

## 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 808586-2572

### AGENDA

Wednesday, November 19, 2014 at 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

Anthony Borge  
Chair  
Oahu

Craig Takamine  
Vice Chair  
Hawaii

Barbara Bennett  
2<sup>nd</sup> Vice Chair  
Kauai

Kyoko Y. Kimura  
Maui

Harris Nakamoto  
Oahu

Wayne Tanaka  
Oahu

Ashley Leahey  
Maui

Richard C. Lim  
Director, DBEDT  
Voting Ex Officio

#### I. Call to Order

#### II. Approval of October 15, 2014 Meeting Minutes

#### III. Old Business

- A. Discussion and Action on Small Business Statement After Public Hearing for Proposed Amendments to Hawaii Administrative Rules (HAR) Title 13 Chapter 95.1, **Island-Based Fisheries Rules**, promulgated by Department of Land and Natural Resources (DLNR) – attached and incorporated herein as Exhibit 1
- B. Discussion and Action on Small Business Statement After Public Hearing for Proposed Amendments to HAR Title 13 Chapter 77, **Oahu Aquarium Life Management**, promulgated by DLNR – attached and incorporated herein as Exhibit 2
- C. Discussion and Action on Small Business Statements After Public Hearing for the following proposed amendments, promulgated by Department of Health – attached and incorporated herein as Exhibit 3:
  1. HAR Title 11 Chapter 54, **Water Quality Standards**
  2. HAR Title 11 Chapter 55, **Water Pollution Control**

#### IV. New Business

- A. Discussion and Action on recommendations to the following rules promulgated by Department of Human Services – attached and incorporated herein as Exhibit 4:
  1. Proposed Adoption of HAR Title 17 Chapter 1719.1, **State Funded Aged, Blind and Disabled Program**
  2. Repeal of HAR Title 17 Chapter 1722.3, **Basic Health Hawaii**
  3. Proposed Adoption of HAR Title 17 Chapter 1731, **Premium Assistance Program**
- B. Discussion and Action on Proposed Amendments to HAR Title 16 Chapter 85, Section 49, **Degree of Supervision**, promulgated by Department of Commerce and Consumer Affairs (DCCA) – attached and incorporated herein as Exhibit 5
- C. Discussion and Action on Proposed Amendments to HAR Title 16 Chapter 95, **Pharmacists and Pharmacies**, promulgated by DCCA – attached and incorporated herein as Exhibit 6

**V. Administrative Matters**

- A. Discussion Regarding State of Hawaii Procurement Office's (SPO's) Initiative to Implement a Small Business Set-Aside Program, Pursuant to Chapter 103D, Sections 901 through 906, Hawaii Revised Statutes (HRS) – Exhibit 7
- B. Discussion on the Board's Budget Request to the Legislature for Fiscal Years 2016 and 2017
- C. Discussion on Revisions to the Board's Power Point Presentation for Outreach Purposes to Business Organizations and Associations, and Next Steps for Outreach
- D. Discussion on Hawaii's Chamber of Commerce Small Business & Entrepreneurship Advocacy Committee Meeting held on October 22, 2014, and the Committee's Discussion on the following agenda item: "Legislative Package for 2015: Provide Resources to Existing Small Business Programs like Business Action Center, Small Business Regulatory Review Board"
- E. Discussion and Action to Elect a Board Vice Chair
- F. Discussion and Action to Appoint Board Members for "Discussion Leader" Assignments for the State Departments' and Counties' Administrative Rule Review
- G. Discussion and Action on Proposed Second Drafts of the Documents described below for State Agencies and Counties to Use when Submitting Proposed New and Amended Administrative Rules for:
  - 1. Small Business Impact Statement, Section 201M-2, HRS
  - 2. Small Business Statement after Public Hearing, Section 201M-3, HRS

**VI. Next Meeting:** Scheduled for Wednesday, December 10, 2014, at 9:30 a.m., Conference Room 436, Capitol District Building, Honolulu, Hawaii

**VII. Adjournment**

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

# November 19, 2014 ~ SBRRB Meeting Checklist

Member Attendance				
	Airline Preference	From	Details	Attend
Anthony Borge, Chair	NA (A)	Oahu	Parking Pass	X
<del>Craig Takamine, Vice Chair</del>	<del>HA</del>	<del>Hawaii</del>	<del>Parking Pass</del>	<del>✓</del>
Barbara Bennett	HA (A)	Kauai	Parking Pass	X
Kyoko Kimura	HA (A)	Maui	Parking Pass	✓
Harris Nakamoto	NA (A)	Oahu	Parking Pass	✓
Director's ex officio - Mark Richey	NA (A)	Oahu	NA	✓
Ashley Leahey	HA (A)	Maui	Parking Pass	✓
Wayne Tanaka	NA (A)	Oahu	Parking Pass	✓

Pre Meeting Checklist	
Conference Room #436 (Confirm each month)	X
Make 12 - 15 copies of rule packages for board packets - continuous	✓
Poll board attendance	X
Prepare TAF for Director's approval - ASAP (Linda) <i>Barbara / Craig - Need to Contact</i>	✓ DNE
Airline booking ASAP - Linda <i>Ashley / Kyoko ✓ Barbara / Craig - Need to Contact</i>	✓ DNE
Draft Agenda to Chair	✓
Post approved agenda on SBRRB website & State Calendar & Lte. Governor's Office	✓ DNE
Send Agendas to those people who requested it <i>Add Pilot ✓ (attached) DNE</i>	✓ DNE
Mail approved agenda to board members, M. Ahn	✓
Mail board packets Mon, Tues or Wed., Nov. 10, 12, 13	✓
3-4 Days prior to meeting, send DAGS an email (or fax) re: Board members parking and attending SBRRB meeting - IMPORTANT	✓

STAFF			
Margaret Ahn	(A)		Yes
Dori Palcovich	(A)		Yes

Post Meeting Checklist	

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

	Name	Title	Organization	Email	Phone
1	Constance Cabral	EO	HI Medical Bd DCCA	medical@dcca.hawaii.gov	6-2708
2	Dennis Yamaguchi	Fisherman			
3	Alton Miyasaka	Biologist	DLNR / DAR	alton.k.miyasaka@hawaii.gov	70092
4	Lee Ann Teskima	Exec. Officer	DCCA - Bd of Pharmacy	pharmacy@dcca.hawaii.gov	586-2695
5	Aileen Beftel	Program Specialist	DHS/MAD		6928078
6	Evelyn Yamamoto	" "	" "		692-8095
7	Matt Ross	Fisherman			
8	Jerry Ishra				
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16					

# Exhibit 1

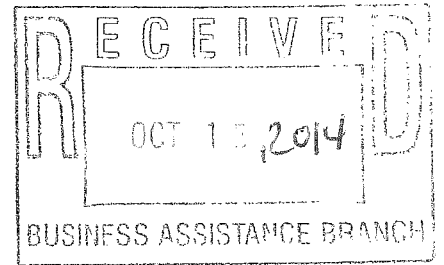
DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-95.1  
Hawaii Administrative Rules

September 26, 2014

SUMMARY

Chapter 13-95.1, Hawaii Administrative Rules,  
entitled "Island-Based Fisheries Rules", is adopted.



HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART V PROTECTED MARINE FISHERIES RESOURCES

CHAPTER 95.1

ISLAND-BASED FISHERIES RULES

Subchapter 1 General Provisions

§13-95.1-1	Definitions
§13-95.1-2	Penalty
§13-95.1-3	Scope
§13-95.1-4	Exceptions
§13-95.1-5	Severability

Subchapter 2 Maui Island Fisheries

§13-95.1-20	Goatfish
§13-95.1-21	Uhu

SUBCHAPTER 1

GENERAL PROVISIONS

§13-95.1-1 Definitions. As used in this chapter, unless otherwise provided:

"Commercial marine dealer" means any person who sells or exchanges, or who is an agent in the transfer of marine life obtained directly from a commercial marine licensee, or any commercial marine licensee who sells or exchanges marine life at retail.

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

"Goatfish" means any fish in the family Mullidae, or any recognized synonym.

"Kūmū" means any fish known as *Parupeneus porphyreus* or any recognized synonym. Kūmū are also known as whitesaddle goatfish.

"Length" means the straight-line measurement from the tip of the snout to the middle of the trailing edge of the tail.

"Moano kea" means any fish known as *Parupeneus cyclostomus* or any recognized synonym. Moano kea are also known as moano kali, moano ukali ulua, blue goatfish, or goldsaddle goatfish.

"Munu" means any fish known as *Parupeneus insularis* or any recognized synonym. Munu are also known as doublebar goatfish.

"Oama" means any juvenile weke'ā or *Mulloidichthys flavolineatus*, which is less than five inches in length.

"Possess" means to procure, receive, hold, or control for a sufficient period to have had the opportunity to release or relinquish control.

"Take" means to fish for, capture, confine, or harvest aquatic life. This term shall not apply to the temporary capture or confinement of any specimen which is returned to the water as soon as possible after landing.

"Uhu" means any fish belonging to the family Scaridae or any recognized synonyms. Uhu is a general term for parrotfish.

"Uhu 'ahu'ula" means any fish known as *Chlorurus perspicillatus* or any recognized synonym. Uhu 'ahu'ula are also known as spectacled parrotfish. The terminal phase of these fish is also known as "uhu uliuli".

"Uhu 'ele'ele" is any *Scarus rubroviolaceus* which has reached its terminal phase, indicated by a change in coloration from brownish-red and yellowish-gray, to green and blue. A predominantly green or blue-green body color and a green beak on a specimen of *Scarus rubroviolaceus* is prima facie evidence that the



specimen is an uhu 'ele'ele. Both uhu 'ele'ele and uhu pālukaluka are known as redlip or ember parrotfish.

"Uhu pālukaluka" means any fish known as *Scarus rubroviolaceus* or any recognized synonym. Uhu pālukaluka are also known as redlip or ember parrotfish. The terminal phase of these fish is also known as "uhu 'ele'ele".

"Uhu uliuli" is any *Chlorurus perspicillatus* which has reached its terminal phase, indicated by a change in coloration from a grayish brown body with a broad white band at the base of the tail, to a blue-green body with a dark band across the top of the snout. A predominantly blue-green body color and the lack of a white tail band on a specimen of *Chlorurus perspicillatus* is prima facie evidence that the specimen is an uhu uliuli. Both uhu uliuli and uhu 'ahu'ula are known as spectacled parrotfish.

"Weke'ā" means any fish known as *Mulloidichthys flavolineatus* or any recognized synonym. Weke'ā are also known as white goatfish. The young of these fish are also known as 'oama.

"Weke nono" means any fish known as *Mulloidichthys pfluegeri* or any recognized synonym. Weke nono are also known as Pflueger's goatfish or moelua. [Eff ] (Auth: HRS §§187A-5, 189-2, 189-6) (Imp: HRS §§187A-1, 187A-5, 189-2, 189-6)

§13-95.1-2 Penalty. (a) Any person who violates any provision of this chapter shall be subject to administrative fines as provided by chapter 187A, HRS.

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

§13-95.1-3 Scope. (a) Unless expressly provided otherwise, the scope of jurisdiction for subchapter 2 shall be as follows:

Subchapter 2 shall apply to the take or possession of aquatic life from, in, or on the lands or waters of Maui island subject to state jurisdiction or control. For purposes of this section, "waters of Maui island" means all ocean waters within three nautical miles seaward from the highest wash of the waves on the shores of Maui, excluding all waters within two nautical miles from the shores of Kaho'olawe island, as shown on Exhibit 1 entitled "Map of Maui Island Fisheries", dated May 19, 2014, and located at the end of this chapter.

(b) Nothing in this chapter shall restrict the State's claims to jurisdiction and authority over its marine waters.

(c) The take and possession provisions of this chapter supersede any conflicting take or possession provisions in chapter 13-95. [Eff ]  
(Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-1.5, 188-22.5, 187A-5, 188-53)

§13-95.1-4 Exceptions. (a) The prohibitions of this chapter shall not apply to authorized employees of the department when acting in the course of their official duties, departmental agents and contractors engaged in authorized departmental activities, or to any persons conducting activities permitted under a valid license or permit listed under section 13-95-1.1 that expressly refers to this chapter.

(b) Native Hawaiian traditional and customary rights recognized under article XII, section 7, of the Hawaii State Constitution shall not be abridged.

(c) For the purposes of this chapter, any commercial marine dealer may possess more than the allowed number of aquatic specimens, only if the specimens were purchased from other individual(s) with:

- (1) A valid commercial marine license; or

(2) A valid special marine product license; and has receipts issued for each purchase pursuant to section 189-11, HRS. Receipts shall include the first and last name and license number of the person to whom the receipt is issued. [Eff ]  
(Auth: HRS §§187A-3.5, 187A-5, 187A-6, 189-2, 189-6)  
(Imp: HRS §§187A-3.5, 187A-5, 187A-6, 188-53, 189-2, 189-6, 189-11)

§13-95.1-5 Severability. If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remaining provisions, or application of the provisions which can be given effect without the invalid provision or application, shall not be affected. [Eff ]  
(Auth: HRS §§187A-5, 188-53)  
(Imp: HRS §§187A-5, 188-53)

## SUBCHAPTER 2

### MAUI ISLAND FISHERIES

§13-95.1-20 Goatfish. (a) No person may take or possess any kūmū, moano kea, or weke nono less than twelve inches in length.

(b) Except as provided in subsection (f), no person may take or possess any other goatfish less than eight inches in length.

(c) No person may take more than one kūmū per day, or possess more than one kūmū at any one time.

(d) No person may take more than two moano kea per day, or possess more than two moano kea at any one time.

(e) No person may take more than two munu per day, or possess more than two munu at any one time.

(f) Notwithstanding subsection (b), any person may take up to fifty 'oama per day, or possess up to fifty 'oama at any one time, provided that no 'oama may

be taken by any means other than hook-and-line fishing.

(g) No person may sell any 'oama at any time.  
[Eff . . . . .] (Auth: HRS §§187A-5, 188-53)  
(Imp: HRS §§187A-5, 188-53)

§13-95.1-21 Uhu. (a) No person may take or possess any uhu 'ele'ele or uhu uliuli at any time.

(b) No person may take or possess any uhu pālukaluka or any uhu 'ahu'ula less than fourteen inches in length.

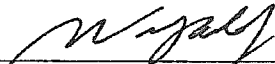
(c) Any other department size restriction notwithstanding, subject to subsections (a) and (b), any person may take any other uhu greater than ten inches in length.

(d) No person may take more than two uhu of any variety per day, or possess more than two uhu of any variety at any one time. [Eff . . . . .]  
(Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

DEPARTMENT OF LAND AND NATURAL RESOURCES

Chapter 13-95.1, Hawaii Administrative Rules, on the Summary Page dated September 26, 2014, was adopted on September 26, 2014, following public hearings held on November 19-21, 2013, after public notice was given in the Honolulu Star-Advertiser on October 20, 2013.

The adoption of chapter 13-95.1 shall take effect ten days after filing with the Office of the Lieutenant Governor.

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

APPROVED AS TO FORM:

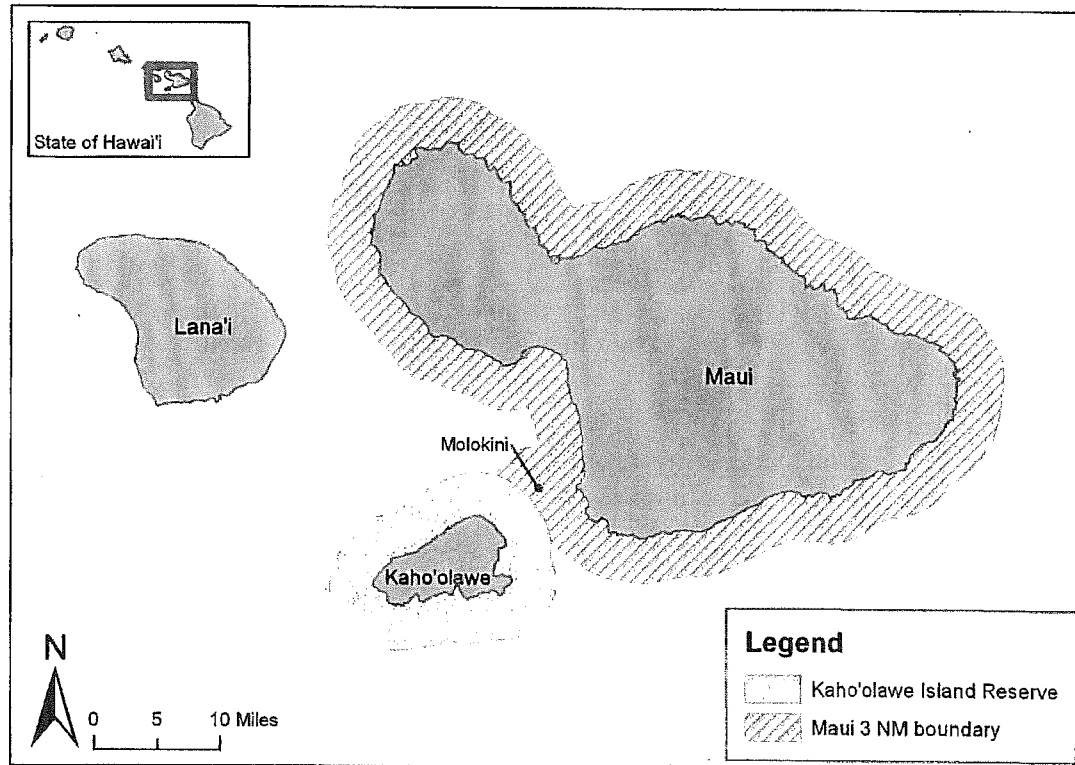
  
\_\_\_\_\_  
Deputy Attorney General

\_\_\_\_\_  
NEIL ABERCROMBIE  
Governor  
State of Hawaii

Date:

\_\_\_\_\_  
Filed

Exhibit 1. Map of Maui Island Fisheries (May 19, 2014)



NOTE: The Maui Island Fisheries rules do NOT apply to waters within two nautical miles of Kaho'olawe island (which are governed by the Kaho'olawe Island Reserve Commission's separate authority, Hawaii Administrative Rules chapter 13-261).

