin only certification verified that the coffee being inspected met the minimum requirements of Prime grade and allowed to be labeled as 100% Hawaii coffee, or the recognized geographic region of production. However, since the passage of Act 328, SLH 2012, which removed the mandatory certification with voluntary certification, certification of origin is no longer needed. Farmers will be required to attest to the actual origin of the coffee. There is no scientific method to determine the actual origin of the coffee. Since the passage of Act 328, SLH 2012, which repealed the mandatory certification of coffee to voluntary certification, applicants now have a choice to certify or not certify their green coffee. Origin declaration is the responsibility of the coffees' owner. The region of production on Hawaii-grown cherry, parchment, green or natural coffee must be labeled on the bags, or accompanied with a document declaring the geographic region of production.

Many testifiers supported the proposed natural coffee standards. One testimony suggested that green coffee mixed with natural coffee should be labeled as offgrade. Others who testified stated that natural coffee commands a higher price than green coffee and mixing green coffee and natural coffee should not be grounds to assign it as offgrade. Therefore, we are proposing the addition of mixed natural coffee grade standards (section 4-143-12) similar to natural coffee.

There were several testimonies opposing to the increase from 15% to 20% defect allowance for Prime grade. It was suggested to develop another "sub-Prime 20" grade standard for 20% defects. We currently utilize 26 quality grade standards for green coffee for Hawaii, Kona, Maui, Molokai and Kauai. An additional 5 green coffee standards for Oahu, 5 green coffee grade standards for Hawai'i Island; 6 grade standards for natural coffee and 6 grade standards for mixed natural coffee are being proposed. This will result in a total of 48 different coffee grade standards. We concerned that the addition "sub-prime 20" grade standards will not be a useful tool in marketing Hawaii-grown coffee. It was suggested and supported by several testifiers that a sunset date on the 20% defects be adopted to allow the farmers' time to combat the CBB. With the assistance being provided to the farmers to control the CBB, we feel that increasing the defect tolerance in Prime grade to 20% permanently will not provide an incentive for the coffee farmers to produce higher quality coffee. We agree with supporting a three-year sunset date on 20% Prime grade defects to allow time to evaluate the efforts in controlling CBB.

Testifiers in Ka'u supported the proposed rules changes, and requested recognition of Ka'u to have an origin name. In addition, several testifiers requested the adoption of a Ka'u coffee grade standard similar to other regions. This issue was discussed with the Board of Agriculture and it was decided that a Hawaii Island grade would be proposed for other Hawaii Island coffee regions, except for Kona to utilize. One testifier felt that the proposed Hawaii Island grade standard is an acceptable compromise.

There were two testifiers requesting to retain the Coffee Quality Verification Program. One testifier added that this program should be redefined and utilize part-time certifiers to be called upon for inspection. Since its adoption in 2001, there have been no millers requesting to implement the Coffee Quality Verification Program. Certification of coffee is voluntary and we feel that there is no need for this activity.

### **III. RECOMMENDATIONS**

Based upon staff research and testimonies presented at the public hearings or received in writing, the Division recommends the following actions on the changes proposed in the notice of public hearings.

Adopt the amendments to and compilation of Chapter 4-143, Hawaii Administrative Rules, as proposed, with the following changes:



Section 4-143-1

Addition of labeling requirements and documentation requirements for mixed natural coffee.

Require geographic region documentation on the transport of Hawai'i grown cherry, parchment, green and natural coffee.

Section 4-143-2

Addition of inspection for mixed natural coffee.

Deletion of exemption specified in subsection (b).

Delete in subsection (c) "green coffee shall be graded, placed into sealed container and tagged as required in subsection 4-143-1(i) before the green coffee is offered for inspection". Statement is already included in subsection (b).

Add statement in subsection (g) "Coffee bags or containers sampled for certification shall not be moved from the facility where it was sampled until approval is given by the department. Movement of coffees without approval shall be considered a violation under section 4-143-8(d)".

Require request in writing for additional copy of certificate and amend the number of additional copies of the certificate to be issued at no charge.

Increase inspection fee rate to \$48.00 per hour for regular time and \$72.00 per hour for overtime

Amend inspection fee rate for appeal inspection to the greater amount of fees and other charges to perform the appeal inspection or \$350.00.

Section 4-143-3

Delete definition of "black bean" for cherry coffee.

Delete definitions for "decay", "dieback cherry", "firm", "floater", "injury", "mature", "pulp", "raisined cherry", "serious damage", "well colored", "wholesale quantity", as these definitions pertain to cherry coffee.

Amend definitions for "certificate", "damage", "green coffee", "inspector", and "supervisor",

Add definitions for "Hawaii Island mixed natural coffee", "Hawaii mixed natural coffee", "Hamakua mixed natural coffee", "Kau mixed natural coffee", "Kauai mixed natural coffee", "Kona mixed natural coffee", "Maui mixed natural coffee", "Molokai mixed natural coffee" and "Oahu mixed natural coffee".

Section 4-143-4

Delete - Standards for cherry coffee grown in the geographic region of Kona.

Section 4-143-5

Delete - Standards for parchment coffee.

Section 4-143-6

Amend:

Adding green coffee grade standards for Oahu and Hawaii Island.

Remove two-tenths of a per cent allowance on moisture.

Increase the defect tolerance for Prime grade to twenty per cent, with a sunset date of June 30, 2017, reverting back to fifteen per cent beginning July 1, 2017.

Establish defect tolerance of one-tenth of a full imperfection for not more than two pinholes caused by insect damage with a sunset date of June 30, 2017, and beginning July 1, 2017, defect tolerance shall be one-fifth of a full imperfection.

Section 4-143-7

Delete – Minimum export requirements.

Section 4-143-8

Amend to include inspection for condition and origin of coffee.

Delete enforcement of minimum export requirements for green coffee.

Section 4-143-10

Delete – Coffee quality verification program.

Section 4-143-11

Add Standards for grades of natural coffee.

Section 4-143-12

Add Standards for grades for mixed natural coffee.

Section 4-143-13

Add Record keeping requirements

The Quality Assurance Division respectfully recommends that the Board approve the attached proposed amendment to chapter 4-143, Hawaii Administrative Rules entitled "Standards for Coffee". Following the Board approval, the amendment will be forwarded for the Governor's approval and filed with the Lieutenant Governor's Office. These amendments shall take effect on the first day of the month that begins at least ten days after the rules are filed with the Office of the Lieutenant Governor.

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Jeri Kahana  
Administrator  
Quality Assurance Division

APPROVED FOR SUBMISSION:

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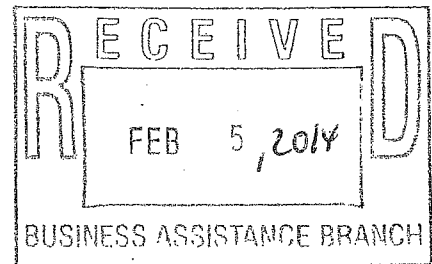
Scott E. Enright  
Chairperson, Board of Agriculture

Attachments

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## Exhibit 3

SMALL BUSINESS IMPACT STATEMENT  
(SEC 201M-2, HRS)



DEPARTMENT OR AGENCY: COUNTY OF KAUAI PLANNING COMMISSION

Relevant HRS Chapter or Section: N/A

Administrative Rule Chapter and Title: Administrative rules pertaining to the interpretation and enforcement of Kauai County Code Chapter 8, Article 17 relating to transient vacation rentals

Name: Michael Dahilig/Ian Jung

Title: Director of Planning/Deputy County Attorney

Phone Number: 808-241-4050

Email Address: mdahilig@kauai.gov

A. Provide the following information described in Section 201M-2(b), HRS and in Governor's Administrative Directive No. 09-01:

B. RULE DESCRIPTION:

1. ☒ New ☐ Repeal ☐ Amendment ☐ Recompilation

2. Nature of Proposed Changes:

a. Is the proposed rule authorized by a federal or state law or statute that does not require an agency to interpret or describe the requirements of the law or statute? ☐ Yes ☒ No

b. Is the proposed rule an emergency regulation? ☐ Yes ☒ No

c. Will the proposed rule affect small business because it:

1) Will apply to "small business" defined as a for-profit enterprise with fewer than 100 full-time or part-time employees? ☒ Yes ☐ No

The proposed rules concern the approval of land use permits by the Planning Commission throughout the County. Small businesses may be applying for land use permits in order to construct places of businesses, or are involved directly in land use development or construction contracting.

- 2) Will cause a direct and significant economic burden upon a small business? \_\_\_Yes XNo
- 3) Is directly related to the formation, operation, or expansion of a small business? XYes \_\_\_No

**3. Summarize the proposed rule(s) and reasons for the proposed rule(s):**

See draft findings in rules. Also, the process for TVR rules and allowable fine levy has not been clear to the public and the draft rules are meant to memorialize the process in one document.

**C. Small Business Impact Statement pursuant to 201M-2(b):**

The proposed rules should not have a detrimental impact on small businesses as they involve the implementation of a county law, and streamline current procedures under the existing rules.

**D. Are there new or increased fees or fines? \_\_\_Yes XNo**

The rules only establish the fine structure already allowed through county legislation.

**E. Did the agency consult small businesses, departmental advisory committees, or were other small businesses organizations consulted during the drafting of the proposed rule? XYes \_\_\_No**  
If no, why not?

**F. Other alternatives or less stringent measures proposed by affected businesses to reduce direct or indirect costs and, if proposed, why those proposals were not adopted.**

N/A

**G. Departmental Impact (i.e. fiscal, personnel, program)?**

\_\_\_Yes XNo

If yes, describe long and short-range impacts, estimated in dollar amounts or personnel, due to enforcement, administration, execution, or implementation of the proposed rule that may result in a savings or shortfall under the current program budget.

**H. Impact on General Public (i.e. individuals, consumers, and large businesses)?**

XYes \_\_\_No

If yes, describe long- and short-range impacts due to the enforcement, implementation, or execution of the proposed rule.

The general public could experience a less cumbersome process through the commission by making clear interpretive standards.

**I. Impact on state economy?**

☐ Yes ☒ No

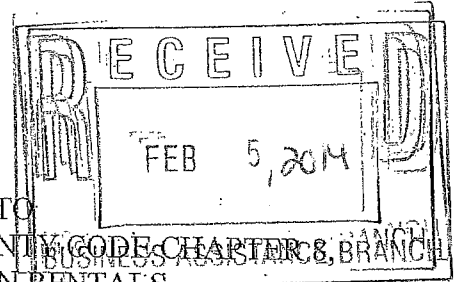
**J. Final result anticipated from the proposed rule change.**

The final result will provide for a more organized document for the public to review, and clarity on the implementation of the TVR program.

**K. Alternatives explored to carry out the statutory purpose other than rulemaking.**

None because the code has already been adopted. Amendment of the source law by additional ordinance adoption is more cumbersome.

PLANNING COMMISSION  
County of Kaua'i State of Hawai'i



ADMINISTRATIVE RULES PERTAINING TO  
THE INTERPRETATION AND ENFORCEMENT OF KAUAI COUNTY CODE CHAPTER 8, ARTICLE 17 RELATING TO TRANSIENT VACATION RENTALS.

AUTHORITY:

Pursuant to Article XIV Section 14.03.E of the Kauai County Charter, the Planning Commission of the County of Kaua'i adopts the following administrative rules pertaining to the responsibility of the Planning Department to enforce Chapter 8, Article 17 of the Kauai County Code 1987, as amended, ("KCC") concerning to the certification and enforcement of Transient Vacation Rentals.

Pursuant to KCC Section 8-17.12(h), the annual renewal of a non-conforming use certificate is requires as prescribed in KCC Sections 8-17-10(a-h). The renewal documentation requires at a minimum:

*...proof that there is a currently valid State of Hawaii general excise tax license and transient accommodations tax license for the nonconforming use. Failure to meet this condition will result in the automatic denial of the application for renewal of the nonconforming use certificates.*

Non-conforming uses are defined under KCC Section 8-13.2, and specifically Section 8-13.2(b), which states as follows:

*If any nonconforming use ceases for any reason for a continuous period of twelve (12) calendar months or for one (1) season if the use be seasonal, then the use shall not be resumed and any use of the land or building thereafter shall be in full conformity of the provisions of this chapter.*

FINDINGS:

The requirements of the Chapter 8, Article 17 of the KCC lack specificity pertaining to the annual renewal process, including late filing, the documentation and evidence required to maintain a non-conforming use as defined in KCC Section 8-13, and the procedures necessary for a certificate holder to seek due process in the event of non-renewal.

RULE:

**I. NON-CONFORMING USE CERTIFICATE (NCUC) RENEWAL**

- A. **Requirements for Renewal.** Applications for renewal shall only be accepted by the Department sixty (60) days prior to the certificate's renewal date. The annual renewal deadline is the same month and day of the original determination made by the Planning Department certifying the non-conforming use. Along with the mandatory



renewal form, the following documents must accompany the submittal, pursuant to KCC 8-17.12(h)(1):

1. Renewal fee in the amount set forth by ordinance;
2. Copy currently valid General Excise Tax (GET) certificate; and
3. Copy of currently valid Transient Accommodation Tax (TAT) certificate.

Further, in order to ascertain continuous use pursuant to KCC Section 8-23.2(b), the following shall also be submitted to the Planning Department:

1. A dated, updated copy of the "For Your Safety and Comfort" information document provided to vacation rental tenants;
2. A dated picture of the required transient vacation rental sign with the house in viewing range; and
3. Copies of redacted tax returns evidencing activity on the GET and TAT certificates with the address of the vacation rental clearly visible.
4. For the period of one (1) year from the date of approval of these Rules, the following shall also be required of renewing certificate holders:
  - a. Where the Planning Department has identified missing documents required by the non-conforming use certificate application process, the applicant, in good faith, shall exercise best efforts in providing these documents to complete the file as part of the renewal application.

**B. Timely Renewal Notices.** The Planning Department shall notify the certificate holder if the renewal application has been approved, approved pending a certain action, withheld, or denied within forty-five (45) days of the certificate's renewal deadline.

**C. Inspections.** The Planning Department may require an inspection to verify the non-conforming use.

**D. Renewal Applications.** Submittal by the renewal date is the certificate holder's responsibility as the Planning Department shall not be responsible for notifying the holder of any pertinent deadlines. Renewals postmarked by the deadline and received within seven (7) days after the deadline shall be accepted by the Planning Department as submitted timely.

**F. Late Renewal Applications.** Renewal applications received by the Planning Department within thirty days (30) after the deadline may renew, provided that in addition to the renewal fee, a certificate holder shall pay an administrative processing fee of twice the renewal fee.

**E. Non Compliance Timeline.** After the thirtieth (30<sup>th</sup>) day after the renewal deadline, the Department shall reject any renewal application and issue a forfeiture letter.

**F. Forfeiture.** Determination of forfeiture shall be subject to an appeal of the Planning Director's Decision pursuant to Chapter 9 of the Rules of Practice and Procedure of the Planning Commission.

**G. Voluntary Forfeiture.** A certificate holder may voluntarily forfeit the non-conforming use certificate provided an declaration attesting to the voluntary action is submitted contemporaneously with a form provided by the Planning Department.

**DRAFT**  
**for discussion purposes**

## **II. VIOLATIONS**

**A. Transient Vacation Rentals with NCUC and Violations.** Pursuant to KCC Section 8-17.12(h)(2), the Planning Department may withhold the renewal of a NCUC if a violation of the Comprehensive Zoning Ordinance (CZO) or other pertinent land use laws are identified on the property. A temporary cease and desist order shall be issued to the certificate holder to immediately suspend vacation rental activities until the violation has been rectified. Should the vacation rental use continue in violation of the temporary cease and desist order, and the order has not been appealed pursuant to Chapter 9 of the Rules of Practice and Procedure of the Planning Commission, fines shall be applicable as a non-allowed use outside the Visitor Destination Area.

1. **CZO Violations.** For lots with active transient vacation rental NCUCs, the Planning Department shall keep a record of any complaints and violations on the property. Along with a withhold notice, any violations shall require the issuance of a temporary cease and desist order to the certificate holder within ten (10) days from submittal of the renewal form. The letter shall clearly state that any vacation rental use must cease until the violation is rectified or if the order is appealed. Failure to rectify the violation within one (1) year of the temporary cease and desist order shall be considered abandonment pursuant to KCC Section 8-23.2(b). Fines for the actual CZO violations leading to certificate withholding shall be issued as a separate order and separately appealable.
2. **Violations of other Pertinent Land Use Laws.** For lots with active transient vacation rental NCUCs, the Planning Department shall notify other County agencies of the nonconforming use with instructions to carbon copy any violation notices of their relevant codes to the Planning Department. The Department shall catalog these violation notices. At the time of renewal, should a cataloged violation notice be present and active in the file, the Planning Department shall issue a temporary cease and desist order along with information the certificate holder that the a future renewal will be withheld pending resolution of any violations. The letter shall clearly state that any vacation rental use must cease until the violation is rectified and the order is appealable. Failure to rectify the violation within one (1) year of the temporary cease and desist order shall be considered abandonment pursuant to KCC Section 8-23.2(b). A letter from the County agency that the violation has been rectified must be submitted to the Planning Department to release the hold on the renewal.

**B. Single-Family Transient Vacation Rentals Operating Without Certificate.** A Zoning Compliance notice shall be issued on a lot where an inspection has ascertained a Single-Family Transient Vacation Rental use. An after-the-fact NCUC shall not be issued by the Planning Department, the final appealable decision of the Director shall be upon the second notice, should the use persist, whereby the Director has levied a fine.

### III. ENFORCEMENT.

- A. **Zoning Compliance Notice.** A Zoning Compliance Notice related to Single-Family use shall require a response from the person notified within ten (10) days of service. A withholding of the renewal and temporary cease and desist order shall be treated as a Zoning Compliance Notice.
- B. **Notice of Violation.** Should no response be received after service of a Zoning Compliance Notice, or the Planning Director finds lack of progress to timely rectify the violation the Planning Department shall issue a Notice of Violation. The Notice of Violation shall include a levy of fines, which may be appealed pursuant to Chapter 9 of the Rules of Practice and Procedure of the Planning Commission.

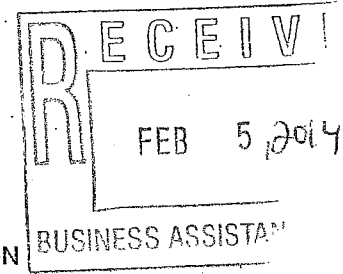
### IV. FINE SCHEDULE

Fines shall be levied in addition to any permitting fees required to rectify the violation.

TVR NCUC FINE SCHEDULE		
Type	Example	Fine per instance or per day
<b>STRUCTURE VIOLATIONS</b>		
Class I or II required	Lawn Building/Unpermitted addition	Starting at \$250
Class II required	Unpermitted Construction	Starting at \$500
Class V required	Unpermitted Construction	Starting at \$2,500
Use Permit/Variance required	Building height violation	Starting at \$5,000
Not allowed in the zoning district	Illegal Density	\$10,000
<b>USE VIOLATIONS</b>		
Use Permit/Variance required	Baseyard in Res District	Starting at \$5000
Not allowed in the zoning district	TVR w/o NCUC	\$10,000
<b>OTHER VIOLATIONS</b>		
Non-Compliance with Ordinance	No NCUC Sign	Starting at \$250

## Exhibit 4

SMALL BUSINESS IMPACT STATEMENT  
(SEC 201M-2, HRS)



DEPARTMENT OR AGENCY: COUNTY OF KAUAI PLANNING COMMISSION

Relevant HRS Chapter or Section: N/A

Administrative Rule Chapter and Title: Interpretive Administrative Zoning Rules and Regulations (2014) of the Kauai Planning Commission Relating to Chapters 8, 9 and 10 of the Kauai County Code (1987)

Name: Michael Dahilig/Ian Jung

Title: Director of Planning/Deputy County Attorney

Phone Number: 808-241-4050

Email Address: mdahilig@kauai.gov

A. Provide the following information described in Section 201M-2(b), HRS and in Governor's Administrative Directive No. 09-01:

B. RULE DESCRIPTION:

1. ☒ New ☐ Repeal ☐ Amendment ☒ Recompilation

2. Nature of Proposed Changes:

a. Is the proposed rule authorized by a federal or state law or statute that does not require an agency to interpret or describe the requirements of the law or statute? ☐ Yes ☒ No

b. Is the proposed rule an emergency regulation? ☐ Yes ☒ No

c. Will the proposed rule affect small business because it:

1) Will apply to "small business" defined as a for-profit enterprise with fewer than 100 full-time or part-time employees? ☒ Yes ☐ No

The proposed rules concern the approval of land use permits by the Planning Commission throughout the County. Small businesses may be applying for land use permits in order to construct places of businesses, or are involved directly in land use development or construction contracting.

- 2) Will cause a direct and significant economic burden upon a small business? \_\_\_Yes XNo
- 3) Is directly related to the formation, operation, or expansion of a small business? XYes \_\_\_No

**3. Summarize the proposed rule(s) and reasons for the proposed rule(s):**

The rule amendments can be categorized into two efforts: A) Recodification of previous interpretive rules to the CZO by the Commission rules; B) Introduction of additional interpretive rules. The amendments directly related to small business matters involve the sections on Food Trucks, Minor Food Processing and Film Production .

**C. Small Business Impact Statement pursuant to 201M-2(b):**

The proposed rules should not have a detrimental impact on small businesses as they involve the implementation of a county law, and streamline current procedures under the existing rules.

**D. Are there new or increased fees or fines? \_\_\_Yes XNo**

The rules only establish the process to appeal a new fine structure already instituted through county legislation.

**E. Did the agency consult small businesses, departmental advisory committees, or were other small businesses organizations consulted during the drafting of the proposed rule? XYes \_\_\_No**  
**If no, why not?**

**F. Other alternatives or less stringent measures proposed by affected businesses to reduce direct or indirect costs and, if proposed, why those proposals were not adopted.**

N/A

**G. Departmental Impact (i.e. fiscal, personnel, program)?**  
**\_\_\_Yes XNo**

If yes, describe long and short-range impacts, estimated in dollar amounts or personnel, due to enforcement, administration, execution, or implementation of the proposed rule that may result in a savings or shortfall under the current program budget.

**H. Impact on General Public (i.e. individuals, consumers, and large businesses)?**

☒ Yes ☐ No

If yes, describe long- and short-range impacts due to the enforcement, implementation, or execution of the proposed rule.

The general public could experience a less cumbersome process through the commission by making clear interpretive standards.

**I. Impact on state economy?**

☐ Yes ☒ No

**J. Final result anticipated from the proposed rule change.**

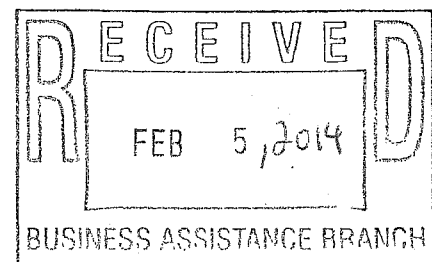
The final result will provide for a more organized document for the public to review, and clarity on the implementation of the CZO.

**K. Alternatives explored to carry out the statutory purpose other than rulemaking.**

None because the code has already been adopted. Amendment of the source law by additional ordinance adoption is more cumbersome.



**INTERPRETIVE ADMINISTRATIVE ZONING RULES AND REGULATIONS (2014)**  
**OF THE**  
**KAUAI PLANNING COMMISSION**  
**RELATING TO CHAPTERS 8, 9 and AND 10 OF THE KAUAI COUNTY CODE (1987)**



## FOREWORD:

Generally, as relating to these codified rules, pursuant to Article XIV Section 14.03.E of the Kauai County Charter, the Planning Commission of the County of Kauai has adopted the following administrative rules and regulations pertaining to the responsibility of the Department to enforce various elements of the Kaua'i County Code, 1987, as amended, ("Comprehensive Zoning Ordinance") and other related zoning ordinances.

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### CHAPTER

#### KPAR-8-1.5 DEFINITIONS

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- 2. Dwelling, Multiple Family, Single-Family Detached
- 3. Food Trucks
- 4. Fruit Stands

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- 1. Film Productions as Accessory Use and Structures
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- 1. Paint Colors

**KPAR-8-1.5-1**

**DEFINITIONS, COMPREHENSIVE ZONING ORDINANCE**

**KITCHENS, INSTALLED EQUIPMENT**

*(Adopted by the Commission February 26, 2013; Approved by the Mayor XX/XX/2013)*

**AUTHORITY:**

Pursuant to Article XIV Section 14.03.E of the Kauai County Charter the Planning Commission of the County of Kaua'i adopts the following administrative rules pertaining to the responsibility of the Department to enforce Chapter 8, Section 8-1.5 of the Kaua'i County Code, 1987, as amended, concerning the definition of "Kitchen."

Under the Comprehensive Zoning Ordinance, "Kitchen" is defined as, "any room used or intended or designed to be used for cooking and preparing food."

**FINDINGS:**

As enforcement of Ordinance 935 hinges upon the definition of "Kitchen," and there have been abuses to create structures considered "Dwelling, Multiple Family" from those previously permitted as "Dwelling, Single Family Detached."

**RULE:**

1. "Installed equipment" is further defined by the Commission and shall be interpreted by the Department as any appliance used to cook and prepare food including but not limited to a stove tops or ranges, griddle, rice cooker, toaster oven, microwave, hot plate, and or deep fryer. Installation, by nature, shall be considered complete upon a connection to an electrical socket or fuel source. Installed equipment can be distinguished from blenders and food processors which are used only to prepare food.
2. Under Ordinance 935, "[a]ny room used or intended...for cooking and preparing food" shall be interpreted by the Department as to include any room where installed equipment is connected to or intended to be connected to an electrical socket. Evidence of any instructions, written, oral or posted, to "unplug" installed equipment when the installed equipment is not in use shall be considered installation.
3. All plans submitted to the Planning Department must demarcate surfaces where installed equipment will be connected to an electrical socket and used. Surfaces shall be outlined on all plans with a dashed line, labeled and cross hatched. Uses of installed equipment outside these surfaces will be considered a violation of Ordinance 935.
4. Rooms "[d]esigned to be used for cooking and preparing food" shall require surfaces for installed equipment to be no more than eight-feet from a sink and a refrigerator.

**KPAR-8-1.5-2**

**DEFINITIONS, COMPREHENSIVE ZONING ORDINANCE**

**DWELLING UNITS; DWELLING, MULTIPLE FAMILY**

(Adopted by the Commission February 26, 2013; Approved by the Mayor)

**AUTHORITY:**

Pursuant to Article XIV Section 14.03.E the Planning Commission of the County of Kaua'i adopts the following administrative rules pertaining to the responsibility of the Department to enforce Chapter 8, Section 8-1.5 of the Kaua'i County Code, 1987, as amended, concerning the definitions of "Dwelling Unit" and "Dwelling, Multiple Family."

Under the Comprehensive Zoning Ordinance:

"Dwelling Unit" means any building or any portion thereof which is designed or intended for occupancy by one (1) family or persons living together or by a person living alone and providing complete living facilities, within the unit, for sleeping recreation, eating and sanitary facilities, including installed equipment for only one (1) kitchen. Any building or portion thereof that contains more than one (1) kitchen shall constitute as many dwelling units as there are kitchens."

"Dwelling, Multiple Family" means a building or portion thereof consisting of two (2) or more dwelling units and designed for occupancy by two (2) or more families living independently of each other, where any (1) of the units is structurally dependent on any other unit.

**RULE:**

1. "[A]ny building or portion thereof" shall be interpreted by the Department as any enclosed portion of residential structure.
2. "Installed equipment" is further defined by the Commission and shall be interpreted by the Department as any appliance used to cook and prepare food including but not limited to a stove tops or ranges, griddle, rice cooker, toaster oven, microwave, hot plate, and or deep fryer. Installation, by nature, shall be considered complete upon a connection to an electrical socket. Installed equipment can be distinguished from blenders and food processors which are used only to prepare food.
3. "[L]iving independently of each other" shall be interpreted by the Department as any building or portion of residential structure designed and constructed in a manner to impede the free flow of all individuals permanently or temporarily residing in the structure from entering and exiting all rooms in the structure. This independence shall be evidenced by, for example, including but not limited to: locks on doors meant to only allow unlocked ingress in one direction; doors facing each other within the structure with keyed locks facing each other; and/or separate clearly marked or identified entrances to a building or portion thereof for complete living facilities.