## Exhibit 2

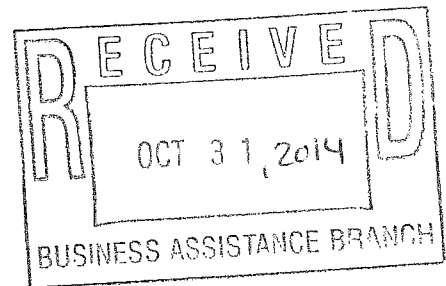
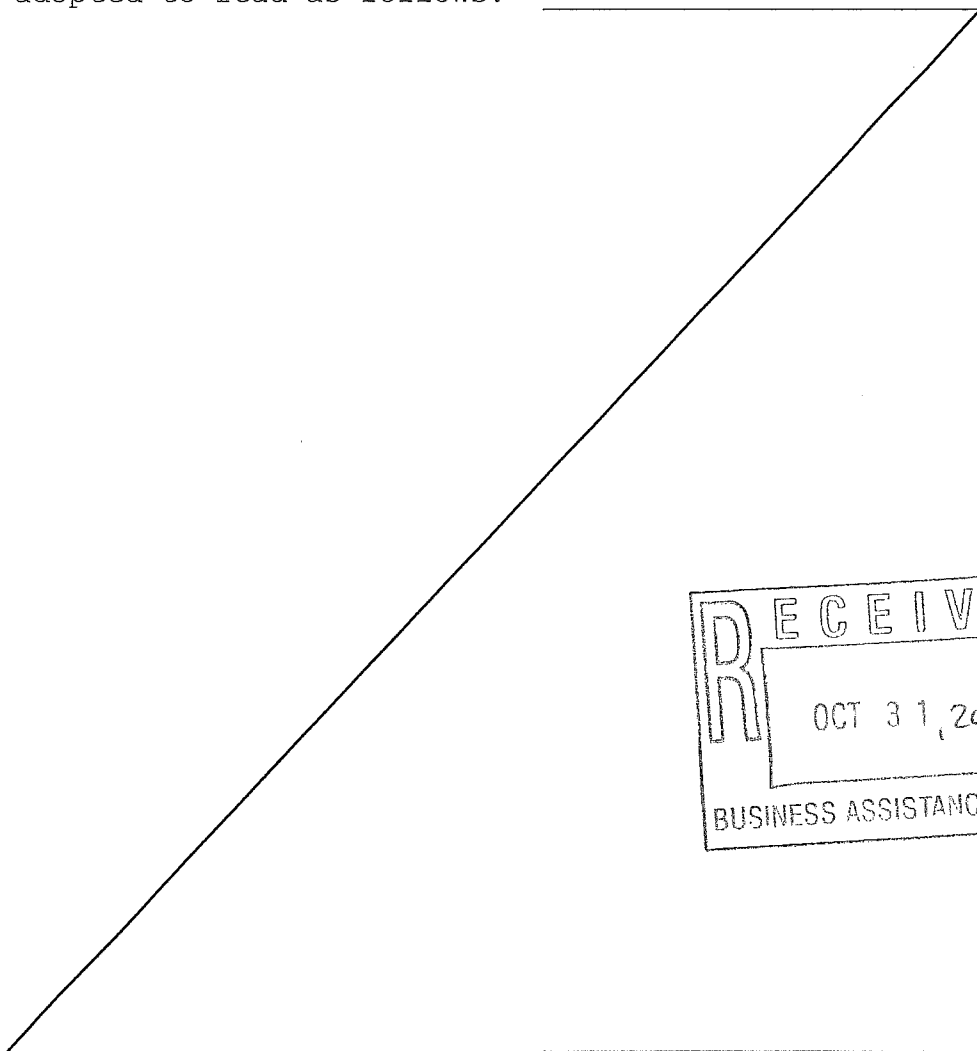
Ramseyer Draft  
(10/24/2014)

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-77  
Hawaii Administrative Rules

October 24, 2014

1. Chapter 77 of Title 13, Hawaii Administrative Rules, entitled "Oahu Aquarium Life Management" is adopted to read as follows:





"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART IV FISHERIES RESOURCE MANAGEMENT

CHAPTER 77

OAHU AQUARIUM LIFE MANAGEMENT

General Provisions

- §13-77-1 Intents and purposes
- §13-77-2 Definitions
- §13-77-3 Penalties
- §13-77-4 Exemptions
- §13-77-5 Severability
- §13-77-6 Oahu prohibited activities

General Provisions

§13-77-1 Applicability and scope. This chapter shall apply to the collection of aquatic life for an aquarium purpose from the waters of Oahu while using fine or small mesh traps or fine or small mesh nets, but not throw nets. While governing the taking of aquatic life intended for live aquarium displays, this chapter shall not apply to the use of nets to take aquatic life for food, bait, or other consumptive purposes. This chapter is also intended to supplement regulations restricting the use of net fishing gears in chapter 13-75. [Eff ] (Auth: HRS §§187A-5, 188-31) (Imp: HRS §§187A-5, 188-31)

§13-77-2 Definitions. As used in this chapter unless otherwise provided:

"Achilles tang" means any marine fish species known as *Acanthurus achilles* or any recognized synonym.

"Aquarium purposes" means to hold marine fish, fresh water nongame fish, or other aquatic life alive in a state of captivity, whether as pets, for scientific study, for public exhibition, for public display, or for sale for these purposes.

"Aquarium fish permit" means a permit issued by the department pursuant to section 188-31, HRS, for the use of fine mesh nets and traps to take marine fish, fresh water nongame fish, or other aquatic life for aquarium purposes.

"Bandit angelfish" means any marine fish species known as *Apolemichthys arcuatus* or any recognized synonym. This species is also known as banded angel, *Holacanthus arcuatus*, and *Desmoholacanthus arcuatus*.

"Cleaner wrasse" means any marine fish species known as *Labroides phthirophagus* or any recognized synonym.

"Commercial aquarium fish permit" means a valid aquarium fish permit issued to a person who also has been issued a valid commercial marine license.

"Commercial marine license" means a license issued by the department for the taking of marine life for commercial purposes, issued pursuant to section 189-2, HRS.

"Day" means the twenty-four hours following midnight of one day until midnight of the following day. It is a measure of time for the purposes of setting a bag limit only.

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

"Kole" means any marine fish species known as *Ctenochaetus strigosus* or any recognized synonym.

"Length" means the straight-line external measurement from the leading edge of the snout or jaw to the middle of the trailing edge of the tail.

"Moorish idol" means any marine fish species

known as *Zanclus cornutus* or any recognized synonym.

"Naso tang" means any marine fish species known as *Naso lituratus* or any recognized synonym. This species is also known as the orangespine unicornfish.

"Ornate butterflyfish" means any marine fish species known as *Chaetodon ornatissimus* or any recognized synonym.

"Oval butterflyfish" means any marine fish species known as *Chaetodon lunulatus* or any recognized synonym.

"Permittee" means a person who has a valid commercial or recreational aquarium fish permit.

"Person" means any individual, corporation, partnership, association or other business entity.

"Potter's angel" means any marine fish species known as *Centropyge potteri* or any recognized synonym.

"Recreational aquarium fish permit" means a valid aquarium fish permit issued to a person for non-commercial use.

"Reticulated butterflyfish" means any marine fish species known as *Chaetodon reticulatus* or any recognized synonym.

"Small mesh" or "fine mesh" means a net, trap, or other fishing gear with mesh, which stretched mesh size is smaller than the legal limit as provided in section 13-75-14.

"State" means the state of Hawaii.

"State marine waters" means those waters extending from the upper reaches of the wash of the waves on shore seaward to the limit of the State's police power and management authority, including the United States territorial sea.

"Waters of Oahu" means, for enforcement purposes, marine waters from the shoreline around the island of Oahu seaward for three nautical miles.

"Yellow tang" means any marine fish species known as *Zebrasoma flavescens* or any recognized synonym.

[Eff ] (Auth: HRS §§187A-5, 188-31)  
(Imp: HRS §§187A-5, 188-31)

§13-77-3

§13-77-3 Exemptions. Notwithstanding the provisions of this chapter, the department may issue the licenses or permits which exempt persons from the provisions of this chapter. Section 13-75-14(7) exempts the use of small mesh hand nets or scoop nets to take fish or other marine life for non-commercial purposes. [Eff \_\_\_\_\_] (Auth: HRS §§187A-3.5, 187A-6, 189-6) (Imp: HRS §§187A-3.5, 187A-6, 189-6)

§13-77-4 Penalties. A person violating any provision of this chapter shall be guilty of a petty misdemeanor and penalized as provided by section 187A-13, HRS. In addition to any criminal penalty, any violation of these rules shall also be subject to civil and administrative penalties, as provided by section 187A-12.5, HRS. [Eff \_\_\_\_\_] (Auth: HRS §§187A-12.5, 187A-13, 187A-32) (Imp: HRS §§187A-12.5, 187A-13)

§13-77-5 Severability. The provisions of these rules are declared to be severable, and if any portion, or the application thereof, to any person or property is held invalid for any reason, the validity of the remainder of these rules or the application of the remainder to other persons or property shall not be affected. [Eff \_\_\_\_\_] (Auth: HRS §§187A-5, 188-31) (Imp: HRS §§1-23, 187A-5)

§13-77-6 Oahu prohibited activities. (a) Notwithstanding the provisions of chapter 13-75, it is unlawful for any person in or on the waters of Oahu, possessing a small mesh net authorized under a commercial aquarium fish permit or recreational aquarium fish permit, to possess a small mesh net that is:

- (1) More than thirty (30) feet long; provided that two or more permittees may join two

nets, each no more than thirty (30) feet long, for a total net length of no more than sixty (60) feet long; or

- (2) More than six (6) feet in height.
- (3) These restrictions regarding net length and height in subsection (a) shall take effect after July 1, 2015.

(b) It is unlawful for any person, while possessing, using, or having used a small mesh net authorized under a commercial aquarium fish permit and in or on the waters of Oahu, to possess a small mesh net and take or possess a daily bag limit of more than:

- (1) One hundred (100) yellow tang;
- (2) Seventy-five (75) kole;
- (3) Fifty (50) Potter's angel;
- (4) Fifty (50) naso tang;
- (5) Twenty-five (25) moorish idol; or
- (6) Ten (10) achilles tang.

A daily bag limit includes the cumulative number of regulated aquatic life taken or possessed by a person on any day.

(c) It is unlawful for any person while possessing, using, or having used a small mesh net authorized under a commercial aquarium fish permit and in or on the waters of Oahu, to possess a small mesh net and to take or possess more than six (6) of any of the following per day:

- (1) Yellow tang less than one and one-half (1.5) inches in length;
- (2) Yellow tang more than five (5) inches in length;
- (3) Kole more than five (5) inches in length; or
- (4) Cleaner wrasse of any size.

(d) It is unlawful for any person while possessing, using, or having used a small mesh net authorized under a commercial aquarium fish permit and in or on the waters of Oahu, to take or possess more than two (2) bandit angelfish that are longer than five and a half (5.5) inches in length, per day.

(e) It is unlawful for any person while

possessing, using, or having used a small mesh net authorized under a commercial aquarium fish permit, to operate a vessel on the waters of Oahu with:

- (1) More than the daily bag limits as provided in subsections (b), (c), and (d) for the number of permittees on board the vessel; or
- (2) More than three times the number of any daily bag limit, regardless of the number of permittees on board.

(f) It is unlawful for any person, while possessing a small mesh net authorized under a commercial aquarium fish permit or recreational aquarium fish permit while in or on the waters of Oahu, to take or possess any of the following species:

- (1) Ornate butterflyfish;
- (2) Oval butterflyfish; and
- (3) Reticulated butterflyfish." (Auth: HRS §§187A-5, 188-31) (Imp: HRS §§187A-5, 188-31)

2. The adoption of chapter 13-77, 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 October 24, 2014 and filed with the Office of the Lieutenant Governor.

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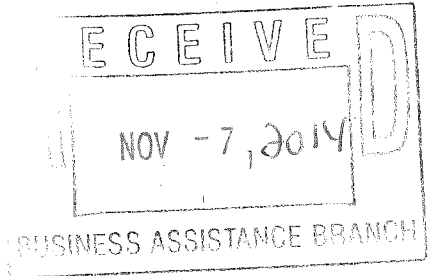
William J. Aila, Jr.,  
Chairperson, Board of Land  
and Natural Resources

APPROVED AS TO FORM:

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Deputy Attorney General

## Exhibit 3



Department of Health  
Rules Amending Title 11  
Hawaii Administrative Rules

(insert adoption date)

1. Chapter 54 of Title 11, Hawaii Administrative Rules, entitled "Water Quality Standards" is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES  
TITLE 11  
DEPARTMENT OF HEALTH  
CHAPTER 54  
WATER QUALITY STANDARDS

- \$11-54-1 Definitions
- \$11-54-1.1 General policy of water quality antidegradation
- \$11-54-2 Classification of State waters
- \$11-54-3 Classification of water uses
- \$11-54-4 Basic water quality criteria applicable to all waters
- \$11-54-5 Uses and specific criteria applicable to inland waters
  - \$11-54-5.1 Inland water areas to be protected
  - \$11-54-5.2 Inland water criteria
- \$11-54-6 Uses and specific criteria applicable to marine waters
- \$11-54-7 Uses and specific criteria applicable to marine bottom types
- \$11-54-8 Recreational criteria for all State waters
- \$11-54-9 Zones of mixing
- \$11-54-9.1 Water quality certification



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- §11-54-9.1.01 Water quality certification; contents of certification
- §11-54-9.1.02 Water quality certification; contents of water quality certification application
- §11-54-9.1.03 Water quality certification; notice and hearing
- §11-54-9.1.04 Water quality certification; waiver
- §11-54-9.1.05 Water quality certification; adoption of new water quality standards
- §11-54-9.1.06 Water quality certification; inspection of facility or activity before operation
- §11-54-9.1.07 Water quality certification; notification to licensing or permitting agency
- §11-54-9.1.08 Water quality certification; termination or suspension
- §11-54-9.1.09 Water quality certification; review and advice
- §11-54-10 Water quality analyses
- §11-54-11 Schedule of compliance
- §11-54-12 Intake credits
- §11-54-13 Revision
- §11-54-14 Severability
- §11-54-15 Field citations; non-compliance

§11-54-1 Definitions. As used in this chapter:

"Ambient conditions" means the water quality conditions that would occur in the receiving waters if these waters were not influenced by the proposed new human activity.

"Amphidromous" means aquatic life that migrate to and from the sea, but not specifically for reproductive purposes. Amphidromous aquatic life in Hawaiian streams are confined to fresh waters as adults, but their larval stages are partially or entirely spent in the ocean as part of the zooplankton.

"Anchialine pools" means coastal bodies of standing waters that have no surface connections to the ocean but display both tidal fluctuations and salinity ranges characteristic of fresh and brackish waters, indicating the presence of subsurface connections to the watertable and ocean. Anchialine pools are located in porous substrata (recent lava or limestone) and often contain a distinctive assemblage of native aquatic life. Deeper anchialine pools may display salinity stratification, and some shallow pools may contain standing water only on the highest tides.

"Aquatic life" means "any type or species of mammal, fish, amphibian, reptile, mollusk, crustacean, arthropod, invertebrate, coral, or other animal that inhabits the freshwater or marine environment and includes any part, product, egg, or offspring thereof; or freshwater or marine plants, including, seeds, roots, products, and other parts thereof" (section 187A-1, HRS).

"Best degree of treatment or control" means that treatment or control which is required by applicable statutes and regulations of the State of Hawai'i and the Federal Water Pollution Control Act, as amended, (33 U.S.C. §1251, et seq.) or which is otherwise specified by the director considering technology or management practices currently available in relation to the public interest.

"Best management practices" or "BMPs" means schedules of activities, prohibitions or designations of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of State waters. Best management practices also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs include methods, measures or practices selected by the department to meet nonpoint source pollution control needs. BMPs also include but are not limited to structural and nonstructural controls. BMPs can be

applied before, during, and after pollution-producing activities to reduce or eliminate the introduction of pollutants into receiving State waters.

"Brackish waters" means waters with dissolved inorganic ion concentrations (salinity) greater than 0.5 parts per thousand, but less than thirty-two parts per thousand.

"Coastal waters" means "all waters surrounding the islands of the State from the coast of any island to a point three miles seaward from the coast, and, in the case of streams, rivers, and drainage ditches, to a point three miles seaward from their point of discharge into the sea and includes those brackish waters, fresh waters and salt waters that are subject to the ebb and flow of the tide" (section 342D-1, HRS).

"Coastal wetlands" means natural or man-made ponds and marshes having variable salinity, basin limits, and permanence. These wetlands usually adjoin the coastline and may be subject to tidal, seasonal, or perennial flooding. Coastal wetlands are generally maintained by surface and subterranean sources of fresh and salt water. Many natural coastal wetlands have been modified significantly by man and are characterized by introduced aquatic life. Coastal wetlands include, but are not limited to, salt marshes, open ponds, mudflats, man-made or natural waterbird refuges, isolated seasonal lakes and mangrove flats.

"Department" means department of health, State of Hawai'i.

"Developed estuaries" means volumes of brackish coastal waters in well-defined basins constructed by man or otherwise highly modified from their natural state. Developed estuaries include, but are not limited to, dredged and revetted stream termini.

"Director" means the director of health, State of Hawai'i, or the director's duly authorized agent.

"Discharge" means the discharge of a water pollutant.

"Ditches and flumes" means fresh waters flowing continuously in artificial channels. They are used mainly for the purpose of irrigation and usually receive water from stream diversions. Ditches and flumes may be inflowing (carry water to reservoirs or user areas) or outflowing (drain water from reservoirs or user areas).

"Drainage basin" or "watershed" means the region or area drained by a stream or river system.

"Drainage ditch" means that facility used to carry storm runoff only, not sanitary sewage.

"Elevated wetlands" means natural freshwater wetlands located above 100 m (330 ft) elevation. They are generally found in undisturbed areas, mainly in remote uplands and forest reserves with high rainfall. Elevated wetlands include upland bogs, marshes, swamps, and associated ponds and pools.

"Estuaries" means characteristically brackish coastal waters in well-defined basins with a continuous or seasonal surface connection to the ocean that allows entry of marine fauna. Estuaries may be either natural or developed.

"Existing uses" means those uses actually attained in the water body on or after November 28, 1975 whether or not they are included in the water quality standards.

"Flowing springs and seeps" means perennial, relatively constant fresh water flows not in distinct channels, in which the water emanates from elevated aquifers as wet films or trickles over rock surfaces. They are found typically as natural occurrences along rock faces or banks of deeply incised streams, and artificially along road cuts.

"Flowing waters" means fresh waters flowing unidirectionally down altitudinal gradients. These waters may or may not be confined in distinct channels. Flowing waters include streams, flowing springs and seeps and ditches and flumes.

"Fresh waters" means all waters with a dissolved inorganic ion concentration of less than 0.5 parts per thousand.

"Hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded and develops conditions that favor the growth and regeneration of hydrophytic vegetation.

"Hydrophytic vegetation" or "hydrophytes" means plants adapted to growing in seasonally or permanently flooded conditions.

"Intermittent streams" means fresh waters flowing in definite natural channels only during part of the year or season. Intermittent streams include many tributaries of perennial streams.

"Introduced aquatic life" means those species of aquatic organisms that are not native to a given area or water body and whose populations were established (deliberately or accidentally) by human activity. "Introduced" organisms are also referred to as "alien" or "exotic".

"Low wetlands" means freshwater wetlands located below 100 m (330 ft) elevation that may be natural or artificial in origin and are usually found near coasts or in valley termini. Low wetlands are maintained by either stream, well, or ditch influent water, or by exposure of the natural water table. Low wetlands include, but are not limited to, natural lowland marshes, riparian wetlands, littoral zones of standing waters (including lakes, reservoirs, ponds and fishponds) and agricultural wetlands such as taro lo'i.

"Native aquatic life" means those species or higher taxa of aquatic organisms that occur naturally in a given area or water body and whose populations were not established as a result of human activity.

"Natural estuaries" means volumes of brackish coastal waters in well-defined basins of natural origin, found mainly at the mouths of streams or rivers. Natural estuaries can be either stream-fed (drowned stream mouths fed by perennial stream runoff) or spring-fed (nearshore basins with subterranean fresh water sources). Stream-fed estuaries serve as important migratory pathways for larval and juvenile amphidromous stream fauna.

"Natural freshwater lakes" means standing water that is always fresh, in well-defined natural basins, with a surface area usually greater than 0.1 ha (0.25 acres), and in which rooted emergent hydrophytes, if present, occupy no more than thirty per cent of the surface area. Natural freshwater lakes in Hawai'i occur at high, intermediate, and low elevations. Lowland freshwater lakes characteristically lack a natural oceanic connection (surface or subsurface) of a magnitude sufficient to cause demonstrable tidal fluctuations.

"Nonpoint source pollution" has the meaning defined in section 342E-1, HRS.

"Perennial streams" means fresh waters flowing year-round in all or part of natural channels, portions of which may be modified by humans. Flow in perennial streams may vary seasonally. Perennial streams may be subdivided into longitudinal zones, based on elevation and gradient:

- (1) Headwater zone (elevation above 800 m (2600 ft) or gradient above 30 per cent or both);
- (2) Mid-zone (elevation between 50-800 m (165-2600 ft), or gradient between 5 and 30 per cent or both); and
- (3) Terminal zone (elevation below 50 m (165 ft) or gradient below 5 per cent or both).

Perennial streams may be either continuous or interrupted. Continuous perennial streams discharge continuously to the ocean in their natural state, and contain water in the entire length of the stream channel year-round. Interrupted perennial streams usually flow perennially in their upper reaches but only seasonally in parts of their middle or lower reaches, due to either downward seepage of surface flow (naturally interrupted) or to man-made water diversions (artificially interrupted).

"Person" has the same meaning as defined in section 342D-1, HRS.

"Point source" has the same meaning as defined in section 11-55-01.

"Pollution" means "water pollution" as defined in section 342D-1, HRS.

"Reservoirs" means standing water that is always fresh, in well-defined artificially created impoundments.

"Saline or salt waters" means waters with dissolved inorganic ion concentrations greater than thirty-two parts per thousand.

"Saline lakes" means standing waters of salinities ranging from brackish to hypersaline, located in well-defined natural basins, and lacking a natural surface connection to the ocean. Saline lakes may be present as high-island shoreline or near-shoreline features (e.g. Lake Nomilu, Kauai; Salt Lake, Oahu; Lake Kauhako, Molokai) or as low-island closed lagoons (Lake Laysan, Laysan). They are usually, but not always, fed by seawater seepage and may be diluted by rainwater, overland runoff, or ground water, or concentrated by evaporation.

"Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.

"Springs and seeps" means small, perennial, relatively constant freshwater flow not in distinct channels, such as wet films or trickles over rock surfaces, in which the water emanates from elevated aquifers. Springs and seeps may be either stream associated, occurring in deeply cut valleys and contributing to stream flow; or coastal, occurring on coastal cliffs and usually flowing into the ocean.

"Standing waters" refers to waters of variable size, depth, and salinity, that have little or no flow and that are usually contained in well-defined basins. Standing water bodies include natural freshwater lakes, reservoirs or impoundments, saline lakes, and anchialine pools.

"State waters", as defined by section 342D-1, HRS, means all waters, fresh, brackish, or salt around and within the State, including, but not limited to,

coastal waters, streams, rivers, drainage ditches, ponds, reservoirs, canals, ground waters, and lakes; provided that drainage ditches, ponds, and reservoirs required as part of a water pollution control system are excluded. This chapter applies to all [state]State waters, including wetlands, subject to the following exceptions:

- (1) This chapter does not apply to groundwater[.], except the director may in the director's discretion take appropriate actions when the director believes that the discharge of pollutants to the ground or groundwater has adversely affected, is adversely affecting, or will adversely affect the quality of any State water other than groundwater.
- (2) This chapter does not apply to drainage ditches, flumes, ponds and reservoirs that are required as part of a water pollution control system.
- (3) This chapter does not apply to drainage ditches, flumes, ponds, and reservoirs that are used solely for irrigation and do not overflow into or otherwise adversely affect the quality of any other [state]State waters, unless such ditches, flumes, ponds, and reservoirs are waters of the United States as defined in 40 C.F.R. section 122.2. The State of Hawai'i has those boundaries stated in the Hawai'i Constitution, art. XV, §1.

"Streams" means seasonal or continuous water flowing unidirectionally down altitudinal gradients in all or part of natural or modified channels as a result of either surface water runoff or ground water influx, or both. Streams may be either perennial or intermittent and include all natural or modified watercourses.

"Stream channel" means a natural or modified watercourse with a definite bed and banks which periodically or continuously contains flowing water.

"Stream system" means the aggregate of water features comprising or associated with a stream,



including the stream itself and its tributaries, headwaters, ponds, wetlands, and estuary. A stream system is geographically delimited by the boundaries of its drainage basin or watershed.

"Surface water" means both contained surface water (that is, water upon the surface of the earth in well-defined basins created naturally or artificially including, but not limited to, streams, other watercourses, lakes, and reservoirs) and diffused surface water (that is, water occurring upon the surface of the ground other than in contained basins). Water from natural springs and seeps is surface water when it exits from the spring onto the earth's surface.

"Water pollution control system" means a system designed and constructed specifically for the purpose of collecting, handling, storing, treating, or disposing of storm water, domestic wastewater, and/or industrial wastewater, to prevent water pollution.

"Wetlands" means land that is transitional between terrestrial and aquatic ecosystems where the water table is usually at or near the surface or the land is covered by shallow water. A wetland shall have one or more of the following attributes:

- (1) At least periodically the land supports predominantly hydrophytic vegetation;
- (2) The substratum is predominantly undrained hydric soil; or
- (3) The substratum is nonsoil (gravel or rocks) and is at least periodically saturated with water or covered by shallow water.

Wetlands may be fresh, brackish, or saline and generally include swamps, marshes, bogs, and associated ponds and pools, mud flats, isolated seasonal ponds, littoral zones of standing water bodies, and alluvial floodplains. For the purpose of applying for water quality certifications under Clean Water Act Section 401, and for National Pollutant Discharge Elimination System (NPDES) permit purposes, the identification and delineation of wetland boundaries shall be done following the procedures

described in the U.S. Army Corps of Engineers' Wetlands Delineation Manual (USACE 1987). [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/02/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; am and comp ] (Auth: HRS §187A-1, §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E; 40 C.F.R. §§ 122.2, 130.2, 131.3, 131.12; 22 U.S.C. §1362(14))

§11-54-1.1 General policy of water quality antidegradation. (a) Existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

(b) Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the director finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the state's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the director shall assure water quality adequate to protect existing uses fully. Further, the director shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

(c) Where existing high quality waters constitute an outstanding resource, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

(d) In those areas where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with section 316 of the Clean Water Act. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; comp ] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E; 40 C.F.R. §131.12) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

§11-54-2 Classification of [state]State waters.

(a) State waters are classified as either inland waters or marine waters.

(b) Inland waters may be fresh, brackish, or saline.

(1) All inland fresh waters are classified as follows, based on their ecological characteristics and other natural criteria:

(A) Flowing waters.

- (i) Streams (perennial and intermittent);
- (ii) Flowing springs and seeps; and
- (iii) Ditches and flumes that discharge into any other waters of the State;

(B) Standing waters.

- (i) Natural freshwater lakes; and
- Reservoirs (impoundments);

- (C) Wetlands.
  - (i) Elevated wetlands (bogs, marshes, swamps, and associated ponds); and
  - (ii) Low wetlands (marshes, swamps, and associated ponds).
- (2) All inland brackish or saline waters are classified as follows, based on their ecological characteristics and other natural criteria:
  - (A) Standing waters.
    - (i) Anchialine pools; and
    - (ii) Saline lakes.
  - (B) Wetlands.
    - (i) Coastal wetlands (marshes, swamps, and associated ponds).
  - (C) Estuaries.
    - (i) Natural estuaries (stream-fed estuaries and spring-fed estuaries); and
    - (ii) Developed estuaries.
- (c) Marine waters
  - (1) All marine waters are either embayments, open coastal, or oceanic waters;
  - (2) All marine waters which are embayments or open coastal waters are also classified according to the following bottom subtypes:
    - (A) Sand beaches;
    - (B) Lava rock shorelines and solution benches;
    - (C) Marine pools and protected coves;
    - (D) Artificial basins;
    - (E) Reef flats; and
    - (F) Soft bottoms. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; am and comp ] (Auth: HRS §§342D-

1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS  
§§342D-4, 342D-5, Ch. 342E)

§11-54-3 Classification of water uses. (a) The following use categories classify inland and marine waters for purposes of applying the standards set forth in this chapter, and for the selection or definition of appropriate quality parameters and uses to be protected in these waters. Storm water discharge into State waters shall be allowed provided it meets the requirements specified in this section and the basic water quality criteria specified in section 11-54-4.

(b) Inland waters.

(1) Class 1.

It is the objective of class 1 waters that these waters remain in their natural state as nearly as possible with an absolute minimum of pollution from any human-caused source. To the extent possible, the wilderness character of these areas shall be protected. Waste discharge into these waters is prohibited, except as provided in section 11-54-4(e). Any conduct which results in a demonstrable increase in levels of point or nonpoint source contamination in class 1 waters is prohibited.

(A) Class 1.a.

The uses to be protected in class 1.a waters are scientific and educational purposes, protection of native breeding stock, baseline references from which human-caused changes can be measured, compatible recreation, aesthetic enjoyment, and other nondegrading uses which are compatible with the protection of the ecosystems associated with waters of this class;

(B) Class 1.b.

The uses to be protected in class 1.b waters are domestic water supplies, food processing, protection of native breeding stock, the support and propagation of aquatic life, baseline references from which human-caused changes can be measured, scientific and educational purposes, compatible recreation, and aesthetic enjoyment. Public access to these waters may be restricted to protect drinking water supplies;

(2) Class 2

The objective of class 2 waters is to protect their use for recreational purposes, the support and propagation of aquatic life, agricultural and industrial water supplies, shipping, and navigation. The uses to be protected in this class of waters are all uses compatible with the protection and propagation of fish, shellfish, and wildlife, and with recreation in and on these waters. These waters shall not act as receiving waters for any discharge which has not received the best degree of treatment or control compatible with the criteria established for this class. No new treated sewage discharges shall be permitted within estuaries. No new industrial discharges shall be permitted within estuaries, with the exception of:

- (A) Acceptable non-contact thermal and drydock or marine railway discharges within Pearl Harbor, Oahu;
- (B) [Stormwater]Storm water discharges associated with industrial activities (defined in 40 C.F.R. sections 122.26(b)(14) and(b)(15), except (b)(15)(i)(A) and (b)(15)(i)(B)) which meet, at the minimum, the basic water quality criteria applicable to all

waters as specified in section 11-54-4(a), and all applicable requirements specified in chapter 11-55, titled "Water Pollution Control"; and

- (C) Discharges covered by a National Pollutant Discharge Elimination System (NPDES) general permit, approved by the U.S. Environmental Protection Agency and issued by the Department in accordance with 40 C.F.R. section 122.28 and all applicable requirements specified in chapter 11-55, titled "Water Pollution Control".

(c) Marine waters.

(1) Class AA.

It is the objective of class AA waters that these waters remain in their natural pristine state as nearly as possible with an absolute minimum of pollution or alteration of water quality from any human-caused source or actions. To the extent practicable, the wilderness character of these areas shall be protected. No zones of mixing shall be permitted in this class:

- (A) Within a defined reef area, in waters of a depth less than 18 meters (ten fathoms); or
- (B) In waters up to a distance of 300 meters (one thousand feet) off shore if there is no defined reef area and if the depth is greater than 18 meters (ten fathoms).

The uses to be protected in this class of waters are oceanographic research, the support and propagation of shellfish and other marine life, conservation of coral reefs and wilderness areas, compatible recreation, and aesthetic enjoyment. The classification of any water area as Class AA shall not preclude other uses of the waters compatible with these objectives and in

conformance with the criteria applicable to them;

(2) Class A.

It is the objective of class A waters that their use for recreational purposes and aesthetic enjoyment be protected. Any other use shall be permitted as long as it is compatible with the protection and propagation of fish, shellfish, and wildlife, and with recreation in and on these waters. These waters shall not act as receiving waters for any discharge which has not received the best degree of treatment or control compatible with the criteria established for this class. No new sewage discharges will be permitted within embayments. No new industrial discharges shall be permitted within embayments, with the exception of:

- (A) Acceptable non-contact thermal and drydock or marine railway discharges, in the following water bodies:
  - (i) Honolulu Harbor, Oahu;
  - (ii) Barbers Point Harbor, Oahu;
  - (iii) Keehi Lagoon Marina Area, Oahu;
  - (iv) Ala Wai Boat Harbor, Oahu; and
  - (v) Kahului Harbor, Maui.
- (B) Storm water discharges associated with industrial activities (defined in 40 C.F.R. sections 122.26(b)(14) and (b)(15), except (b)(15)(i)(A) and (b)(15)(i)(B)) which meet, at the minimum, the basic water quality criteria applicable to all waters as specified in section 11-54-4, and all applicable requirements specified in the chapter 11-55, titled "Water Pollution Control"; and
- (C) Discharges covered by a NPDES general permit, approved by the U.S. Environmental Protection Agency and



issued by the Department in accordance with 40 C.F.R. section 122.28 and all applicable requirements specified in chapter 11-55, titled "Water Pollution Control".

(d) Marine bottom ecosystems.

(1) Class I.

It is the objective of class I marine bottom ecosystems that they remain as nearly as possible in their natural pristine state with an absolute minimum of pollution from any human-induced source. Uses of marine bottom ecosystems in this class are passive human uses without intervention or alteration, allowing the perpetuation and preservation of the marine bottom in a most natural state, such as for nonconsumptive scientific research (demonstration, observation or monitoring only), nonconsumptive education, aesthetic enjoyment, passive activities, and preservation;

(2) Class II.

It is the objective of class II marine bottom ecosystems that their use for protection including propagation of fish, shellfish, and wildlife, and for recreational purposes not be limited in any way. The uses to be protected in this class of marine bottom ecosystems are all uses compatible with the protection and propagation of fish, shellfish, and wildlife, and with recreation. Any action which may permanently or completely modify, alter, consume, or degrade marine bottoms, such as structural flood control channelization(dams); landfill and reclamation; navigational structures (harbors, ramps); structural shore protection (seawalls, revetments); and wastewater effluent outfall structures may

be allowed upon securing approval in writing from the director, considering the environmental impact and the public interest pursuant to sections 342D-4, 342D-5, 342D-6, and 342D-50, HRS in accordance with the applicable provisions of chapter 91, HRS. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; am and comp 10/21/12; am and comp 12/6/13; am and comp ] (Auth: HRS §174C, §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

§11-54-4 Basic water quality criteria applicable to all waters. (a) All waters shall be free of

substances attributable to domestic, industrial, or other controllable sources of pollutants, including:

- (1) Materials that will settle to form objectionable sludge or bottom deposits;
- (2) Floating debris, oil, grease, scum, or other floating materials;
- (3) Substances in amounts sufficient to produce taste in the water or detectable off-flavor in the flesh of fish, or in amounts sufficient to produce objectionable color, turbidity or other conditions in the receiving waters;
- (4) High or low temperatures, biocides, pathogenic organisms, toxic, radioactive, corrosive, or other deleterious substances at levels or in combinations sufficient to be toxic or harmful to human, animal, plant, or aquatic life, or in amounts sufficient to interfere with any beneficial use of the water;

- (5) Substances or conditions or combinations thereof in concentrations which produce undesirable aquatic life; and
- (6) Soil particles resulting from erosion on land involved in earthwork, such as the construction of public works; highways; subdivisions; recreational, commercial, or industrial developments; or the cultivation and management of agricultural lands.