**KPAR-8-1.5-4**

**DEFINITIONS, COMPREHENSIVE ZONING ORDINANCE**  
**FOOD TRUCKS**

**AUTHORITY:**

Pursuant to Article XIV Section 14.03.E of the Kauai County Charter the Planning Commission of the County of Kaua'i adopts the following administrative rules pertaining to the responsibility of the Department to enforce Chapter 8, Section 8-1.5 of the Kaua'i County Code, 1987, as amended, concerning the definition of "Structure" and its applicability to the operation of vehicles used for food service activities.

Under the Comprehensive Zoning Ordinance, "Structure" is defined as, "anything constructed or erected which requires location on the ground or which is attached to something having location on the ground, excluding vehicles designed and used only for the transportation of people or goods, and excluding utility poles and towers constructed by a public utility."

These rules do not pertain to the Department's application of Chapter 205A, Hawaii Revised Statutes and the County of Kaua'i Special Management Area Rules and Regulations:

**FINDINGS:**

As enforcement of Comprehensive Zoning Ordinance as it pertains to vehicles used for food service activities hinges upon the definition of "Structure," further clarification of the terms, "food service" and "vehicle" used within the Comprehensive Zoning Ordinance are necessary.

**RULE:**

1. "Food Service" as referenced throughout Chapter 8, Kauai County Code, yet without a definition set forth in Section 8-1.5 of the code shall be interpreted to mean "use of the property whereby consideration is paid by an invitee in exchange for food."
2. "Vehicle" as referenced throughout Chapter 8, Kauai County Code, yet without a definition set forth in Section 8-1.5 of the code shall be interpreted to mean "anything capable of usage and licensure by the state for the transport of persons or goods."
3. Vehicles utilized for food service activities shall not be interpreted as "structures" for the purposes of Chapter 8, Kauai County Code application provided that:
  - a. Vehicles are maintained in full operable condition, and can be made immediately mobile at the request of a Planning Department official.
  - b. Vehicles are self-contained and do not require external utilities on the parcel to engage in food service activities.
  - c. Appurtenant structures including but not limited to pop-up tents, benches, tables clearly used for food service shall not remain stationary and shall be stored within

the vehicle or in a properly permitted enclosed structure when the food service is not in operation.

**KPAR-8-1.5-5**

**DEFINITIONS, COMPREHENSIVE ZONING ORDINANCE**

**FRUIT STANDS**

[Separate proposed rule - To be coditified if adopted]

**KPAR-8-2.4-1**

**USES, COMPREHENSIVE ZONING ORDINANCE**

**FILM PRODUCTIONS AS ACCESSORY USES AND STRUCTURES TO ALL ZONING DISTRICTS**

**AUTHORITY:**

Pursuant to Article XIV Section 14.03.E the Planning Commission of the County of Kaua'i adopts the following administrative rules pertaining to the responsibility of the Department to enforce Chapter 8, Section 8-2.4 of the Kaua'i County Code, 1987, as amended, concerning uses. In particular, "accessory structures" and "accessory uses" are allowed in all zoning districts under Sections 8-2.4(a)(2); 8-2.4(g)(1); 8-2.4(i)(1); 8-2.4(j)(1); 8-2.4(m)(1); 8-2.4(n)(1); 8-2.4(q)(1); 8-2.4(s)(1), Kauai County Code

**FINDINGS:**

Kauai's urban and natural form is a desired drop back for photography, film and television shoots. The images and scenery meant to be captured on film are the uses and/or structures already permitted under the zoning code.

Photography, film and television production shoots are limited in duration, and do not alter the permitted use beyond the process, again, of capturing the images on film.

**RULE:**

1. "Film Productions" shall mean the use of a parcel or erection of any temporary structure on a parcel related to a limited duration film operation holding a permit to conduct filming as approved by the Film Commissioner of the County of Kauai. Limited duration film operations without a permit from the Film Commissioner are not considered "Film Productions."
2. Film Productions are considered an accessory use pursuant to Section 8-2.4, Kauai County Code, specifically Sections 8-2.4(a)(2); 8-2.4(g)(1); 8-2.4(i)(1); 8-2.4(j)(1); 8-2.4(m)(1); 8-2.4(n)(1); 8-2.4(q)(1); 8-2.4(s)(1).
3. Temporary structures to assist with the Film Production must be removed at the end of

the limited duration film operation, unless subsequent permits are sought. Should a subsequent permit be sought to permit said structures, they shall not be considered after-the-fact provided the requisite applications are submitted within ninety (90) days of the expiration of the Film Commissioner's permit.

4. Helicopter landings at the shoot location are beyond the scope of "Film Productions" and are considered a prohibited use without the proper zoning permits. Aerial helicopter usage shall be in accordance with all Federal laws, and any additional conditions of the Film Commissioner's permit.
5. Violation of the terms of the Film Commissioner's permit shall lead to a determination by the Department that the activity is beyond a "Film Production" and shall be subject to civil and or criminal penalties by the Department or the Prosecutor.
6. These rules do not encompass compliance with Chapter 205A, Hawaii Revised Statutes and the County of Kaua'i Special Management Area Rules and Regulations.

#### **KPAR-8-2.4-2**

#### **DEFINITIONS, COMPREHENSIVE ZONING ORDINANCE**

#### **MINOR FOOD PROCESSING**

Pursuant to Article XIV Section 14.03.E the Planning Commission of the County of Kaua'i adopts the following administrative rules pertaining to the responsibility of the Department to enforce Chapter 8, Section 8-2.4 of the Kaua'i County Code, 1987, as amended, concerning uses. In particular "Minor Food Processing" is allowed in zoning districts pursuant to Section 8-2.4(j)(11); and 8-2.4(q)(9), Kauai County Code.

#### **FINDINGS:**

There is a need to distinguish "Food Processing" under section 8-2.4 from "Minor Food Processing" to more clearly delineate whether a use permit versus an over the counter permit is required. The clarity is meant to encourage the growth of small scale value added food production.

#### **RULE:**

1. "Minor Food Processing" means the production of such goods as cracked seeds, jellies, candies and ice cream or agricultural products
2. These goods shall be for the purpose of creating value added products whereby the materials brought into the structure for production are primarily in a raw, unadulterated form
3. Production of the goods or value added products shall be limited to a gross processing work area that is no more than a total of 2,500 square feet, not including any area directly related to over-the-counter sales or direct consumption.



4. This work area shall be clearly identified and labeled on plans submitted to the Department.
5. These rules do not encompass compliance with Chapter 205A, Hawaii Revised Statutes and the County of Kaua'i Special Management Area Rules and Regulations.

**KPAR-8-19-1**

**TRANSIENT ACCOMMODATION UNITS**

**[Separate proposed rule - To be coditified if adopted]**

**KPAR-9-2.9**

**PUBLIC ACCESS RIGHT-OF-WAY FOR SUBDIVISIONS**

**Referral to Public Access, Open Space, and Natural Resources Preservation Fund**

**Commission; Preferred Public Access Right-of-Way**

Pursuant to Article XIV Section 14.03.E the Planning Commission of the County of Kaua'i adopts the following administrative rules pertaining to the responsibility of the Department to enforce Chapter 9, Section 9-2.9 of the Kaua'i County Code, 1987, as amended, concerning the exaction of public rights of way as part of a subdivision action. In particular, specifications of the Planning Department are required as part of the approval documents to be submitted to the Kauai Planning Commission.

**FINDINGS:**

Since the recent creation of the Public Access, Open Space, and Natural Resources Preservation Fund Commission, there is a need to clearly integrate the role of the Commission in providing input to the application of this particular ordinance.

**RULE:**

1. Upon intake of a subdivision action, the Department shall determine whether a public accessway is required by ordinance pursuant to Section 9-2.9, Kauai County Code.
2. Should an accessway be required, the Department shall refer the application to the Public Access, Open Space, and Natural Resources Preservation Fund Commission for input concerning the location of the eventual access.
3. The Department shall also seek guidance from the Open Space Commission whether not only mauka-to-makai access is needed, but whether lateral access and the preservation of historical accesses should also be exacted.
4. The Department shall provide a 60-day window upon transmittal to the Open Space Commission to receive comments back before advancing any application documents to the Planning Commission.

**KPAR-10-5A-1**

**LIHUE TOWN CORE URBAN DESIGN DISTRICT**

**PAINT COLORS**

(Adopted by the Commission February 26, 2013; Approved by the Mayor)

**1-1. Purpose.**

Pursuant to Chapter 10, Article 5A, Kaua'i County Code, 1987, as amended, these rules define the Department of Planning's statutory requirement to preserve, maintain and restore the appearance and design Līhu'e Town Core Urban Design District.

**1-2. Authority.**

These rules are authorized under Hawai'i Revised Statute Chapter 91, Kaua'i County Charter Section 14.03.E. and incorporated by Kaua'i County Code, 1987, as amended, Chapter 10 and Chapter 8, Article 3, which allows the Planning Director to enforce the requirements set forth in the Līhu'e Town Core Urban Design District.

**1-3. Definitions.**

In addition to terms defined in Chapter 10, Article 5A, Kaua'i County Code 1987, as amended:

- (a) "Color Palette" means an array of "Dark Earth Tones", "Light Earth Tones" and "Warm Earth Tones", and "Earth Tones" and other colors commonly found in the Līhu'e Town Core as approved by the Planning Director.
- (b) "Dark Earth Tones" means colors that are of a darker shade that draw from a palette of browns, tans, greys, greens and some reds, and are muted and flat in emulation of the natural colors found in dirt, rocks and vegetation.
- (c) "Earth Tones" means colors that draw from a palette of browns, tans, greys, greens and some reds, and are muted and flat in emulation of the natural colors found in dirt, rocks and vegetation.
- (d) "Light Earth Tones" means colors that are of a lighter shade that draw from a palette of browns, tans, greys, greens and some reds, and are muted and flat in emulation of the natural colors found in dirt, rocks and vegetation.
- (e) "Planning Director" means the Director of the Planning Department of the County of Kaua'i.
- (f) "Reflective" means colors or glass/metallic surfaces that are capable of reflecting light.
- (g) "Special Planning Areas D, E, F, and G" means Special Planning Areas authorized under Kauai County Code, 1987 as Amended, Chapter 8, Article 11 and established by the Līhu'e Town Core Urban Design District in Chapter 10, Article 5A.
- (h) "Warm Earth Tones" means colors that have a red or yellow undertone and draw from a palette of browns, tans, greys, greens and some reds, and emulate the natural colors found in dirt, rocks and vegetation.

**1-4 Setting of the Color Palette.**

- (a) The Planning Director shall form an advisory committee to recommend a Color Palette that identifies at least ten (10) colors each of Earth Tones, Dark Earth Tones, Light Earth Tones,

Warm Earth tones, and other colors commonly found in the Lihue Town Core. The advisory committee formed by the Planning Director shall review and decide colors to recommend to the Planning Director for approval of the Color Palette.

(b) The advisory committee formed by the Planning Director shall identify and determine which colors appropriately reflect the cultural and historical significance of the Lihue Town Core as defined in the Lihue Town Core Urban Design Plan.

(c) The Planning Director shall make the final decision based on the advisory committee's determination of which colors shall constitute the Color Palette.

(d) Should an applicant wish to propose specific colors that are not substantially similar to the Color Palette, the Planning Director shall evaluate the proposed colors and make a decision that the proposed color(s) is consistent with the respective Special Planning Area. In evaluating an applicant's proposed color(s), the Planning Director shall also find that the proposed color(s) significantly resembles that of any of the color(s) on the Color Palette.

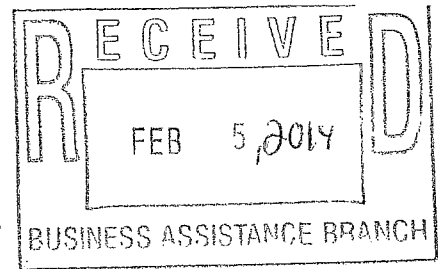
#### **1-5. Exterior Building Color Alterations/Appearance.**

(a) The exterior of any new building or repainting of any building within any of the Special Planning Areas shall comply with the Color Palette as approved by the Planning Director, unless the Planning Director approves an applicant's requested color pursuant to Sec. 1-4(d) of these Rules.

(b) All items affixed to buildings, including but not limited to awnings, canopies, overhangs, and other architectural features shall also comply with the Color Palette as approved by the Planning Director. This Section shall not apply to signs affixed to buildings given signage is regulated within each of the Special Planning Areas of the Lihue Town Core Urban Design District.

(c) All roofs are required to be non-reflective and any items to be mounted or affixed on the roof of any building shall also be non-reflective. This Section shall not apply to photovoltaic equipment, solar water heating, air-conditioning equipment, skylight, or vents. Should an applicant propose other Reflective utility equipment, the applicant must seek approval by the Planning Director to ensure minimal non-reflectiveness. All roof-mounted or affixed utility equipment, other than photovoltaic or solar paneling, shall be screened to minimize the visibility from public streets and pedestrian connections. Screens shall be consistent with the building's architectural design and finishes.

## Exhibit 5



**SMALL BUSINESS IMPACT STATEMENT  
(SEC 201M-2, HRS)**

**DEPARTMENT OR AGENCY:** COUNTY OF KAUAI PLANNING COMMISSION

**Relevant HRS Chapter or Section:** N/A

**Administrative Rule Chapter and Title:** Administrative rules pertaining to the processing and review of use permits concerning the construction and operation of fruit and vegetable stands in the agriculture and open zoning districts

**Name:** Michael Dahilig/Ian Jung

**Title:** Director of Planning/Deputy County Attorney

**Phone Number:** 808-241-4050

**Email Address:** mdahilig@kauai.gov

**A. Provide the following information described in Section 201M-2(b), HRS and in Governor's Administrative Directive No. 09-01:**

**B. RULE DESCRIPTION:**

1. ☒ New ☐ Repeal ☐ Amendment ☐ Recompilation

**2. Nature of Proposed Changes:**

a. Is the proposed rule authorized by a federal or state law or statute that does not require an agency to interpret or describe the requirements of the law or statute? ☐ Yes ☒ No

b. Is the proposed rule an emergency regulation? ☐ Yes ☒ No

c. Will the proposed rule affect small business because it:

1) Will apply to "**small business**" defined as a for-profit enterprise with fewer than **100** full-time or part-time employees? ☒ Yes ☐ No

The proposed rules concern the approval of land use permits by the Planning Commission throughout the County. Small businesses may be applying for land use permits in order to construct places of businesses, or are involved directly in land use development or construction contracting.

- 2) Will cause a direct and significant economic burden upon a small business? \_\_\_Yes XNo
- 3) Is directly related to the formation, operation, or expansion of a small business? XYes \_\_\_No

**3. Summarize the proposed rule(s) and reasons for the proposed rule(s):**

See draft findings in rules

**C. Small Business Impact Statement pursuant to 201M-2(b):**

The proposed rules should not have a detrimental impact on small businesses as they involve the implementation of a county law, and streamline current procedures under the existing rules.

- D.** Are there new or increased fees or fines? \_\_\_Yes XNo

- E.** Did the agency consult small businesses, departmental advisory committees, or were other small businesses organizations consulted during the drafting of the proposed rule? XYes \_\_\_No  
If no, why not?

- F.** Other alternatives or less stringent measures proposed by affected businesses to reduce direct or indirect costs and, if proposed, why those proposals were not adopted.

N/A

- G.** Departmental Impact (i.e. fiscal, personnel, program)?  
\_\_\_Yes XNo

If yes, describe long and short-range impacts, estimated in dollar amounts or personnel, due to enforcement, administration, execution, or implementation of the proposed rule that may result in a savings or shortfall under the current program budget.

- H.** Impact on General Public (i.e. individuals, consumers, and large businesses)?

XYes \_\_\_No

If yes, describe long- and short-range impacts due to the enforcement, implementation, or execution of the proposed rule.

The general public could experience a less cumbersome process through the commission by making clear interpretive standards.

**I. Impact on state economy?**

☐ Yes ☒ No

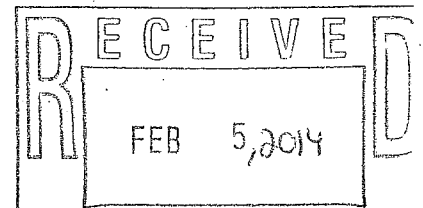
**J. Final result anticipated from the proposed rule change.**

The final result will provide for a more organized document for the public to review, and clarity on the implementation of the CZO.

**K. Alternatives explored to carry out the statutory purpose other than rulemaking.**

None because the code has already been adopted. Amendment of the source law by additional ordinance adoption is more cumbersome.

PLANNING COMMISSION  
County of Kaua'i State of Hawai'i



ADMINISTRATIVE RULES PERTAINING TO THE PROCESSING AND REVIEW OF USE  
PERMITS CONCERNING THE CONSTRUCTION AND OPERATION OF FRUIT AND  
VEGETABLE STANDS IN THE AGRICULTURE AND OPEN ZONING DISTRICTS

AUTHORITY:

Pursuant to Article XIV Section 14.03.E of the Kauai County Charter the Planning Commission of the County of Kaua'i adopts the following administrative rules pertaining to the processing and review of use permits for fruit and vegetable stands.

FINDINGS:

Hawai'i Revised Statutes, Section 205-2, permits the following uses in the State Land Use Agriculture District:

- (A) A roadside stand that is not an enclosed structure, owned and operated by a producer for display and sale of agricultural products grown in Hawai'i and value-added products that were produced using agricultural products grown in Hawai'i;
- (B) Retail activities in an enclosed structure owned and operated by a producer for the display and sale of agricultural products grown in Hawai'i, value-added products that were produced using agricultural products grown in Hawai'i, logo items related to the producer's agricultural operations, and other food items.

Pursuant to Chapter 8, referred to as the Comprehensive Zoning Ordinance (CZO) of the Kaua'i County Code, 1987 as amended, any type of commercial use in the Agriculture and Open Zoning Districts requires a Use Permit pursuant to Article 3 of the CZO.

Pursuant to Ordinance 935, "commercial use" is defined as, "the purchase, sale or other transaction involving the handling or disposition (other than that included in the term "industry" as defined in this Section) of any article, substance or commodity for profit or a livelihood, including in addition, public garages, office buildings, offices of doctors and other professionals, public stables, recreational and amusement enterprises conducted for profit, shops for the sale of personal services, places where commodities or services are sold or are offered for sale, either by direct handling of merchandise or by agreements to furnish them but not including dumps and junk yards." Therefore, any type of commercial use, including but not limited to fruit and vegetable stands, in the Agriculture and Open Zoning Districts requires a Use Permit.

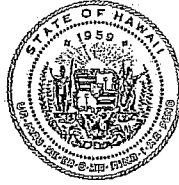
In order to prevent a proliferation and/or large massing of fruit and vegetable stands throughout Kaua'i's agricultural lands, it is appropriate to establish rules restricting the size and operations of these stands.

RULE:



1. A Fruit or Vegetable Stand reviewed under a Use Permit application shall be restricted to the display and sale of agricultural products grown in Hawai'i, value-added products that were produced using agricultural products grown in Hawai'i, logo items related to the producer's agricultural operations, and other food items.
2. A Fruit or Vegetable Stand reviewed under a Use Permit shall be restricted to the following development standards:
  - a. It shall be an open air, unenclosed structure, except for secured areas no greater than four hundred (400) square feet in size;
  - b. It shall not exceed eight hundred (800) square feet in size;
  - c. All other development standards, including but not limited to setbacks, shall be the same as those established under Section 8-8.2 of the Kaua'i County Code, otherwise referred to as the Agricultural District Development Standards.

## Exhibit 6



NEIL ABERCROMBIE  
GOVERNOR

SHAN S. TSUTSUI  
LT. GOVERNOR

STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

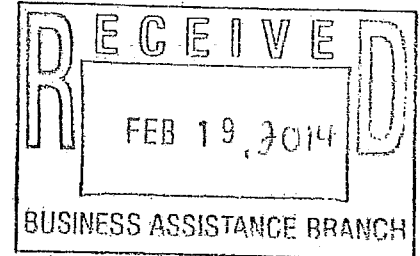
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KEALI'I S. LOPEZ  
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

February 3, 2014



**MEMORANDUM**

**TO:** Chairperson  
Small Business Regulatory Review Board  
Department of Business, Economic Development & Tourism

**FROM:** Kealii Lopez, Director  
Department of Commerce and Consumer Affairs

**SUBJECT:** Small Business Impact Review of the Proposed Amendments to Chapter 99, Title 16, Hawaii Administrative Rules, Relating to Real Estate Brokers and Salespersons

Attached for your review is the proposal to amend Chapter 99, Title 16, HAR, relating to real estate brokers and salespersons.

**I. Proposed Rules:**

The proposed rules implement Chapter 467, Hawaii Revised Statutes. General revisions relating to form and style have been incorporated throughout the chapter and are not summarized below. Substantive revisions to the current version of Chapter 99 include the following:

A global revision of "broker in charge" to "broker-in-charge" has been made throughout the chapter where the term "broker-in-charge" is used as a noun, referring to a person. The change will differentiate this term from the verb tense and help the reader recognize the words as one term.

**Section 16-99-2 Definitions.**

"Broker-in-charge" redefined to allow a broker-in-charge to be appointed to more than one branch office. The change will provide brokerages with more flexibility in the management of real estate licensees and reflects the commission's interpretation of broker-in-charge in its Laws and Rules Review Committee meeting November 14, 2001.

Section 16-99-3 Conduct.

(k) The proposed change clarifies and allows inactive, forfeited, and deceased licensees to receive compensation directly from a former brokerage firm for commissions earned while affiliated with that former brokerage firm.

(o) The proposed change clarifies the circumstances under which a temporary principal broker and/or a broker-in-charge may be appointed. This amendment is intended to maintain consumer protection by ensuring proper management and oversight of a brokerage during the protracted absence of a principal broker and/or broker-in-charge.

Section 16-99-3.1 Disclosure of agency.

"Contract between buyer and seller" redefined to replace "deposit, receipt, offer and acceptance" with "purchase contract" because the former term is obsolete and no longer used by the industry.

Section 16-99-4 Client's account; trust funds; properties other than funds. The amendments to paragraphs (d) and (e) clarify the handling of trust funds and properties other than funds and require such funds or property be deposited or placed in an appropriate secure place by the next business day; and for property located in this state, the neutral escrow depository shall also be located in this state.

Section 16-99-5.1 Involuntary inactive license status.

(a)(4) The phrase "commission approved" was replaced with "pursuant to Section 16-99-3(o)" for consistency with Section 16-99-3(o), which is being amended.

(d) The proposed new subsection clarifies the circumstances under which a brokerage's real estate license shall be involuntarily placed on inactive status.

Section 16-99-11 Advertisement.

(a) The proposed amendment will require all real estate advertising and promotional materials to prominently and conspicuously include the legal name of the brokerage firm or trade name. This amendment is intended to ensure consumers are able to easily identify the brokerage. It also includes a new requirement to include the license number or the brokerage in all advertising and promotional material, which will aid consumers in determining the current status of the licensee in conjunction with existing Professional Vocation Licensing Division's (PVL) web-based license search and the recent roll-out of the PVL license search via mobile devices.

(c) The proposed amendment will limit the scope only to inactive licensees as the requirement is redundant with respect to current and active licensees.

(e) The proposed amendment will require an individual licensee to include their license number in all advertising and promotional materials. Additionally, in response to concerns raised by the Hawaii Association of REALTORS® August 15, 2011, the requirement to include

the block "R", "Realtor", block "RA", or "Realtor Associate", which are registered trademarks of the National Association of REALTORS®, has been deleted, as approved by the commission's Laws and Rules Review Committee in its September 7, 2011 meeting.

Section 16-99-19.1 License name.

(a)(2)(B) The proposed amendment will clarify that a trade name used by a sole proprietor be currently registered with the business registration division.

(b)(2) The proposed amendment will clarify that a trade name used by a corporation, limited liability company, or partnership be currently registered with the business registration division.

Section 16-99-19.2 Experience certificate application.

(a) The proposed amendment will clarify the experience requirements for broker applicants within the state will be limited to at least three years within the five-year period immediately prior to the application for experience certificate.

(d) The proposed amendment will clarify the experience requirements for out-of-state broker applicants consistent with paragraph (a).

Section 16-99-36 Education requirements. The proposed amendments reflect the changes in real estate salesperson and real estate broker pre-license curricula, increasing the minimum number of class hours from forty-five to sixty class hours for the real estate salesperson curriculum and forty-six to eighty class hours for the real estate broker curriculum. The change in the broker curriculum was approved by the commission in its July 14, 2004 Education Review Committee meeting and the change in salesperson curriculum was approved by the commission in its July 13, 2005 Education Review Committee meeting.

Section 16-99-37 Education equivalency. The proposed amendment revises categories that an applicant may qualify for pre-license education equivalency for the salesperson license examination.

(a)(2) The proposed amendment will clarify that applicants must be graduates of an accredited law school in the United States.

(a)(3) The proposed amendment will clarify that applicants must be graduates of an accredited college or university in the United States.

(a)(4) and (5) are deleted as approved by the commission at its July 13, 2005 Education Review Committee meeting.

(b) The proposed new section is added addressing educational equivalencies for broker candidates consistent with paragraph (a).

Section 16-99-52.1(b) Independent study courses. The proposed amendment reflects the changes in real estate salesperson and real estate broker pre-license curricula, increasing the

minimum number of class hours from forty-five to sixty class hours for the real estate salesperson curriculum and forty-six to eighty class hours for the real estate broker curriculum.

Section 16-99-53(c)(8)(C) Application for registration. The proposed new subsection deletes the surety bond requirement for schools offering independent study pre-license real estate salesperson and real estate broker courses delivered electronically or as approved by the commission.

Section 16-99-58 Faculty.

(d) The proposed amendment will require that an instructor candidate shall take and pass the instructor exam with a minimum passing score of eighty-five percent and adds the requirement that the instructor hold an unencumbered Hawaii real estate broker's license.

(g) The proposed amendment will remove the requirement of an instructor exam as a condition of recertification every three years. The new proposed language also clarifies circumstances which an instructor may not be certified. The repeal of recertification examination requirement for instructors was approved by the commission at its October 10, 2006 Education Review Committee meeting.

Section 16-99-61 Certificate of completion. This section is amended to clarify that the date of issuance for a certificate of completion shall be the class completion date.

Section 16-99-62 Records.

(a) The proposed amendment will clarify that school completion records must be submitted to the commission within ten days of the class completion date and ten days of the issuance of a school completion certificate, as appropriate

(b) The proposed amendment will require a school to submit a listing of students who have completed the course and other information requested by the commission.

Section 16-99-66(a) Advertising.

(a) The proposed amendment will revise the definition of "advertising" to recognize changes in technology.

Section 16-99-67 School brochure or catalogue.

(b) The proposed amendment deletes the option of having the school include information on financing plans and placement services in their school brochure or catalogue as the information is no longer necessary.

Section 16-99-87 Definitions.

"Continuing education hours" has been redefined for consistency with 467-11.5, HRS.

"Course and course offering" has been redefined to add the phrase "and a maximum as the commission may determine" allowing the Commission to set the maximum clock hours.

"Professional standards and practice courses" has been redefined to expand the scope of "real estate professional development."

Section 16-99-89 Equivalent continuing education.

(c) The section is amended for consistency with 467-11.5, HRS, which was amended by SLH 2010, Act 9.

Section 16-99-90 License renewal procedure. The section is amended for consistency with 467-11.5, HRS.

Section 16-99-93 Excess continuing education hours. This section is amended by inclusion of a reference to section 467-11.5, HRS for consistency with that section.

Section 16-99-95 Duplicate continuing education hours. This section is amended to limit the time within which a licensee may not take a continuing education course for which the licensee has received a certificate to two consecutive biennia.

Section 16-99-96 An instructor who is a licensee. The proposed amendment allows instructors to receive a one-time continuing education credit for core/elective courses taught within two consecutive biennia.

Section 16-99-99 Application for registration as a continuing education provider.

(a)(7) The proposed amendment will clarify that a bond is not required for a course delivered electronically or as approved by the commission

Section 16-99-100 Criteria for approving and certifying continuing education courses.

(a)(4) The proposed amendment replaces "major course concepts" with "clearly defined course objectives." Course objectives need to be clear and specific. The original "major course concepts" is too broad.

(a)(6) The proposed amendment replaces the phrase "at least" with "a minimum of."

(a)(10) The proposed amendment broadens the means by which a course may be delivered.

Section 16-99-101 Courses not acceptable for continuing education course certification.

(3) Terminology in the section is amended to reflect current technology. The terms "salesmanship and sales psychology" are deleted as these topics are appropriate to the real estate profession.

(4) The section is amended to clarify course material which may be construed as sales or self-promotion related to a specific product or service.

Section 16-99-103 Offerings of a certified continuing education course.