(b) The director is authorized to impose by order the penalties and fines and corrective measures as specified in chapters 342D and 342E, HRS, against any person who discharges or otherwise causes or allows water pollutants to enter State waters and cause violation of this chapter, unless that person acted in compliance with a permit or variance issued by the director pursuant to chapters 342D, HRS, for that person's discharges. Each day that the person has caused each water quality standard not to be met shall constitute a separate offense.

[(b)](c) To ensure compliance with paragraph (a)(4), all [state]State waters are subject to monitoring and to the following standards for acute and chronic toxicity and the protection of human health.

(1) As used in this section:

"Acute Toxicity" means the degree to which a pollutant, discharge, or water sample causes a rapid adverse impact to aquatic organisms. The acute toxicity of a discharge or receiving water is measured using the methods in section 11-54-10, unless other methods are specified by the director.

"Chronic Toxicity" means the degree to which a pollutant, discharge, or water sample causes a long-term adverse impact to aquatic organisms, such as a reduction in growth or reproduction. The chronic toxicity of a discharge or receiving water is measured using the methods in section 11-54-10, unless other methods are specified by the director.

"Dilution" means, for discharges through submerged outfalls, the average and minimum values calculated using the models in the EPA publication, Initial Mixing Characteristics of Municipal Ocean Discharges (EPA/600/3-85/073, November, 1985), or in the EPA publication, Expert System for Hydrodynamic Mixing Zone Analysis of Conventional and Toxic Submerged Single Port Discharges (Cormix 1) (EPA/600/3-90/012), February, 1990.

"In-Stream Waste Concentration" (IWC) means the concentration of a toxicant in the receiving water, or for a discharge, the concentration of the effluent after minimum dilution authorized by the department. A discharge of one hundred divided by the minimum dilution is the IWC when the dilution is authorized by the director. A discharge of one hundred per cent effluent is the IWC when dilution is not authorized by the director.

"No Observed Effect Concentration" (NOEC), means the highest per cent concentration of a discharge or water sample, in dilution water, which causes no observable adverse effect in a chronic toxicity test. For example, an NOEC of 100 per cent indicates that an undiluted discharge or water sample causes no observable adverse effect to the organisms in a chronic toxicity test.

"Test of Significant Toxicity" (TST) means the alternative statistical method for analyzing and interpreting valid whole effluent toxicity test data as described in the EPA publications, National Pollutant Discharge Elimination System Test of Significant Toxicity Implementation Document, EPA 833-R-10-003 (June 2010), and National Pollutant Discharge Elimination System Test of Significant Toxicity Technical Document, EPA 833-R-10-004 (June 2010).

- (2) Narrative toxicity and human health standards.

- (A) Acute Toxicity Standards: All [state]State waters shall be free from pollutants in concentrations which exceed the acute standards listed in paragraph (3). All [state]State waters shall also be free from acute toxicity as measured using the toxicity tests listed in section 11-54-10, or other methods specified by the director.
- (B) Chronic Toxicity Standards: All [state]State waters shall be free from pollutants in concentrations which on average during any twenty-four hour period exceed the chronic standards listed in paragraph (3). All [state]State waters shall also be free from chronic toxicity as measured using the toxicity tests listed in section 11-54-10, or other methods specified by the director.
- (C) Human Health Standards: All [state]State waters shall be free from pollutants in concentrations which, on average during any thirty day period, exceed the "fish consumption" standards for non-carcinogens in paragraph (3). All [state]State waters shall also be free from pollutants in concentrations, which on average during any 12 month period, exceed the "fish consumption" standards for pollutants identified as carcinogens in paragraph (3).
- (3) Numeric standards for toxic pollutants applicable to all waters. The freshwater standards apply where the dissolved inorganic ion concentration is less than 0.5 parts per thousand; saltwater standards apply above 0.5 parts per thousand. Values for metals refer to the dissolved fraction. All values are expressed in micrograms per liter.

<u>Pollutant</u>	<u>Freshwater</u>		<u>Saltwater</u>		<u>Fish</u>
	<u>Acute</u>	<u>Chronic</u>	<u>Acute</u>	<u>Chronic</u>	<u>Consumption</u>
Acenaphthene	570	ns	320	ns	ns
Acrolein	23	ns	18	ns	250
Acrylonitrile*	2,500	ns	ns	ns	0.21
Aldrin*	3.0	ns	1.3	ns	0.000026
Aluminum	750	260	ns	ns	ns
Antimony	3,000	ns	ns	ns	15,000
Arsenic	360	190	69	36	ns
Benzene*	1,800	ns	1,700	ns	13
Benzidine*	800	ns	ns	ns	0.00017
Beryllium*	43	ns	ns	ns	0.038
Cadmium	3+	3+	43	9.3	ns
Carbon tetra- chloride*	12,000	ns	16,000	ns	2.3
Chlordane*	2.4	0.0043	0.09	0.004	0.00016
Chlorine	19	11	13	7.5	ns
Chloroethers- ethyl (bis-2)*	ns	ns	ns	ns	0.44
isopropyl	ns	ns	ns	ns	1,400
methyl (bis)*	ns	ns	ns	ns	0.00060
Chloroform*	9,600	ns	ns	ns	5.1
Chlorophenol (2)	1,400	ns	ns	ns	ns
Chlorpyrifos	0.083	0.041	0.011	0.0056	ns
Chromium (VI)	16	11	1,100	50	ns
Copper	6+	6+	2.9	2.9	ns

<u>Pollutant</u>	<u>Freshwater</u>		<u>Saltwater</u>		<u>Fish</u>
	<u>Acute</u>	<u>Chronic</u>	<u>Acute</u>	<u>Chronic</u>	<u>Consumption</u>
Cyanide	22	5.2	1	1	ns
DDT*	1.1	0.001	0.013	0.001	0.000008
metabolite TDE*	0.03	ns	1.2	ns	ns
Demeton	ns	0.1	ns	0.1	ns
Dichloro-					
benzenes*	370	ns	660	ns	850
benzidine*	ns	ns	ns	ns	0.007
ethane(1,2)*	39,000	ns	38,000	ns	79
phenol(2,4)	670	ns	ns	ns	ns
propanes	7,700	ns	3,400	ns	ns
propene(1,3)	2,000	ns	260	ns	4.6
Dieldrin*	2.5	0.0019	0.71	0.0019	0.000025
Dinitro					
o-cresol(4,6)	ns	ns	ns	ns	250
toluenes*	110	ns	200	ns	3.0
Dioxin*	0.003	ns	ns	ns	5.0x10 <sup>-9</sup>
Diphenyl-					
hydrazine(1,2)	ns	ns	ns	ns	0.018
Endosulfan	0.22	0.056	0.034	0.0087	52
Endrin	0.18	0.0023	0.037	0.0023	ns
Ethylbenzene	11,000	ns	140	ns	1,070
Fluoranthene	1,300	ns	13	ns	18
Guthion	ns	0.01	ns	0.01	ns
Heptachlor*	0.52	0.0038	0.053	0.0036	0.00009
Hexachloro-					

<u>Pollutant</u>	<u>Freshwater</u>		<u>Saltwater</u>		<u>Fish Consumption</u>
	<u>Acute</u>	<u>Chronic</u>	<u>Acute</u>	<u>Chronic</u>	
benzene*	ns	ns	ns	ns	0.00024
butadiene*	30	ns	11	ns	16
cyclohexane-					
alpha*	ns	ns	ns	ns	0.010
beta*	ns	ns	ns	ns	0.018
technical*	ns	ns	ns	ns	0.014
cyclopentadiene	2	ns	2	ns	ns
ethane*	330	ns	310	ns	2.9
Isophorone	39,000	ns	4,300	ns	170,000
Lead	29+	29+	140	5.6	ns
Lindane*	2.0	0.08	0.16	ns	0.020
Malathion	ns	0.1	ns	0.1	ns
Mercury	2.4	0.55	2.1	0.025	0.047
Methoxychlor	ns	0.03	ns	0.03	ns
Mirex	ns	0.001	ns	0.001	ns
Naphthalene	770	ns	780	ns	ns
Nickel	5+	5+	75	8.3	33
Nitrobenzene	9,000	ns	2,200	ns	ns
Nitrophenols*	77	ns	1,600	ns	ns
Nitrosamines*	1,950	ns	ns	ns	0.41
Nitroso					
dibutylamine-N*	ns	ns	ns	ns	0.19
diethylamine-N*	ns	ns	ns	ns	0.41
dimethylamine-N*	ns	ns	ns	ns	5.3



<u>Pollutant</u>	<u>Freshwater</u>		<u>Saltwater</u>		<u>Fish</u>
	<u>Acute</u>	<u>Chronic</u>	<u>Acute</u>	<u>Chronic</u>	<u>Consumption</u>
diphenylamine-N*	ns	ns	ns	ns	5.3
pyrrolidine-N*	ns	ns	ns	ns	30
Parathion	0.065	0.013	ns	ns	ns
Pentachloro-ethanes	2,400	ns	130	ns	ns
benzene	ns	ns	ns	ns	28
phenol	20	13	13	ns	ns
Phenol	3,400	ns	170	ns	ns
2,4-dimethyl	700	ns	ns	ns	ns
Phthalate esters					
dibutyl	ns	ns	ns	ns	50,000
diethyl	ns	ns	ns	ns	590,000
di-2-ethylhexyl	ns	ns	ns	ns	16,000
dimethyl	ns	ns	ns	ns	950,000
Polychlorinated biphenyls*	2.0	0.014	10	0.03	0.000079
Polynuclear aromatic hydrocarbons*	ns	ns	ns	ns	0.01
Selenium	20	5	300	71	ns
Silver	1+	1+	2.3	ns	ns
Tetrachloro-ethanes	3,100	ns	ns	ns	ns
benzene (1,2,4,5)	ns	ns	ns	ns	16
ethane (1,1,2,2)*	ns	ns	3,000	ns	3.5
ethylene*	1,800	ns	3,400	145	2.9
phenol (2,3,5,6)	ns	ns	ns	440	ns

<u>Pollutant</u>	<u>Freshwater</u>		<u>Saltwater</u>		<u>Fish</u>
	<u>Acute</u>	<u>Chronic</u>	<u>Acute</u>	<u>Chronic</u>	<u>Consumption</u>
Thallium	470	ns	710	ns	16
Toluene	5,800	ns	2,100	ns	140,000
Toxaphene*	0.73	0.0002	0.21	0.0002	0.00024
Tributyltin	ns	0.026	ns	0.01	ns
Trichloro-					
ethane (1,1,1)	6,000	ns	10,400	ns	340,000
ethane (1,1,2)*	6,000	ns	ns	ns	14
ethylene*	15,000	ns	700	ns	26
phenol (2,4,6)*	ns	ns	ns	ns	1.2
Vinyl chloride*	ns	ns	ns	ns	170
Zinc	22+	22+	95	86	ns

ns - No standard has been developed.

\* - Carcinogen.

+ - The value listed is the minimum standard. Depending upon the receiving water CaCO<sub>3</sub> hardness, higher standards may be calculated using the respective formula in the U. S. Environmental Protection Agency publication Quality Criteria for Water (EPA 440/5-86-001, Revised May 1, 1987).

Note - Compounds listed in the plural in the "Pollutant" column represent complex mixtures of isomers.

Numbers listed to the right of these compounds refer to the total allowable concentration of any combination of isomers of the compound, not only to concentrations of individual isomers.

- (4) The following are basic requirements applicable to discharges to [state] State waters. These standards shall be enforced through effluent limitations or other conditions in discharge permits. The director may apply more stringent discharge requirements to any discharge if necessary

to ensure compliance with all standards in paragraph (2).

- (A) Continuous discharges through submerged outfalls.
  - (i) The No Observed Effect Concentration (NOEC), expressed as per cent effluent, of continuous discharges through submerged outfalls shall not be less than 100 divided by the minimum dilution; or,
  - (ii) The Test of Significant Toxicity (TST), as described in EPA 833-R-10-003 (June 2010) and EPA 833-R-10-004 (June 2010), shall be used to demonstrate no unacceptable level of chronic toxicity at the In-stream Waste Concentration (IWC). The chronic toxicity criterion is expressed using a regulatory management decision (b value) of 0.75 for chronic toxicity where, a 0.25 effect level (or more) at the IWC demonstrates an unacceptable level of chronic toxicity.
- (B) Continuous discharges through submerged outfalls shall not contain:
  - (i) Pollutants in [~~twenty four~~ twenty-four] hour average concentrations greater than the values obtained by multiplying the minimum dilution by the standards in paragraph (3) for the prevention of chronic toxicity.
  - (ii) Non-carcinogenic pollutants in thirty day average concentrations greater than the values obtained by multiplying the minimum dilution by the standards in

paragraph (3) for fish consumption.

- (iii) Carcinogenic pollutants in twelve month average concentrations greater than the values obtained by multiplying the average dilution by the standards in paragraph (3) for fish consumption.

(C) Discharges without submerged outfalls.

- (i) The survival of test organisms in an undiluted acute toxicity test of any discharge shall not be less than eighty per cent;
- (ii) Compliance with the acute toxicity NPDES effluent limit is demonstrated by using the Test of Significant Toxicity (TST) as described in EPA 833-R-10-003 (June 2010) and EPA 833-R-10-004 (June 2010). The acute toxicity criterion is expressed using a regulatory management decision (*b* value) of 0.80 for acute toxicity test methods listed in 11-54-10, where, in an undiluted acute toxicity test, a 0.20 effect level (or more) at the IWC demonstrates an unacceptable level of acute toxicity; or,
- (iii) The Test of Significant Toxicity (TST), as described in EPA 833-R-10-003 (June 2010) and EPA 833-R-10-004 (June 2010), shall be used to demonstrate no unacceptable level of chronic toxicity at the IWC. The chronic toxicity criterion is expressed using a regulatory management decision (*b* value) of 0.75 for chronic toxicity where, a 0.25 effect

level (or more) at the IWC demonstrates an unacceptable level of chronic toxicity. Toxicity is considered significant if the mean response in the IWC is greater than 0.75 multiplied by the mean response of the control.

No discharge shall contain pollutants in concentrations greater than the standards in paragraph (3) for the prevention of acute toxicity to aquatic life. The director may make a limited allowance for dilution for a discharge in this category if it meets the following criteria: the discharge velocity is greater than 3 meters per second; the discharge enters the receiving water horizontally, and; the receiving water depth at the discharge point is greater than zero.

[(c)](d) The requirements of paragraph (a)(6) shall be deemed met upon a showing that the land on which the erosion occurred or is occurring is being managed in accordance with soil conservation practices acceptable to the applicable soil and water conservation district and the director, and that a comprehensive conservation program is being actively pursued, or that the discharge has received the best degree of treatment or control, and that the severity of impact of the residual soil reaching the receiving body of water is deemed to be acceptable.

[(d)](e) In order to reduce a risk to public health or safety arising out of any violation or probable violation of this chapter, the director may post or order posted any [state]State waters. Posting is the placement, erection, or use of a sign or signs warning people to stay out of, avoid drinking, avoid contact with, or avoid using the water. This posting authority shall not limit the director's authority to

post or order posting in any other appropriate case or to take any enforcement action.

[(e)](f) Pesticide Application.

(1) As used in this section:

"Declared pest emergency situation" means an event defined by a public declaration by the President of the United States, state governor or, with the concurrence of the director, county mayor of a pest problem determined to require control through application of a pesticide beginning less than ten days after identification of the need for pest control.

"Pest" means any insect, rodent, nematode, fungus, weed, or

(A) Any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under 7 U.S.C. §136w(c)(1).

"Pesticide" means

- (A) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest;
- (B) Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and
- (C) Any nitrogen stabilizer, except that the term "pesticide" shall not include any article that is a "new animal drug" within the meaning of 21 U.S.C. 321(w), that has been determined by the Secretary of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article, or that is an animal feed within the meaning of 21 U.S.C. 321(x) bearing or containing a new animal drug.

The term "pesticide" does not include liquid chemical sterilant products (including any sterilant or subordinate disinfectant claims on such products) for use on a critical or semi-critical device, as defined in section 201 of 21 U.S.C. §321. For purposes of the preceding sentence, the term "critical device" includes any device which is introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body and the term "semi-critical device" includes any device which contacts intact mucous membranes but which does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body. The term "pesticide" applies to insecticides, herbicides, fungicides, rodenticides, and various other substances used to control pests. The definition encompasses all uses of pesticides authorized under [FIFRA]the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) including uses authorized under sections 3 (registration), 5 (experimental use permits), 18 (emergency exemptions), 24(c) (special local needs registrations), and 25(b) (exemptions from FIFRA).

Note: drugs used to control diseases of humans or animals (such as livestock, fishstock and pets) are not considered pesticides; such drugs are regulated by the Food and Drug Administration. Fertilizers, nutrients, and other substances used to promote plant survival and health are not considered plant growth regulators and thus are not pesticides. Biological control agents, except for certain microorganisms, are exempted from regulation under FIFRA. (Biological control agents include beneficial predators such as birds or ladybugs that eat insect pests, parasitic wasps, fish, etc.).

(2) Pesticide applications may be made to State waters if the pesticide applications are:

- (A) Registered by the U.S. Environmental Protection Agency and licensed by the state department of agriculture or other state agency regulating pesticides;
- (B) Used for the purpose of controlling mosquito and other flying insect pests; controlling weed and algae pests; controlling animal pests; controlling forest canopy pests; or protecting public health or the environment in a declared pest emergency situation or as determined by the director;
- (C) Applied in a manner consistent with the labeling of the pesticide under [the Federal Insecticide, Fungicide, and Rodenticide Act;] FIFRA;
- (D) Applied under permits issued pursuant to HRS chapter 342D, if the [Director] director requires such permits under chapter 342D, HRS;
- (E) Applied in a manner so applicable narrative and numeric state water quality criteria as required in chapter 11-54 are met. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; am and comp 06/15/09; am and comp 10/21/12; am and comp 12/6/13; am and comp ] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

§11-54-5 Uses and specific criteria applicable to inland waters. Inland water areas to be protected are described in section 11-54-5.1, corresponding specific criteria are set forth in section 11-54-5.2; water body types are defined in section 11-54-1. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88;



am and comp 01/18/90; am and comp 10/29/92, am and  
comp 04/17/00; am and comp 10/2/04; comp 06/15/09;  
comp 10/21/12; comp 12/6/13; comp ]  
(Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp:  
HRS §§342D-4, 342D-5, Ch. 342E).

§11-54-5.1 Inland water areas to be protected.

(a) Freshwaters.

(1) Flowing waters: perennial streams and rivers,  
intermittent streams, springs and seeps, and  
man-made ditches and flumes that discharge  
into any other waters of the State.

(A) Class 1.a.:

- (i) All flowing waters within the  
natural reserves, preserves,  
sanctuaries, and refuges  
established by the department of  
land and natural resources under  
chapter 195, HRS, or similar  
reserves for the protection of  
aquatic life established under  
chapter 195, HRS.
- (ii) All flowing waters in national  
and state parks.
- (iii) All flowing waters in state or  
federal fish and wildlife  
refuges.
- (iv) All flowing waters which have  
been identified as a unique or  
critical habitat for threatened  
or endangered species by the U.S.  
Fish and Wildlife Service.
- (v) All flowing waters in Waimanu  
National Estuarine Research  
Reserve (Hawai'i).

As listed in Appendix A dated July 1, 2014, entitled "Class 1, Inland Waters", located at the end of this chapter.

- (B) Class 1.b.: All flowing waters in protective subzones designated under chapter 13-5 by the state department of land and natural resources[.] as listed in Appendix A dated July 1, 2014, entitled "Class 1, Inland Waters", located at the end of this chapter.
- (C) Class 2.: All flowing waters in areas not otherwise classified.

All flowing waters in classes 1 and 2 in which water quality exceeds the standards specified in this chapter shall not be lowered in quality unless it has been affirmatively demonstrated to the director that the change is justifiable as a result of important economic or social development and will not interfere with or become injurious to any assigned uses made of, or presently in, those waters. This statement of antidegradation policy does not limit the applicability of the policy in section 11-54-1.1 to the whole chapter.

- (2) Standing waters (natural freshwater lakes and reservoirs):

- (A) Class 1.a.:

- (i) All standing waters within the natural reserves, preserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195, HRS, or similar reserves for the protection of aquatic life established under chapter 195, HRS.
- (ii) All standing waters in national and state parks.
- (iii) All standing waters in state or federal fish and wildlife refuges.

- (iv) All standing waters which have been identified as a unique or critical habitat for threatened or endangered species by the U.S. Fish and Wildlife Service.
- (v) All standing waters in Waimanu National Estuarine Research Reserve (Hawai'i).

As listed in Appendix A dated July 1, 2014, entitled "Class 1, Inland Waters", located at the end of this chapter.

- (B) Class 1.b.: All standing waters in protective subzones designated under chapter 13-5 by the state department of land and natural resources[.] as listed in Appendix A dated July 1, 2014, entitled "Class 1, Inland Waters", located at the end of this chapter.
  - (C) Class 2.: All standing waters in areas not otherwise classified.
- (3) Elevated wetlands and low wetlands:
- (A) Class 1.a.:
    - (i) All elevated and low wetlands within the natural reserves, preserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195, HRS, or similar reserves for the protection of aquatic life established under chapter 195, HRS.
    - (ii) All elevated and low wetlands in national and state parks.
    - (iii) All elevated and low wetlands in state or federal fish and wildlife refuges.
    - (iv) All elevated and low wetlands which have been identified as a unique or critical habitat for

threatened or endangered species by the U.S. Fish and Wildlife Service.

- (v) All elevated and low wetlands in Waimanu National Estuarine Research Reserve (Hawai'i).

As listed in Appendix A dated July 1, 2014, entitled "Class 1, Inland Waters", located at the end of this chapter.

- (B) Class 1.b.: All elevated and low wetlands in protective subzones designated under chapter 13-5 by the state department of land and natural resources[.] as listed in Appendix A dated July 1, 2014, entitled "Class 1, Inland Waters", located at the end of this chapter.

- (C) Class 2.: All elevated and low wetlands not otherwise classified.

(b) Brackish or saline waters (anchialine pools, saline lakes, coastal wetlands, and estuaries).

- (1) Class 1.a.:

- (A) All inland brackish or saline waters within natural reserves, preserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195, HRS, or similar reserves for the protection of aquatic life established under chapter 195, HRS.
- (B) All inland brackish or saline waters in national and state parks.
- (C) All inland brackish or saline waters in state or federal fish and wildlife refuges.
- (D) All inland brackish or saline waters which have been identified as a unique or critical habitat for threatened or endangered species by the U.S. Fish and Wildlife Service.

- (E) All inland brackish and saline waters in Waimanu National Estuarine Research Reserve (Hawai'i).
- (F) The following natural estuaries:  
Lumaha'i and Kilauea estuaries  
(Kaua'i).

As listed in Appendix A dated July 1, 2014, entitled "Class 1, Inland Waters", located at the end of this chapter.

- (2) Class 1.b.: All inland brackish or saline waters in protective subzones designated under chapter 13-5 by the state department of land and natural resources[.] as listed in Appendix A dated July 1, 2014, entitled "Class 1, Inland Waters", located at the end of this chapter.
- (3) Class 2.: All inland brackish and saline waters not otherwise classified. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; am and comp \_\_\_\_\_ ] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

§11-54-5.2 Inland water criteria. (a) Criteria for springs and seeps, ditches and flumes, natural freshwater lakes, reservoirs, low wetlands, coastal wetlands, saline lakes, and anchialine pools. Only the basic criteria set forth in section 11-54-4 apply to springs and seeps, ditches and flumes, natural freshwater lakes, reservoirs, low wetlands, coastal wetlands, saline lakes, and anchialine pools. Natural freshwater lakes, saline lakes, and anchialine pools will be maintained in the natural state through Hawai'i's "no discharge" policy for these waters. Waste discharge into these waters is prohibited,

except as provided in section 11-54-4(e) (see section 11-54-3(b)(1)).

(b) Specific criteria for streams. Water column criteria for streams shall be as provided in the following table:

<u>Parameter</u>	Geometric mean not to exceed the <u>given value</u>	Not to exceed the given value more than <u>ten per cent of the time</u>	Not to Exceed the given value more than <u>two per cent of the time</u>
Total Nitrogen (ug N/L)	250.0* 180.0**	520.0* 380.0**	800.0* 600.0**
Nitrate + Nitrite Nitrogen (ug [NO <sub>3</sub> +NO <sub>2</sub> ]-N/L)	70.0* 30.0**	180.0* 90.0**	300.0* 170.0**
Total Phosphorus (ug P/L)	50.0* 30.0**	100.0* 60.0**	150.0* 80.0**
Total Suspended Solids (mg/L)	20.0* 10.0**	50.0* 30.0**	80.0* 55.0**
Turbidity (N.T.U.)	5.0* 2.0**	15.0* 5.5**	25.0* 10.0**

\* Wet season - November 1 through April 30.

\*\* Dry season - May 1 through October 31.

L = liter

N.T.U. = Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.

ug = microgram or 0.000001 grams

pH Units - shall not deviate more than 0.5 units from ambient conditions and shall not be lower than 5.5 nor higher than 8.0

Dissolved Oxygen - Not less than eighty per cent saturation, determined as a function of ambient water temperature.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Specific Conductance - Not more than three hundred micromhos/centimeter.

(1) Bottom criteria for streams:

- (A) Episodic deposits of flood-borne soil sediment shall not occur in quantities exceeding an equivalent thickness of five millimeters (0.20 inches) over hard bottoms twenty-four hours after a heavy rainstorm.
- (B) Episodic deposits of flood-borne soil sediment shall not occur in quantities exceeding an equivalent thickness of ten millimeters (0.40 inches) over soft bottoms twenty-four hours after a heavy rainstorm.
- (C) In soft bottom material in pool sections of streams, oxidation-reduction potential (EH) in the top ten centimeters (four inches) shall not be less than +100 millivolts.
- (D) In soft bottom material in pool sections of streams, no more than fifty per cent of the grain size distribution of sediment shall be smaller than 0.125 millimeters (0.005 inches) in diameter.
- (E) The director shall prescribe the appropriate parameters, measures, and criteria for monitoring stream bottom biological communities including their habitat, which may be affected by proposed actions. Permanent benchmark stations may be required where necessary for monitoring purposes. The water quality criteria for this subsection shall be deemed to be met if time series surveys of benchmark stations indicate no relative changes in the relevant biological communities, as noted by biological community

indicators or by indicator organisms which may be applicable to the specific site.

(c) Specific criteria for elevated wetlands: pH units shall not deviate more than 0.5 units from ambient conditions and shall not be lower than 4.5 nor higher than 7.0.

(d) Specific criteria for estuaries.

(1) The following table is applicable to all estuaries except Pearl Harbor:

<u>Parameter</u>	Geometric mean not to exceed the <u>given value</u>	Not to exceed the given value more than <u>ten per cent of the time</u>	Not to Exceed the given value more than <u>two per cent of the time</u>
Total Nitrogen (ug N/L)	200.00	350.00	500.00
Ammonia Nitrogen (ug NH <sub>4</sub> -N/L)	6.00	10.00	20.00
Nitrate + Nitrite Nitrogen (ug [NO <sub>3</sub> +NO <sub>2</sub> ]-N/L)	8.00	25.00	35.00
Total Phosphorus (ug P/L)	25.00	50.00	75.00
Chlorophyll a (ug/L)	2.00	5.00	10.00
Turbidity (N.T.U.)	1.5	3.00	5.00

L = liter

N.T.U. = Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard



reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.

ug = microgram or 0.000001 grams

pH Units - shall not deviate more than 0.5 units from ambient conditions and shall not be lower than 7.0 nor higher than 8.6.

Dissolved Oxygen - Not less than seventy-five per cent saturation, determined as a function of ambient water temperature and salinity.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from ambient conditions.

Oxidation - reduction potential (EH) - Shall not be less than -100 millivolts in the uppermost ten centimeters (four inches) of sediment.

(2) The following table is applicable only to Pearl Harbor Estuary.

<u>Parameter</u>	Geometric mean not to exceed the <u>given value</u>	Not to exceed the given value more than <u>ten per cent of the time</u>	Not to exceed the given value more than <u>two per cent of the time</u>
Total Nitrogen (ug N/L)	300.00	550.00	750.00
Ammonia Nitrogen (ug NH <sub>4</sub> -N/L)	10.00	20.00	30.00
Nitrate + Nitrite Nitrogen (ug [NO <sub>3</sub> +NO <sub>2</sub> ]-N/L)	15.00	40.00	70.00
Total Phosphorus (ug P/L)	60.00	130.00	200.00
Chlorophyll a (ug/L)	3.50	10.00	20.00

<u>Parameter</u>	Geometric mean not to exceed the <u>given value</u>	Not to exceed the given value more than <u>ten per cent of the time</u>	Not to exceed the given value more than two per cent of <u>the time</u>
Turbidity (N.T.U.)	4.00	8.00	15.00

L = liter

N.T.U. = Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.

ug = microgram or 0.000001 grams.

pH Units - shall not deviate more than 0.5 units from ambient conditions and shall not be lower than 6.8 nor higher than 8.8.

Dissolved Oxygen - Not less than sixty per cent saturation, determined as a function of ambient water temperature and salinity.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from ambient conditions.

Oxidation - Reduction potential (EH) - Shall not be less than -100 millivolts in the uppermost ten centimeters (four inches) of sediment. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; am and comp 10/21/12; am and comp 12/6/13; comp ]  
 (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

§11-54-6 Uses and specific criteria applicable to marine waters. (a) Embayments.

(1) As used in this subsection:

"Embayments" means land-confined and physically-protected marine waters with restricted openings to open coastal waters, defined by the ratio of total bay volume to the cross-sectional entrance area of seven hundred to one or greater.

"Total bay volume" is measured in cubic meters and "cross-sectional entrance area" is measured in square meters, and both are determined at mean lower low water.

(2) Water areas to be protected.

(A) Class AA.

(i) Hawaii

Puako Bay  
Waiulua Bay  
Anaehoomalu Bay  
Kiholo Bay  
Kailua Harbor  
Kealakekua Bay  
Honaunau Bay

Oahu

Waiialua Bay  
Kahana Bay  
Kaneohe Bay  
Hanauma Bay

Kauai

Hanalei Bay] Waters are listed in Appendix B dated July 1, 2014, entitled "Class AA, Marine Waters and Embayments", located at the end of this chapter.

(ii) All embayments in preserves, reserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195 or chapter 190, HRS,

as listed in Appendix B dated July 1, 2014, entitled "Class AA, Marine Waters and Embayments", located at the end of this chapter, or similar reserves for the protection of marine life established under chapter 190, HRS[.] as listed in Appendix B dated July 1, 2014, entitled "Class AA, Marine Waters and Embayments", located at the end of this chapter.

(iii) All waters in state or federal fish and wildlife refuges and marine sanctuaries[.] as listed in Appendix B dated July 1, 2014, entitled "Class AA, Marine Waters and Embayments", located at the end of this chapter.

(iv) All waters which have been officially identified as a unique or critical habitat for threatened or endangered species by the U.S. Fish and Wildlife Service[.] as listed in Appendix B dated July 1, 2014, entitled "Class AA, Marine Waters and Embayments", located at the end of this chapter.

(B) Class A.

Hawaii

Hilo Bay (inside breakwater)

Kawaihae Boat Harbor

Honokohau Boat Harbor

Keauhou Bay

Maui

Kahului Bay

Lahaina Boat Harbor

Maalaea Boat Harbor

Lanai

Manele Boat Harbor

Kaumalapau Harbor

Molokai

Hale o Lono Harbor  
 Kaunakakai Harbor  
 Kaunakakai Boat Harbor

Oahu

Kaiaka Bay  
 Paiko Peninsula to Koko Head  
 Ala Wai Boat Harbor  
 Kewalo Basin  
 Honolulu Harbor  
 Keehi Lagoon  
 Barbers Point Harbor  
 Pokai Bay  
 Heeia Kea Boat Harbor  
 Waianae Boat Harbor  
 Haleiwa Boat Harbor  
 Ko Olina

Kauai

Hanamaulu Bay  
 Nawiliwili Bay  
 Kukuiula Bay  
 Wahiawa Bay  
 Hanapepe Bay (inside breakwater)  
 Kikiaola Boat Harbor  
 Port Allen Boat Harbor] Waters are listed in Appendix C dated July 1, 2014, entitled "Class A, Marine Waters and Embayments", located at the end of this chapter.

- (3) The following criteria are specific for all embayments excluding those described in subsection (d). (Note that criteria for embayments differ based on fresh water inflow.)

<u>Parameter</u>	Geometric mean not to exceed the <u>given value</u>	Not to exceed the given value more than <u>ten per cent of the time</u>	Not to Exceed the given value more than Two per cent of <u>The time</u>
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<u>Parameter</u>	Geometric mean not to exceed the <u>given value</u>	Not to exceed the given value more than ten per cent <u>of the time</u>	Not to Exceed the given value more than Two per cent of <u>The time</u>
Total Nitrogen (ug N/L)	200.00* 150.00**	350.00* 250.00**	500.00* 350.00**
Ammonia Nitrogen (ug NH <sub>4</sub> -N/L)	6.00* 3.50**	13.00* 8.50**	20.00* 15.00**
Nitrate + Nitrite Nitrogen (ug [NO <sub>3</sub> +NO <sub>2</sub> ]-N/L)	8.00* 5.00**	20.00* 14.00**	35.00* 25.00**
Total Phosphorus (ug P/L)	25.00* 20.00**	50.00* 40.00**	75.00* 60.00**
Chlorophyll a ug/L)	1.50* 0.50**	4.50*[*] 1.50**	8.50* 3.00**
Turbidity (N.T.U.)	1.5* 0.40**	3.00* 1.00**	5.00* 1.50**

\* "Wet" criteria apply when the average fresh water inflow from the land equals or exceeds one per cent of the embayment volume per day.

\*\* "Dry" criteria apply when the average fresh water inflow from the land is less than one per cent of the embayment volume per day.

Applicable to both "wet" and "dry" conditions:

pH Units - shall not deviate more than 0.5 units from a value of 8.1, except at coastal locations where and when freshwater from stream, stormdrain or groundwater discharge may depress the pH to a minimum level of 7.0.

Dissolved Oxygen - Not less than seventy-five per cent saturation, determined as a function of ambient water temperature and salinity.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from natural or seasonal changes considering hydrologic input and oceanographic factors.

L = liter

N.T.U. = Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.

ug = microgram or 0.000001 grams

(b) Open coastal waters.