(a) The proposed amendment decreases the number of calendar days prior to the course offering date from fourteen to three, in recognition of advances in current technology.

Section 16-99-104 Criteria for certification of a continuing education instructor.

(d)(3) The proposed amendment allows the Commission to set minimum standard requirements for certification of continuing education instructors by the provider.

(e) The proposed amendment ensures that continuing education instructors receive necessary training prior to teaching in each biennium. The current method described in the deleted language proved to be ineffective.

Section 16-99-109 Revocation or suspension of a continuing education provider registration.

(8) The proposed amendment revises section references, replacing "16-99-112 and 16-99-113" with "16-99-111 and 16-99-112".

Section 16-99-112 Record keeping information and retention period.

(a) The proposed amendment adds "student evaluations" as a requirement.

(b) The proposed amendment aims to clarify the language of the section.

(d) The proposed amendment reflects the current practice of making course completion certificates available online.

Section 16-99-121 Faculty.

(b) The proposed amendment revises the administrator's responsibilities to include administration and maintenance of student evaluations and rating standards of instructors, as provided by section 16-99-121.1.

Section 16-99-121.1 Instructor Evaluations. A new section is added that establishes a provider implemented evaluation system that would enable the commission to monitor the quality of instructors. Student evaluations will provide objective input. The amendment address concerns raised by the Hawaii Association of Realtors and was approved by the commission at its February 9, 2011 Laws and Rules Review Committee meeting.

Section 16-99-147 Registration.

(f) The proposed deletions and amendments clarify the registration requirements for a condominium hotel operator who is not a real estate broker consistent with language in 467-30(b)(1), HRS.



Section 16-99-147.1 Condominium hotel operations. A new section is added to conform to language set forth in section 467-30, HRS.

Section 16-99-147.2 Who may register as a condominium hotel operator. A new section is added that sets forth Commission policy, based upon section 467-30 (j), HRS, that only those without a real estate license may register as a condominium hotel operator, and further, that where a real estate licensee is part of an entity which operates a condominium hotel (e.g., general partner or employee of a partnership, officer or employee of a corporation, member of a member-managed limited liability company, or a principal who directly manages or is responsible for a condominium hotel operation), the entity may not register.

Section 16-99-148 Fidelity Bond.

(g) A new section is added to clarify that a condominium hotel operator who is an individual having no employees and utilizing his or her own apartments or units to provide transient lodgings shall not be required to obtain and maintain a fidelity bond, which conforms to insurance industry practice of providing fidelity bond coverage only in situations where there are employees.

Section 16-99-149 Client trust funds, accounting, and records.

(a) The proposed amendment clarifies that condominium hotel operators are precluded from holding a license pursuant with § 467-30(g)(2) shall comply with section 16-99-4, which addresses handling of funds or property of others entrusted to the condominium hotel operator.

Section 16-99-150 Conduct.

(a) The proposed amendment revises terminology for consistency with Chapter 514B, HRS, by replacing the term "apartment" with "unit."

(d) The proposed amendment clarifies that the condominium hotel operator must not violate any provisions of Chapter 514B, HRS, which took effect on July 1, 2006, after implementation of the original rule.

II. Small Business Impact Statement pursuant to section 201M-2, HRS:

1. The businesses that will be directly affected by, bear the cost of, or directly benefit from the proposed rules?

Real estate salespersons, real estate brokers, real estate brokerage firms, and condominium hotel operators who engage in the business of real estate or condominium hotel operations.

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

We do not anticipate any adverse effects.

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

No additional direct or indirect costs are anticipated.

4. The probably monetary costs and benefits to the implementing agency and 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?

Monetary benefits to the department are not anticipated.

5. 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, modifications of the fines schedule, performance rather than design standards, exemption, or any other mitigating techniques?

Through the forum of public Commission meetings at which the proposed rule amendments were discussed, the availability and distribution of minutes covering those meetings, the availability and distribution of the proposed rules throughout the process and through the opportunity for input by the Hawaii Association of REALTORS © and associated boards on the neighbor islands and other interested parties representing real estate licensees, and the posting of the proposed rule amendments on the Real Estate Commission website, discussions and dialogs with affected parties produced a consensus on the proposed amendments.

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

Commission members discussed the rule amendments with the Hawaii Association of REALTORS®, REALTOR® boards on the neighbor islands, and other stakeholders and received feedback, input, and suggested language during the drafting of the proposed rule amendments.

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

There are no federal or county standards and the proposed amendments are consistent with and do exceed requirements of implementing sections of the Hawaii Revised Statutes.

### III. Other Alternatives in Lieu of Proposed Rules:

There appear to be no other means to implement and clarify the statutory requirements.

The proposed rules have been reviewed by the Legislative Reference Bureau and the Department of the Attorney General.

Small Business Regulatory Review Board  
February 3, 2014  
Page 9

The department submits these proposed rules and the Small Business Impact Statement contained herein, for consideration by the Small Business Regulatory Review Board.

Attachment

cc: Miles I. Ino, Executive Officer

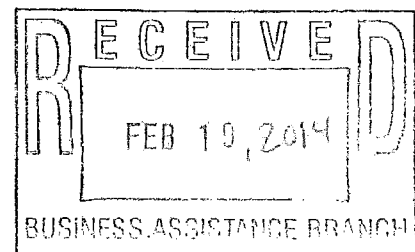
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**FEB 3 2014**

**DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

**Amendment and Compilation of Chapter 16-99  
Hawaii Administrative Rules**

1. Chapter 16-99, Hawaii Administrative Rules, entitled "Real Estate Brokers and Salespersons" is amended and compiled to read as follows:



"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 99

REAL ESTATE BROKERS AND SALESPERSONS

Subchapter 1 General Provisions

§16-99-1	Objective
§16-99-2	Definitions
§16-99-3	Conduct
§16-99-3.1	Disclosure of agency
§16-99-4	Client's account; trust funds; properties other than funds
§16-99-5	Notification and filing of names, addresses, and changes
§16-99-5.1	Involuntary inactive license status
§16-99-5.2	Statewide license
§16-99-6	Display of license
§16-99-7	Renewal of license
§16-99-8	Repealed
§16-99-9	Suspended license
§16-99-10	Revoked license
§16-99-10.5	Other requested material
§16-99-10.6	Surrender of real estate license
§16-99-11	Advertisement
§16-99-12	Exam site solicitation

Subchapter 2 Applications

§16-99-17	Forms and instructions
§16-99-18	Repealed
§16-99-19	License applications
§16-99-19.1	License name
§16-99-19.2	Experience certificate application
§16-99-20	Repealed
§16-99-21	Denial

- §16-99-22 Demand for a hearing
- §16-99-23 Proceedings upon demand for hearing
- §16-99-24 Repealed
- §16-99-25 Falsification of application

#### Subchapter 3 Examination

- §16-99-29 Examination for broker and salesperson license
- §16-99-30 Examination subject matter

#### Subchapter 4 Education and Experience

- §16-99-36 Education requirement
- §16-99-37 Education equivalency
- §16-99-38 Repealed
- §16-99-39 Repealed
- §16-99-40 Repealed
- §16-99-41 Repealed
- §16-99-42 Repealed
- §16-99-43 Repealed
- §16-99-44 Repealed
- §16-99-45 Repealed
- §16-99-46 Real estate education fund

#### Subchapter 5 Registered Real Estate Schools

- §16-99-50 Policy
- §16-99-51 Registered school
- §16-99-52 Repealed
- §16-99-52.1 Independent study courses
- §16-99-53 Application for registration
- §16-99-53.1 Alternative forms of school bond
- §16-99-54 Changes in school's owners
- §16-99-55 Display of certificate of registration and instructor's certificate
- §16-99-56 Classrooms
- §16-99-57 Courses
- §16-99-58 Faculty
- §16-99-59 Tuition and other charges
- §16-99-60 Repealed
- §16-99-61 Certificate of completion

- §16-99-62 Records
- §16-99-63 Reports
- §16-99-64 Inspections
- §16-99-65 Renewals
- §16-99-66 Advertising
- §16-99-67 School brochure or catalogue
- §16-99-68 Prohibited advertising practices
- §16-99-69 Revocation or suspension of school registration, course approval,  
and instructor certification
- §16-99-70 Hearings
- §16-99-71 Repealed

#### Subchapter 6 Practice and Procedure

- §16-99-75 Administrative practice and procedure

#### Subchapter 7 Recovery Fund

- §16-99-79 Recovery fund settlement procedures

#### Subchapter 8 Oral Testimony

- §16-99-83 Oral testimony

#### Subchapter 9 Continuing Education

- §16-99-87 Definitions
- §16-99-88 Repealed
- §16-99-89 Equivalent continuing education
- §16-99-90 License renewal procedure
- §16-99-91 Activating an inactive real estate license
- §16-99-92 Continuing education hours in license restoration and reinstatement  
cases
- §16-99-93 Excess continuing education hours
- §16-99-94 Continuing education certificates of completion
- §16-99-95 Duplicate continuing education hours
- §16-99-96 An instructor who is a licensee
- §16-99-97 Extensions
- §16-99-98 Prior to offering a continuing education course
- §16-99-99 Application for registration as a continuing education provider

- §16-99-100 Criteria for approving and certifying continuing education courses
- §16-99-101 Courses not acceptable for continuing education course certification
- §16-99-102 Application for certification of a continuing education course
- §16-99-103 Offerings of a certified continuing education course
- §16-99-104 Criteria for certification of a continuing education instructor
- §16-99-105 Biennial provider registration and course certification
- §16-99-106 Forfeited registration, certification; restoration
- §16-99-107 Fees
- §16-99-108 Revocation or suspension of a continuing education course certification
- §16-99-109 Revocation or suspension of a continuing education provider registration
- §16-99-110 Repealed
- §16-99-111 Record keeping responsibilities of a continuing education provider
- §16-99-112 Record keeping information and retention period
- §16-99-113 Advertising
- §16-99-114 Prohibited advertising practices
- §16-99-115 Continuing education course entrance requirements
- §16-99-116 Discontinuing course offerings
- §16-99-117 Material change
- §16-99-118 Repealed
- §16-99-119 Review, evaluation, and investigation
- §16-99-120 Repealed
- §16-99-121 Faculty
- §16-99-121.1 Instructor evaluation
- §16-99-122 Display of certificate of registration and instructor's certificate
- §16-99-123 Classrooms
- §16-99-124 Classroom compliance
- §16-99-125 Repealed
- §16-99-126 Repealed
- §16-99-127 Denial, revocation, and suspension
- §16-99-128 Request for a contested case hearing

#### Subchapter 10 Condominium Hotel Operators

- §16-99-147 Registration
- §16-99-147.1 Condominium hotel operations
- §16-99-147.2 Who may register as a condominium hotel operator
- §16-99-148 Fidelity bond
- §16-99-149 Client's trust funds, accounting, and records



§16-99-150 Conduct

## SUBCHAPTER 1

### GENERAL PROVISIONS

§16-99-1 Objective. This chapter, adopted by the real estate commission, hereafter referred to as "commission," is intended to clarify and implement chapter 467, Hawaii Revised Statutes, as amended, to the end that the provisions thereunder, for the protection of the general public in its real estate transactions, may be best effectuated and the public interest most effectively served. [Eff 12/26/74; am and ren §16-99-1, 4/27/81; am and comp 6/28/82; comp 3/3/84; comp 11/3/90; comp 2/25/91; comp 5/21/01; comp ] (Auth: HRS §467-4) (Imp: HRS §467-4)

§16-99-2 Definitions. As used in this chapter:

"Approved curriculum" means the curriculum or courses approved by the commission as satisfying the education requirements established for real estate broker and salesperson license examination applicants.

"Branch office" means a place of business other than the principal place of business from which real estate business is conducted. Branch offices located on an island different from the principal place of business shall be registered [by] with the commission. Branch office registration shall not be required for places of business located on the same island as the principal place of business and registration shall not be required for any additional place of business from which real estate broker activities are engaged in exclusively relative to a condominium project, real estate subdivision, larger community development developed by a single developer, time share project, new or existing shopping center, or other commercial building.

"Brokerage firm" or "firm" means a sole proprietor broker licensee, or a partnership, corporation, or limited liability company licensed as a broker.

[“Broker in charge”] "Broker-in-charge" means an individual broker licensee designated by the principal broker as the broker directly in charge of and responsible to the principal broker for the real estate operations conducted at the principal place of business or a branch office. The principal broker may designate one or more [brokers in charge] brokers-in-charge of the principal place of business or branch office, provided that there shall be at least one [broker in charge] broker-in-charge

of each branch office. A broker-in-charge may be designated to more than one branch office.

"Broker-salesperson" means an individual broker licensee who associates that individual's own license with a brokerage firm as an employee or independent contractor.

"Commingle" means to mingle or mix, such as a deposit of client's funds in the broker's personal account.

"Inactive" means the status of a current license that is not forfeited, suspended, revoked, or terminated, the holder of which cannot transact any real estate business until the license status is changed to "active" status.

"Involuntary inactive" means the status of a current license resulting from the forfeiture, suspension, revocation, termination, or inactive status of a principal broker, [broker in charge] broker-in-charge, branch office, or brokerage firm, as the case may be.

"Licensee" means the person in whose name the commission grants a license.

"Place of business" means the physical place where business is conducted other than a post office box, telephone, telephone answering service, letter or mail drop service, or motor vehicle within the State, and may include a home occupation office. The place of business shall conform with the permitted use under the zoning code of the county in which the place of business is situated and with any declarations, bylaws, house rules, recorded restrictions, or covenants that may govern the place of business. The commission may use as guidelines, but is not limited to, the following factors in finding that a brokerage firm is maintaining a place of business: physical presence of the broker during reasonable scheduled office hours; on-site maintenance of confidential clients' files which shall be immediately accessible to the commission upon request; the prominent display of the brokerage firm's name or trade name as licensed by the commission and the listing of the brokerage firm name where permissible in the building directory; the operation of the brokerage firm at a place of business directly accessible to the public; and the on-site maintenance of personnel and compensation records [on] for all real estate salespersons and broker-salespersons employed by or associated with the brokerage firm. Client files as used in this definition include[s] but is not limited to: real estate contracts, escrow records, trust account records, and confidential client data. "Place of business" does not include the operation of a place of business designed to evade the requirements of the definition as set forth in this paragraph. Each brokerage firm shall have one, and only one, principal place of business.

"Supervision" means the act of directing, inspecting, and reviewing.

"Trust properties" includes funds in the form of cash or checks, and personal property[,], other than cash or checks, received by the licensee to be held in trust for the benefit of the depositor of the property or for the benefit of third persons, or both.

"Wall certificate" means a certificate of license issued by the commission to a qualified person either as a salesperson or broker. [Eff 12/26/74; am and ren §16-99-2, 4/27/81; am and comp 6/28/82; am and comp 3/3/84; am 9/29/86; am and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; am and comp ] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §§467-1.5, 467-7, 467-8, 467-11, 467-12, 467-14, 467-25.5)

§16-99-3 Conduct. (a) To fully protect the general public in its real estate transactions, every licensee shall conduct business, including the licensee's own personal real estate transactions, in accordance with this section.

(b) The licensee shall protect the public against fraud, misrepresentation, or unethical practices in the real estate field. The licensee shall endeavor to eliminate any practices in the community which could be damaging to the public or to the dignity and integrity of the real estate profession. The licensee shall assist the commission in its efforts to regulate the practices of brokers and salespersons in this State.

(c) The licensee shall not be a party to the naming of a false consideration in any document, unless it be the naming of an obviously nominal consideration.

(d) The licensee shall recommend that title be examined, survey be conducted, or legal counsel be obtained when the interest of either party requires it.

(e) The broker shall keep in special bank accounts, separated from the broker's own funds, moneys coming into the broker's possession in trust for other persons, such as escrow funds, trust funds, clients' moneys, rental deposits, rental receipts, and other like items.

(f) The licensee, for the protection of all parties with whom the licensee deals, shall see that financial obligations and commitments regarding real estate transactions, including real property rental management agreements, are in writing, express the exact agreements of the parties, and set forth essential terms and conditions, and that copies of those agreements, at the time they are executed, are placed in the hands of all parties involved.

When working with a seller in a "For Sale By Owner" or a "Courtesy to Broker" situation, the licensee shall disclose who, if anyone, the licensee represents and who will pay a commission, if any.

(g) The licensee shall not acquire, rent, lease, or exchange an interest in or buy, rent, lease, or exchange for one's self, any member of the licensee's immediate family or brokerage firm, or any entity in which the licensee has any ownership interest, property listed with the licensee, licensee's brokerage firm, or listed with any other brokerage firm or licensee without making the true position known in writing to the listing owner or property owner. When offering for sale, lease, exchange, or rental, property which the licensee owns or has an interest in, the licensee shall fully inform the principal broker of the licensee's intention to sell, lease, exchange, or rent, and of the licensee's interest in the property. The licensee shall reveal the interest to the purchaser, lessee, or tenant in writing prior to accepting any offer.

(h) When acting as agent in the management of property, the licensee shall not accept any commission, rebate, or profit on expenditures for or from an owner, without the owner's and principal broker's knowledge and consent.

(i) The brokerage firm shall not submit or advertise property without written authorization, and in any offering the price quoted shall not be other than that agreed upon with the owner as the offering price.

(j) A licensee shall transmit immediately all written offers in any real estate transaction as defined in section 16-99-3.1 to the listing broker who has a written unexpired exclusive listing contract covering the property. Each written offer, upon receipt by the listing broker, shall be transmitted to the seller immediately. In the event that more than one formal written offer on a specific property is made before the owner has accepted an offer, any other formal written offer presented to the broker, whether by a prospective purchaser or another broker, shall be immediately transmitted to the owner for decision. If an offer or counter offer is rejected, the rejection shall be noted on the offer or counter offer, or in the event of seller's or buyer's neglect or refusal to do so, the broker for the rejecting party shall note the rejection on the offer or counter offer and a copy shall be returned immediately to the originator of the offer or counter offer.

(k) The brokerage firm shall not compensate a licensee of another brokerage firm in connection with a real estate transaction without paying directly or causing the payment to be made directly to the other brokerage firm. This requirement shall not apply in cases where the licensee or the licensee's estate is receiving compensation from a former brokerage firm for commission earned while the licensee was affiliated with that former brokerage firm[.], regardless of whether the licensee is on inactive status or on forfeited status or deceased.

(l) A licensee shall not place any sign or advertisement indicating a property is for sale, rent, lease, or exchange without the written authorization of the owner or seller and approval of the principal broker or [broker in charge] broker-in-charge.

(m) There shall be a principal broker or one or more [brokers in charge] brokers-in-charge, or both, at the principal place of business, and one or more [brokers in charge] brokers-in-charge at a branch office who shall be immediately responsible for the real estate operations conducted at that place of business.

(n) A brokerage firm shall maintain a principal place of business located in this State at a business address registered with the commission from which the brokerage firm conducts business and where the brokerage firm's books and records are maintained.

(o) Prior to the time the principal broker or the [broker in charge] broker-in-charge is absent from the principal place of business for more than thirty calendar days, and no other [broker in charge] broker-in-charge is registered [with] for the principal place of business, the principal broker shall submit to the commission a signed, written notification of the absence designating a temporary principal broker or temporary [broker in charge] broker-in-charge, who shall acknowledge the temporary designation by signing the notification. In case of prolonged illness or death where the principal broker or [broker in charge] broker-in-charge is unable to act, another broker shall be designated as the temporary principal broker or [broker in charge] broker-in-charge within thirty days of the illness or death with appropriate notification [to the commission.] and statement of a licensed medical doctor certifying to the commission the inability of the broker to practice. [A temporary principal broker or broker in charge arrangement shall not exceed a period of six months, with the right to extend prior to expiration for another six months for good cause and with the approval of the commission.]

A temporary principal broker or broker-in-charge arrangement shall not exceed a period of six months unless, prior to expiration of the initial six-month period, the principal broker requests and obtains, upon a showing of good cause for such extension, approval of the commission to extend the temporary arrangement for up to an additional six months.

(p) No licensee shall act as a broker, broker-salesperson, or salesperson for more than one brokerage firm except that this subsection shall not apply to those situations as described in subsection (o).

(q) Within ten days of receiving a written request, it shall be the responsibility of the principal broker or [broker in charge] broker-in-charge of the brokerage firm to provide broker applicants formerly or presently employed by or associated with them with an accurate experience certification statement in the form provided by the commission attesting to the length of time that the broker applicant has been actively associated with or employed full-time by the brokerage firm. Falsification of information contained in the certification form shall be cause for revocation or suspension of the broker's or brokerage firm's license and of the salesperson's license if that person is a party to the falsification.

(r) A broker licensee shall not sit for any Hawaii real estate broker or salesperson examination during the period in which the licensee has a real estate broker license unless specifically permitted by the commission.

(s) A salesperson licensee shall not sit for any Hawaii real estate salesperson examination during the period in which the licensee has a real estate salesperson license unless specifically permitted by the commission.

(t) An exclusive listing shall state a definite termination date.

(u) The licensee shall not add to or modify the terms of an instrument previously signed or initiated by a party to a transaction without written consent of all the parties.

(v) The licensee shall not convert other people's moneys to the licensee's own use.

(w) Violation of any part of this chapter may be cause for revocation or suspension of license. [Eff 12/26/74; am and ren §16-99-3, 4/27/81; am and comp 6/28/82; am and comp 3/3/84; am 9/29/86; am 7/11/87; am and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; am and comp ] (Auth: HRS §467-4) (Imp: HRS §467-14)

§16-99-3.1 Disclosure of agency. (a) As used in this section:

"Buyer" includes a vendee, lessee, party to an exchange, or grantee of an option.

"Buyer's agent" means a real estate broker who acts as the agent of the buyer.

"Contract between the buyer and seller" includes a ["deposit receipt, offer and acceptance",] purchase contract, an option, an offer to purchase, a sales contract, an offer to lease, or a lease.

"Listing brokerage firm" means the real estate brokerage firm that obtains a listing of real estate for sale, lease, exchange (residential, time share, industrial, or commercial) or for an interest in a residential cooperative housing corporation.

"Seller" includes a vendor, lessor, party to an exchange, or grantor of an option.

"Selling brokerage firm" means a real estate brokerage firm that acts in cooperation with a listing broker and finds and obtains a buyer in a transaction.

"Subagent" means a real estate brokerage firm or salesperson to whom an agent delegates agency powers.

"Transaction" means any sale, lease, rent, or exchange of real estate (residential, time share, industrial, or commercial) transaction or a sale or exchange of, or option involving, an interest in a residential cooperative housing corporation, but excluding leases for one year or less.

(b) At the time a listing brokerage firm obtains a listing, the listing brokerage firm shall disclose the following:

- (1) Whether the seller authorizes the listing brokerage firm to appoint seller's subagents through a multiple listing service or otherwise; and
- (2) Whether the seller authorizes the listing brokerage firm to share commissions with seller's subagents or buyer's agents.

The disclosure shall be in writing, dated, and signed by the seller and the listing brokerage firm.

(c) Prior to preparing any contract between the buyer and the seller, the following disclosure shall be made at least once to the buyer, in writing or orally:

- (1) If the licensee acting as the listing brokerage firm is acting alone and providing services to the buyer, the licensee shall disclose who the licensee represents in the transaction;
- (2) If the licensee, acting in cooperation with a listing brokerage firm, has found the buyer in the transaction, the licensee shall disclose who the licensee represents in the transaction; or
- (3) If there is no listing brokerage firm, each licensee providing services to the buyer with respect to the transaction shall disclose whether the licensee represents the buyer or the seller in the transaction.

(d) Prior to presenting a contract between the buyer and the seller to the seller, the following disclosure shall be made at least once to the seller, in writing or orally:

- (1) The licensee acting as the listing brokerage firm shall disclose to the seller who the selling brokerage firm represents in the transaction; or
- (2) If there is no listing brokerage firm, each licensee involved in the transaction shall disclose to the seller whether the licensee represents the buyer or the seller in the transaction.

(e) Any disclosure required by subsections (c) and (d) shall be confirmed in writing in a separate paragraph titled "AGENCY DISCLOSURE" in the contract between the buyer and the seller. The title shall be in no less than ten-point bold print. No particular disclosure language is required. To assist licensees, the commission approves the following language:

"AGENCY DISCLOSURE(S):

\_\_\_\_\_, and all licensees

(Print name of Selling Brokerage Firm,)

(or Listing Brokerage Firm if acting alone)

employed by or associated with the brokerage firm,

represents the \_\_\_\_\_ . By

(Buyer or Seller)

[initialling] initialing below, the Buyer and Seller confirm that oral or written disclosure of such representation was provided to them before the signing of this contract.

\_\_\_\_\_  
Buyer's initials

\_\_\_\_\_  
Seller's initials"

(f) Unless specifically restricted by the real estate brokerage firm in writing, any real estate salesperson, employed by or associated with a real estate brokerage firm, shall be authorized to make the required disclosures on behalf of the real estate brokerage firm. Failure to make the disclosure required by subsections (b), (c), and (d) or to obtain the written confirmation thereof shall subject the real estate brokerage firm and the real estate salesperson to disciplinary action by the commission.

(g) A licensee may not be the agent for both the buyer and the seller without obtaining the written consent of both the buyer and the seller. The written consent shall state that the licensee made a full disclosure of the type of representation the licensee will provide and shall briefly describe the type of representation the licensee will provide to the buyer and to the seller. A general statement in the consent signed by the buyer and seller that the licensee represents both buyer and the seller is not sufficient.

(h) A licensee representing a buyer shall disclose, orally or in writing, such agency to the seller, or the listing brokerage firm if there is a listing brokerage firm, before negotiations are initiated. The licensee shall disclose, orally or in writing, to the seller, or the listing brokerage firm if there is a listing brokerage firm, whether the licensee is, or intends to be, the buyer, before negotiations are initiated.

(i) If any change occurs in a transaction which makes a prior written or oral disclosure required by this section incomplete, misleading, or inaccurate, the licensee shall promptly make a revised written disclosure if the prior disclosure was in writing, or a revised oral disclosure if the prior disclosure was made orally, to the buyer or seller, or both, as the case may be. Any revised written disclosure shall include the date of the revised disclosure and be acknowledged separately by the signature of the buyer or seller, or both, as the case may be.

(j) The obligation of either the seller or buyer to pay compensation to a brokerage firm is not determinative of the agency relationship.

(k) Nothing in this chapter shall affect the validity of title to real property transferred, based solely on the reason that any licensee failed to conform to the provisions of this chapter. [Eff 7/11/87; am and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; am and comp ] (Auth: HRS §467-4) (Imp: HRS §467-14(12))



§16-99-4 Client's account; trust funds; properties other than funds. (a) Every brokerage firm that does not immediately place all funds entrusted to the brokerage firm in a neutral escrow depository, shall maintain a trust fund account in this State with some bank or recognized depository, which is federally insured, and place all entrusted funds therein. The trust fund account shall designate the principal broker as trustee and all trust fund accounts, including interest bearing accounts, shall provide for payment of the funds upon demand.

(b) Every brokerage firm shall retain for at least three years records of all trust funds which the brokerage firm has received. All records and funds shall be subject to inspection by the commission or its representative. The three-year requirement shall be for real estate license law purposes only. The brokerage firm may be required to keep records for a longer period of time for other purposes. The records shall be kept in Hawaii in accordance with standard accounting principles and shall clearly indicate the following:

- (1) Names of the persons from whom funds are received, for whom deposited, and to whom disbursed;
- (2) Dates of receipt, deposit, withdrawal, and disbursements, and amounts received, deposited, withdrawn, and disbursed;
- (3) Description of the trust fund and the purpose for its establishment;
- (4) Purposes for the money; and
- (5) Other pertinent information concerning the trust fund transactions.

(c) Trust fund accounts shall be either interest bearing or non-interest bearing, as agreed to in writing between the owner of funds and the principal broker or [broker in charge] broker-in-charge receiving the funds and all other individuals who are parties to the real estate agreement. For interest bearing accounts, these same parties to the real estate agreement shall also agree in writing as to who shall pay for any early withdrawal penalty. The principal broker or [broker in charge] broker-in-charge shall keep any interest belonging to others in the trust fund account and shall not commingle the accrued interest with the brokerage firm's, principal broker's, or [broker in charge's] broker-in-charge's general operating account or with the brokerage firm's, principal broker's, or [broker in charge's] broker-in-charge's own funds. All agreements relating to disbursements of the accrued interest from the client trust account shall be in writing, signed by the owner of the trust fund, the principal broker or [broker in charge] broker-in-charge receiving the funds, and all other individuals [that] who are parties to the real estate agreement. The interest accrued on any trust account deposit shall be disbursed in strict compliance with the written disbursement agreement. In the absence of a written agreement, any interest accrued shall be paid to the owner of the funds.

(d) Every brokerage firm shall deposit or place trust funds received into a neutral escrow depository or in a trust fund account with some bank or recognized

depository, which is federally insured, by the next business day following their receipts. The neutral escrow depository shall be located in the same state where the property is located.

(e) [Every] Each principal broker or [broker in charge] broker-in-charge who receives personal property, other than funds, in trust for other people, [by the next business day] shall safeguard the property by placing the property by the next business day in a secure place located in the State.

(f) The principal broker or [broker in charge] broker-in-charge shall retain for at least three years records of all personal property other than trust funds coming into the possession of the principal broker or [broker in charge] broker-in-charge as trustee. All records of the personal property held in trust shall be subject to inspection by the commission or its representative and kept in the State at the place of business. The records shall clearly indicate the following:

- (1) Date of receipt of the personal property to be held in trust;
- (2) A description of and the type of trust property received;
- (3) From whom the personal property held in trust was received;
- (4) For whose benefit the personal property is being held in trust; and
- (5) The date and to whom the personal property is to be delivered.

(g) Property of others coming initially into the possession, custody, or control of a salesperson or broker-salesperson, to be held in trust for the benefit of the depositor[, and] or [for the benefit of] third persons, shall be received on behalf of the salesperson's or broker-salesperson's principal broker or [broker in charge] broker-in-charge, and shall be delivered immediately by the next business day after receipt to the salesperson's or broker-salesperson's principal broker or [broker in charge] broker-in-charge, unless the salesperson or broker-salesperson is instructed as to another time in writing by the depositor. The received property shall include but not be limited to: cash or checks as down payments, earnest money deposits, security deposits, and rental income; other checks payable to third persons or trust accounts; and personal property other than cash or checks.

(h) The principal broker or [broker in charge] broker-in-charge shall not commingle client's funds with other moneys; provided, however, it shall not constitute commingling to:

- (1) Hold an uncashed check until acceptance of an offer when directed to do so by the buyer or offeror;
- (2) Hold an uncashed check after acceptance of an offer when directed to do so by the seller or offeree; or
- (3) Maintain a minimum amount in the client's account to keep the account open.

The fact that a check is being held in an uncashed form in paragraph (2) shall be specifically disclosed in writing to the seller or offeree before acceptance of the

offer. Commingling of the client's funds with other moneys shall include, but not be limited to, keeping undisputed commissions, management fees, and other fees in the brokerage firm's client trust account beyond a reasonable time after those commissions, management fees, and other fees have been earned.

(i) A salesperson, broker-salesperson, or employee shall not handle trust properties in any way without the express written authorization of the person's principal broker or [broker in charge] broker-in-charge. A principal broker or [broker in charge] broker-in-charge may authorize a salesperson, broker-salesperson, or employee, in writing, to place trust properties on behalf of the brokerage firm anywhere the principal broker or [broker in charge] broker-in-charge could place them, but shall not authorize any other disposition. A principal broker or [broker in charge] broker-in-charge shall be held responsible for any trust properties the principal broker or [broker in charge] broker-in-charge authorizes a salesperson, broker-salesperson, or employee to handle.

(j) A principal broker or [broker in charge] broker-in-charge shall not allow any person to have custody or control of trust properties held by the principal broker or [broker in charge] broker-in-charge except as provided in chapter 467, HRS, and this chapter.

(k) A principal broker may allow a [broker in charge] broker-in-charge to have custody and control of trust properties on behalf of the principal broker. The principal broker and [broker in charge] broker-in-charge shall be jointly responsible for any trust properties the principal broker authorizes the [broker in charge] broker-in-charge to handle.

(l) Information about escrow accounts and records for real estate transactions under the real estate brokerage firm shall be retained for at least three years, subject to inspection by the commission or its representative at the place of business. [Eff 12/26/74; am and ren §16-99-4, 4/27/81; am and comp 6/28/82; am and comp 3/3/84; am 9/29/86; am and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; am and comp ] (Auth: HRS §467-4) (Imp: HRS §§467-1.6, 467-14)

§16-99-5 Notification and filing of names, addresses, and changes. (a) Each individual licensee shall file with the commission and shall notify the commission of any change in writing, within ten days of the change, on a form provided by the commission:

- (1) The licensee's legal name, residence address, and mailing address; and
- (2) The name and license number of the brokerage firm with whom the licensee is employed or associated.

- (b) Each brokerage firm shall file with the commission:
- (1) The address of the brokerage firm's principal place of business and the name and license number of the principal broker and each [broker in charge] broker-in-charge;
  - (2) The address of each branch office;
  - (3) The name and license number of each licensee employed by or associated with the brokerage firm; and
  - (4) In the case of a partnership, corporation, or limited liability company, the names and addresses of the partners, officers and directors, or members and managers as the case may be.
- (c) Upon closing the principal place of business or a branch office, the principal broker or [broker in charge] broker-in-charge shall immediately notify the affected licensees. Within ten days of the date of closing the principal place of business, the principal broker shall provide the commission in writing on a form provided by the commission, the names and license numbers of the affected licensees.
- (d) A principal broker or [broker in charge] broker-in-charge shall release a licensee from employment or association within ten days upon written request. Any individual licensee who changes employing or associating brokerage firm shall notify the commission in writing, on a form provided by the commission, within ten days of the change, or immediately place the individual's license on inactive status.
- (e) Any licensee whose license has been forfeited, suspended, revoked, or terminated shall immediately cease employment and shall return the licensee's wall certificate and identification card to the commission.
- (f) A licensee who resides in another state or country shall be subject to receipt of service of process by the principal broker or [broker in charge] broker-in-charge on the licensee's behalf.
- (g) All changes submitted to the commission pursuant to this section shall be effective as of the dates indicated on a form provided by the commission.
- (h) The principal broker or any [broker in charge] broker-in-charge of the brokerage firm may sign the form submitted to the commission to report changes pursuant to this section.
- (i) A licensee shall be subject to disciplinary action for failure to submit notifications required by this section within ten days of the change. [Eff 12/26/74; am and ren §16-99-5, 4/27/81; am and comp 6/28/82; am and comp 3/3/84; am and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; am and comp ] (Auth: HRS §467-4) (Imp: HRS §§467-1.5, 467-8, 467-11, 467-12)

§16-99-5.1 Involuntary inactive license status. (a) An individual's license shall be placed on an involuntary inactive status upon the occurrence of one or more of the following:

- (1) The principal broker's license is placed on an inactive, forfeited, suspended, revoked, or terminated status;
- (2) The brokerage firm, whether a corporation, limited liability company, or partnership, with which the licensee is affiliated or employed, is no longer registered with the business registration division;
- (3) The license of the licensee's brokerage firm is placed on an inactive, terminated, revoked, forfeited, or suspended status;
- (4) The principal broker is unable to act in the case of prolonged illness or death and no [commission approved] temporary principal broker has been designated[;] pursuant to section 16-99-3(o);
- (5) The brokerage firm has no approved place of business; and
- (6) The principal broker is absent from the place of business for more than thirty calendar days, or moves out-of-state, and no commission approved temporary principal broker or [broker in charge] broker-in-charge has been designated pursuant to section 16-99-3(o).

(b) A branch office license shall be placed on an involuntary inactive status upon the occurrence of one or more of the following:

- (1) The license of the brokerage firm or the principal broker is placed on an inactive, forfeited, suspended, revoked, or terminated status; and
- (2) The principal broker is unable to act in the case of prolonged illness or death and no commission approved temporary principal broker or [broker in charge] broker-in-charge has been designated pursuant to section 16-99-3(o).

(c) A principal broker or [broker in charge] broker-in-charge may place an individual licensee associated with or employed by the brokerage firm on an involuntary inactive status after written notification to the affected individual licensee.

(d) A brokerage firm's license, whether a corporation, limited liability company or partnership, shall be placed on an involuntary inactive status upon the occurrence of one or more of the following:

- (1) The principal broker's license is placed on an inactive, forfeited, suspended, revoked, or terminated status;
- (2) The brokerage firm is no longer registered with the business registration division;

- (3) The principal broker is unable to act in the case of prolonged illness or death and no temporary principal broker has been designated pursuant to section 16-99-3(o);
- (4) The brokerage firm has no approved place of business; and
- (5) The principal broker is absent from the place of business for more than thirty days, or moves out-of-state, and no commission approved temporary principal broker or broker-in-charge has been designated pursuant to section 16-99-3(o). [Eff and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; am and comp ] (Auth: HRS §467-4) (Imp: HRS §§467-7, 467-11, 467-12)

§16-99-5.2 Statewide license. A brokerage firm may associate or employ a salesperson or broker-salesperson who resides on an island different from that of the principal place of business, provided that:

- (1) The principal broker shall maintain compliance with section 467-1.6, HRS, and all other requirements for supervision;
- (2) The salesperson or broker-salesperson shall not maintain or advertise a place of business other than the principal place of business;
- (3) Any advertisements on an island different from that of the principal place of business shall disclose the name of the brokerage firm and the address and phone number of the principal place of business;
- (4) All agency disclosures required by section 16-99-3.1 shall include that the principal place of business is located on a different island; and
- (5) The salesperson or broker-salesperson shall provide clients with an effective means of communication with the principal broker, at no cost to the client. [Eff and comp 5/21/01; comp ] (Auth: HRS §467-4) (Imp: HRS §§467-1.6, 467-12)

§16-99-6 Display of license. The brokerage firm's certificate of license shall be conspicuously displayed in the principal place of business. [Eff 12/26/74; am and ren §16-99-6, 4/27/81; am and comp 6/28/82; comp 3/3/84; am and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; comp ] (Auth: HRS §467-14) (Imp: HRS §§467-8, 467-12)

§16-99-7 Renewal of license. The biennial renewal fee and completed renewal application shall be submitted on or before the commission prescribed deadline. Unless renewed, all real estate licenses expire at the end of every even-numbered year. When the renewal deadline falls on a non-working day, renewal fees paid by mail shall be considered as paid when due if the envelope bears a postmark of no later than the first working day thereafter. Failure to submit a completed renewal application and failure to pay the renewal fee when due, or if the check is not honored by the bank for whatever reason, shall constitute automatic forfeiture of license. The principal broker shall [see to it] ensure that all licensees are currently licensed at all times during employment or association. [Eff 12/26/74; am and ren §16-99-7, 4/27/81; am and comp 6/28/82; comp 3/3/84; am 9/29/86; am and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; comp ] (Auth: HRS §467-4) (Imp: HRS §§467-1.6, 467-11, 467-14)

§16-99-8 Repealed. [R 5/21/01]

§16-99-9 Suspended license. The commission, as a form of disciplinary action against a licensee, may suspend the right of the licensee to use the license for a period not to exceed five years. Prior to conducting any real estate activity, a licensee with a suspended license shall reinstate the license pursuant to section 92-17(c)(3), HRS. If the licensee fails to file for reinstatement within thirty days after the end of the suspension, the license shall be forfeited. [Eff 12/26/74; am and ren §16-99-9, 4/27/81; am and comp 6/28/82; comp 3/3/84; am and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; comp ] (Auth: HRS §467-4) (Imp: HRS §§92-17(c)(3), 436B-20, 467-8, 467-9, 467-9.6, 467-14)

§16-99-10 Revoked license. An individual whose license has been revoked shall apply for a new real estate salesperson license by filing an application and complying with all requirements for new applicants. The commission may waive the applicable education requirements of section 467-9.5, HRS, pursuant to section 16-99-37. [Eff 12/26/74; am and ren §16-99-10, 4/27/81; am and comp 6/28/82; comp 3/3/84; am and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; comp ] (Auth: HRS §467-4) (Imp: HRS §§467-8, 467-9, 467-14)

§16-99-10.5 Other requested material. The commission may require the person requesting reinstatement of a suspended license or applying for a new license following license revocation to submit other information and documents that may be helpful to the commission in evaluating the person's request. [Eff and comp 11/3/90; comp 2/25/91; comp 5/21/01; comp ] (Auth: HRS §467-4) (Imp: HRS §§92-17(c)(3), 467-9)

§16-99-10.6 Surrender of real estate license. (a) A licensee who has no pending complaints, investigations, disciplinary petitions filed against the licensee, or disciplinary hearings before the commission may surrender the person's real estate license, and shall:

- (1) Return the licensee's pocket identification card and wall certificate to the commission; and
  - (2) Cease conducting any real estate activities.
- (b) Should an individual desire to engage in any real estate activities the individual shall obtain a new license as a new applicant for a salesperson license. [Eff and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; comp ] (Auth: HRS §467-4) (Imp: HRS §§467-7, 467-10)

§16-99-11 Advertisement. (a) All real estate advertising and promotional materials shall prominently and conspicuously include the legal name of the brokerage firm or a trade name previously registered by the brokerage firm with the business registration division and with the commission[.] and the license number of the brokerage. The license number of the brokerage shall not be required for all advertising and promotional materials that comply with paragraph (e).

For advertising and promotional purposes only, a brokerage firm may:

- (1) Abbreviate "Incorporated[.]", "Corporation[.]", "Limited[.]", "General Partnership[.]", "Limited Partnership[.]", "Limited Liability Company[.]", or "Limited Liability Partnership" from the licensed name; and
  - (2) Use "dba" in conjunction with the licensed name and a trade name.
- (b) No licensee shall advertise "For Sale by Owner[.]", "For Rent by Owner[.]", "For Lease by Owner[.]", or "For Exchange by Owner[.]".
- (c) Current individual real estate licensees[, whether active or inactive,] on inactive status shall disclose the licensee's inactive status [as a real estate licensee] in all advertising and promotional material.



(d) A leasehold property advertised for sale in any medium shall be identified by the word "leasehold[.]".

(e) All advertising and promotional materials that refer to the individual licensee's name, including but not limited to business cards, shall:

- (1) Include the licensee's legal name, name as licensed by the commission, or sole proprietor's trade name as licensed by the commission;
- (2) Identify the licensee with the licensee's associating or employing brokerage firm; and
- (3) [Specify that the licensee is a broker (B), or salesperson (S), or if a current member of the Hawaii Association of Realtors, Realtor (R) or Realtor-Associate (RA).] Include the licensee's license number as issued by the commission.

(f) If the address of any unregistered place of business is included in advertising materials, then the street address of the principal place of business or the branch office, as the case may be, shall be included and respectively identified as such. [Eff 12/26/74; am and ren §16-99-11, 4/27/81; am and comp 6/28/82; am and comp 3/3/84; am and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; am and comp ] (Auth: HRS §467-4) (Imp: HRS §467-7)

§16-99-12 Exam site solicitation. On the day of a real estate licensing examination, a licensee shall not at the exam site or at any place on the property where the exam site is located, directly or indirectly, recruit, solicit, offer to employ, discuss employment with, or distribute literature promoting the licensee to any individual who sits for that examination. [Eff and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; comp ] (Auth: HRS §467-4) (Imp: HRS §467-25)

## SUBCHAPTER 2

### APPLICATIONS

§16-99-17 Forms and instructions. An application filed with the commission shall be prepared in accordance with and contain the information and documentation called for in the application form and the accompanying instructions provided by the commission. All applications shall be accompanied by a nonrefundable fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, HRS. [Eff 12/26/74; am and ren

§16-99-17, 4/27/81; am and comp 6/28/82; comp 3/3/84; am and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; comp ] (Auth: HRS §467-4) (Imp: HRS §§26-9(k), 467-9, 467-9.6, 467-11, 467-14)

§16-99-18 Repealed. [R 5/21/01]

§16-99-19 License applications. (a) All applications for a real estate salesperson or broker license shall be accompanied by:

- (1) The required fee; and
- (2) Supporting documents to satisfy the applicable education and experience requirements. Applications not accompanied by supporting documents shall be rejected. In the event an applicant has not satisfied the applicable education and experience requirements, the applicant's examination score shall be declared void and license application rejected.

(b) An application for a branch office registration shall be accompanied by the required branch office registration fee. [Eff 12/26/74; am and ren §16-99-19, 4/27/81; am and comp 6/28/82; am and comp 3/3/84; am and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; comp ] (Auth: HRS §467-4) (Imp: HRS §467-9)

§16-99-19.1 License name. (a) An individual may designate a license name different from the individual's legal name, provided that:

- (1) The license name of individual broker, broker-salesperson, or salesperson:
  - (A) Shall include the individual's full legal surname;
  - (B) May include the individual's initials, full legal first name, full legal middle name, full legal name, or nickname; and
  - (C) May retain the individual's former legal surname if the surname is legally changed subsequent to licensing, provided that the change is reported pursuant to section 16-99-5;
- (2) The license name of a sole proprietor broker:
  - (A) Shall comply with the provisions of [subsection] paragraph (1); and
  - (B) May include a trade name currently registered by the broker with the business registration division and with the

commission, provided that the trade name complies with section 467-9, HRS.

(b) The license name of a corporation, limited liability company, or partnership:

(1) Shall be its legal name, provided that the name complies with section 467-9, HRS; and

(2) May include a trade name currently registered by the entity with the business registration division and with the commission, provided that the trade name complies with section 467-9, HRS. [Eff and comp 5/21/01; am and comp ] (Auth: HRS §467-4) (Imp: HRS §467-9)

§16-99-19.2 Experience certificate application. (a) Candidates for the broker examination shall submit to the commission a completed experience certificate application together with:

(1) A nonrefundable application fee; and

(2) A certified statement by the principal broker or a broker in charge of each of applicant's brokerage firms during the three years immediately preceding the application for experience certificate, that attests to the length of time that the applicant has been actively associated or employed full-time with the brokerage firm.

Applicants shall have experience in this State as a full-time Hawaii-licensed real estate salesperson, associated as an employee or independent contractor with an active Hawaii-licensed brokerage firm, for [the three-year] at least three years within the five-year period immediately prior to the application for experience certificate.

(b) "Full-time" means averaging at least forty hours a week devoted to real estate salesperson activity. No pro rata credit shall be given to part-time real estate salesperson activity.

(c) The commission shall verify the applicant's dates of employment or association with each brokerage firm, and dates of release from the firm's employment or association, on the experience certification statements with the records of the commission. An applicant shall not receive credit for any experience for periods during which the applicant's license was inactive, forfeited, suspended, revoked, or terminated.

(d) The commission may grant an equivalency for [a portion of] the experience requirement based on real estate license experience in another state with similar education requirements; provided that [the maximum equivalency shall be two years for out-of-state experience as a full-time licensed real estate

salesperson, and two and one-half years for out-of-state experience as a full-time licensed real estate broker. The amount of equivalency shall be computed with a ratio of 1-1 (Example: one month experience equal to one month equivalency).] an out-of-state applicant shall have experience as a full-time licensed real estate salesperson with an active out-of-state brokerage firm, for at least three years within the five-year period immediately prior to the application for experience certificate; or possess a current, unencumbered out-of-state real estate broker's license. All requests for equivalency to the experience requirement shall be submitted in writing together with all required documents of an official nature with the experience certification application.

(e) The commission may reject an application for experience certificate if the application is incomplete or if the applicant's real estate salesperson license is in forfeited, suspended, revoked, or terminated status.

(f) If the applicant has satisfied the three-year full-time experience requirement, the commission shall issue to the applicant an experience certificate that shall be valid for two years from the date of issuance. The experience certificate shall be produced at the applicant's examination appointment and submitted with the applicant's application for individual broker license. [Eff and comp 5/21/01; am and comp ] (Auth: HRS §467-4) (Imp: HRS §467-9.5)

§16-99-20 Repealed. [R 3/3/84]

§16-99-21 Denial. In the event an application for admission to the examination, for issuance, reinstatement, or restoration of a license is denied, the commission shall notify the applicant by letter of the commission's action which shall include a concise statement of the reasons therefor and if the applicant is entitled to a hearing, a statement informing the applicant of the right to a hearing if the applicant so desires. [Eff 12/26/74; am and ren §16-99-21, 4/27/81; am and comp 6/28/82; am and comp 3/3/84; comp 11/3/90; comp 2/25/91; comp 5/21/01; comp ] (Auth: HRS §467-4) (Imp: HRS §467-15)

§16-99-22 Demand for a hearing. Any person whose application for admission to the examination, for the issuance, reinstatement, or restoration of a license has been denied by the commission, shall be entitled to a hearing; provided that a demand for a hearing is filed with the commission within sixty days of the date of the letter informing the applicant of the denial of application; and provided

further that this section shall not apply to a denial based on the failure to file an application within the period provided by this chapter. [Eff 12/26/74; am and ren §16-99-22, 4/27/81; am and comp 6/28/82; am and comp 3/3/84; comp 11/3/90; comp 2/25/91; comp 5/21/01; comp ] (Auth: HRS §467-4) (Imp: HRS §467-15)

§16-99-23 Proceedings upon demand for hearing. If a demand for a hearing is filed within the time prescribed, the commission shall order a hearing pursuant to chapters 91 and 92, HRS, and chapter 16-201, Administrative Practice and Procedure. [Eff 12/26/74; am and ren §16-99-23, 4/27/81; am and comp 6/28/82; am and comp 3/3/84; am and comp 11/3/90; comp 2/25/91; comp 5/21/01; comp ] (Auth: HRS §467-4) (Imp: HRS §467-15)

§16-99-24 Repealed. [R 5/21/01]

§16-99-25 Falsification of application. The commission may deny an applicant admission to the examination, or issuance of license, void applicant's examination score, or revoke a license on the ground of falsification of any information supplied in the application for examination, application for experience certificate, application for license, or supporting documents. [Eff and comp 6/28/82; comp 3/3/84; comp 11/3/90; comp 2/25/91; am and comp 5/21/01; comp ] (Auth: HRS §467-4) (Imp: HRS §467-14)

### SUBCHAPTER 3

### EXAMINATION

§16-99-29 Examination for broker and salesperson license. (a) No license shall be issued to any individual unless the individual takes and passes an examination as prescribed by the commission for the license applied for. The minimum passing score for the uniform and the State portions of the examination shall be seventy for salesperson applicants and seventy-five for broker applicants. Any individual who fails to obtain a passing score in any part of the examination shall repeat that part of the examination. Failure to obtain a passing score in all parts thereof within the two-year period after the first examination date, shall result

in failure of the examination as a whole and the entire examination shall be repeated by the candidate.

(b) Any eligible individual shall forfeit the examination fee if the individual does not sit for the examination.

(c) Unsuccessful candidates, rejected applicants, and individuals granted withdrawal who wish to sit for subsequent examinations shall file a new application and comply with all requirements each time.

(d) The examinations shall be given on dates and at locations as determined by an agreement between the commission and a professional testing service, and may include examination locations outside the State.

(e) Examinations shall be conducted in accordance with procedures formulated by the testing agency authorized by the commission to administer examinations. Failure to follow such procedures shall result in immediate disqualification from the examination and may bar candidates from being examined in any future examinations.

(f) Any individual who passes the salesperson or broker examination shall be required to apply for the individual's active or inactive license within two years of the individual's last examination date. Failure to apply for a license within two years of the last examination date shall cause the examination and license application to be abandoned pursuant to section 436B-9, HRS, and the individual shall be required to pass the examination again.

(g) At the location for examination, all candidates for salesperson or broker examination shall present a current real estate school completion certificate or current education equivalency certificate. Candidates for broker examination also shall present a current experience certificate at the examination location. [Eff 12/26/74; am and ren §16-99-29, 4/27/81; am and comp 6/28/82; am and comp 3/3/84; am and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; comp ] (Auth: HRS §§467-4, 467-9) (Imp: HRS §§467-8, 467-9, 467-9.5)

§16-99-30 Examination subject matter. Candidates shall demonstrate, by passing with a grade satisfactory to the commission an examination given by it and appropriate to the license sought, that they have a reasonable knowledge of general principles and practices of real estate transactions and the law and rules pertaining to or relating to real estate, and such other subjects and matters which the commission or its designated examining agency determines to be essential to the protection of the general public in its real estate transactions. [Eff 12/26/74; am and ren §16-99-30, 4/27/81; am and comp 6/28/82; am and comp 3/3/84; comp 11/3/90;

comp 2/25/91; am and comp 5/21/01; comp  
§467-4) (Imp: HRS §467-8)

] (Auth: HRS

#### SUBCHAPTER 4

#### EDUCATION AND EXPERIENCE

§16-99-36 Education requirement. The education requirement for the salesperson license examination shall be satisfied by successful completion of a curriculum in real estate at an accredited institution, consisting of a minimum of [forty-five] sixty class hours and conforming to the approved curriculum for salesperson adopted by the commission or such equivalent education or experience as shall be determined by the commission. The education requirement for the broker license examination shall be satisfied by successful completion of a curriculum in real estate at an accredited institution, consisting of a minimum of [forty-six] eighty class hours and conforming to the approved curriculum for brokers adopted by the commission or equivalent education or experience as shall be determined by the commission. A "class hour" as used in this section means sixty minutes of classroom instruction. [Eff 12/26/74; am and ren §16-99-36, 4/27/81; am and comp 6/28/82; am and comp 3/3/84; am and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; am and comp ] (Auth: HRS §467-4) (Imp: HRS §§467-8, 467-9.5)

§16-99-37 Education equivalency. (a) The commission may grant an equivalency to the respective education requirements for applicants for the salesperson [and broker] license examinations for:

- (1) Those who hold a current license that was active within one year immediately prior to the date of application as a salesperson or broker in another state with similar or superior education requirements as determined by the commission;
- (2) Graduates of an accredited law school in the United States; [of] or
- (3) Bachelor of arts or bachelor of science degree graduates of accredited colleges and universities in the United States who have majored in real estate or business[.];
- [(4) Those who have successfully completed at least six semester credits in real estate, business, business law, real estate development, or finance courses at an accredited college or university; and

- (5) Those who have received a professional designation and recognized certificates of completion as accepted by the commission including a GRI designation; certificate in advanced real estate from the University of Hawaii, small business management program.]

(b) The commission may grant an equivalency to the respective education requirements for applicants for the broker license examinations for:

- (1) Those who hold a current license that was active within one year immediately prior to the date of application as a broker in another state with similar or superior education requirements as determined by the commission; and

- (2) Graduates of an accredited law school in the United States.

[(b)] (c) All requests for equivalency to the educational requirements shall be submitted in writing, together with all supporting documents of an official nature to the commission for its review, prior to filing the application for examination.

[(c)] (d) An approved education equivalency shall be valid for two years from the date of issuance. [Eff 12/26/74; am and ren §16-99-37, 4/27/81; am and comp 6/28/82; am and comp 3/3/84; am and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; am and comp ] (Auth: HRS §467-4) (Imp: HRS §467-9.5)

§16-99-38 Repealed. [R 5/21/01]

§16-99-39 Repealed. [R 5/21/01]

§16-99-40 Repealed. [R 3/3/84]

§16-99-41 Repealed. [R 3/3/84]

§16-99-42 Repealed. [R 3/3/84]

§16-99-43 Repealed. [R 3/3/84]

§16-99-44 Repealed. [R 3/3/84]



§16-99-45 Repealed. [R 3/3/84]

§16-99-46 Real estate education fund. The commission may authorize the use of funds deposited in the real estate education fund for the benefit of and improvement of services to the consuming public, licensees, commissioners, and staff. The education fund may be used for classes, media exposure, participation in national associations, publications, research, seminars, studies, and any other educational purpose as the commission may determine. [Eff and comp 6/28/82; am and comp 3/3/84; comp 11/3/90; comp 2/25/91; comp 5/21/01; comp ] (Auth: HRS §467-4) (Imp: HRS §467-19)

## SUBCHAPTER 5

### REGISTERED REAL ESTATE SCHOOLS

§16-99-50 Policy. (a) A registered school shall not offer courses which may be used to fulfill the educational requirements for a real estate license unless it first registers with the commission and complies with the requirements of this subchapter.

(b) "School" as used in this subchapter includes, but is not limited to, a private school, or an accredited college or university offering courses used to fulfill the educational requirements for initial licensing. [Eff and comp 3/3/84; am and comp 11/3/90; comp 2/25/91; comp 5/21/01; comp ] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-51 Registered school. (a) A registered school shall be a school which applies for a certificate of registration from the commission and which is found by the commission to have met the requirements imposed by chapter 467, HRS, and this chapter.

(b) A registered school shall have on file at the school's principal office, for commission inspection upon request, unit and daily lesson plans implementing the school's approved curriculum. Such plans should specify at minimum: the objectives of the unit and daily lesson plan stated in student performance terms; and an evaluative method to determine that the students have been taught the objectives of the unit and daily lesson. [Eff and comp 3/3/84; am and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; comp ] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §§467-9.5, 467-25.5)

§16-99-52 Repealed. [R 5/21/01].