(1) As used in this subsection:

"Open coastal waters" means marine waters bounded by the 183 meter or 600 foot (100 fathom) depth contour and the shoreline, excluding bays named in subsection (a).

(2) Water areas to be protected: [(measured in a clockwise direction from the first-named to the second-named location, where applicable):]

(A) Class AA[.]as listed in Appendix D dated July 1, 2014, entitled "Class AA, Open Coastal Waters", located at the end of this chapter.

[(i) Hawaii - The open coastal waters from Leleiwi Point to Waiulaula Point.

(ii) Maui - The open coastal waters between Nakalele Point and Waihee Point and between Huelo Point and Puu Olai.

(iii) Kahoolawe - All open coastal water surrounding the island.

(iv) Lanai - All open coastal waters surrounding the island.

(v) Molokai - The open coastal waters between the westerly boundary of Hale o Lono Harbor to Lamaloa Head. Also, the open coastal waters from Cape Halawa to the

- easterly boundary of Kaunakakai Harbor.
- (vi) Oahu - Waimanalo Bay from the southerly boundary of Kaiona Beach Park, and including the waters surrounding Manana and Kaohikaipu Islands, to Makapuu Point. Also, Waialua Bay from Kaiaka Point to Puaena Point, and the open coastal waters along Kaena Point between a distance of 5.6 kilometers (3.5 miles) from Kaena Point towards Makua and 5.6 kilometers (3.5 miles) from Kaena Point toward Mokuleia.
  - (vii) Kauai - The open coastal waters between Hikimoe Valley and Makahoa Point. Also, the open coastal waters between Makahuena Point and the westerly boundary of Hoai Bay.
  - (viii) Niihau - All open coastal waters surrounding the island.
  - (ix) All other islands of the state - All open coastal waters surrounding the islands not classified in this section.]
- [~~(x)~~]All open waters in preserves, reserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195 or chapter 190, HRS as listed in Appendix D dated July 1, 2014, entitled "Class AA, Open Coastal Waters", located at the end of this chapter, or similar reserves for the protection of marine life established under chapter 190, HRS, as amended as listed in Appendix D dated July 1, 2014, entitled "Class AA, Open Coastal Waters", located at the end of this



chapter; or in the refuges or sanctuaries established by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service[.]as listed in Appendix D dated July 1, 2014, entitled "Class AA, Open Coastal Waters", located at the end of this chapter.

- (B) Class A - All other open coastal waters not otherwise specified.
- (3) The following criteria are specific for all open coastal waters, excluding those described in subsection (d). (Note that criteria for open coastal waters differ, based on fresh water discharge.)

<u>Parameter</u>	<u>Geometric mean not to exceed the given value</u>	<u>Not to exceed the given value more than ten per cent of the time</u>	<u>Not to exceed the given value more than two per cent of the time</u>
Total Nitrogen (ug N/L)	150.00* 110.00**	250.00* 180.00**	350.00* 250.00**
Ammonia Nitrogen (ug NH <sub>4</sub> -N/L)	3.50* 2.00**	8.50* 5.00**	15.00* 9.00**
Nitrate + Nitrite Nitrogen (ug [NO <sub>3</sub> +NO <sub>2</sub> ]-N/L)	5.00* 3.50**	14.00* 10.00**	25.00* 20.00**
Total Phosphorus (ug P/L)	20.00* 16.00**	40.00* 30.00**	60.00* 45.00**
Light Extinction Coefficient (k units)	0.20* 0.10**	0.50* 0.30**	0.85* 0.55**
Chlorophyll a ug/L)	0.30* 0.15**	0.90* 0.50**	1.75* 1.00**
Turbidity (N.T.U.)	0.50* 0.20**	1.25* 0.50**	2.00* 1.00**

\* "Wet" criteria apply when the open coastal waters receive more than three million gallons per day of fresh water discharge per shoreline mile.

\*\* "Dry" criteria apply when the open coastal waters receive less than three million gallons per day of fresh water discharge per shoreline mile.

Applicable to both "wet" and "dry" conditions:

pH Units - shall not deviate more than 0.5 units from a value of 8.1, except at coastal locations where and when freshwater from stream, stormdrain or groundwater discharge may depress the pH to a minimum level of 7.0.

Dissolved Oxygen - Not less than seventy-five per cent saturation, determined as a function of ambient water temperature and salinity.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from natural or seasonal changes considering hydrologic input and oceanographic factors.

k units = the ratio of light measured at the water's surface to light measured at a particular depth.

L = liter

Light Extinction Coefficient is only required for dischargers who have obtained a waiver pursuant to section 301(h) of the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251), as amended, and are required by EPA to monitor it.

N.T.U. = Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.

ug = microgram or 0.000001 grams

(c) Oceanic waters.

(1) As used in this subsection: "Oceanic waters" means all other marine waters outside of the 183 meter (600 feet or 100 fathom) depth contour.

- (2) Water areas to be protected: Class A - All oceanic waters.
- (3) The following criteria are specific for oceanic waters:

<u>Parameter</u>	Geometric mean not to exceed the <u>given value</u>	Not to exceed The given value more than <u>ten per cent of the time</u>	Not to exceed the given value more than two per cent of <u>the time</u>
Total Nitrogen (ug N/L)	50.00	80.00	100.00
Ammonia Nitrogen (ug NH <sub>4</sub> -N/L)	1.00	1.75	2.50
Nitrate + Nitrite Nitrogen (ug [NO <sub>3</sub> +NO <sub>2</sub> ]-N/L)	1.50	2.50	3.50
Total Phosphorus (ug P/L)	10.00	18.00	25.00
Chlorophyll a (ug/L)	0.06	0.12	0.20
Turbidity (N.T.U.)	0.03	0.10	0.20

L = liter

N.T.U. = Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.

ug = microgram or 0.000001 grams

pH Units - shall not deviate more than 0.5 units from a value of 8.1.

Dissolved Oxygen - Not less than seventy-five per cent saturation, determined as a function of ambient water temperature and salinity.

Temperature - shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from natural or seasonal changes considering hydrologic input and oceanographic factors.

(d) Area-specific criteria for the Kona (west) coast of the island of Hawaii.

(1) For all marine waters of the island of Hawaii from Loa Point, South Kona District, clockwise to Malae Point, North Kona District, excluding Kawaihae Harbor and Honokohau Harbor, and for all areas from the shoreline at mean lower low water to a distance 1000 m seaward:

(A) In areas where nearshore marine water salinity is greater than 32.00 parts per thousand the following specific criteria apply:

<u>Parameter</u>	<u>Geometric mean not to exceed the given single value</u>
Total Dissolved Nitrogen (ug N/L)	100.00
Nitrate + Nitrite Nitrogen (ug [NO <sub>3</sub> +NO <sub>2</sub> ]-N/L)	4.50
Total Dissolved Phosphorus (ug P/L)	12.50
Phosphate (ug PO <sub>4</sub> - P/L)	5.00
Ammonia Nitrogen (ug NH <sub>4</sub> - N/L)	2.50
Chlorophyll a (ug/L)	0.30
Turbidity (N.T.U.)	0.10

\* Specific criteria for Class A embayments apply to Honokohau Harbor and Kawaihae Harbor, see section 11-54-6(a)(3).

- (B) If nearshore marine water salinity is less than or equal to 32.00 parts per thousand the following parameters shall be related to salinity on the basis of a linear least squares regression equation:

$$Y = MX + B$$

where:

Y = parameter concentration (in ug/L)

X = salinity (in ppt)

M = regression coefficient (or "slope")

B = constant (or "Y intercept").

The absolute value of the upper 95 per cent confidence limit for the calculated sample regression coefficient (M) shall not exceed the absolute value of the following values:

<u>Parameter</u>	<u>M</u>
Nitrate and Nitrite Nitrogen (ug [NO <sub>3</sub> + NO <sub>2</sub> ]-N/L)	-31.92
Total Dissolved Nitrogen (ug N/L)	-40.35
Phosphate (ug PO <sub>4</sub> - P/L)	-3.22
Total Dissolved Phosphorus (ug P/L)	-2.86

The specific criteria for ammonia nitrogen, chlorophyll a, and turbidity given in clause (i) also apply.

- (C) Parameter concentrations shall be determined along a horizontal transect extending seaward from a shoreline sample location using the following method: water samples shall be obtained at distances of 1, 10, 50, 100, and 500 meters from the shoreline sampling location. Samples shall be collected within one meter of the water surface and below the air-water interface. Dissolved nutrient samples shall be filtered through media with particle size retention of 0.7 um. This sampling protocol shall be replicated not less than three times on different days over a period not to exceed fourteen days during dry weather conditions. The geometric means of sample measurements for corresponding offshore distances shall be used for regression calculations.

pH Units - shall not deviate more than 0.5 units from a value of 8.1, except at coastal locations where and when freshwater from stream, stormdrain or groundwater discharge may depress the pH to a minimum level of 7.0.

Dissolved Oxygen - Not less than seventy-five per cent saturation, determined as a function of ambient water temperature and salinity.

Temperature - Shall not vary more than one degree Celsius from ambient conditions.

Salinity - Shall not vary more than ten per cent from natural or seasonal changes considering hydrologic input and oceanographic factors.

L - liter

N.T.U. - Nephelometric Turbidity Units. A comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension under the same conditions. The higher the intensity of scattered light, the higher the turbidity.

ug - microgram or 0.000001 grams. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; am and comp ] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

§11-54-7 Uses and specific criteria applicable to marine bottom types. (a) Sand beaches.

- (1) As used in this subsection:  
"Sand beaches" means shoreline composed of the weathered calcareous remains of marine algae and animals (white sand), the weathered remains of volcanic tuff (olivine), or the weathered remains of lava (black sand). Associated animals are largely burrowers and are related to particle grain size, slope, and color of the beach.
- (2) Water areas to be protected:
  - (A) Class I - All beaches on the Northwestern Hawaiian Islands. These islands comprise that portion of the Hawaiian archipelago which lies northwest of the island of Kauai and is part of the State of Hawaii; including Nihoa Island, Necker Island, French Frigate Shoals, Brooks Banks, Gardiner Pinnacles, Dowsett and Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Atoll, Gambia Shoal, and Kure Atoll.

- (B) Class II - All beaches not in Class I.
- (3) The following criteria are specific to sand beaches:
  - (A) Episodic deposits of flood-borne sediment shall not occur in quantities exceeding an equivalent thickness of ten millimeters (0.40 inches) twenty-four hours after a heavy rainstorm.
  - (B) Oxidation - reduction potential (EH) in the uppermost ten centimeters (four inches of sediment shall not be less than +100 millivolts.
  - (C) No more than fifty per cent of the grain size distribution of sediment shall be smaller than 0.125 millimeters in diameter.
- (b) Lava rock shoreline and solution benches.
  - (1) As used in this subsection:
    - "Lava rock shorelines" means sea cliffs and other vertical rock faces, horizontal basalts, volcanic tuff beaches, and boulder beaches formed by rocks falling from above or deposited by storm waves. Associated plants and animals are adapted to the harsh physical environment and are distinctly zoned to the degree of wave exposure.
    - "Solution benches" means sea level platforms developed on upraised reef or solidified beach rock by the erosive action of waves and rains. Solution benches are distinguished by a thick algal turf and conspicuous zonation of plants and animals.
  - (2) Water areas to be protected:
    - (A) Class I - All lava rock shorelines and solution benches in preserves, reserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195 or chapter 190, HRS, or similar reserves for the protection of marine life established under chapter 190,



HRS, as amended; or in refuges or sanctuaries established by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service.

(B) Class II

(i) All other lava rock shorelines not in Class I.

(ii) The following solution benches:

<u>Maui</u>	<u>Oahu</u>
Kihei	Diamond Head
Papaula Point	Manana Island
	Makapuu
<u>Kauai</u>	Laie
Near Hanapepe	Kahuku
Salt Ponds	Mokuleia
Milolii	Makua
Nualolo	Makaha
Makaha	Maile
Mahaulepu	Lualualei
Kuhio Beach Park (Kukuiula)	Barbers Point

(3) The following criteria are specific to lava rock shorelines and solution benches:

(A) Episodic deposits of flood-borne sediment shall not occur in quantities exceeding an equivalent thickness of five millimeters (0.20 inches) for longer than twenty-four hours after a heavy rainstorm.

(B) The director shall determine parameters, measures, and criteria for bottom biological communities which may be affected by proposed actions. The location and boundaries of each bottom-type class will be clarified when situations require their identification. For example, when a discharge permit is applied for or a waiver pursuant to section 301(h) of the Federal Water Pollution Control Act

(33 U.S.C. Section 1311) is required. Permanent benchmark stations may be required where necessary for monitoring purposes. The water quality standards for this subsection shall be deemed to be met if time series surveys of benchmark stations indicate no relative changes in the relevant biological communities, as noted by biological community indicators or by indicator organisms which may be applicable to the specific site.

(c) Marine pools and protected coves.

(1) As used in this subsection:

"Marine pools" means waters which collect in depressions on sea level lava rock outcrops and solution benches and also behind large boulders fronting the sea. Pools farthest from the ocean have harsher environments and less frequent renewal of water and support fewer animals. Those closest to the ocean are frequently renewed with water, are essentially marine, and support more diverse fauna.

"Protected coves" means small inlets which are removed from heavy wave action or surge.

(2) Water areas to be protected.

(A) Class I.

(i) All marine pools and protected coves in preserves, reserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195 or chapter 190, HRS, or similar reserves for the protection of marine life established under chapter 190, HRS, as amended; or in

refuges or sanctuaries  
established by the U.S. Fish  
and Wildlife Service or the  
National Fisheries Service.

- (ii) Hawaii  
Honaunau  
Kiholo

(B) Class II.

<u>Hawaii</u>	<u>Maui</u>
Kalapana	Hana
Pohakuloa	Keanae
Kapalaoa	Napili
Kapoho	Puu Olai to
King's Landing	Cape
(Papai)	Hanamanioa
Hilo	Kipahulu
Leileiwi Point	
Wailua Bay	<u>Molokai</u>
	Cape Halawa
	Kalaupapa
	South Coast

Oahu  
Diamond Head  
Halona Blowhole to Makapuu  
Mokuleia  
Kaena Point  
Makua  
Punaluu

Kauai  
Kealia  
Mahaulepu  
Hanamaulu  
Poipu  
Puolo Point

- (3) The following criteria are specific to  
marine pools and protected coves:
  - (A) In marine pools and coves with sand  
bottoms, oxidation-reduction potential  
(EH) in the uppermost ten centimeters

- (four inches) of sediment shall not be less than +100 millivolts.
- (B) In marine pools and coves with sand bottoms, no more than fifty per cent of the grain size distribution of the sediment shall be smaller than 0.125 millimeters in diameter.
- (C) Episodic deposits of flood-borne soil sediment shall not occur in quantities exceeding equivalent thicknesses for longer than twenty-four hours following a heavy rainstorm according to the following:
- (i) No thicker than an equivalent of five millimeters (0.20 inches) on hard bottoms (other than living corals).
  - (ii) No thicker than an equivalent of ten millimeters (0.40 inches) on soft bottoms.
- (D) The director shall determine parameters, measures, and criteria for bottom biological communities which may be affected by proposed actions. Permanent benchmark stations may be required where necessary for monitoring purposes. The water quality standards for this subsection shall be deemed to be met if time series surveys of benchmark stations indicate no relative changes in the relevant biological communities, as noted by biological community indicators or by indicator organisms which may be applicable to the specific site.
- (d) Artificial basins.
- (1) As used in this subsection:  
 "Artificial basins" means dredged or quarried channels or harbors, and harbor-associated submerged structures. Many organisms can attach to the vertical

structures, but the soft, shifting sediment bottoms of harbors may only be colonized by a few hardy or transient species.

(2) Class II water areas to be protected are as follows:

(A) Shallow draft harbors:

Hawaii

Wailoa River Boat Harbor  
Mahukona Harbor  
Keauhou Harbor  
Kailua-Kona Harbor  
Honokohau Boat Harbor  
Kawaihae Boat Harbor

Maui

Maalaea Boat Harbor  
Lahaina Boat Harbor  
Hana Harbor

Lanai

Manele Boat Harbor  
Kaumalapau Harbor

Molokai

Kalaupapa Anchorage  
Kaunakakai Small Boat Harbor  
Hale o Lono Harbor

Oahu

Heeia Kea Boat Harbor  
Kaneohe Marine Corps Air Station  
Kaneohe Yacht Club  
Hawaii Kai Marina (Kuapa Pond)  
Pokai Bay  
Waianae Boat Harbor  
Keehi Marine Center  
La Mariana Sailing Club  
Haleiwa Harbor  
Makani Kai Marina  
Keehi Boat Harbor  
Ala Wai Boat Harbor:  
Ala Wai Fuel Dock  
Hawaii Yacht Club  
Waikiki Yacht Club

Ko Olina

Kauai

Nawiliwili Small Boat Harbor  
Kukuiula Boat Harbor  
Kikiaola Boat Harbor  
Port Allen Boat Harbor

(B) Deep draft commercial harbors:

Hawaii

Kuhio Bay (Hilo Harbor)  
Kawaihae Deep Draft Harbor

Maui

Kahului Harbor

Molokai

Kaunakakai Barge Harbor

Oahu

Honolulu Harbor  
Barbers Point Harbor  
Kewalo Basin

Kauai

Nawiliwili Harbor  
Port Allen Harbor

(3) Specific criterion to be applied -  
Oxidation-reduction potential (EH) in the  
uppermost ten centimeters (four inches) of  
sediment shall not be less than -100  
millivolts.

(e) Reef flats and reef communities.