§16-99-52.1 Independent study courses. (a) Independent study courses shall conform to commission-approved curricula and shall meet the specific standards of this section and all other applicable requirements of this chapter.

(b) An independent study course for satisfaction of the salesperson education requirement shall reasonably require the student to expend [forty-five] a minimum of sixty hours in completing the course. An independent study course for satisfaction of the broker education requirement shall reasonably require the student to expend [forty-six] a minimum of eighty hours in completing the course.

(c) Every registered school offering an approved independent study course for satisfaction of the salesperson or broker education requirement shall:

- (1) Be available to answer students' questions or provide them assistance as necessary;
- (2) Provide reasonable oversight of students' work in order to insure that the student who completes the work is the student who is enrolled in the course;
- (3) Obtain from each student the following certification statement:  
"I certify that I have personally completed each assigned module of instruction.

- | Date | Student's Signature"                                                                                                 |
|------|----------------------------------------------------------------------------------------------------------------------|
| (4)  | Certify students as successfully completing an independent study course only if the student has:                     |
| (A)  | Completed all instructional modules required to demonstrate mastery of the material, and                             |
| (B)  | Passed the final examination. [Eff and comp 5/21/01; am and comp ] (Auth: HRS §§467-4, 467-5.5) (Imp: HRS §467-25.5) |

§16-99-53 Application for registration. (a) A registration shall be granted to the owner for a specific school registered under a particular name to teach specific real estate courses.

(b) Application for the initial registration of a school shall be made to the commission not less than ninety days before the opening date of the school.

(c) The following shall accompany an application:

- (1) Current certificates of clearance from the county building department, the county fire department, and the state department of health for each classroom;
- (2) A description of the courses to be offered which contains the course title, curriculum, curriculum objectives in student performance terms, evaluative procedure to be used to demonstrate the accomplishment of the curriculum objectives and procedures for student evaluation of the instructor;
- (3) A copy of the student enrollment or student registration form;
- (4) A copy of the school catalogue or brochures and a statement of the content of advertising and the media to be used;
- (5) A schedule of all fees, tuition, and charges to be made, including the advance deposit charged per student and statement of refund procedures;
- (6) The name and qualifications of the school's principal;
- (7) The names of the school's instructors and the instructors' teaching qualifications and experience;
- (8) A surety bond to the commission conditioned for the protection of the contractual rights of real estate students in an amount equal to the sum of:
  - (A) The maximum number of students permitted in each broker classroom as determined by the county building department multiplied by the advance deposit charged per student for the broker course multiplied by the maximum number of broker courses to be held at any one time during the first year of the school's registration; and
  - (B) The maximum number of students permitted in each salesperson classroom as determined by the county building department multiplied by the advance deposit charged per student for the salesperson course multiplied by the maximum number of salesperson courses to be held at any one time during the first year of the school's registration. In no event shall the amount of the bond be less than \$2,000. The bond shall be issued by a surety authorized to do business in the State. An accredited college or university shall not be required to submit to the commission a surety bond or license fee as required by this section;
  - (C) No bond shall be required to cover real estate students only enrolled in an independent study course delivered electronically or as approved by the commission;

- (9) A license fee;
  - (10) A statement of ethical practices;
  - (11) If the applicant is a partnership, the names of the partners in the entity and a copy of the partnership agreement;
  - (12) If the applicant is a corporation, the names of any persons who own five per cent or more of the stock of the entity, and a copy of the articles of incorporation; and
  - (13) Other additional information as may be required by the commission.
- (d) A school shall not begin operation until it has registered with the commission.
- (e) A school shall not solicit students until it has registered with the commission. However, a school in the process of obtaining a license may advertise "subject to completion of all registration requirements" and the statement shall be a part of all representations.
- (f) A school shall limit its course offerings to courses approved by the commission.
- (g) The registration of a school shall expire at the end of every even-numbered year. Registrations shall be renewed biennially by the commission-prescribed deadline.
- (h) A school ceasing to operate shall so inform the commission and shall surrender its registration within thirty days after cessation of operations. The registration of such a school shall be canceled automatically thirty days after cessation of operations unless a longer period of inactivity has been applied for in writing and approved by the commission. For the purposes of this subsection, "a school ceasing to operate" means a school which has not held any classes for a period of three months.
- (i) A registered school shall not conduct classes when it has been notified by the appropriate county agency that the conditions existing at the school's facilities violate county building, fire, or health codes. The school may resume its operations when it has remedied the violation. [Eff and comp 3/3/84; am 10/3/85; am and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; am and comp ] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-53.1 Alternative forms of school bond. (a) Where a surety bond required by sections 16-99-53 and 16-99-65 cannot reasonably be secured and the school owner has received three letters rejecting the owner's application for a surety bond, the commission, after a review of the reasons for rejection, may accept other alternative forms of security including but not limited to:

- (1) Submission of an executed agreement between the school owner and two other commission-approved registered real estate school owners guaranteeing that they will honor all students' contracts that were signed or approved by the school owner should the owner be unable to complete the instructing of such courses because of the owner's death, disability, bankruptcy, or extended absence from the State beyond four months; and
- (2) Submission of one of the following: a certificate of deposit from a federally insured institution, in the amount equal to the required bond; a cashier's check from a federally insured institution, in the amount equal to the required bond; an irrevocable letter of credit on a form approved by the commission drawn upon a bank or savings and loan association, in the amount of the bond required; or any other alternative security approved by the commission for substitution of the bond.

(b) Any certificate of deposit, cashier's check, irrevocable letter of credit, or other approved alternative security shall be issued from a federally insured institution located in this State, made payable to the commission or in the case of a letter of credit shall designate the commission as beneficiary for the benefit of any eligible person sustaining damage resulting from the school owner's failure to faithfully, promptly, and truly perform the instruction of any real estate courses contracted to teach. The commission shall retain possession of the security as prescribed by this section for a period of six years dating from the first day of the school's registration and dating subsequently each six years from the first day of the school's biennial registration renewal. In the event any of the alternatives to the surety bond earns interest while in the possession of the commission, the interest shall belong to the school's owner. At the expiration of the six-year holding period as calculated pursuant to this section, the commission shall release all alternative forms of school bonds in amounts remaining as security if no claims have been made against any amounts during the time the commission held the security and if the school owners, heirs, personal representatives, successors, or permitted assigns execute appropriate release forms indemnifying the commission and the State.

(c) Cancellation of surety bond. A registered school that has been notified that the school's surety bond required by this subchapter has been [cancelled] canceled, shall not schedule any course offerings until such time that the school submits to the commission proof of a valid surety bond. [Eff and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; am and comp ]  
(Auth: HRS §§26-9(p), 467-4) (Imp: HRS §467-25.5)

§16-99-54 Changes in school's owners. (a) Any change in the ownership status of a school shall be approved by the commission.

(b) A change in partners shall be deemed a change in ownership. Any change in ownership of fifty per cent or more of a corporation's outstanding capital stock or any change in ownership of any number of shares of stock which results in the transferee thereof becoming the owner of fifty per cent or more of the outstanding capital stock, shall be deemed a change in ownership.

(c) The new owner shall submit written evidence to the commission that, as of the effective date of the change in ownership, the new owner shall:

- (1) Assume liability for all or substantially all of the school's outstanding debts incurred as a direct result of the school's educational activities; and
- (2) Honor all student contracts that were signed or approved by the school's authorities before the effective date of the change in ownership. [Eff and comp 3/3/84; comp 11/3/90; comp 2/25/91; comp 5/21/01; comp ] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-55 Display of certificate of registration and instructor's certificate. Each school granted a certificate of registration and each instructor granted an instructor's certificate shall prominently display it in its business office at all times. [Eff and comp 3/3/84; comp 11/3/90; comp 2/25/91; comp 5/21/01; comp ] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-56 Classrooms. (a) Every school shall have and maintain classrooms which have adequate space, seating, equipment, and instructional material. Each classroom shall be approved by the commission and shall have current certificates of clearance from the county building department, the county fire department, and the state department of health. Classrooms shall be subject to inspection by the commission prior to approval or subsequent thereto during regular school hours.

- (b) Classrooms shall conform to the zoning, building, electrical, plumbing, and fire codes of the county in which the facility is located and to State rules as may be applicable to the facility. [Eff and comp 3/3/84; am and comp 11/3/90; comp 2/25/91; comp 5/21/01; comp ] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-57 Courses. (a) The initial curriculum and any additional courses offered by a school shall be approved by the commission.

(b) Broker and salesperson classes shall not be held together unless approved by the commission. [Eff and comp 3/3/84; am and comp 11/3/90; comp 2/25/91; comp 5/21/01; comp ] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-58 Faculty. (a) Each school shall designate [some] an individual as principal.

- (b) The principal shall be responsible for:
  - (1) Complying with the commission's rules relating to real estate schools;
  - (2) Providing reports and information as may be required by the commission;
  - (3) Informing the commission in writing five business days prior to any changes in school policies, programs, personnel, facilities, tuition, calendar, and all other matters changing the status of the school as originally licensed;
  - (4) Advertising by the school; and
  - (5) Directing and supervising the school staff and program.
- (c) Every instructor shall be biennially certified by the commission.

Certification shall be obtained by each instructor for each course the instructor desires to teach. The commission may, prior to the instructor's initial certification and prior to any recertification, require the instructor to do either or both of the following: to complete a commission sponsored or approved instructor's workshop, or to appear before the commission to demonstrate the instructor's command of and ability to communicate the prelicense course.

(d) Each instructor shall initially take and pass an examination with a minimum passing score of eighty-five per cent or as prescribed by the commission and shall:

- (1) Hold a current and unencumbered Hawaii real estate broker's license, have at least three years full-time experience in real estate in Hawaii, and fulfill the present experience requirement for a Hawaii broker's license; [or]
- (2) Hold a degree in law and be an attorney licensed and in practice in the area of real estate for at least two years in this State; [or]
- (3) Hold an appointment to the real estate faculty of an accredited college or university; or

- (4) Have graduated from an accredited college or university, have at least three years full-time experience in real estate in Hawaii, and fulfill the present experience requirements for a Hawaii broker's license.
- (e) Each instructor shall have had one year prior teaching experience in real estate within three years [preceeding] preceding the application for certification and possess in addition to the requirements in subsection (d):
- (1) A certificate of completion from a special real estate instructor institute issued within a year immediately [preceeding] preceding the request for certification; [or]
  - (2) A certificate of completion from a professional real estate course leading to a professional designation accepted by the commission; [or]
  - (3) An appointment to the real estate faculty of an accredited institution of higher education; [or]
  - (4) A certificate of completion from an accredited salesperson and broker course; or
  - (5) Other as the commission may determine (including successfully passing a qualifying real estate license examination).
- (f) School personnel shall comply with applicable state department of health requirements.
- (g) [Every instructor, every three years, as a condition of recertification for each course the instructor chooses to teach, shall take and pass an instructor's exam, demonstrating the instructor's current command of the prelicense course.] An instructor may not be certified if the individual has been:
- (1) Disciplined by the commission or any state or by any licensing regulatory body for fraud, misrepresentation, or deceit in connection with the sale, purchase, exchange, or property management of any interest in real estate or for any other conduct substantially related to the practice or profession of real estate; or
  - (2) Convicted of a crime which substantially relates to the profession of teaching or to the practice or profession of real estate.
- (h) A registered school shall obtain the approval of the commission prior to scheduling the appearance of a guest lecturer or substitute teacher as an instructor for a specified topic of instruction included in its approved curriculum. A guest or substitute teacher shall not be used for more than fifty per cent of its scheduled classes. [Eff and comp 3/3/84; am and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; am and comp ] (Auth: HRS §§467-4, 467-25.5)  
(Imp: HRS §467-25.5)



§16-99-59 Tuition and other charges. (a) Tuition rates and all other charges shall be published in the school catalogue. No school shall deviate from its published tuition rates and charges.

(b) Tuition and other charges collected from enrollees shall be refunded in full by the school if the course for which the tuition and charges were collected is not started on the date published by the school in its catalogue or advertisements.

(c) Tuition and other charges shall be specifically set forth in the school registration form. The registration form shall expressly state the school's policy regarding the return of tuition and other charges when a student is dismissed or withdraws voluntarily. Each student shall acknowledge acceptance of the school's tuition policies on the school's registration form. [Eff and comp 3/3/84; comp 11/3/90; comp 2/25/91; comp 5/21/01; comp ] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-60 Repealed. [R 5/21/01]

§16-99-61 Certificate of completion. A certificate of completion shall be issued by the school in a form and size approved by the commission, and shall be awarded only to a student who attends eighty per cent of the scheduled classes and who completes with a passing grade the final examination of a course of study conforming to the approved curriculum or who completes an independent study course under section 16-99-52.1. The certificate shall be valid for a period of two years from the date of issuance. The date of issuance shall be the class completion date. [Eff and comp 3/3/84; am and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; am and comp ] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §§467-9.5, 467-25.5)

§16-99-62 Records. (a) Each school shall maintain records on the following:

- (1) Class attendance of each student;
- (2) Tuition and other charges collected from each student;
- (3) The names of the students to whom it issued a certificate of completion, the course for which the certificate of completion was issued, and the date when the certificate of completion was issued[;], which shall be submitted to the commission within ten days of the class completion date; and

- (4) The qualifying exams administered for purposes of issuing a school certificate of completion.
- (b) Within ten days of issuance of a Hawaii school completion certificate, the school shall submit to the commission:
- (1) A listing of students who have completed the course with their course completion certificate number, curriculum instructor names and date when the certificate of completion was issued; and
  - (2) Other information requested by the commission.
- [(b)] (c) These records shall be maintained for a three-year period, shall be kept current, and shall be available for inspection by the commission. [Eff and comp 3/3/84; am and comp 11/3/90; comp 2/25/91; comp 5/21/01; am and comp ] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-63 Reports. Each school may be required to submit reports to the commission and may be subject to review regarding its educational programs conducted in conformance with this chapter. [Eff and comp 3/3/84; comp 11/3/90; comp 2/25/91; comp 5/21/01; comp ] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-64 Inspections. Registered schools and schools that have applied for registration may be inspected by the commission. [Eff and comp 3/3/84; comp 11/3/90; comp 2/25/91; comp 5/21/01; comp ] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-65 Renewals. (a) Applications for renewal of a school's registration shall be submitted by the commission prescribed deadline of every even-numbered year.

- (b) The following shall accompany an application:
- (1) A renewal fee;
  - (2) A statement as to the enrollment and advance deposit charged per student for each of the school's broker and salesperson courses offered during the preceding registration period;
  - (3) The dates and locations of course of study to be offered if the registration is renewed; and
  - (4) A surety bond to the commission conditioned for the protection of the contractual rights of real estate students in an amount equal to the sum of:

- (A) The largest number of students enrolled in the school's broker course at any one time during the preceding registration period multiplied by the advance deposit charged per student for the broker course; and
- (B) The largest number of students enrolled in the school's salesperson course at any one time during the preceding registration period multiplied by the advance deposit charged per student for the salesperson course.

In no event shall the amount of the bond be less than \$2,000. The bond shall be issued by a surety authorized to do business in the State.

(c) A registration shall be renewed if the school meets all of the then existing applicable requirements of the commission including but not limited to a reasonable student exam passing percentage, demonstrated evidence that the school curriculum objectives have been taught, certificates of completion issued within the past year, for each instructor, who completed successfully a commission sponsored or approved prelicense instructor's workshop, and an update of the information required for its original application for registration.

(d) An accredited college or university shall not be required to submit to the commission a surety bond or pay the renewal fee as required by this section. [Eff and comp 3/3/84; am 10/3/85; am and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; comp ] (Auth: HRS §§467-4, 467-11, 467-25.5)  
(Imp: HRS §467-25.5)

§16-99-66 Advertising. (a) For purposes of this subchapter, "advertising" means an announcement by an accredited real estate school for the purpose of promoting the school or soliciting students and shall include, but not be limited to, all printed, [and] audio, and visual communications, such as newspaper advertisements, direct public mailings, books and periodicals, television and radio commercials, current and future technology, and others.

(b) All advertisements soliciting students shall be of an announcement type listing, at the minimum, the place where a school catalogue or brochure may be obtained.

(c) Prior to publication and dissemination, all schools shall submit to the commission for review all copies or proofs of advertising, brochures, and promotional materials covering its real estate course.

(d) The commission, at any time may require that a school furnish proof of any of its advertising claims. Retractions of advertising claims may be ordered

by the commission, with the retractions published in the same manner as the claims themselves.

(e) A school shall be held strictly responsible for the acts and promises of all its agents or persons engaged in soliciting students. [Eff and comp 3/3/84; comp 11/3/90; comp 2/25/91; comp 5/21/01; am and comp ]  
(Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-67 School brochure or catalogue. (a) Each school shall distribute to prospective students and other interested persons, a brochure or catalogue. Each brochure or catalogue shall include, at minimum, the following:

- (1) Name, address, and telephone number of the school;
  - (2) Date of issue;
  - (3) School's owner or owners and principal;
  - (4) Any available locations, and if the class location is tentative, that fact shall be disclosed;
  - (5) School's calendar;
  - (6) Class hours;
  - (7) Schedule of all charges;
  - (8) A statement that the school's curriculum is available for any student's inspection upon request;
  - (9) Course titles and objectives;
  - (10) Course outlines or description;
  - (11) Length of course;
  - (12) School's policy on attendance, absences, and make-up;
  - (13) School's policy on grading, reporting of grades, and standards required;
  - (14) School's policy on student conduct;
  - (15) School's policy on refund of tuition and other fees collected;
  - (16) If a minimum number of students is necessary to operate a class, that fact shall be disclosed and a minimum number given; and
  - (17) If the course or any portion of the services are advertised as being free, a complete disclosure of all conditions shall be stated.
- [(b) Each brochure or catalogue may include the following:
- (1) School's financing plans; and
  - (2) School's placement services.]

(c)] (b) Each brochure or catalogue shall be updated periodically so that the information contained in it is current. [Eff and comp 3/3/84; am and comp 11/3/90; comp 2/25/91; comp 5/21/01; am and comp ] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-68 Prohibited advertising practices. (a) No school shall provide any information to the public or to prospective students which is false, misleading, or deceptive. Information is "misleading" when there may be a possibility that it will deceive the class of persons whom it is intended to influence.

(b) No school shall use any name, other than the name under which it registered with the commission, for advertising or publicity purposes.

(c) No school shall advertise that it is "recommended," "endorsed," "approved," or "accredited" by the commission. A school may indicate that it is "registered" with the commission to conduct courses to qualify applicants for the real estate license examination.

(d) No school shall make any warranties or guarantees that a student will pass the real estate license examination by taking its course.

(e) No school shall advertise that it is endorsed by business establishments, organizations, or individuals engaged in the kind of work for which training is given until written evidence of this fact is filed with the commission.

(f) No school shall solicit students in "help wanted" or other employment columns in newspapers or other publications or in any other form of advertising other than that which shows itself clearly to be that of a school seeking to enroll students.

(g) No school shall make or imply any guarantee of employment or income to any student or prospective student unless the school can in fact guarantee employment or income and the school does so in writing.

(h) No school shall advertise a course of instruction which has not been approved by the commission unless the advertisement clearly states that it is a "proposed" or "tentative" offering, subject to the approval of the commission. No money shall be collected from any prospective student for enrollment in such a course until it has been approved by the commission. [Eff and comp 3/3/84; comp 11/3/90; comp 2/25/91; comp 5/21/01; comp ] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-69 Revocation or suspension of school registration, course approval, and instructor certification. The commission may revoke or suspend the registration of any real estate school, the approval of any real estate course, or the certification of any instructor for any of the following causes:

- (1) The school, instructor, or course falls below the minimum requirements established by the commission including a student exam passing percentage;

- (2) The school or instructor violates any ordinances, codes, statutes, or rules relating to real estate schools or instructors;
- (3) The school or instructor solicits information from any person for the purpose of discovering past examination questions or questions which may be used in future examinations;
- (4) The school or instructor distributes to any person copies of examination questions or otherwise communicates to any person examination questions, without the prior written approval of the copyright owner of the examination questions so distributed or communicated; or
- (5) The instructor sits for a Hawaii real estate license examination during the period the instructor is certified by the commission. [Eff and comp 3/3/84; am and comp 11/3/90; comp 2/25/91; comp 5/21/01; comp ] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-70 Hearings. (a) When the commission denies an application for registration or renewal of a school, or deems it proper to revoke or suspend the registration of any school, the approval of any course, or the certification of any instructor, the commission shall notify in writing the person or school involved of the commission's action. The notification shall include a concise statement of the reasons for the commission's action and a statement that the person or school involved may request a hearing.

(b) Requests for a hearing shall be filed with the commission within sixty days of the date of the letter informing the school or instructor of the commission's action.

(c) If a demand for a hearing is filed within the time prescribed, the commission shall order a hearing pursuant to chapters 91 and 92; HRS, and chapter 16-201, Administrative Practice and Procedure. [Eff and comp 3/3/84; am 9/29/86; comp 11/3/90; comp 2/25/91; am and comp 5/21/01; comp ] (Auth: HRS §§467-4, 467-25.5) (Imp: HRS §467-25.5)

§16-99-71 Repealed. [R 5/21/01]

## SUBCHAPTER 6

### PRACTICE AND PROCEDURE

§16-99-75 Administrative practice and procedure. The rules of practice and procedure for real estate shall be as provided in chapter 16-201, the rules of practice and procedure of the department of commerce and consumer affairs, which are incorporated by reference and made a part of this chapter. [Eff 9/29/86; am and comp 11/3/90; comp 2/25/91; comp 5/21/01; comp ] (Auth: HRS §§91-2, 442-5) (Imp: HRS §§91-2, 442-5)

## SUBCHAPTER 7

### RECOVERY FUND

§16-99-79 Recovery fund settlement procedures. Upon the occurrence of all of the following, the commission may settle any subsequent claim against the real estate recovery fund involving a licensee that was previously named in an order and on whose behalf the commission had been required to make payments out from the recovery fund:

- (1) The claimant is seeking recovery against the same licensee as named in an order for which the commission had been required to make a payment from the recovery fund;
- (2) The claimant is similarly situated as the claimant named in an order for which the commission has been required to make a payment from the recovery fund;
- (3) The claimant notifies the commission in writing within the same time period specified in section 467-18, HRS, that it has commenced an action for a judgment which may result in collection from the real estate recovery fund;
- (4) The claimant files a verified claim with the commission stating with particularity the reasons, grounds, and evidence in support of claimant's request for settlement directly with the commission;
- (5) The claimant gives reasonable notice to the licensee at the licensee's last known address by registered or certified mail, restricted delivery to addressee only, return receipt requested that claimant intends to settle the claim directly with the commission together with a copy of the verified claim. Where it is impossible to give licensee notice by mail, claimant shall give notice to licensee by publication once in a

newspaper of general circulation in the State, that the claimant intends to settle the claim directly with the commission, a summary of the reasons, grounds, and evidence supporting claimant's relief from the recovery fund. Any notice given shall also contain a statement to the effect that any payment from the recovery fund shall result in an automatic termination of the licensee's license;

- (6) The licensee has had an opportunity to respond within a reasonable time, in writing, to claimant's verified claim;
- (7) That claimant is not a spouse of the licensee, or the personal representative of such spouse;
- (8) The claimant has made all reasonable searches and inquiries to ascertain whether the licensee is possessed of real or personal property or other assets, which may be used to satisfy the claim and that by such search the claimant has discovered no such assets;
- (9) The commission is satisfied, that there is sufficient evidence to support a settlement of the claim; and
- (10) The settlement is in the best interest of the real estate recovery fund.[Eff and comp 11/3/90; comp 2/25/91; am and comp 5/21/01; comp ] (Auth: HRS §467-4) (Imp: HRS §467-16)

## SUBCHAPTER 8

### ORAL TESTIMONY

§16-99-83 Oral testimony. (a) The commission shall accept oral testimony on any item which is on the commission's agenda, provided that the testimony shall be subject to the following conditions:

- (1) Each person seeking to present oral testimony shall so notify the commission no later than forty-eight hours prior to the meeting, and at that time shall state the item on which testimony is to be presented;
- (2) The commission may request that any person providing oral testimony submit the remarks, or a summary of the remarks, in writing to the commission;
- (3) The commission may rearrange the items on the agenda for the purpose of providing for the most efficient and convenient presentation of oral testimony;



- (4) Persons presenting oral testimony, at the beginning of the testimony, shall identify themselves and the organization, if any, that they represent;
  - (5) The commission may limit oral testimony to a specified time period but in no case shall the period be less than five minutes, and the person testifying shall be informed prior to the commencement of the testimony of the time constraints to be imposed; and
  - (6) The commission may refuse to hear any testimony which is irrelevant, immaterial, or unduly repetitious to the agenda item on which it is presented.
- (b) Nothing in this chapter shall require the commission to hear or receive any oral or documentary evidence from a person on any matter which is the subject of another pending proceeding subject to the hearing relief, declaratory relief, or rule relief provisions of chapter 16-201.
- (c) Nothing in this chapter shall prevent the commission from soliciting oral remarks from persons present at the meeting or from inviting persons to make presentations to the commission on any particular matter on the commission's agenda. [Eff and comp 11/3/90; comp 2/25/91; comp 5/21/01; comp ] (Auth: HRS §467-4) (Imp: HRS §92-3)

## SUBCHAPTER 9

### CONTINUING EDUCATION

§16-99-87 Definitions. As used in this subchapter:

"Beyond professional entry" means the course objectives involve learning outcomes which help the licensee develop more than minimal entry level competency in the subject matter of the course including consumer protection in real estate transactions.

"Certified" means that the commission has made a determination that the course or course offering satisfies all requirements prescribed by statutes and rules.

"Clock hours" means sixty minutes of classroom instructions excluding time for registration and other non-instructional matters.

"Consumer protection" means course content relating to section 467-14, HRS, or section 16-99-3.

"Continuing education" means clock hours of core courses and elective courses that involve areas designed to improve a licensee's competency or professional standards and practice, and which courses are determined by the

commission to exceed minimum entry level competency in the subject matter of the course, including consumer protection in real estate transactions.

"Continuing education hours" means the [ten] mandatory hours as required in section 467-11.5, HRS.

"Core" course means a mandatory continuing education course or course offering certified and designated as a "core" course by the commission that each individual licensee must complete to satisfy the continuing education hours requirement.

"Completion of course" means licensee's orderly attendance throughout the entire course.

"Course and course offering" means a continuing education module of instruction certified by the commission, consisting of a minimum of three clock hours [.] and a maximum as the commission may determine.

"Disciplined by the real estate commission" means the commission's issuance of a final order in which a licensee is found in violation of a specific real estate law or rule; or means a commission approved settlement agreement in which a licensee admits to violating a specific real estate law or rule.

"Elective" course means a continuing education course or course offering certified by the commission that an individual licensee may choose to complete to satisfy the continuing education hours requirement.

"Instructor" means an individual who teaches continuing education courses.

"Material change" means a significant deviation, in one or more aspects from the course as originally certified by the commission including a change in course length or clock hours, but not including changes designed to reflect recent changes in statutes, regulations, or case law.

"Professional standards and practice courses" means course content relating to real estate professional development[.] that improves real estate competency of the licensee or for the benefit of the real estate consumer, or both.

"Provider" means any person, partnership, association, corporation, limited liability company, educational organization, school, or other entity which sponsors, offers, organizes, develops, delivers, or provides for the instruction of a real estate continuing education course.

"Registered" means a person, partnership, association, corporation, limited liability company, educational organization, school, or other entity has submitted all required documentation for registration as a provider and that the documentation satisfactorily supports the provider's administrative ability for delivering continuing education courses. [Eff and comp 2/25/91; am and comp 5/21/01; am and comp ] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-88 Repealed. [R 5/21/01]

§16-99-89 Equivalent continuing education. (a) In reviewing a request for an equivalency of the required continuing education hours as specified in sections 467-4.5 and 467-11.5, HRS, the commission may be guided but may not be limited by all of the following:

- (1) The request is for a course completed, within the current biennium prior to license renewal, on or before the license expiration date;
- (2) The request is for a course not specifically excluded by the provisions specified in section 16-99-101; and
- (3) The course objectives for the requested course equivalency must satisfy the requirements of section 16-99-100, or the request is for a course offered and completed outside the State and is:
  - (A) Certified by the Association of Real Estate License Law Officials; or
  - (B) A national course that is delivered by an instructor certified by the National Association of Realtors or its affiliates, the Building Owners and Managers Association, the Community Associations Institute, or any other national organization approved by the commission.

(b) The licensee has the burden of presenting the commission with sufficient information and documentation in support of the request for an equivalency.

(c) A licensee who is issued a Hawaii real estate salesperson license during an even-numbered year shall be deemed to have completed equivalent to the [ten hours of] continuing education hours as required by section 467-11.5, HRS, and section 16-99-90. [Eff and comp 2/25/91; am and comp 5/21/01; am and comp ] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-90 License renewal procedure. In renewing an individual license on an active status, the licensee shall provide the commission evidence of completing [ten hours of] the continuing education hours as required in section 467-11.5 HRS, including a mandatory core course if specified by the commission, which have been completed on or before the commission-prescribed deadline of an even-numbered year and within the current license biennium. Such evidence shall include but not be limited to submission by the provider, using a commission-prescribed electronic method, of the licensee's name, license number, license status, course and instructor

names, and other information the commission may require. [Eff and comp 2/25/91; am and comp 5/21/01; am and comp ] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-91 Activating an inactive real estate license. Prior to making a written request to activate an inactive status individual license, an applicant who has been inactive for one or more renewal periods, shall first satisfy the prescribed continuing education hours of one prior renewal period. The commission shall credit the applicant with continuing education hours for any certified continuing education core or elective courses completed during the immediate prior renewal period. As an equivalent, where the commission deems appropriate, the inactive licensee may retake and pass the applicable salesperson or broker prelicense examination. The requirements of this section are in addition to other requirements of this subchapter and chapter 467, HRS, for activating an inactive status license. [Eff and comp 2/25/91; am and comp 5/21/01; comp ] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-92 Continuing education hours in license restoration and reinstatement cases. Prior to applying to the commission for restoration or reinstatement of a license to active status, an applicant shall satisfy the prescribed continuing education hours or the equivalent as determined by the commission for one prior renewal period. The commission shall credit the applicant with continuing education hours for any certified continuing education core or elective courses completed during the immediate prior renewal period. As an equivalent, where the commission deems appropriate, the applicant may either take and pass the applicable salesperson or broker prelicense examination, or complete such other courses as prescribed by the commission, or both. The requirements of this section are in addition to other conditions stated in the order of suspension, and other applicable requirements of this chapter and chapter 467, HRS. [Eff and comp 2/25/91; am and comp 5/21/01; comp ] (Auth: HRS §§467-4, 467-4.5, 467-11, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-93 Excess continuing education hours. Except as permitted by sections 16-99-91 and 16-99-92, continuing education clock hours obtained in excess of [ten hours] the continuing education hours required by section 467-11.5, HRS, cannot be carried forward to satisfy the continuing education requirements for any subsequent license renewal. [Eff and comp 2/25/91; comp 5/21/01; am and

comp ] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-94 Continuing education certificates of completion. The form of a continuing education certificate of completion of course shall be as prescribed by the commission. The number of continuing education hours appearing on each certificate shall be the number of hours previously approved by the commission. A continuing education provider may offer a class for more hours than previously approved by the commission. But the number of course hours appearing on the continuing education course completion certificate shall be only for the amount as previously approved by the commission. [Eff and comp 2/25/91; comp 5/21/01; comp ] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-95 Duplicate continuing education hours. Except as provided by the commission or by this subchapter, a licensee shall not take a continuing education course [that is substantially similar to a course] for which the licensee has already received a certificate[.] within two consecutive biennia. [A continuing education provider shall not issue to a licensee a certificate for substantially the same course completed by the licensee. "Substantially similar" as used in this section means that at minimum, seventy-five per cent of the course content of a course is repeated in another course offering.] [Eff and comp 2/25/91; am and comp 5/21/01; am and comp ] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-96 An instructor who is a licensee. In satisfying the continuing education hours of a license period, an instructor who is a real estate licensee, may use once in any two consecutive biennium, the clock hours for each course taught[.] except the core course which may be recognized for clock hours each biennium. The one time use applies even when the instructor has taught the course more than once. [Eff and comp 2/25/91; am and comp 5/21/01; am and comp ] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-97 Extensions. Upon application, on a form provided by the commission, and for good cause shown as determined by the commission, the commission may extend the time for completing the continuing education hours.

[Eff and comp 2/25/91; comp 5/21/01; comp ] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-98 Prior to offering a continuing education course. An individual or organization may solicit students for, advertise for, or take reservations for a continuing education course offering, when the proposed continuing education course is:

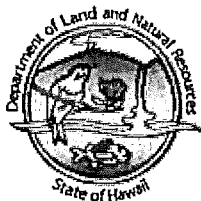
- (1) Certified by the commission;
- (2) Identified by a specified commission assigned course number; and
- (3) Sponsored by a registered continuing education provider. [Eff and comp 2/25/91; am and comp 5/21/01; comp ] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-99 Application for registration as a continuing education provider. (a) A continuing education provider shall be responsible for the administration of the course offering. An application for registration as a continuing education provider shall be made to the commission on a form prescribed by the commission. The application shall be submitted with a nonrefundable application fee in an amount as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, HRS, and include at least the following:

- (1) The complete legal name of the provider, telephone number, current mailing address, and the provider's administrative office address;
- (2) The form of ownership of the provider, whether sole proprietorship, partnership, corporation, or limited liability company, and the name, telephone number, and current address of the provider's owner. When the owner of the continuing education provider is not an individual, the names, titles, and addresses of the directors, officers, members, managers, or partners of the entity together with a stamped filed copy of the articles of incorporation or partnership agreement on file with the State business registration division must be submitted to the commission;
- (3) The name, address, and telephone number of the provider's administrator;
- (4) A statement that all classroom facilities comply with the county building department, county fire department, and the State department of health requirements;

## Exhibit 7

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



WILLIAM J. AILA, JR.  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

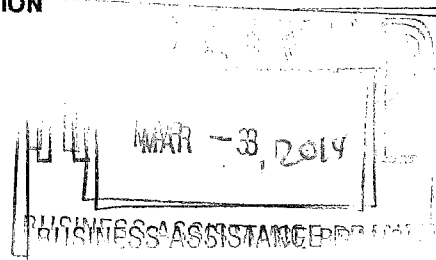
ESTHER KIA'AINA  
FIRST DEPUTY

WILLIAM M. TAM  
DEPUTY DIRECTOR - WATER

EDWARD R. UNDERWOOD  
ADMINISTRATOR  
DIVISION OF BOATING AND OCEAN RECREATION

**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**DIVISION OF BOATING AND OCEAN RECREATION**  
333 QUEEN STREET, SUITE 300  
HONOLULU, HAWAII 96813

March 19, 2014



**MEMORANDUM**

**To:** Ms. Chu Lan Shubert-Kwock, Acting Chair  
Small Business Regulatory Review Board  
Department of Business, Economic Development and Tourism

**From:** Edward R. Underwood, Administrator *ERU*  
Division of Boating and Ocean Recreation

**Subject:** Small Business Impact Statement of (1) Proposed Amendment of Hawaii Administrative Rules (HAR), Chapter 13, Section 13-233-26, Charges for Parking, will enable the department to establish parking fees in areas where the Counties do not charge for public parking and (2) Chapter 13, Section 13-256-16, thrill craft operations; general provisions, will clarify that, for purposes of operating thrill craft, all persons holding or receiving a certificate of completion for the education requirement of Section 13-256-16 on the operation of thrill craft are exempt from the education requirement of Section 13-244-15.5, on the operation of power driven vessels.

The Department of Land and Natural Resources, Division of Boating and Ocean Recreation (DOBOR) is submitting a Small Business Impact Statement regarding the subject proposal per Hawaii Revised Statutes, Section 201M-2.

**Small Business Impact Statement**

1. The businesses that will be directly affected by, bear the cost of, or directly benefit from the proposed rules.

**Response:** Businesses utilizing state small boat harbors and facilities currently have the ability to obtain parking passes for the vessel owners as well as their employees. Members of the general public may be assessed parking fees on a case by case basis. A business may be affected if they choose to provide vehicle parking for their employees. We do not expect any impact to businesses regarding the amendment to the thrill craft education rule.



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

Response: The Department currently has the authority to establish vehicle parking rates in its facilities equal to or less than County rates. When implementing a parking plan for Maui County, it was found that the County does not have established vehicle public parking rates. This HAR amendment will enable the Department to assess parking fees equal to or less than County or State rates. Currently, the Ala Wai small boat harbor has implemented a vehicle parking plan. Small Businesses operating from a small boat harbor or facility with a parking plan will be required to pay for parking. Vessel owners may obtain a parking pass at reduced rates as well as the employees. The adverse effect will be costs associated with parking vehicles. There is no anticipated adverse effect regarding the amendment to the thrill craft education rule.

3. 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.

Response: A business owner who has a vessel moored in a facility may obtain a monthly parking pass for \$25.00. An employee may obtain a monthly parking pass for \$90.00 or park in a designated area, if available, for \$30.00 per month for a covered stall or \$20.00 per month for an open stall. There is no fee associated with the thrill craft education rule amendment.

4. The probable monetary costs and benefits to the implementing agency and 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.

Response: The Department plans to hire a parking vendor to manage the parking plan. The parking plan that was established at the Ala Wai small boat harbor several years ago generates between \$60,000 and \$90,000 per month. The revenue generated will vary due to facility location and the number of parking stall available for public use.

5. 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 any other mitigating techniques.

Response: The parking fees are set at equal to or less than State or County rates. This was done to ensure that parking rates remained reasonable.

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

Response: Small business was not involved in the development of the rule amendments because the parking fee rule is a clarification on how parking rates will be established and commercial thrill craft operators are required to provide education by HAR.

Ms. Chu Lan Shubert-Kwock, Acting Chair

March 19, 2014

Page 3

7. 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.

Response: The proposed rules do not include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards.

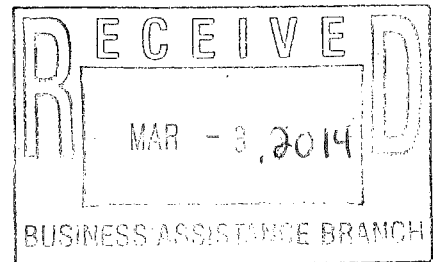
DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendment to Chapter 13-233  
Hawaii Administrative Rules

DATE

SUMMARY

1. §13-233-26, Hawaii Administrative Rules, is amended to read as follows:



\$13-233-26 Charges for parking. Charges will be made and collected for parking, stopping, or standing a vehicle in paid parking zones equal to or less than county or state rates in the county where the paid parking zone is located. [Eff 2/24/94; am and comp 4/5/08; am and comp ] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

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

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

4. The amendments and compilation of chapter 13-231, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

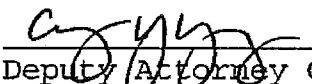
I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on \_\_\_\_\_ by the Board of Land and Natural Resources, and filed with the Office of the Lieutenant Governor.

\_\_\_\_\_  
WILLIAM J. AILA, JR.

Chairperson

Board of Land and Natural Resources

APPROVED FOR PUBLIC HEARING:

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

DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF BOATING AND OCEAN RECREATION

Amendment to Chapter 13-256  
Hawaii Administrative Rules

1. Section 13-256-16 is amended to read as follows:

"§ 13-256-16. Thrill craft operations; general provisions.

(a) No person under fifteen years of age shall operate a thrill craft. No person shall permit, or mislead another person into permitting, a person under fifteen years of age to operate a thrill craft.

(b) No person shall operate thrill craft within a marine life conservation district or marine natural area reserve.

(c) Thrill craft operations shall be curtailed in certain designated areas as described in subchapters two through eleven as necessary, to: 1) avoid possible adverse impacts on humpback whales or other protected marine life; 2) provide for increased public access; 3) reduce user conflicts; and 4) promote overall public safety.

(d) Effective January 2005, all recreational thrill craft operators shall be required to possess, and make available upon demand of enforcement personnel, a certificate of completion from an accredited institution of higher education on the safe use and operation of a thrill craft. The State may recognize reciprocity with other states, i.e., the National Association of State Boating Law Administrators (NASBLA) approved portion of the personal water craft course; however, all operators shall be required to complete the portions of a certificate course for Hawaii that includes, but is not limited to:

- (1) Local ocean safety principles and practices;
- (2) The historical, cultural, and customary practices of Hawaii's ocean users; and
- (3) Any rules or laws pertaining to protected species and thrill craft operation in the State.

(e) All thrill craft operators and passengers shall be required to wear a personal flotation device in accordance with section 13-243-1.

(f) All persons holding or receiving a certificate of completion under this rule are exempt from section 13-244-15.5 for purposes of operating thrill craft." [Eff 2/24/94; am 7/5/2003; am ] (Auth: HRS §§200-22, 200-24) (Imp: HRS §§ 200-22, 200-24)

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

3. Additions to update source notes to reflect this amendment is not underscored.

4. The amendment to section 13-256-16, 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 \_\_\_\_\_ by the Board of Land and Natural Resources, and filed with the Office of the Lieutenant Governor.

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

APPROVED FOR PUBLIC HEARING:

  
Deputy Attorney General

- (5) A statement certifying that the provider has a student attendance policy and procedures for monitoring attendance and record keeping for a minimum of four years;
  - (6) A statement certifying that the provider has a policy for a refund, issuance of a certificate of completion of course, and the means by which the statement of policies shall be provided to a student prior to registering for the course;
  - (7) A surety bond conditioned for the protection of the contractual rights of real estate students in an amount not less than \$2,000 issued by a surety authorized to do business in the State; provided that no bond shall be required if [the provider submits a statement certifying that no moneys shall be collected from real estate students in advance of the class date;] the course is delivered electronically or as approved by the commission; and
  - (8) Other additional information as may be required by the commission.
- (b) A nonrefundable application fee and the posting of a bond pursuant to this section shall not be required of a provider that is a college or university accredited by an accrediting organization approved by the Council of Post Secondary Accreditation or the United States Department of Education (USDOE) as an institution of higher learning. [Eff and comp 2/25/91; am and comp 5/21/01; am and comp ] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-100 Criteria for approving and certifying continuing education courses. (a) The commission may approve and certify a continuing education course when the course satisfies all of the following:

- (1) Is for a core or elective course designed for any one of the following purposes:
  - (A) Protecting the general public in its real estate transactions;
  - (B) Enabling the licensee to serve the objectives of the consumer in a real estate transaction; or
  - (C) Enabling the licensee to develop and improve a licensee's competency and professionalism in a changing marketplace;
- (2) Qualifies as either a consumer protection or professional standards and practice course as defined in this subchapter;
- (3) Is developed for a knowledge and abilities level beyond "professional entry";
- (4) Includes in the course [major course concepts;] clearly defined course objectives;

- (5) Specifies course objectives in terms of student performance; for example, when the student completes the course the student can analyze, summarize, identify, and provide resolutions to ethical issues for a specific real estate transaction;
- (6) Consists of [at least] a minimum of three clock hours;
- (7) Issues upon the completion of the course offering a certificate of course completion;
- (8) Requires the completion of the course within the license biennium;
- (9) Is offered by a registered continuing education provider;
- (10) Is delivered live, [by means of interactive television,] or by other means of [interactive] communication as approved by the commission;
- (11) Has a course outline detailing the sequence of topics, amount of time allotted to each topic, and reading assignments; and
- (12) Meets such other conditions as requested by the commission.

(b) In making a determination pursuant to this section, the commission may consult with an advisory committee of real estate educators and practitioners having specialized knowledge and practical experience with the subject matter of the proposed course. Where the commission deems necessary, the commission may also retain a consultant to assist the commission in making a determination pursuant to this section. The consultant shall be compensated by moneys provided from the real estate education fund. [Eff and comp 2/25/91; am and comp 5/21/01; am and comp ] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-101 Courses not acceptable for continuing education course certification. The commission may not certify a continuing education course, or any portion thereof, which:

- (1) Does not directly relate to real estate law or real estate practice;
- (2) Is related to passing a prelicense real estate salesperson or broker exam;
- (3) Teaches general office [and business] skills, such as [typing,] word processing, basic internet skills, computer software or other technology, [speed reading, memory improvement, report writing,] personal motivation, [salesmanship, sales psychology,] and time management;
- (4) Includes sales or promotions of a product or service or other meetings held in conjunction with general real estate brokerage activity;



- (5) Is devoted to meals or refreshments;
- (6) Is less than three clock hours in duration; and
- (7) Does not meet the definition of continuing education as determined by the commission. [Eff and comp 2/25/91; am and comp 5/21/01; am and comp ] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-102 Application for certification of a continuing education course.

(a) An application for certification of a continuing education course shall be made on a form prescribed by the commission. Applications for course certification shall be made for all courses except those courses which have been developed by the commission. The certification shall be valid for the duration of the biennium license period for which certification is sought, unless sooner terminated as provided by rules of this subchapter.

(b) An application for certification of a continuing education course shall be accompanied by a nonrefundable application fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, HRS. [Eff and comp 2/25/91; am and comp 5/21/01; comp ] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-103 Offerings of a certified continuing education course. (a) A provider shall not solicit students for registration for any offering of a certified continuing education course without first notifying the commission on a form prescribed by the commission at least [fourteen] three calendar days prior to the course offering date. In notifying the commission, the provider shall do all of the following:

- (1) Notify the commission of the provider's intention to solicit students. The notification shall contain at least the course offering date, time, location, fees and charges, and the instructor's name; and
- (2) Certify to the commission that the instructor meets the requirements pursuant to section 16-99-104.

(b) The commission may, after a review of the information submitted pursuant to (a)(1) and (2) of this section, confirm the course offering, assign a course offering number, and issue a course offering certificate that shall be prominently displayed at the course site. [Eff and comp 2/25/91; am and comp 5/21/01; am and comp ] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-104 Criteria for certification of a continuing education instructor. (a)

Every continuing education provider shall determine that each instructor evidences an ability to teach and command knowledge of the subject matter of the course and shall certify to the commission on a form prescribed by the commission that each instructor has met the commission requirements.

(b) A continuing education instructor evidences an ability to teach by possessing:

- (1) A bachelor's degree or higher in education;
- (2) A current teaching designation from an organization recognized by the commission;
- (3) A current teaching credential;
- (4) A full-time current appointment to the faculty of an accredited institution of higher education;
- (5) Three years of full-time teaching in any field. "Three years of full-time teaching" may have been accumulated over a period exceeding three years;
- (6) A certificate of completion from a special real estate instructor institute approved by the commission; or
- (7) Other experience or credentials as the commission may approve.

(c) A continuing education instructor evidences a command knowledge of the subject matter of the course by:

- (1) Possessing a bachelor's degree or higher from an institution of higher education accredited by the USDOE with a major in a field of study directly related to the subject matter of the continuing education course;
- (2) Possessing a bachelor's degree or higher from an institution of higher education accredited by the USDOE and five years of real estate experience directly related to the subject matter of the continuing education course;
- (3) Practicing as a licensed attorney for at least three years in an area directly related to the subject matter of the continuing education course;
- (4) Serving an appointment to the real estate or any other faculty of an institution accredited by the USDOE in an area directly related to the subject matter of the continuing education course;
- (5) Possessing a documented combination of: three years of experience directly related to the subject matter of the continuing education course; substantial participation in the development of real estate curriculum or courses at a knowledge and skill level beyond professional entry; substantial participation in the teaching of real

estate courses directly related to the subject matter of the continuing education course at a knowledge and skill level beyond professional entry, including but not limited to substantial participation in teaching or development of seminars, workshops, educational training courses offered at any state accredited institution of learning, or at any college or university accredited by the USDOE, or at any real estate office; or

- (6) Possessing other experience or credentials as the commission may approve.
- (d) Any individual meeting the criteria for approval as a continuing education instructor, may not be certified by the provider if the individual has been:
  - (1) Disciplined by the commission of any state or by any licensing regulatory body for fraud, misrepresentation, or deceit in connection with the sale, purchase, exchange, or property management of any interest in real estate or for any other conduct substantially related to the practice or profession of real estate; [or]
  - (2) Convicted of a crime which substantially relates to the profession of teaching or to the practice or profession of real estate[.] ; or
  - (3) Determined to have scored below the minimum requirements as established by the commission, which may include a standardized student evaluation rating.
- (e) The commission may require that each instructor complete an instructor's workshop as approved by the commission [or complete viewing a commission approved audio videotape of such workshop within the biennium.] prior to teaching in each biennium.
- (f) "Command knowledge" as used in this section means an understanding, application, evaluation, and synthesis of the body of knowledge in connection with the continuing education course at a level past professional entry. [Eff and comp 2/25/91; am and comp 5/21/01; am and comp ]  
(Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-105 Biennial provider registration and course certification. (a) A continuing education provider shall be biennially registered with the commission. The biennial registration renewal fee shall be paid to the department of commerce and consumer affairs by the commission-prescribed deadline of every even-numbered year.

(b) A continuing education course shall be biennially certified by the commission. The biennial certification renewal fee shall be paid to the department

of commerce and consumer affairs by the commission-prescribed deadline of every even-numbered year.

(c) The registration of a continuing education provider and the certification of a continuing education course shall expire at the end of every even-numbered year. To renew a provider registration or course certification, each provider and each course owner shall, respectively, satisfy all of the following:

- (1) Submit a new application for registration as a provider or course certification;
- (2) Satisfy, respectively, the initial registration and certification requirements of this subchapter;
- (3) Pay all required fees as set forth in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, HRS; and
- (4) Meet all other applicable requirements of this subchapter. [Eff and comp 2/25/91; am and comp 5/21/01; comp ]  
(Auth: HRS §§467-4, 467-4.5, 467-11, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5).

§16-99-106 Forfeited registration, certification, restoration. (a) Failure, neglect, or refusal by any person to pay the respective biennial renewal provider registration fee or course certification fee shall constitute a forfeiture of the certificate of registration or certification.

(b) Any forfeited certificate of registration or certification may be restored upon satisfaction of all of the following:

- (1) Written application;
- (2) Continued satisfaction of the respective requirements of sections 16-99-99 and 16-99-100; and
- (3) Payment of the applicable fees specified in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, HRS. [Eff and comp 2/25/91; am and comp 5/21/01; comp ] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-107 Fees. All fees shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, HRS. [Eff and comp 2/25/91; am and comp 5/21/01; comp ] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-108 Revocation or suspension of a continuing education course certification. The commission may revoke or suspend the certification of a continuing education course for any of the following causes:

- (1) The course no longer satisfies the requirements of section 16-99-100;
- (2) The course contains outdated or incorrect information; and
- (3) Such other cause as may be determined by the commission. [Eff and comp 2/25/91; am and comp 5/21/01; comp ]  
(Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-109 Revocation or suspension of a continuing education provider registration. The commission may revoke or suspend a continuing education provider's registration for any of the following causes:

- (1) The provider allows its instructors to use outdated course information and material in the teaching of any continuing education course;
- (2) The provider permits a course to be taught by an instructor who is not qualified to teach the continuing education course pursuant to guidelines of section 16-99-104;
- (3) The provider permits an individual who has been disciplined by the commission or by any other licensing regulatory body of this State or of any other state to have direct supervision of the continuing education provider's staff or instructors, or to occupy a position from which the individual can set policy and direct the operations of the provider's continuing education business. The disciplinary action of any other licensing regulatory body must have been for fraud, misrepresentation, or deceit in connection with the purchase, sale, exchange, management of any interest in real estate, or for any other conduct substantially related to the practice or profession of real estate;
- (4) The provider permits an individual who has been convicted of a crime in connection with operating a business relating to the delivery of educational courses to have direct supervision of the continuing education provider's staff or instructors, or to occupy a position from which the individual can set policy and direct the operations of the provider's continuing education business;
- (5) The provider violates any statutes or rules relating to continuing education providers;

- (6) The provider falsifies or misrepresents any information or document submitted to the commission;
- (7) The provider fails to correct any noted defect pursuant to section 16-99-119;
- (8) The provider fails to satisfy the record keeping requirements of sections [16-99-112 and 16-99-113;] 16-99-111 and 16-99-112; or
- (9) Such other causes as may be determined by the commission. [Eff and comp 2/25/91; am and comp 5/21/01; am and comp ] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-110 Repealed. [R 5/21/01]

§16-99-111 Record keeping responsibilities of a continuing education provider. (a) A continuing education provider shall submit all required reports and records by the deadline prescribed by this subchapter and by other designated administrative deadlines as from time to time may be imposed by the commission.

(b) When a provider fails to keep, produce, or timely submit any report or record as required by this section, the commission may do any or all of the following:

- (1) Suspend, after written notice, without a hearing, the issuance of blank forms of certificates of course completion; [or]
- (2) Suspend the issuance of a course number for any subsequent course offering until the provider complies with the record keeping and submittal requirements of this subchapter; or
- (3) Revoke or suspend the registration of the provider. [Eff and comp 2/25/91; am and comp 5/21/01; am and comp ] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-112 Record keeping information and retention period. (a) A real estate continuing education provider shall maintain for a period of at least four years records of course offerings (including names of instructors, dates of and locations of course offerings), student attendance, student registration, course completions, student evaluations, and personal information and resumes of its instructors and administrators. Each student record shall include, at a minimum, the following:

- (1) The student's name, address, real estate license number, license status, continuing education course completion information including course and instructor names, course offering number and date, and whether the student completed the course, course completion certificate number, and amount of approved clock hours of continuing education credits earned; and
  - (2) Proof of actual course attendance including a verified sign-in and sign-out attendance sheet or a student certification statement in the case of a continuing education course offered by alternative delivery methods with interactive instructional techniques. The sign-in and sign-out sheet may be kept in another location other than the student's record, provided that reference to such location shall be made in each student's record. The name, address, and phone number of the individual who verified the student's attendance shall also be noted in the student's record.
- (b) Within ten days of the end of any continuing education course or completion of course offered by alternative delivery methods, the continuing education provider shall issue to each student having completed the course a certificate of completion of course [on a form] as prescribed by the commission. Except as provided in sections 16-99-91 and 16-99-92, the continuing education certificate of completion of course is valid only for the biennium license period in which the course was completed.
- (c) Within ten days of the end of the course or completion of course offered by alternative delivery methods, the continuing education provider shall submit to the commission:
- (1) A listing of licensees who have completed the course with their issued course completion certificate numbers, course and instructor names, and course offering number and date, using a commission-prescribed electronic method, together with the prescribed number of copies as requested by the commission;
  - (2) When applicable, completed student evaluations of instructors for each course offering; and
  - (3) Other information requested by the commission.
- (d) A real estate continuing education provider shall issue a student a duplicate certificate of completion of course upon receipt of a student's written request for such a certificate. [The provider may charge the student a reasonable charge for honoring the request. The provider shall give written notice to the commission when issuing a duplicate certificate of completion. The notice shall include the name of the student, the student's license number and status, name of the course, course offering number and date, provider's name, certificate numbers of the

original and duplicate certificates, and date on which the duplicate certificate was issued.]

(e) For any course attended by more than fifty students, the provider shall provide at least one additional individual other than the instructor to administer the course offering, including but not limited to keeping records of attendance, preparing and distributing certificates, and assuring that physical facilities meet the requirements of this subchapter. [Eff and comp 2/25/91; am and comp 5/21/01; am and comp ] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-113 Advertising. (a) For purposes of this subchapter, "advertising" means an announcement by a continuing education provider for the purpose of promoting itself as a provider or for soliciting students and includes, but is not limited to, all printed and visual communications, such as newspaper advertisements, direct public mailings, books and periodicals, television and radio commercials, and others.

(b) All advertisements soliciting students shall be of an announcement type listing, and minimally, include the name and address of the continuing education provider, the place where a catalogue or brochure may be obtained, a brief description of the course, a statement that the course can be used for satisfying continuing education requirements, and the number of course hours approved for continuing education.

(c) A continuing education provider shall keep on file at its place of business all advertising materials, subject to inspection and review by the commission upon written request.

(d) A continuing education provider shall not be advertised or be represented as having been "registered" with the commission until the provider has received written notification of its registration from the commission.

(e) All advertising materials and claims shall be free from misrepresentation and fraud.

(f) The commission, at any time, may require that a continuing education provider furnish proof of any of its advertising claims. Retractions of advertising claims may be ordered by the commission, with the retractions published in the same manner as the claims themselves.