(1) As used in this subsection:

"Nearshore reef flats" means shallow  
platforms of reef rock, rubble, and sand  
extending from the shoreline. Smaller,  
younger flats projected out as semicircular  
aprons while older, larger flats form wide  
continuous platforms. Associated animals  
are mollusks, echinoderms, worms,

crustaceans (many living beneath the surface), and reef-building corals. "Offshore reef flats" means shallow, submerged platforms of reef rock and sand between depths of zero to three meters (zero to ten feet) which are separated from the shoreline of high volcanic islands by lagoons or ocean expanses. Dominant organisms are bottom-dwelling algae. Biological composition is extremely variable. There are three types: patch, barrier, and atoll reef flats; quite different from one another structurally. The presence of heavier wave action, water more oceanic in character, and the relative absence of terrigenous influences distinguish offshore reef flats.

"Protected reef communities" means hard bottom aggregations, including scattered sand channels and patches, dominated by living coral thickets, mounds, or platforms. They are found at depths of ten to thirty meters (thirty-two to ninety-six feet) along protected leeward coasts or in shallow water (up to sea level) in sheltered lagoons behind atoll or barrier reefs and in the calm reaches of bays or coves.

"Wave-exposed reef communities" means aggregations, including scattered sand channels and patches, dominated by corals. They may be found at depths up to forty meters (approximately one hundred thirty feet) along coasts subject to continuous or heavy wave action and surge. Wave-exposed reef communities are dominated biologically by benthic algae, reef-building corals, and echinoderms.

(2) Water areas to be protected:

(A) Class I.

- (i) All reef flats and reef communities in preserves,

- reserves, sanctuaries, and refuges established by the department of land and natural resources under chapter 195 or chapter 190, HRS, or similar reserves for the protection of marine life under chapter 190, HRS, as amended; or in refuges or sanctuaries established by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service;
- (ii) Nearshore reef flats:
- |                        |              |
|------------------------|--------------|
| <u>Hawaii</u>          | <u>Maui</u>  |
| Puako                  | Honolua      |
| <u>Lanai</u>           | <u>Oahu</u>  |
| Northwest Lanai Reef   | Hanauma Bay  |
| <u>Molokai</u>         | <u>Kauai</u> |
| Western Kalaupapa      | Nualolokai   |
| Southeast Molokai Reef | Hanalei      |
| Honomuni Harbor        | (Anini to    |
| Kulaalamihī Fishpond   | Haena)       |
- (iii) Offshore reef flats:
- Moku o Loe (Coconut Island, Kaneohe Bay, Oahu)
  - Kure Atoll
  - Pearl and Hermes Atoll
  - Lisianski Island
  - Laysan Island
  - Maro Reef
  - French Frigate Shoals
- (iv) Wave exposed reef communities:
- Hawaii
- 1823 Lava Flow (Punaluu)
  - 1840 Lava Flow (North Puna)
  - 1868 Lava Flow (South Point)
  - 1887 Lava Flow (South Point)
  - 1955 Lava Flow (South Puna)
  - 1960 Lava Flow (Kapoho)
  - 1969 Lava Flow (Apuna Point)



1970 Lava Flow (Apuna Point)  
1971 Lava Flow (Apuna Point)  
1972 Lava Flow (Apuna Point)  
1973 Lava Flow (Apuna Point)

Maui

Hana Bay  
Makuleia Bay (Honolua)

Molokini Island

All wave exposed reef communities

Molokai

Moanui Kahinapohaku Waikolu -  
Kalawao  
Halawa Bay

Oahu

Sharks Cove (Pupukea)  
Moku Manu (Islands)  
Outer Hanauma Bay  
Waimea Bay  
Kawela Bay  
Kahana Bay

Kauai

Ke`e Beach  
Poipu Beach  
Kipu Beach

Niihau

All wave exposed communities

Lehua (off Niihau)

All wave exposed communities

(v) Protected reef communities:

Hawaii

Puako  
Honaunau  
Kealakekua

Kiholo  
Anaehoomalu  
Hapuna  
Kahaluu Bay  
Keaweula (North Kohala)  
Milolii Bay to Keawaiki  
Kailua-Kaiwi (Kona)  
Onomea Bay  
1801 Lava Flow (Keahole or Kiholo)  
1850 Lava Flow (South Kona)  
1859 Lava Flow (Kiholo)  
1919 Lava Flow (Milolii)  
1926 Lava Flow (Milolii)

Maui  
Honolua

Ahihi-La Perouse (including 1790  
Lava Flow at Cape Kinau)

Molokini Island  
All protected reef communities

Lanai  
Manele  
Hulopoe

<u>Molokai</u>	<u>Oahu</u>
Southeast Molokai	Hanauma Bay
Kalaupapa	Moku o Loe
Honomuni Harbor	(Coconut Island, Kaneohe Bay)

Kauai  
Hoai Bay (Poipu)

Northwestern Hawaiian Islands  
Kure Atoll Lagoon  
Pearl and Hermes Lagoon  
Lisianski Lagoon  
Maro Reef Lagoon

French Frigate Shoals Lagoon

(B) Class II.

- (i) Existing or planned harbors may be located within nearshore reef flats showing degraded habitats and only where feasible alternatives are lacking and upon written approval by the director, considering environmental impact and the public interest pursuant to section 342D-6, HRS.

Hawaii

Blonde Reef (Hilo Harbor)  
Kawaihae Small Boat Harbor

Maui

Lahaina Harbor  
Kahului Harbor

Lanai

Manele

Molokai

Kaunakakai Harbor  
Hale o Lono Harbor  
Palaau (2.4 kilometers/1.5 mile,  
east of Pakanaka Fishpond)

Oahu

Keehi Boat Harbor  
Ala Moana Reef  
Honolulu Harbor  
Heeia Harbor  
Kaneohe Yacht Club  
Ala Wai Harbor  
Haleiwa Boat Harbor  
Maunalua Bay  
Pearl Harbor  
Kaneohe Bay  
Kahe

All other nearshore reef flats not in Class I;

- (ii) Offshore reef flats:

Oahu

## Kapapa Barrier Reef

## Kaneohe Patch Reefs (Kaneohe Bay)

- (iii) All other wave exposed or protected reef communities not in Class I.
- (3) Specific criteria to be applied to all reef flats and reef communities: No action shall be undertaken which would substantially risk damage, impairment, or alteration of the biological characteristics of the areas named herein. When a determination of substantial risk is made by the director, the action shall be declared to be contrary to the public interest and no other permits shall be issued pursuant to chapter 342D, HRS.
- (A) Oxidation-reduction potential (EH) in the uppermost ten centimeters (four inches) of sand patches shall not be less than +100 millivolts;
  - (B) No more than fifty per cent of the grain size distribution of sand patches shall be smaller than 0.125 millimeters in diameter;
  - (C) Episodic deposits of flood-borne soil sediment shall not occur in quantities exceeding equivalent thicknesses for longer than twenty-four hours after a heavy rainstorm as follows:
    - (i) No thicker than an equivalent of two millimeters (0.08 inches) on living coral surfaces;
    - (ii) No thicker than an equivalent of five millimeters (0.2 inches) on other hard bottoms;
    - (iii) No thicker than an equivalent of ten millimeters (0.4 inches) on soft bottoms;
  - (D) The director shall determine parameters, measures, and criteria for bottom biological communities which may

be affected by proposed actions. The location and boundaries of each bottom-type class shall be clarified when situations require their identification. For example, the location and boundaries shall be clarified when a discharge permit is applied for or a waiver pursuant to Section 301(h) of the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251 et seq.) is required. Permanent benchmark stations may be required where necessary for monitoring purposes. The water quality standards for this subsection shall be deemed to be met if time series surveys of benchmark stations indicate no relative changes in the relevant biological communities, as noted by biological community indicators or by indicator organisms which may be applicable to the specific site.

- (f) Soft bottom communities.
- (1) As used in this subsection:
  - "Soft bottom communities" means poorly described and "patchy" communities, mostly of burrowing organisms, living in deposits at depths between two to forty meters (approximately six to one hundred thirty feet). The particle size of sediment, depth below sea level, and degree of water movement and associated sediment turnover dictate the composition of animals which rework the bottom with burrows, trails, tracks, ripples, hummocks, and depressions.
  - (2) Water areas to be protected:
    - Class II - All soft bottom communities.
    - (3) Specific criteria to be applied - Oxidation-reduction potential (EH) in the uppermost ten centimeters (four inches) of sediment should not be less than -100 millivolts.

The location and boundaries of each bottom-type class shall be clarified when situations require their identification. For example, the location and boundaries shall be clarified when a discharge permit is applied for or a waiver pursuant to Section 301(h) of the Act is required. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; comp ] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

§11-54-8 [Specific criteria for recreational areas]. Recreational criteria for all State waters.  
 (a) These criteria are designed to protect the public from exposure to harmful levels of pathogens while participating in water-contact activities. The specific criteria for enterococcus shall be expressed in colony forming units (CFU) per one hundred milliliters or as a most probable number (MPN) per one hundred milliliters, as specified by the analytical method used. [In inland recreational waters:

- (1) Enterococcus content shall not exceed a geometric mean of 33 per one hundred milliliters in not less than five samples which shall be spaced to cover a period between twenty five and thirty days. No single sample shall exceed the single sample maximum of 89 CFU per 100 milliliters or the site-specific one-sided 82 per cent confidence limit.
- (2) Inland recreational waters in which enterococcus content does not exceed the standard shall not be lowered in quality.
- (3) At locations where sampling is less frequent than five samples per twenty-five to thirty

days, no single sample shall exceed the single sample maximum nor shall the geometric mean of these samples taken during the 30-day period exceed 33 CFU per 100 milliliters.

- (4) Raw or inadequately treated sewage, sewage for which the degree of treatment is unknown, or other pollutants of public health significance, as determined by the director of health, shall not be present in natural public swimming, bathing or wading areas. Warning signs shall be posted at locations where human sewage has been identified as temporarily contributing to the enterococcus count.
- (b) In marine recreational waters:
  - (1) Within 300 meters (one thousand feet) of the shoreline, including natural public bathing or wading areas, enterococcus content shall not exceed a geometric mean of 35 CFU per 100 milliliters in not less than five samples which shall be spaced to cover a period between twenty-five and thirty days. No single sample shall exceed the single sample maximum of 104 CFU per 100 milliliters or the site-specific one-sided 75 per cent confidence limit. Marine recreational waters along sections of coastline where enterococcus content does not exceed the standard, as shown by the geometric mean test described above, shall not be lowered in quality.
  - (2) At locations where sampling is less frequent than five samples per twenty-five to thirty days, no single sample shall exceed the single sample maximum nor shall the geometric mean of these samples taken during the thirty-day period exceed 35 CFU per 100 milliliters.]

(b) Enterococcus content shall not exceed a geometric mean of 35 colony forming units per one hundred milliliters over any thirty day interval.

(c) A Statistical Threshold Value (STV) of 130 per one hundred milliliters shall be used for enterococcus. The STV shall not be exceeded by more than ten percent of samples taken within the same thirty day interval in which the geometric mean is calculated.

(d) State waters in which enterococcus content does not exceed the standard shall not be lowered in quality.

[(3)](e) Raw or inadequately treated sewage, sewage for which the degree of treatment is unknown, or other pollutants of public health significance, as determined by the director of health, shall not be present in natural public swimming, bathing or wading areas. Warning signs shall be posted at locations where human sewage has been identified as temporarily contributing to the enterococcus count. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; am and comp 06/15/09; comp 10/21/12; am and comp 12/6/13; am and comp ] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

§11-54-9 Zones of mixing. (a) As used in this section, "zones of mixing" means limited areas around outfalls and other facilities to allow for the initial dilution of waste discharges.

(b) Zones of mixing for the assimilation of domestic, agricultural, and industrial discharges which have received the best degree of treatment or control are recognized as being necessary. It is the objective of these limited zones to provide for a current realistic means of control over the placement and manner of discharges or emissions so as to achieve



the highest attainable level of water quality or otherwise to achieve the minimum environmental impact considering initial dilution, dispersion, and reactions from substances which may be considered to be pollutants.

- (c) Establishment, renewal, and termination.
  - (1) Application for establishment of a zone of mixing shall be made concurrently with any discharge permits whenever applicable and the conditions of a zone of mixing shall be incorporated as conditions of the discharge permits. Every application for a zone of mixing shall be made on forms furnished by the director and shall be accompanied by a complete and detailed description of present conditions, how present conditions do not conform to standards, and other information as the director may prescribe.
  - (2) Each application for a zone of mixing shall be reviewed in light of the descriptions, statements, plans, histories, and other supporting information as may be submitted upon the request of the director, and in light of the effect or probable effect upon water quality standards established pursuant to this chapter.
  - (3) Whenever an application is approved, the director shall establish the zone of mixing, taking into account the environmental impact, including but not limited to factors such as the protected uses of the body of water, existing natural conditions of the receiving water, character of the effluent, and the adequacy of the design of the outfall and diffuser system to achieve maximum dispersion and assimilation of the treated or controlled waste with a minimum of undesirable or noticeable effect on the receiving water.
  - (4) Approval of a zone of mixing shall be made either after a public hearing is held by the

director in the county where the source is situated, in accordance with chapters 91 and 92, HRS and the rules of practice and procedures of the department, or after the public notification and comment process duly established for a discharge permit in the case when the zone of mixing is being considered concurrently with the discharge permit.

- (5) No zone of mixing shall be established by the director unless the application and the supporting information clearly show that:
- (A) The continuation of the function or operation involved in the discharge by the granting of the zone of mixing is in the public interest;
  - (B) The discharge occurring or proposed to occur does not substantially endanger human health or safety;
  - (C) Compliance with the existing water quality standards from which a zone of mixing is sought would produce serious hardships without equal or greater benefits to the public; and
  - (D) The discharge occurring or proposed to occur does not violate the basic standards applicable to all waters, will not unreasonably interfere with any actual or probable use of the water areas for which it is classified, and has received (or in the case of a proposed discharge will receive) the best degree of treatment or control.
- (6) Any zone of mixing or renewal thereof shall be established within the requirements of this section and for time periods and under conditions consistent with the reasons therefore and within the following limitations:
- (A) If the zone of mixing is established on the grounds that there is no reasonable

means known or available for the adequate prevention, control, or abatement of the discharge involved, it shall be allowed only until the necessary means for prevention, control or abatement become practicable, and subject to the taking of any substitute or alternative measures that the director may prescribe. No renewal of a zone of mixing established under this subsection shall be allowed without a thorough review of known and available means of preventing, controlling, or abating the discharge involved;

- (B) The director may issue a zone of mixing for a period not exceeding five years;
- (C) Every zone of mixing established under this section shall include, but not be limited to, conditions requiring the applicant to perform appropriate effluent and receiving water sampling including monitoring of bottom biological communities and report the results of each sampling to the director. A program of research to develop reasonable alternatives to the methods of treatment or control in use by the applicant may be required if research is deemed prudent by the director; and
- (D) In order to prevent high temperature discharges from violating section 11-54-04(a)(4), no new or increased domestic, industrial, or other controllable source shall discharge at a maximum temperature which will cause temperatures to exceed three degrees Celsius above ambient, or thirty degrees Celsius, whichever is less, within one meter of the bottom within a zone of mixing. For discharges with or

without submerged outfalls, the director may make a limited allowance for higher discharge temperatures if there is satisfactory demonstration that the elevated temperature will not cause damage to the local aquatic community.

- (7) Any zone of mixing established pursuant to this section may be renewed from time to time on terms and conditions and for periods not exceeding five years which would be appropriate on initial establishment of a zone of mixing, provided that the applicant for renewal had met all of the conditions specified in the immediately preceding mixing, and provided further that the renewal and the zone of mixing established in pursuance thereof shall provide for the discharge not greater in quantity of mass emissions than that attained pursuant to the terms of the immediately preceding zone of mixing at its expiration. Any new zones of mixing or requests for zone of mixing renewals for wastewater treatment plants (WWTP) performing primary treatment shall comply with section 301(h) of the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251). No renewal shall be allowed except upon application. Any renewal application shall be made at least one hundred and eighty days prior to the expiration of the zone of mixing.
- (8) No zone of mixing established pursuant to this part shall be construed to prevent or limit the application of any emergency provisions and procedures provided by law.
- (9) The establishment of any zone of mixing shall be subject to the concurrence of the U.S. Environmental Protection Agency.
- (10) Each mixing zone may be subject to revocation, suspension, or modification if,

after notice and opportunity for a hearing pursuant to chapter 91, HRS and the rules of practice and procedures of the department, the director determines that the terms specified in section 342D-6, HRS have been violated. In taking any action, the director may consider operating records, compliance investigations, or other information regarding discharge quality or impact on receiving waters. The action shall be effected by giving written notice to the permittee, which shall contain the reasons for the action.

- (11) The director shall be notified within thirty days of the permanent discontinuance of a discharge. The zone of mixing shall terminate thirty days after such notification has been received.
- (12) Upon expiration of the period stated in the designation, the zone of mixing shall automatically terminate and no rights shall become vested in the designee. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; comp ]  
(Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

§11-54-9.1 Water quality certification. As used in sections 11-54-9.1.01 to 11-54-9.1.10:

"33 CFR" means the Code of Federal Regulations, Title 33, Corps of Engineers, Department of the Army, Department of Defense, revised as of July 1, 2011, unless otherwise specified.

"40 CFR" means the Code of Federal Regulations, Title 40, Protection of the Environment, revised as of July 1, 2011, unless otherwise specified.

"Act" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act

or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 95-483 and Public Law 97-117, 33 U.S.C. section 1251 et. seq.

"Agent" means a duly authorized representative of the owner as defined in section 11-55-7(b).

"Discharge" means the same thing as defined in Section 502(16) of the Act.

"Discharge of a pollutant" and "discharge of pollutants" means the same thing as defined in section 502(12) of the Act.

"Duly authorized representative" means a person or position as defined in 40 CFR section 122.22(b).