(g) A continuing education provider shall be held strictly responsible for the acts and promises of its agents who solicit students. [Eff and comp 2/25/91; am and comp 5/21/01; comp ] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)





not issue a certificate of completion of the course until the licensee produces a duly issued real estate license pocket card or commission issued real estate license restoration application. [Eff and comp 2/25/91; am and comp 5/21/01; comp ] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-116 Discontinuing course offerings. Ten days prior to the cancellation of provider registration, a provider shall in writing inform the commission of its intent to cancel its registration and discontinue the offering of courses. Within a reasonable time, after informing the commission of its intention to cancel its registration, the provider shall refund any course tuition and other fees collected in advance. [Eff and comp 2/25/91; am and comp 5/21/01; comp ] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-117 Material change. Any anticipated material change to a commission certified continuing education course shall be submitted by the course owner to the commission for approval thirty days prior to making the changes. [Eff and comp 2/25/91; am and comp 5/21/01; comp ] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-118 Repealed. [R 5/21/01]

§16-99-119 Review, evaluation, and investigation. With or without the giving of any prior notice, the commission may conduct a review, evaluation, or investigation of an application for continuing education course certification or continuing education provider registration. With or without any prior notice, the commission may conduct a review, evaluation, or investigation of a course offering or a registered continuing education provider's operations and performance. A review, evaluation, or investigation may be conducted by any means including but not limited to surveys, observations, physical inspections, and on-site monitoring, as well as interviews with providers, owners, administrators, instructors, and students. When the commission has reason to believe that a continuing education provider may be in violation of this subchapter or is otherwise failing to maintain reasonable operating standards, the commission may give appropriate written notice to the provider specifying the grounds for the violation and requiring that corrective action

be taken by the provider within thirty days of the receipt of the notice. The provider may request a hearing of the alleged violations and requested corrective acts pursuant to chapter 91, HRS, and chapter 16-201. [Eff and comp 2/25/91; am and comp 5/21/01; comp ] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-120 Repealed. [R 5/21/01]

§16-99-121 Faculty. (a) Each continuing education provider shall designate an individual as administrator.

- (b) The administrator shall be responsible for:
  - (1) Complying with the commission's rules relating to continuing education providers as set forth in this subchapter;
  - (2) Providing reports and information as may be required by the commission;
  - (3) Informing the commission in writing ten business days prior to any changes in the information on the application for registration as a provider;
  - (4) Directing and supervising the continuing education provider's faculty, staff, and program[.];
  - (5) Administering and maintaining the student evaluations; and
  - (6) Ensuring that instructors do not fall below minimum rating standards. [Eff and comp 2/25/91; am and comp 5/21/01; am and comp ] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-121.1 Instructor evaluation. (a) Course providers shall implement a standardized student evaluation process as determined by the commission.

(b) Course providers shall ensure that student evaluations of instructors do not fall below the minimum rating standards as determined by the commission. [Eff and comp ] (Auth: HRS §§467-4, 467-4.5) (Imp: HRS §467-4.5)

§16-99-122 Display of certificate of registration and instructor's certificate. A continuing education provider shall prominently display its certificate of provider registration in its business office at all times. [Eff and comp 2/25/91; am and

comp 5/21/01; comp ] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-123 Classrooms. (a) A continuing education provider shall have and maintain classrooms that have adequate space, seating, equipment, and instructional material.

(b) A provider shall provide written certification to the commission that each classroom conforms to the zoning, building, electrical, plumbing, and fire codes of the county in which the facility is located and to State rules as may be applicable to the facility. [Eff and comp 2/25/91; am and comp 5/21/01; comp ] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-124 Classroom compliance. A continuing education provider shall not conduct classes when it has been notified by the appropriate county agency that the conditions existing at the continuing education provider's facilities violate county building, fire, or health codes. The continuing education provider may resume its operations when it has remedied the violation. [Eff and comp 2/25/91; am and comp 5/21/01; comp ] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

§16-99-125 Repealed. [R 5/21/01]

§16-99-126 Repealed. [R 5/21/01]

§16-99-127 Denial, revocation, and suspension. (a) In the event an application for provider registration, renewal of registration, course certification, or renewal of certification is denied, the commission shall notify the applicant of the commission's decision, state specifically the reason for denying the application, and inform the applicant of the right to a hearing under chapter 91, HRS.

(b) In the event the commission deems it proper to revoke or suspend a provider registration or course certification, the commission shall notify the provider or course owner by mail of the commission's intent to revoke or suspend the registration or certification, state specifically the reason for revocation or suspension, and inform the provider or course owner of the right to a hearing under

chapter 91, HRS. [Eff and comp 2/25/91; am and comp 5/21/01;  
comp ] (Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS  
§§467-4.5, 467-11.5)

§16-99-128 Request for a contested case hearing. Any person whose application for registration or certification has been denied, or whose registration or certification has been revoked or suspended by the commission shall be entitled to a hearing pursuant to chapter 91, HRS, and chapter 16-201; provided that a request for a contested case hearing is filed with the commission in accordance with chapter 91, HRS, and chapter 16-201. [Eff and comp 5/21/01; comp ]  
(Auth: HRS §§467-4, 467-4.5, 467-11.5) (Imp: HRS §§467-4.5, 467-11.5)

## SUBCHAPTER 10

### CONDOMINIUM HOTEL OPERATORS

§16-99-147 Registration. (a) Registrations made pursuant to section 467-30, HRS, shall expire on December 31 of each even-numbered year.

(b) All business entities registered pursuant to section 467-30(b), HRS, with the exception of sole proprietors, shall be currently registered, duly authorized, and in good standing with the business registration division.

(c) Trade names used by condominium hotel operators shall be currently registered with the commission and also currently registered, authorized by, and in good standing with the business registration division.

(d) On or before the commission prescribed deadline of each even-numbered year, condominium hotel operators shall submit a complete reregistration application form, pay appropriate fees, submit evidence of a fidelity bond policy, and submit any other additional information substantiating compliance with the registration requirements of section 467-30, HRS, or be deemed by the commission as unregistered and subject to new registration application requirements.

(e) Within ten days of any changes, the condominium hotel operator shall notify the commission, in writing, of any changes in the information contained on the registration or reregistration application, exemption, or exclusion forms.

(f) [An] A registration application [for an exemption or exclusion from the provisions of section 467-30(b)(1), HRS,] made pursuant to section 467-30(g)(2), HRS, shall be [made on a form provided by] submitted to the commission. The applicant shall [submit] certify for each condominium project, unless otherwise approved by the commission, zoning information[, verified by a

county official] that the condominium hotel is in a hotel or transient lodging zone; together with submitting true copies of the condominium project declaration and bylaws certified by the bureau of conveyances or land court [specifically] containing specific language permitting [a condominium hotel] transient lodgings for periods of less than thirty days. [Eff and comp 2/25/91; am and comp 5/21/01; am and comp ] (Auth: HRS §§467-4, 467-11, 467-30) (Imp: HRS §467-30)

§16-99-147.1 Condominium hotel operations. The condominium hotel operator shall operate only in areas specifically authorized by county zoning codes. The condominium project declaration and bylaws shall specifically permit transient lodging of less than thirty days. [Eff and comp ] (Auth: HRS §§467-4, 467-30) (Imp: HRS §467-30)

§16-99-147.2 Who may register as a condominium hotel operator. (a) Only those persons who do not hold a real estate license, either salesperson or broker, may register as a condominium hotel operator.

(b) Where an entity includes the following persons holding a real estate salesperson or broker's license, that entity may not register as a condominium hotel operator:

- (1) General partner or employee of a partnership condominium hotel operator;
- (2) An officer or employee of a corporation condominium hotel operator;
- (3) A member of a member-managed limited liability company condominium hotel operator; or
- (4) A principal having direct management and responsibility over condominium hotel operations, including performing or facilitating the delivery of customary hotel services. [Eff and comp ] (Auth: HRS §§467-4, 467-30) (Imp: HRS §467-30)

§16-99-148 Fidelity bond. (a) The fidelity bond shall be issued by a company currently authorized by the insurance commissioner of Hawaii to issue insurance in this State.

(b) Unless otherwise approved by the commission, the fidelity bond shall:

- (1) Name the department of commerce and consumer affairs as the certificate holder;
  - (2) Provide the department of commerce and consumer affairs with written notification at least thirty calendar days prior to its cancellation or termination;
  - (3) Provide coverage for condominium hotel operator activity only;
  - (4) Name the condominium hotel operator registrant only as the insured and exclude any other person, trade name, or business entity as the named insured;
  - (5) Specify that it is a fidelity bond and whether it is a blanket or name schedule type, and if a name schedule type, lists all persons covered;
  - (6) Specify an expiration date or that it is continuous;
  - (7) Specify if the bond contains a deductible provision or a nondeductible provision; and
  - (8) Provide other information as requested by the commission.
- (c) The amount of the deductible shall not exceed the greater of \$2,000 or five per cent of the face amount of the fidelity bond. In no case shall the amount of the deductible exceed the maximum deductible amount of \$5,000.
- (d) When the fidelity bond is a name schedule bond, the condominium hotel operator shall:
- (1) Provide a certified statement listing the names of all persons handling or having control of the funds received by the condominium hotel operator; and
  - (2) Provide any changes in the listing of names submitted pursuant to subsection (d)(1), on an amended certified statement within ten calendar days of the change and an original of the amended fidelity bond policy.
- (e) Unless otherwise approved by the commission, the fidelity bond shall not contain a criminal conviction endorsement or rider which requires the prosecution or conviction of the employee as a condition precedent to recovery on the bond.
- (f) The commission shall terminate the registration of a condominium hotel operator for failure to maintain a fidelity bond in compliance with section 467-30, HRS, and this chapter.
- (g) The fidelity bond shall not be required of an individual owner providing apartments or units for transient lodging; provided that ownership of the apartment or unit is in the individual owner's name and not in an entity's name; and provided further that the owner has no employees. Where the individual owner has an employee, the individual owner shall obtain and maintain a fidelity

bond. [Eff and comp 2/25/91; am and comp 5/21/01; am and  
comp ] (Auth: HRS §§467-4, 467-30) (Imp: HRS §467-30)

§16-99-149 Client's trust funds, accounting, and records. (a) Condominium hotel operators, including condominium hotel operators who are [excluded or exempt from obtaining a real estate broker's license pursuant to section 467-30(f), HRS] precluded from holding a license as a real estate broker or real estate salesperson pursuant to 467-30(g)(2). HRS shall comply with section 16-99-4. For purposes of compliance, when the condominium hotel operator is not a real estate broker, references to broker or principal broker in section 16-99-4 shall also mean "condominium hotel operator."

(b) The condominium hotel operator shall not commingle the client's trust funds with funds of other activities such as the association of apartment owners, lease rent, condominium managing agent, or the condominium hotel operator's own funds.

(c) The records of the client's trust funds shall not be commingled with the records of other activities such as association of apartment owners, condominium managing agents, or the condominium hotel operator's own funds. Upon demand, the records of the client's trust funds shall be subject to inspection by the commission or its representative. [Eff and comp 2/25/91; am and comp 5/21/01; am and comp ] (Auth: HRS §§467-4, 467-30) (Imp: HRS §467-30)

§16-99-150 Conduct. (a) The condominium hotel operator shall ensure that the terms and conditions agreed upon between the apartment or unit owner and the condominium hotel operator for operating a condominium hotel are in writing, and that a copy is given to each apartment or unit owner. The terms and conditions shall include but are not limited to financial obligations, responsibilities, and duties of the condominium hotel operator.

(b) The condominium hotel operator shall not accept any compensation, commission, rebate, or profit on any expenditure for or from an apartment or unit owner, without the apartment or unit owner's knowledge and written consent.

(c) The condominium hotel operator shall provide a monthly written accounting of the apartment or unit owner's funds or a periodic written accounting based on the contractual agreement.

(d) The condominium hotel operator and its employees shall not violate any provisions of chapter 514A, HRS, 514B, HRS, or the rules adopted pursuant thereto, and where the condominium hotel operator or its employees possess a real



estate license, the licensees shall also not violate any provisions of chapter 467, HRS, and the rules relating thereto." [Eff and comp 2/25/91; am and comp 5/21/01; am and comp ] (Auth: HRS §§467-4, 467-30) (Imp: HRS §467-30)

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

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

4. These amendments to and compilation of chapter 16-99, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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

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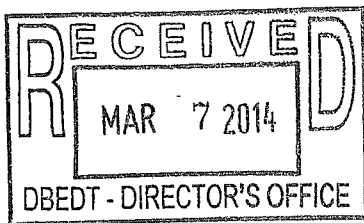
NIKKI SENTER, Chair  
Real Estate Commission

APPROVED AS TO FORM:

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Deputy Attorney General

## Exhibit 8



OFFICE OF THE LIEUTENANT GOVERNOR  
STATE OF HAWAII

SHAN S. TSUTSUI  
LIEUTENANT GOVERNOR


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March 7, 2014

**MEMORANDUM**

TO: Mr. Richard C. Lim, Director  
Department of Business, Economic Development and Tourism

ATTN: Dori Palcovich  
Small Business Regulatory Review Board, DBEDT

FROM: Shan S. Tsutsui   
Lieutenant Governor

SUBJECT: Small Business Impact Statement and Proposed Administrative Rule Review

Attached please find the Small Business Impact Statement pursuant to Section 201M-2, Hawaii Revised Statutes and a DRAFT copy of the Proposed Administrative Rules implementing the Commissioner of Deeds Program in the Office of the Lieutenant Governor pursuant to Act 277, Session Laws of Hawaii 2013, now codified as Chapter 503B, Hawaii Revised Statutes for your review.

These rules have not yet been sent to the Governor for executive approval to go to public hearing.

Should you have questions or concerns, please don't hesitate to contact Jayson Watts of my office at phone 586-0239 or via email at [Jayson.Watts@hawaii.gov](mailto:Jayson.Watts@hawaii.gov).

Mahalo.

Enclosure

**SMALL BUSINESS IMPACT STATEMENT**  
(SEC 201M-2, HRS)

**DEPARTMENT OR AGENCY:** Office of the Lieutenant Governor  
State of Hawaii

**Relevant HRS Chapter or Section:** Chapter 503B, HRS

**Administrative Rule Chapter and Title:** Adoption of a new Chapter 2-15, Hawaii  
Administrative Rules, entitled "Time Share Commissioners of Deeds".

**Name:** Jayson Watts / Diane Erickson

**Title:** Commissioner of Deeds Specialist / Deputy Attorney General

**Phone Number:** (808) 586-0255

**Email Address:** jayson.watts@hawaii.gov

**A. Provide the following information described in Section 201M-2(b), HRS and in Governor's Administrative Directive No. 09-01:**

**B. RULE DESCRIPTION:**

1. ☒ New      ☐ Repeal      ☐ Amendment      ☐ Recompilation

**2. Nature of Proposed Changes:**

a. Is the proposed rule authorized by a federal or state law or statute that does not require an agency to interpret or describe the requirements of the law or statute? ☒ Yes ☐ No

b. Is the proposed rule an emergency regulation? ☐ Yes ☒ No

c. Will the proposed rule affect small business because it:

1) Will apply to "small business" defined as a for-profit enterprise with fewer than 100 full-time or part-time employees? ☐ Yes ☒ No

2) Will cause a direct and significant economic burden upon a small business? ☐ Yes ☒ No

3) Is directly related to the formation, operation, or expansion of a small business? ☐ Yes ☒ No

**3. Summarize the proposed rule(s) and reasons for the proposed rule(s):**

The purpose of these rules is to implement Act 277, SLH 2013 which requires the Office of the Lieutenant Governor to establish a process for the Governor to appoint individuals to serve as Commissioners of Deeds to administer oaths, take acknowledgements, and take proofs of execution outside of the United States in connection with the execution of conveyance documents relating to a time share interest, any property subject to a time share plan, or the operation of a time share plan covering any property located within Hawaii.

The implementation of Act 277, SLH 2013 through these rules will help to streamline the process for consumers located outside of the United States who wish to purchase time share property in Hawaii. It should be noted that Commissioners of Deeds are only performing the duties similar to that of a notary with respect to such sales.

These rules are modeled largely after Chapter 5-11, Hawaii Administrative Rules, entitled "Notaries Public".

**C. Small Business Impact Statement pursuant to 201M-2(b):**

The proposed rules will not have a detrimental impact on small businesses as they do not impose any potential or actual requirements on a small business (i) that will cause a direct and significant economic burden upon a small business, or (ii) that is directly related to the formation, operation, or expansion of a small business. The proposed rules allow all business to take advantage of a new process for administering oaths, taking acknowledgments, and taking proofs of execution of instruments outside of the US through the use of Commissioners of Deeds, but no business is required to make use of Commissioners of Deeds.

Currently, there are no small businesses operating in the State of Hawaii that have a time share sales office outside of the United States or that sell Hawaii timeshare interests in international waters.

**D. Are there new or increased fines? ☒ Yes ☐ No**

The rules only establish the fine structure allowed pursuant to Section 503B-7(d), HRS, which allows for a penalty for improper notice in an amount that shall be established by the lieutenant governor by rule adopted pursuant to chapter 91.

Section 2-15-13(d) of the proposed rules reads:

(d) Failure to comply with this section may result in a fine of not less than \$250 nor more than \$1,000.

- E. Did the agency consult small businesses, departmental advisory committees, or were other small businesses organizations consulted during the drafting of the proposed rule? ☒ Yes ☐ No  
If no, why not?

- F. Other alternatives or less stringent measures proposed by affected businesses to reduce direct or indirect costs and, if proposed, why those proposals were not adopted.

Not Applicable.

- G. Departmental Impact (i.e. fiscal, personnel, program)?

☒ Yes ☐ No

If yes, describe long and short-range impacts, estimated in dollar amounts or personnel, due to enforcement, administration, execution, or implementation of the proposed rule that may result in a savings or shortfall under the current program budget.

Act 277, SLH 2013 included an appropriation out of the general revenues of the State of Hawaii of \$60,000 for both FY2014 and FY2015 for expenses incurred by the Office of the Lieutenant Governor related to establishing and administering the commissioners of deeds program; however, it did not provide for the establishment of a position, nor was one included in the budget for that purpose. The Office of the Lieutenant Governor has requested for the addition of funds in the LTG 100 budget to assist in implementing the new law, including establishing a position to assist in the duties involved in establishing criteria and an application for appointment as a Commissioner of Deeds, the drafting of administrative rules to implement the new law, establishment of processes and procedures for the acceptance of cash bonds, if necessary, and as provided in Act 277, SLH 2013, as well as to cover any administrative costs involved in the rulemaking, application, bonding, and appointment processes. Funds previously appropriated under Act 277, SLH 2013, would not be utilized if this request is approved.

Pursuant to the Governor's authorization, an unauthorized, unbudgeted position was established and filled as of January, 2014. Substantial progress has been made to draft administrative rules for the program's implementation. The bifurcation of staffing costs and administrative expenses, however, remains a cumbersome and more costly proposition, thus warranting the request for the position's establishment in the office budget and funding.

**H. Impact on the General Public (i.e. individuals, consumers, and large businesses)?**

☒ Yes ☐ No

If yes, describe long- and short-range impacts due to the enforcement, implementation, or execution of the proposed rule.

Act 277, SLH 2013, implemented through these rules, streamlines the process for consumers located outside the United States who wish to purchase time share property in Hawaii.

The general public will experience a less cumbersome process.

**I. Impact on state economy?**

☐ Yes ☐ No

Unknown.

The current process is cumbersome, expensive, and can be a detriment to Hawaii time share property and business.

If implemented properly, this program could benefit Hawaii's visitor industry and aid Hawaii's economic recovery.

**J. Final result anticipated from the proposed rule change.**

The final result will provide for an organized and streamlined process for consumers located outside the United States who wish to purchase time share property in Hawaii.

**K. Alternative explored to carry out the statutory purpose other than rulemaking.**

None. Rulemaking is required to ensure a proper process for the Lieutenant Governor to implement Act 277, SLH 2013 as directed by the Legislature.

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# DRAFT

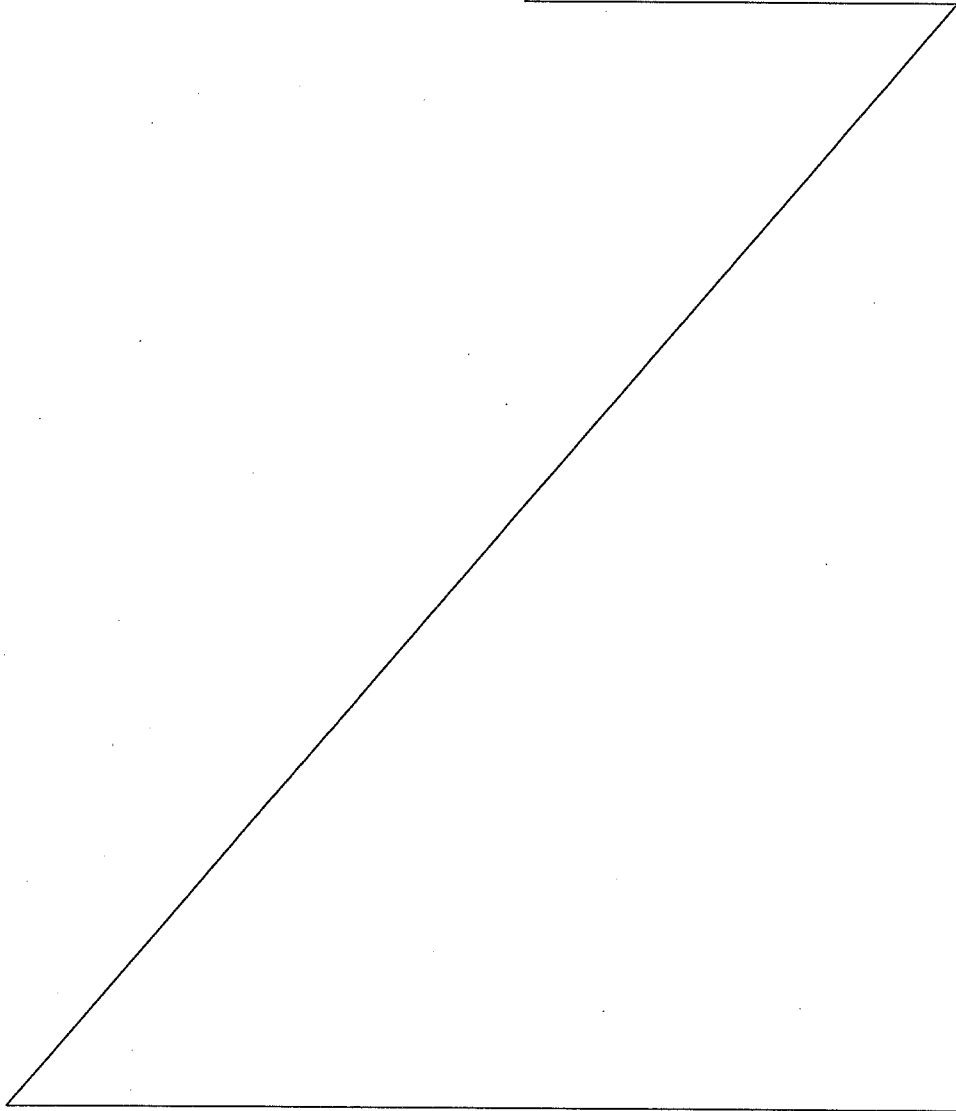
## OFFICE OF THE LIEUTENANT GOVERNOR

### Adoption of Chapter 2-15 Hawaii Administrative Rules

[ , 2014]

#### SUMMARY

Chapter 15 of Title 2, Hawaii Administrative Rules, entitled "Time Share Commissioners of Deeds", is adopted to read as follows:





# DRAFT

## HAWAII ADMINISTRATIVE RULES

### TITLE 2

#### OFFICE OF THE LIEUTENANT GOVERNOR

##### SUBTITLE 1

##### ADMINISTRATION

##### CHAPTER 15

##### TIME SHARE COMMISSIONERS OF DEEDS

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## SUBCHAPTER 1

### GENERAL PROVISIONS

§2-15-1 Definitions. As used in this chapter, unless the context specifically requires otherwise:

"Certificate of appointment" means an instrument by whatever name denominated which evidences the governor's appointment of a person as a commissioner pursuant to section 503B-1, HRS.

"Commission" means an appointed term of office.

"Commissioned act" means an official act performed by a commissioner with a current commission.

"Commissioner" means a time share commissioner of deeds.

"Governor" means the governor of this State.

"Lieutenant governor" means the lieutenant governor of this State. [Eff ] (Auth: HRS §§91-1, 91-2) (Imp: HRS §503B-1)

§2-15-2 Purpose. The purpose of this chapter is to implement chapter 503B, HRS. [Eff ] (Auth: HRS §§91-1, 91-2) (Imp: HRS §503B-1)

§2-15-3 Commission required to act as a commissioner; authority. No person shall act as a commissioner, or advertise or represent oneself as a commissioner, without a current commission previously obtained from the governor. The governor shall have the authority and sole discretion to appoint a commissioner and grant a commission. [Eff ] (Auth: HRS §§91-1, 91-2) (Imp: HRS §503B-1)

§2-15-4 Conduct. Every commissioner shall perform duties in accordance with chapter 503B, HRS, and this chapter. [Eff ] (Auth: HRS

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SS91-1, 91-2) (Imp: HRS §§503B-3, 503B-4, 503B-7, 503B-8)

§2-15-5 Powers. A commissioner, in any foreign country; in international waters; and in any possession, territory, or commonwealth of the United States, as specified in the commissioner's certificate of appointment, may administer oaths and take acknowledgments and proofs of execution of any deed, assignment of lease, apartment deed and ground lease, condominium conveyance document, mortgage, deed of trust, contract, power of attorney, or any other instrument or writing to be used or recorded in the State, but may only do so if the oath, deed, assignment of lease, apartment deed and ground lease, condominium conveyance document, mortgage, deed of trust, contract, power of attorney, or any other instrument or writing is in connection with:

- (1) A time share interest;
- (2) Any property subject to a time share plan;  
or
- (3) The operation of a time share plan that  
includes any property located within the  
State;

provided that the oath, deed, assignment of lease, apartment deed and ground lease, condominium conveyance document, mortgage, deed of trust, contract, power of attorney, or any other instrument or writing is executed outside of the fifty states and the District of Columbia. The powers of a commissioner are personal and cannot be delegated to anyone. [Eff \_\_\_\_\_] (Auth: HRS §§91-1, 91-2) (Imp: HRS §503B-3)

S2-15-6 Official seal. (a) A commissioner shall obtain and keep either an official engraved seal or an official rubber stamp facsimile seal that shall be circular, not over two inches in diameter, and have a serrated or milled-edge border, and shall be inscribed with:

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- (1) The name of the commissioner;
- (2) The commission number of the commissioner;
- (3) The words "Commissioner Of Deeds for Hawaii"; and
- (4) The expiration date of the commissioner's commission.

(b) The commissioner shall authenticate all commissioned acts, certifications, and instruments with the commissioner's official seal.

(c) The commissioner shall surrender the commissioner's official seal to the lieutenant governor within ninety days of resignation, removal by the governor, or the expiration of a commission.

[Eff  
HRS §503B-2) (Auth: HRS §§91-1, 91-2) (Imp:

§2-15-7 Official signature. (a) A commissioner shall sign on every certificate, at the time of certification, the commissioner's official signature as filed with the lieutenant governor pursuant to section 2-15-8, and the commissioner's name as it appears on the commissioner's official seal.

(b) The commissioner shall always add to the commissioner's official signature the typed or printed name of the commissioner. [Eff \_\_\_\_\_]  
(Auth: HRS §§91-1, 91-2) (Imp: HRS §503B-2)

§2-15-8 Submission of commissioner's oath, signature, and official seal to the lieutenant governor; commencement of service. (a) Within one hundred twenty days of receiving the commissioner's certificate of appointment, the commissioner shall transmit the commissioner's oath of office, the commissioner's signature, and an impression of the commissioner's official seal to the lieutenant governor.

(b) A commissioner shall not perform any commissioned act until the commissioner's oath of office, signature, and impression of the official seal have been received by the lieutenant governor.'

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[Eff ] (Auth: HRS §§91-1, 91-2)  
(Imp: HRS §503B-2)

§2-15-9 Acceptable forms of identification of signers. No acknowledgment, jurat, or other instrument shall be taken unless the person offering to make the acknowledgment, jurat, or instrument is personally known by the commissioner to be the person whose name is subscribed to the acknowledgment, jurat, or instrument as a party thereto, or is proved to be such by the oath or affirmation of a credible witness known to the commissioner, or by production of a current identification card or document issued by the United States, this State, any other state, or a national government or a province, state, prefecture, district, municipality, or other similar governmental subdivision that contains the bearer's photograph and signature. [Eff ] (Auth: HRS §§91-1, 91-2) (Imp: HRS §503B-4)

§2-15-10 Acknowledgments; jurats. (a) Every acknowledgment or jurat shall be evidenced by a certificate signed and dated by a commissioner. The certificate shall be a form prescribed by the lieutenant governor, and shall include the following:

- (1) The printed name of the commissioner;
- (2) The official stamp or seal of the commissioner;
- (3) The signature of the commissioner;
- (4) Identification of the location in which the certifying act is performed, as determined by subsection (b);
- (5) A description of the evidence used to identify any signer who is not personally known the commissioner;
- (6) Identification or description of the document being certified which shall be in close proximity to the acknowledgment or jurat;
- (7) The number of pages of the document;

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- (8) The date of the document or a statement that it is not dated; and
- (9) The date of the certificate.
- (b) If the certifying act is performed in a foreign country or in any possession, territory, or commonwealth of the United States, the identification of the location shall state the following:
- (1) The country or the possession, territory, or commonwealth of the United States, and
  - (2) The province, state, prefecture, district, municipality, or other governmental subdivision where the act is performed.
- (c) If the certifying act is performed while upon a vessel in international waters, the identification of the location shall state "International Waterways" and the name and flag state of the vessel upon which the act is performed.
- [Eff \_\_\_\_\_] (Auth: HRS §§91-1, 91-2)
- (Imp: HRS §503B-4)

§2-15-11 Record book. (a) A commissioner shall record all of the commissioner's commissioned acts, as prescribed in chapter 503B, HRS.

(b) The record book shall meet the requirements for a notarial record book as set forth in section 5-11-9.

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

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

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

(f) For each commissioned act, the commissioner shall enter into the record book:

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- (1) For acknowledgments:
  - (A) The date and location of the acknowledgment;
  - (B) A memorandum as to the nature of the instrument acknowledged;
  - (C) The title or type of the instrument;
  - (D) The date of the instrument, or a statement that it is not dated;
  - (E) The signature, printed name, and address of each person whose signature is acknowledged and of each witness;
  - (F) The parties to the instrument; and
  - (G) The manner in which the signer was identified.
- (2) For oaths and affidavits:
  - (A) The date when and location where the oath was administered;
  - (B) The printed name of the person making the oath or affidavit;
  - (C) The date of the oath or affidavit, or a statement that it is not dated;
  - (D) A memorandum as to the nature of the instrument; and
  - (E) The manner in which the person making the oath was identified.
- (g) If the commissioned act is performed in a foreign country or in any possession, territory, or commonwealth of the United States, the identification of the location shall state the following:
  - (1) The country or the possession, territory, or commonwealth of the United States; and
  - (2) The province, state, prefecture, district, municipality, or other governmental subdivision where the act is performed.
- (h) If the certifying act is performed while upon a vessel in international waters, the identification of the location shall state "International Waterways" and the name and flag state of the vessel upon which the act is performed.
- (i) The commissioner shall deposit the commissioner's record book with the lieutenant governor within ninety days of the end date of the



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commissioner's commission. [Eff ]  
(Auth: HRS §§91-1, 91-2) (Imp: HRS §503B-4)

§ 2-15-12 Fees commissioner may charge. (a) A commissioner is not required to charge a fee for rendering any services of the office of the commissioner.

(b) If the commissioner decides to charge a fee, the fee shall be no higher than the rates authorized by any law governing similar services rendered by notaries within the jurisdiction in which the services are performed; provided that for services rendered by commissioners while in international waters, the charges made by commissioners shall be no higher than the notarial rates authorized by the State for similar services. [Eff ] (Auth: HRS §§91-1, 91-2) (Imp: HRS §503B-3)

§ 2-15-13 Written notice of legal effect; form.

(a) A commissioner shall provide to each person whose signature is witnessed or acknowledged by the commissioner a written notice as required by section 503B-7, HRS.

(b) If the commissioned act occurs upon a vessel in international waters and the person whose signature is witnessed or acknowledged by the commissioner does not speak English, the commissioner shall provide to the person a translation of the notice required by section 503B-7, HRS, in the predominant language of the vessel's flag state.

(c) If all the requirements of subsections (a) and (b) are satisfied, nothing in this section prevents the commissioner from also providing a translation of the notice required by section 503B-7, HRS, in any other language.

(d) Failure to comply with this section may result in a fine of not less than \$250 nor more than \$1,000. [Eff ] (Auth: HRS §§91-1, 91-2, 503B-7) (Imp: HRS §503B-7)

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§ 2-15-14 Notification and filing of names, addresses, and changes. (a) Each commissioner shall file the commissioner's name, employer, residence and business addresses and telephone numbers, and occupation with the lieutenant governor, and shall notify the lieutenant governor of any change, in writing, within thirty days of the change.

(b) The notice from the commissioner of the commissioner's name change shall state the old and new names and the effective date of the name change, and shall include a copy of the legal documentation establishing the name change and the new signature of the commissioner. Within thirty days from the date an amended certificate of appointment is issued, the commissioner shall:

- (1) If applicable, transmit and file with the lieutenant governor a copy of the written notice of the name change sent by the commissioner to the surety company; and
- (2) Obtain a new official seal that reflects the name change and complies with the requirements set forth in section 2-15-6. Within thirty days of receipt of the new official seal, the commissioner shall transmit to the lieutenant governor an impression of the new official seal.

A commissioner shall not perform any commissioned act prior to the time when the commissioner has received the amended certificate of appointment and has satisfied the requirements of paragraphs (1) and (2).

(c) The notice from the commissioner of the commissioner's address change shall state the old and new addresses of the commissioner's residence, if there is a change in the commissioner's residence address, the old and new addresses of the commissioner's business, if there is a change in the commissioner's business address, and the effective date of the address change.

(d) Failure to comply with the requirements of this section is grounds for disciplinary actions, including but not limited to, suspension or revocation

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of a commissioner's commission. [Eff ]  
(Auth: HRS §§91-1, 91-2) (Imp: HRS §§503B-1, 503B-2, 503B-8(b))

§2-15-15 Term of commission. The term of commission of a commissioner shall be four years from the date of the commissioner's appointment, unless sooner terminated by the commissioner's resignation, death, abandonment of office, or removal by the governor. Any commissioned act performed after the abandonment or removal from office or the expiration, suspension, or termination of a commission shall be invalid. [Eff ] (Auth: HRS §§91-1, 91-2) (Imp: HRS §503B-1)

§2-15-16 Suspended commission. (a) No commission shall be suspended by the governor for a period exceeding five years. A person whose commission has been suspended may apply for reinstatement of the commission upon complete compliance with all terms and conditions imposed by the order of suspension, except as provided in subsection (c).

(b) If the person fails to file for reinstatement within thirty days after the end of suspension, the person's commission shall be forfeited.

(c) A person whose commission has been suspended for a period exceeding the term of the commission may not apply for reinstatement of the commission, and instead may seek a new commission by applying as a new applicant if the person desires to act as a commissioner. [Eff ] (Auth: HRS §§91-1, 91-2) (Imp: HRS §503B-1)

§2-15-17 Revoked commission. A person may apply for a new commission after five years from the effective date of the revocation of the commission by filing an application and complying with all current

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requirements for new applicants. [Eff ]  
(Auth: HRS §§91-1, 91-2) (Imp: HRS §503B-1)

§2-15-18 Resignation of commission. (a) A commissioner may resign the commissioner's commission, and shall:

- (1) Surrender the commissioner's certificate of appointment, official seal, and record book as provided in section 2-15-19; and
- (2) Cease conducting all commissioned services.
- (b) The resignation or surrender shall not bar jurisdiction by the State to proceed with any investigation, action, or proceeding to revoke or suspend the commissioner's commission or fine the commissioner.

(c) A person may obtain a new commission by applying as a new applicant if the person desires to serve as a commissioner. [Eff ] (Auth: HRS §§91-1, 91-2) (Imp: HRS §503B-1)

§2-15-19 Surrender of commissioner's certificate of appointment, official seal, and record book. (a) Within ninety days of resignation, removal from office, or the expiration of the commissioner's term of office, the commissioner shall:

- (1) Surrender the commissioner's certificate of appointment to the lieutenant governor for the purpose of destruction;
- (2) Surrender the commissioner's official seal to the lieutenant governor for the purpose of defacement; and
- (3) Deposit the commissioner's record book with the lieutenant governor.
- (b) Upon the death of the commissioner, the commissioner's personal representative shall within ninety days fulfill the requirements of subsection (a). [Eff ] (Auth: HRS §§91-1, 91-2) (Imp: HRS §503B-1)

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§2-15-20 Loss, misplacement, or theft of commissioner's official seal or record book. (a) Within ten days after loss, misplacement, or theft of the commissioner's official seal or record book or both, a commissioner shall deliver written notification to the lieutenant governor of the loss, misplacement, or theft detailing the circumstances in which the materials went missing.

(b) In addition to fulfilling the requirements of subsection (a), in the case of a theft of the commissioner's official seal or record book or both:

(1) While in a foreign country, the commissioner shall inform the appropriate local law enforcement agency and use reasonable efforts to obtain a report of the theft from the local law enforcement agency. Within ten days after receipt of a report of the theft, the commissioner shall deliver a copy to the lieutenant governor; and

(2) While upon a vessel in international waters, the commissioner shall inform the captain of the vessel and use reasonable efforts to obtain a copy of a report of the theft from the captain or other appropriate officer of the vessel. Within ten days of receipt of a report of the theft, the commissioner shall deliver a copy to the lieutenant governor.

(c) The lieutenant governor will issue the commissioner a new commission number and an amended certificate of appointment after the loss, misplacement, or theft of the commissioner's official seal or record book or both. Within thirty days from the date an amended certificate of appointment is issued, the commissioner shall obtain a new official seal that reflects the commissioner's new commission number and complies with the requirements set forth in section 2-15-6. Within thirty days of receipt of the new official seal, the commissioner shall transmit to the lieutenant governor an impression of the new official seal.

(d) The commissioner whose official seal or record book has been lost, misplaced, or stolen shall

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not perform any commissioned act prior to the time when the commissioner has received the amended certificate of appointment and has satisfied the requirements of subsection (c).

(e) Failure to comply with the requirements of this section is grounds for disciplinary actions, including, but not limited to, suspension or revocation of a commissioner's commission.

[Eff ] (Auth: HRS §§91-1, 91-2)

(Imp: HRS §503B-1).

## SUBCHAPTER 2

### APPLICATIONS FOR APPOINTMENT AND REAPPOINTMENT

§2-15-21 Application for appointment or reappointment as a commissioner. (a) Each applicant for appointment or reappointment as a commissioner shall complete and file an application with the lieutenant governor. A completed application shall include:

- (1) A letter of character recommendation from a person who is not a relative or an employer of the applicant and who can attest to the applicant's honesty, trustworthiness, financial integrity, and moral character. If the letter of character recommendation is not in English, a translation attested to under oath by the translator shall accompany the letter of character recommendation; and
- (2) A letter of justification from the applicant explaining in detail the reasons why the commission is being sought. If the letter of justification is not in English, a translation attested to under oath by the translator shall accompany the letter of justification.

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

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- (1) The applicant's legal name;
  - (2) Verification that the applicant is at least eighteen years of age;
  - (3) The applicant's current residence, business, and mailing addresses;
  - (4) The date and place of any conviction of a penal crime;
  - (5) The applicant's country of residence or citizenship by either:
    - (A) Proof that the applicant is a United States citizen, a United States national, or an alien authorized to work in the United States; or
    - (B) Documents issued as proof of citizenship in the applicant's country, including but not limited to, unexpired passports, birth certificates, citizenship certificates, identity cards, naturalization certificates, registration certificates, certificates of nationality, and family registers; and
  - (6) Any other information the lieutenant governor may require to investigate the applicant's qualifications for a commission.
- (c) Each applicant shall have the application properly notarized, authenticated, or otherwise certified by:
- (1) A notary public in this State or any other state;
  - (2) Any officer of the United States diplomatic or consular service resident in any foreign country or port, when certified by the officer under the officer's seal of office; or
  - (3) Any person authorized by the law of any foreign country to take an acknowledgment or proof; provided that the acknowledgment or proof shall be accompanied by a certificate to the effect that the person taking the acknowledgment or proof is duly authorized to do so and that the acknowledgment or

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proof is in a manner prescribed by the laws of the foreign country or a treaty or international agreement of the United States; and provided further that a certificate under this paragraph may be issued by:

- (A) A diplomatic or consular officer of the United States under the seal of the officer's office;
  - (B) A diplomatic or consular officer of the foreign country under the seal of the officer's office with the signature or facsimile of the signature of the diplomatic or consular office of the United States; or
  - (C) An apostille, in the case of a foreign country that is party to the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents.
- [Eff \_\_\_\_\_] (Auth: HRS §§91-1, 91-2) (Imp: HRS §503B-1)

S2-15-22 Applying for reappointment as commissioner. (a) Each commissioner shall be responsible for timely filing an application for reappointment as a commissioner and satisfying the application requirements set forth in section 2-15-21.

(b) A completed application for reappointment may be submitted to the lieutenant governor no more than six months prior to the expiration of the commissioner's current commission.  
[Eff \_\_\_\_\_] (Auth: HRS §§91-1, 91-2) (Imp: HRS §503B-1)

§2-15-23 Action on application. (a) Unless otherwise provided by law, the lieutenant governor shall take the following actions within ninety days after the filing of a completed application for an appointment or reappointment:



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- (1) If the lieutenant governor deems appropriate, conduct an investigation of the applicant;
- (2) After completing any necessary investigation, make a recommendation to the governor as to whether the applicant should receive an appointment as a commissioner of deeds; and
- (3) Provide written notification to the applicant of the governor's decision regarding the application for appointment or reappointment as a commissioner. If the application is denied, written notification of the denial shall state the reason for denying the application and shall inform the applicant of the right to a hearing in accordance with chapter 91, HRS, and chapter 2-1.

(b) An application may be considered abandoned if the application is not completed and the required documents and other information are not submitted to the lieutenant governor within ninety days from the date the application for appointment or reappointment is first filed with the lieutenant governor. Neither the governor nor the lieutenant governor shall be required to act on any abandoned application, and the abandoned application may be destroyed by the lieutenant governor. [Eff \_\_\_\_\_] (Auth: HRS §§91-1, 91-2) (Imp: HRS §503B-1)

S2-15-24 Commissioner's continuing duty to report. (a) Within thirty days of the date of an event listed in paragraphs (1) and (2), a commissioner shall deliver written notice of the event to the lieutenant governor:

- (1) The commissioner has been charged with a felony, has been convicted of a felony, or has been charged with a felony for which adjudication of guilty was withheld or sentence was suspended.
- (2) Any civil action, judgment, or settlement

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against the commissioner in any action alleging fraud, misrepresentation, breach of fiduciary duty, or the negligence or official misconduct by the commissioner in the performance of a commissioned act.

(b) Failure of a commissioner to report to the lieutenant governor in the time and manner required by this section shall be grounds for disciplinary action, including but not limited to, suspension or revocation of the commission.

(c) For purposes of this section, a conviction includes the initial plea, verdict, or finding of guilt; a plea of no contest; or pronouncement of sentence by a trial court even though the conviction may not be final or the sentence may not be actually imposed until all appeals are exhausted.

[Eff ] (Auth: HRS §§91-1, 91-2) (Imp: HRS §503B- 1)

§2-15-25 Acceptance of appointment; consent to jurisdiction. By accepting an appointment, a commissioner consents and submits personally to the jurisdiction of the courts of the State in any proceeding relating to the commissioned acts of the commissioner. Notice of any proceeding shall be deemed to be delivered to the commissioner when deposited in the United States mail, addressed to the commissioner's address as listed in the application for appointment or reappointment, or as thereafter reported to the lieutenant governor.

[Eff ] (Auth: HRS §§91-1, 91-2) (Imp: HRS §503B-1)

## SUBCHAPTER 3

### PRACTICE AND PROCEDURE

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§2-15-26 Administrative practice and procedure.  
The rules of practice and procedure for commissioners shall be as provided in chapter 2-1.  
[Eff ] (Auth: HRS §§91-1, 91-2)  
(Imp: HRS §503B-1)

§2-15-27 Grounds for refusal to appoint, reappoint, or reinstate, and for revocation, suspension, or denial of commission. In addition to any other acts or conditions provided by law, the governor may refuse to appoint, reappoint, or reinstate, or may revoke, suspend, or deny the commission of any applicant or commissioner who violates any of the provisions of chapter 503B, HRS, and this chapter, and may otherwise discipline a commissioner for any cause authorized by law, including but not limited to the following:

- (1) Failing to meet and satisfy the conditions and requirements necessary to obtain or maintain a commission;
- (2) Submitting an application for a new commission or reappointed commission that contains a false statement, an omission of fact, or a substantial misstatement;
- (3) Failing to complete the processing of the commissioner's commission by filing the commissioner's oath of office, signature, and an impression of the commissioner's official seal with the lieutenant governor;
- (4) Being incapable of reading, writing, or speaking the English language with understanding;
- (5) Allowing the commissioner's name or title to be used deceptively, fraudulently, or in false or misleading advertising, or making untruthful or improbable statements;
- (6) Being addicted to, dependent on, or a habitual user of a narcotic, barbiturate, amphetamine, hallucinogen, opium, or cocaine, or other drugs or derivatives of a similar nature;

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- (7) Practicing as a commissioner while the ability to practice is impaired by alcohol, drugs, or mental instability, or substantially impaired by physical disability;
- (8) Procuring a commission through fraud, misrepresentation, or deceit;
- (9) Professional misconduct, incompetence, gross negligence, or manifest incapacity in the practice of a commissioner;
- (10) Failure to maintain a record or history of competency, trustworthiness, fair dealing, and financial integrity;
- (11) Engaging in business under a past or present commission issued pursuant to the chapter 503B, HRS, and this chapter, in a manner causing injury to one or more members of the public;
- (12) Failing to comply with, observe, or adhere to any law in a manner that the governor deems the holder of a commissioner's commission to be unfit or an improper person to hold a commission;
- (13) Revocation, suspension, restriction, or denial of a professional license or commissioner's commission if that action was for misconduct, dishonesty, or any cause that relates to the duties or responsibilities of a commissioner;
- (14) A criminal conviction, whether by nolo contendere or otherwise, of a crime related to the qualifications, functions, or duties of a commissioner, or involving theft, fraud, dishonesty, or false statement;
- (15) Failing to report in writing to the lieutenant governor any disciplinary decision issued against the commissioner or the applicant in another jurisdiction within thirty days of the disciplinary decision;
- (16) Taking an acknowledgment, proof of execution, or administering an oath on any document to be used or recorded in the State

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that is not related to a time share interest, any property subject to a time share plan, or the operation of a time share plan that includes any property located within the State;

- (17) Failing to report in writing to the lieutenant governor any of the events in section 2-15-24;
- (18) Certifying to, or acting in, a matter in which the commissioner has a personal interest;
- (19) Authenticating the commissioner's own signature; and
- (20) Violating this chapter, chapter 503B, HRS, or any rule or order of the lieutenant governor. [Eff                      ] (Auth: HRS §§91-1, 91-2) (Imp: HRS §§503B-1, 503B-2)

§2-15-28 Notification of denial of application for appointment or reappointment, or of proposed disciplinary action. In the event an application for appointment or reappointment is denied, or a commissioner is to be disciplined, the governor shall provide written notification to the applicant or commissioner of the governor's intended action, which shall include a concise statement of the reasons therefor and a statement informing the applicant or commissioner of the right to a hearing if the applicant or commissioner so desires.  
[Eff                      ] (Auth: HRS §§91-1, 91-2)  
(Imp: HRS §503B-1)

§2-15-29 Demand for a hearing. Any person whose application for appointment or reappointment is denied, or a commissioner who is to be disciplined by the governor, shall be entitled to a hearing if a demand for hearing is filed with the lieutenant governor within sixty days of the date of the letter informing the applicant or commissioner of the denial of application or intent to discipline the

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commissioner. [Eff ] (Auth: HRS §§91-1, 91-2) (Imp: HRS §503B-1)

§2-15-30 Proceedings upon demand for a hearing. If a demand for a hearing is filed within sixty days of the date of the denial or intent to discipline, the lieutenant governor shall order a hearing pursuant to chapter 91, HRS, and chapter 2-1. [Eff ] (Auth: HRS §§91-1, 91-2) (Imp: HRS §503B-1)

§2-15-31 Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application; and to this end, the provisions of this chapter are declared to be severable. [Eff ] (Auth: HRS §§91-1, 91-2) (Imp: HRS §503B-1)

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## OFFICE OF THE LIEUTENANT GOVERNOR

Chapter 2-15, Hawaii Administrative Rules, on the Summary Page dated [ , 2014], was adopted on [ , 2014], following a public hearing held on [ , 2014], after public notice was given in the Honolulu Star Advertiser on [ , 2014], in the Maui News on [ , 2014], in the Garden Island on [ , 2014], in the Hawaii Tribune Herald on [ , 2014], and in the West Hawaii Today on [ , 2014].

The adoption of chapter 2-15 shall take effect ten days after filing with the Office of the Lieutenant Governor.

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JAYSON M. WATTS  
Commissioner of Deeds  
Specialist

APPROVED AS TO FORM:

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Deputy Attorney General

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SHAN S. TSUTSUI  
Lieutenant Governor  
State of Hawaii

APPROVED:

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NEIL ABERCROMBIE  
Governor  
State of Hawaii

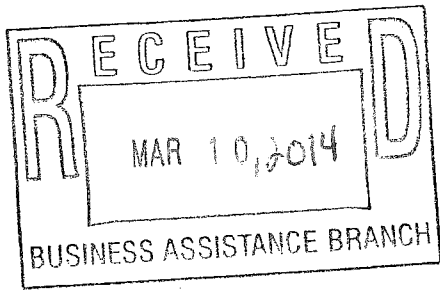
Date: \_\_\_\_\_

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Filed

## Exhibit 9





## SMALL BUSINESS IMPACT STATEMENT

Department of Agriculture  
Quality Assurance Division/Commodities Branch

### **Chapter 4-60, Hawaii Administrative Rules Milk Control Rules**

Jeri Kahana, Administrator, Quality Assurance Division  
Phone 832-0705 / FAX 832-0683

March 19, 2014

#### A. *Description*

       New Rules                             Repeal of Rules                        X   Amendment to Rules

Note: Preliminary approval of proposed amendments to Section 4-60-9 and Section 4-60-10, Hawaii Administrative Rules, entitled "Minimum prices in the Honolulu milk shed" and "Minimum prices in the Hawaii milk shed", respectively, has been granted. The Board of Agriculture has approved authorization for the chairperson to schedule a public hearing and appoint a hearing officer in connection with the proposed amendment.

#### B. Provide the following information described in Items 1-7 of the Policy Section in the Governor's Administrative Directive No. 99-02:

##### 1. *Exact Changes and Reasons for Changes*

The proposed amendments to Section 4-60-9 and Section 4-60-10 would allow the producer or producer-distributor to petition the Board of Agriculture to grant a waiver that would permit the producer or producer-distributor (i.e. processor) to sell or buy milk for less than the minimum price as currently prescribed by rule.

In reference to the proposed amendments, the Milk Control Act (Chapter 157, HRS) allows the Department of Agriculture through its board to set the minimum price for milk to be paid to producers by the processor. However, the law does not require the processor to buy milk from the local producer. If the processor does buy milk from the producer, the producer shall receive from the processor the minimum price of milk as prescribed by rule.

The processor currently purchases approximately 80% of its milk for retail sale from California and purchases approximately 20% from local dairies. With the anticipated expansion of Hawaii's dairy industry in near future, local producer will have the capacity to supply the state with more than 60% of its fresh milk

supply. With this anticipated growth of the local industry, amendments to the pricing rules are needed in order for the local dairies to be competitive with California milk prices. The proposed amendments will allow the producer and processor to negotiate in a transparent manner to arrive at a competitive price for milk that would permit their operations to succeed and grow. Current laws and rules do not prevent the processor from obtaining all of its milk for retail sale from mainland sources. The processor is not required to purchase milk from local producers.

2. *Nature of Proposed Changes*

- a. *Is the proposed rule authorized by a federal or state law or statute that does not require an agency to interpret or describe the requirements of the law or statute?*

\_\_\_\_\_ Yes                        X   No

- b. *Is the proposed rule an emergency regulation?*

\_\_\_\_\_ Yes                        X   No

- c. *Will the proposed rule affect small business because it:*

- 1) *will apply to a for-profit enterprise consisting of fewer than 200 full-time or part-time employees?*

  X   Yes                      \_\_\_\_\_ No

- 2) *will cause a direct and significant economic burden upon a small business?*

\_\_\_\_\_ Yes                        X   No

- 3) *is directly related to the formation, operation, or expansion of a small business?*

  X   Yes                      \_\_\_\_\_ No

3. *Department Impact (i.e. fiscal, personnel, program)?*

\_\_\_\_\_ Yes                        X   No

4. *Impact on General Public (i.e. individuals, consumers, and businesses)?*

☐ Yes ☒ No

5. *Impact on state economy?*

☒ Yes ☐ No (If yes, describe long and short-range impacts.)

In the long range, dairy producers will be able to expand and continue to produce local milk, provide job opportunities in local communities, and continue to provide a reliable supply of fresh milk to consumers.

In the short range, the producer and processor will be able to negotiate a price for milk that will benefit both businesses and ensure a continued supply of fresh local milk.

6. *Final result anticipated from the proposed rule change.*

The amendments will allow the producer and processor to make business decisions that will permit their operation to succeed and grow by arriving at milk prices that is competitive with the mainland market. Keeping the local dairies in business will reduce Hawaii's dependency on imported milk and possibly make the state self-sufficient in milk once again.

7. *Other alternative explored to carry out the statutory purpose other than rulemaking.*

None.

Small Business Impact Statement:

8. *Is there a new or increased fee or fine?*

☐ Yes ☒ No (If yes, provide the following information:)

9. *Will the proposed rule affect small business?*

☒ Yes ☐ No (if yes, provide the following information:)

a. *Describe the type(s) of small business that will be directly of adversely affected by, bear the costs of, or directly benefit from the proposed rule.*

The amendments will directly benefit the dairy producer by making it possible to negotiate a price for milk that will be economically sound for their business while being competitive with mainland prices.

- b. *Description of any increase in direct costs, in estimated dollar amount, to small businesses, such as fees or fines, or other direct costs associated with compliance.*

None.

- c. *Description of any increase in indirect costs, in estimated dollar amounts, to small business, such as reporting, record keeping, equipment, construction, labor, professional services, revenue loss or other costs.*

None.

- d. *Description how small business was involved in the development or the proposed rules.*

The department held several meetings with dairy industry representatives to gather information on drafting the proposed amendments.

- e. *Methods considered or used to reduce the impact on small business such as: Simplification, Consolidation, Varying schedule for fees or fines, Modified compliance or reporting requirements, or other alternative or less stringent measures proposed by affected businesses and, if proposed, why those proposals were not adopted.*

Not applicable.

- f. *If the proposed rule is more stringent than those mandated by governing federal or state law or statute, explain how and why the proposed rule is more stringent.*

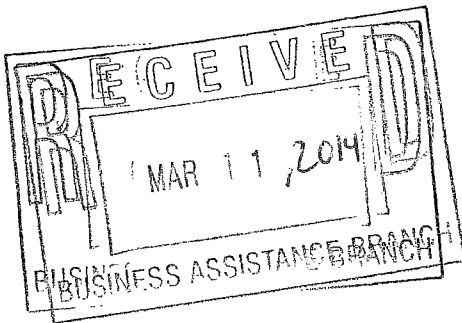
Not applicable.

10. *Was the departmental advisory committee on small business or other small businesses or organizations consulted during the drafting of the propose rule, and were the committee's recommendations, if any, incorporated into the proposed rule?*

Yes, representatives from the dairy industry to discuss and develop the necessary rule amendments.

11. *Did the Small Business Regulatory Review Board or a small business make any recommendation to the department or agency regarding the need for any rule change that may be related to the proposed rule?*

Not applicable.



Department of Agriculture

Amendments to Chapter 4-60  
Hawaii Administrative Rules

February 25, 2014

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

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

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

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

determining the minimum prices for milk set forth in section 157-32, Hawaii Revised Statutes."

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

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

5. These amendments to chapter 4-60, Hawaii Administrative Rules, shall take effect on the first day of the month that begins at least ten days after filing with the Office of the Lieutenant Governor.

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

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SCOTT E. ENRIGHT  
Chairperson  
Board of Agriculture

APPROVED AS TO FORM:

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Deputy Attorney General

## Exhibit A



**Chair's Monthly Report for**  
**March 2014**

1. Reviewed and approved memoranda corresponding to administrative rules reviewed at February board meeting
2. Board meeting preparation – March agenda, February minutes, 201M-7 report
3. Provided testimony on Senate Bill 2487 Relating to the Regulatory Flexibility Act