"License or permit" means any permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission granted by an agency of the federal government to conduct any activity which may result in any discharge into navigable waters.

"Licensing or permitting agency" means any agency of the federal government to which a federal application is made for a "license or permit."

"Navigable waters" means the waters of the United States, including the territorial seas.

"Owner" means the person who owns any "facility" or "activity" which results in any discharge into navigable waters.

"Pollutant" means the same thing as defined in section 502(6) of the Act.

"Territorial seas" means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.

"Water quality certification" or "certification" means a statement which asserts that a proposed discharge resulting from an activity will not violate applicable water quality standards and the applicable provisions of sections 301, 302, 303, 306 and 307 of the Act. A water quality certification is required by

section 401 of the Act from any applicant for a federal license or permit to conduct any activity, including the construction or operation of facilities which may result in any discharge into navigable waters.

"Water quality certification application" means any forms provided by the director for use in obtaining the water quality certification.

"Water quality standards" means standards established pursuant to section 10(c) of the Act, and state-adopted water quality standards for navigable waters which are not interstate waters.

"Waters of the United States" or "waters of the U.S." means:

- (1) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- (2) All interstate waters, including interstate "wetlands";
- (3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
  - (A) Which are or could be used by interstate or foreign travelers for recreational or other purposes;
  - (B) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
  - (C) Which are used or could be used for industrial purposes by industries in interstate commerce;
- (4) All impoundments of waters otherwise defined as waters of the United States under this definition;

- (5) Tributaries of waters identified in paragraphs (1) through (4) of this definition;
- (6) The territorial sea; and
- (7) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (1) through (6) of this definition. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; comp\_ ] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.01 Water quality certification; contents of certification. (a) A certification made by the department shall include:

- (1) The legal name(s), street address, contact person's name and position title, and telephone and fax numbers of the owner and, if applicable, its duly authorized representative;
- (2) A statement that the director has either:
  - (A) Examined the application made by the owner or its duly authorized representative to the licensing or permitting agency (specifically identifying the number or code affixed to the application) and bases its certification upon an evaluation of the information contained in the application which is relevant to water quality considerations; or
  - (B) Examined other information provided by the owner or its duly authorized representative sufficient to permit the director to make the statement described in paragraph (a)(3);



- (3) A statement that there is reasonable assurance that the activity will be conducted in a manner which will not violate applicable water quality standards;
- (4) A statement of any conditions which the director considers necessary or desirable with respect to the discharge resulting from an activity; and
- (5) Other information the director determines to be appropriate.

(b) The director shall issue the certification after evaluating the complete water quality certification application, comments received during the public comment period, any record of a public hearing held pursuant to section 11-54-09.1.03, other information and data the director considers relevant, and after the director determines that there is reasonable assurance that applicable water quality standards will not be violated and the best practicable methods of control will be applied to a discharge resulting from an activity including the construction and operation of a facility

(c) The department shall process applications for permits and water quality certifications for the reconstruction, restoration, repair, or reuse of any Hawaiian fishpond that meets the requirements of chapter 183B, HRS, before all other permits and certifications. The director shall render a decision on the completeness of any application for the permit or water quality certification within thirty days of receipt. Applications for fishpond reconstruction, restoration, or repair that are incomplete shall be denied without prejudice. The director shall render a decision on any complete application for a permit or water quality certification for any fishpond within one hundred fifty days.

(d) The director, at the director's discretion or after consideration of information presented by the owner or its duly authorized representative, the licensing or permitting agency, other government agencies, or interested parties, may modify or revoke

an issued certification or waiver. [Eff and comp 4/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; comp ] (Auth: HRS §§342D-4, 342D-5, 342D6.5, 342D-53) (Imp: HRS §§342D-342D-6, 342D6.5, 342D-5)§11-54-09.1.02

§11-54-9.1.02 Water quality certification;  
contents of water quality certification application.

(a) The owner or its duly authorized representative shall submit a complete water quality certification application for the discharge resulting from an activity. The water quality certification application shall include at a minimum:

- (1) The legal name(s), street address, contact person's name and position title, and telephone and fax numbers of the owner and, if applicable, its duly authorized representative;
- (2) The company or organization name, contact person's name and position title, and telephone and fax numbers of the emergency contact(s);
- (3) The name, street address, contact person's name and position title, telephone and fax numbers, island, and tax map key number(s) for the project;
- (4) Associated existing or pending federal and environmental permits and corresponding file numbers;
- (5) The name(s) of the navigable water where the discharge occurs, the latitude and longitude of the discharge point(s), the classification of the navigable water, and the associated existing recreational uses;
- (6) The scope of work or a description of the overall project including: the construction or operation of facilities which may result

in discharges into navigable waters; the proposed discharge resulting from an activity; and specific biological, chemical, physical, thermal, and other pertinent characteristics of the discharge resulting from an activity;

- (7) If applicable, a description of the function and operation of equipment or facilities to control discharges, including specification of the methods of control to be used;
- (8) The estimated dates on which the activity will begin and end and the date or dates on which the discharge(s) will take place;
- (9) If applicable, a description of the methods and means being used or proposed to monitor the quality and characteristics of the discharge and the operation of equipment or facilities employed in the control of the proposed discharges and a map showing the location(s) of the monitoring point(s);
- (10) The statement of assurance, statement of choice for publication, and if applicable, an authorization statement, with the owner's original signature. Any signatures required for the water quality certification application shall be provided as described in 40 CFR Section 122.22(a);
- (11) Supporting documentation (e.g. maps, plans, specifications, copies of associated federal permits or licenses, federal applications, Environmental Assessments or Environmental Impact Statements, as applicable, etc.);
- (12) Additional information regarding any irregularities or unique features of the project; and
- (13) Additional information as required by the director.

(b) The director shall notify the owner or its duly authorized representative in writing if a water quality certification application is incomplete or otherwise deficient. A description of the additional

information necessary to complete the water quality certification application or to correct the deficiency shall be included in the written notice. If a water quality certification application is incomplete or otherwise deficient, processing of the water quality certification application shall not be completed until the time the owner or its duly authorized representative has supplied the information or otherwise corrected the deficiency. Failure to provide additional information or to correct a deficiency shall be sufficient grounds for denial of the certification or termination of the processing of the water quality certification application.

(c) The director shall notify the owner or its duly authorized representative in writing when a water quality certification application is considered complete. The director shall act on a request for certification within a period which shall not exceed one year from the date when the water quality certification application was considered complete.

(d) The owner or its duly authorized representative shall notify the department in writing of changes which may affect the water quality certification application and certification process.

(e) Each owner who submits a water quality certification application shall pay a filing fee of \$1,000. This filing fee shall be submitted with the water quality certification application and shall not be refunded nor applied to any subsequent water quality certification application following final action of denial or termination of the processing of the water quality certification application.

- (1) Fees shall be made payable to the "State of Hawaii" in the form of a cashier's check or money order;
- (2) Water quality certification application(s) submitted by the U.S. Army Corps of Engineers, Honolulu Engineer District, for the purpose of adopting regional or nationwide general permit(s), in accordance with 33 CFR Parts 325 and 330, respectively,

shall be exempt from the payment of filing fees.

(f) If a project or activity requiring a federal permit or license involves or may involve the discharge of a pollutant or pollutants and is initiated or completed without a water quality certification, the director may process an after-the-fact water quality certification application as follows: after-the-fact water quality certification application.

may be accepted and processed only for the limited purpose of deeming projects or activities requiring federal permits or licenses to be properly permitted or licensed forward of the date of the water quality certification or waiver. No water quality certification or waiver shall be issued which allows the retroactive permitting or licensing of projects or activities before the date the water quality certification or waiver was issued. A water quality certification or waiver may be issued if the following criteria are met:

- (1) The project or activity is not the subject of an ongoing enforcement action by the federal, state or county government;
- (2) Any adverse impacts upon water quality resulting from the project or activity have been mitigated to the maximum extent feasible; and
- (3) The project or activity will not cause or contribute to any lack of attainment of water quality standards set forth in this chapter.

(g) Written notification by the department under subsection (b) is complete upon mailing or sending a facsimile transmission of the document or actual receipt of the document by the owner or its duly authorized representative. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; comp ]

(Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.03 Water quality certification; notice and hearing. The director may provide the opportunity for public comment or hearing(s) or both to consider the issuance of a water quality certification. A notice shall be published in accordance with chapters 91 and 92, HRS. The director shall inform the owner or its duly authorized representative in writing that the action has been taken. All publication and mailing costs associated with the public notification of the director's tentative determinations with respect to the water quality certification application shall be paid by the owner to the appropriate newspaper agency or agencies determined by the director. Failure to provide and pay for public notification, as considered appropriate by the director, may result in a delay in the certification process. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp 12/6/13; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.04 Water quality certification; waiver. (a) If the director fails or refuses to act on a request for certification within one year after receipt of a complete water quality certification application, then the certification requirements of section 11-54-9.1 shall be waived with respect to the federal application.

(b) If the discharge resulting from an activity receives a determination to be covered under a nationwide permit authorization, thereby fulfilling specific conditions of that permit pursuant to 33 CFR

sections 330.4, 330.5, and 330.6, then the director will determine, on a case-by-case basis, which projects are considered minor and non-controversial. Certification requirements of section 11-54-9.1 shall be waived for minor and non-controversial activities within one year of receipt of a complete water quality certification application. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; comp ]  
(Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.05 Water quality certification;  
adoption of new water quality standards.

(a) The licensee or permittee shall comply with any new water quality standards as adopted by the department.

(b) In any case where:

- (1) A certification or waiver was issued without applicable water quality standards;
- (2) Water quality standards applicable to the waters into which the activity may discharge are subsequently established before the activity is completed; or
- (3) The director determines that the activity is violating new water quality standards;

The director shall then notify the licensee or permittee and the licensing or permitting agency of the violation.

(c) If the licensee or permittee fails within one hundred eighty days of the date of the notice to cease the violation, the director shall notify the licensing or permitting agency that the licensee or permittee has failed to comply with the standards. The director, at the director's discretion, shall also revoke the certification or waiver or recommend

suspension of the applicable license or permit pursuant to section 401 of the Act.

(d) The director shall notify the licensing or permitting agency that, in the director's opinion, there is reasonable assurance that applicable water quality standards will not be violated because the licensee or permittee took appropriate action to comply with the applicable water quality standards after their license or permit was suspended pursuant to subsection (c).

(e) This section shall not preclude the department from taking other enforcement action authorized by law. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; am and comp 12/6/13; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-53s) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.06 Water quality certification; inspection of facility or activity before operation. Where any facility or activity has received certification or waiver pursuant to sections 11-54-9.1.01 to 11-54-9.1.09 in connection with the issuance of a license or permit for construction, and where the facility or activity is not required to obtain an operating license or permit, the director, prior to the initial operation of the facility or activity, shall be afforded the opportunity to inspect the facility or activity for the purpose of determining if the manner in which the facility or activity will be operated or conducted will violate applicable water quality standards. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp 12/6/13; comp ] Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)



§11-54-9.1.07 Water quality certification; notification to licensing or permitting agency. If the director, after an inspection pursuant to section 11-54-9.1.06 determines that operation of the proposed facility or activity will violate applicable water quality standards, the director shall so notify the owner or, if applicable, its duly authorized representative and the licensing or permitting agency. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp 12/6/13; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.08 Water quality certification; termination or suspension. Where a licensing or permitting agency, following a public hearing, suspends a license or permit after receiving the director's notice and recommendation pursuant to section 11-54-9.1.07 the owner or its duly authorized representative may submit evidence to the director, that the facility or activity has been modified so as not to violate applicable water quality standards. If the director determines that the applicable water quality standards have not been and will not be violated, the director shall so notify the licensing or permitting agency. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp 12/6/13; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-9.1.09 Water quality certification; review and advice. The director may, and upon request shall, provide licensing and permitting agencies with determinations, definitions, and interpretations to the meaning and content of state water quality standards. The director may, and upon request shall, also advise licensing and permitting agencies of the status of compliance by the owner(s) of a water quality certification with the conditions and requirements of applicable water quality standards. [Eff and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92; am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp 12/6/13; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-53) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-54-10 Water quality analyses. (a) Laboratory analysis shall be performed by a laboratory approved by the department.

(b) Where applicable, analysis to determine compliance with these rules shall be by:

<u>Parameter</u>	<u>Reference</u>
Sample Collection (Phytoplankton and other Bioassays)	Standard Methods for the Examination of Water and Waste Water, twenty first edition, APHA
Sample Preservation and Holding Time, Bacteriological and Chemical Methodology	"Guidelines Establishing Test Procedures for the Analysis of Pollutants," Federal Register, July 1, 2011 (40 CFR 136)
	"A Manual of Chemical and Biological Methods for Seawater Analysis" T.R. Parsons, Y. Maita, and C.M. Lalli, 1984, Pergamon Press, New York.
	"Methods of Seawater Analysis", 2nd, Revised and Extended Edition, ed. by K. Grashof, M. Erhardt, K. Kremling, 1983. Verlag Chemie, Weinheim, Germany.

Toxicity Test

EPA 821-R-02-031, Short-Term Methods For Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms, 4<sup>th</sup> edition, October 2002.

or:

EPA 821-R-02-012, Methods For Measuring the Acute Toxicity of Effluents and Receiving waters to Freshwater and Marine Organisms, 5<sup>th</sup> edition, October 2002.

or:

EPA 821-R-02-014, Short-Term Methods For Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms, 3<sup>rd</sup> edition, October 2002.

or:

EPA 833-R-10-003, National Pollutant Discharge Elimination System Test of Significant Toxicity Implementation Document, June 2010.

or:

EPA 833-R-10-004, National Pollutant Discharge

Elimination System Test of  
Significant Toxicity  
Technical Document, June  
2010.

or:

EPA/600/R-12/022, Tropical  
Collector Urchin,  
*Tripneustes gratilla*,  
Fertilization Test Method,  
April 2012.

Quality Control  
(Bacteriological and  
Biology) and Chemistry

EPA/600/4-79-019, Handbook  
for Analytical Quality  
Control in Water and  
Wastewater Laboratories,  
March 1979.

Kona Coast Area Specific  
Standards

Rationale for the  
Development of Area-  
Specific Water Quality  
Criteria for the West Coast  
of The Island of Hawaii and  
Procedures for Their Use.  
Hawaii State Department of  
Health. March 1997.

or as otherwise previously specified or approved by  
the director. [Eff 11/12/82; am and comp 10/6/84; am  
and comp 04/14/88; am and comp 01/18/90; am and comp  
10/29/92, am and comp 04/17/00; am and comp 10/2/04;  
comp 06/15/09; comp 10/21/12; am and comp 12/6/13;  
comp ] (Auth: HRS §§342D-1, 342D-4,  
342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch.  
342E)

§11-54-11 Schedule of compliance. (a) A schedule of compliance is an NPDES implementation tool that applies to the implementation of water quality standards through NPDES permits only.

(b) The director may issue a schedule of compliance in an individual NPDES permit for the implementation of effluent limits derived from the water quality criteria in this chapter if the director makes a finding that the discharger cannot immediately comply with the water quality based effluent limitations upon the effective grant of the permit.

(c) A schedule of compliance may be included in an individual NPDES permit issued by the director pursuant to chapter 342D, HRS.

(d) A schedule of compliance in an NPDES permit is allowed only for water quality-based effluent limits based upon a new, revised, or newly interpreted water quality standard and must:

(1) Comply with the provisions in 40 CFR section 122.47, revised as of July 1, 2014, and;

(2) Include an enforceable final effluent limitation that is within the timeframe allowed as specified in sections 11-55-08(a)(2)(B), 11-55-15(d), 11-55-21, 11-55-22, 11-55-23(10), and 11-55-34.07(3)(B).

(3) Require compliance as soon as possible.

(e) A schedule of compliance that exceeds one year in duration must set forth interim requirements, specific dates to meet interim requirements, and a date by which the required water quality-based effluent limitation must be achieved. [Eff and comp ] Auth: HRS §§342D-4, 342D-5, 342D-53, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, 342D-6, Ch. 342E)

§11-54-12 Intake credits. (a) An intake credit is an NPDES implementation tool that applies to the implementation of water quality standards through NPDES permits only.

(b) As used in this section:

"Background pollutant concentration" means the water body concentration immediately upstream/upcurrent of a permitted discharge, regardless of whether those pollutants are natural or result from anthropogenic upstream activity.

"Intake pollutant" means the background pollutant concentration that is present in the intake water body, which must be the same water body as the receiving water for the discharge at the time it is withdrawn from such waters.

"Same body of water" means an intake pollutant is considered to be from the "same body of water" as the discharge if the department finds that the intake pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period of time had it not been removed by the permittee. This finding may be deemed established if:

- (1) The background pollutant concentration in the receiving water (excluding any amount of the pollutant in the facility's discharge) is similar to that in the intake water; and
- (2) There is a direct hydrologic connection between the intake and discharge points; and
- (3) Water quality characteristics (e.g. temperature, pH, hardness) are similar in the intake and receiving waters.

The department may consider other site-specific factors relevant to the transport and fate of the pollutant in deciding whether a pollutant would or would not have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee.

(c) The director may, upon request of the discharger, adjust water quality-based effluent limitations or standards to reflect credit for intake pollutants in the discharger's intake water only:

- (1) To the extent necessary to meet the applicable limitation or standard, up to a

maximum value equal to the intake pollutant value; and

- (2) If there is no net increase in the concentration of the intake pollutant for which the credit is given. A discharger may add to the mass of the background pollutant concentration if an equal or greater mass is removed prior to discharge, so there is no net addition of the pollutant in the discharge compared to the intake water.

(d) Intake credit is not applicable to any pollutant for which a Total Maximum Daily Load (TMDL) and waste load allocation (WLA) have been developed and have been approved by the U.S. Environmental Protection Agency unless the TMDL and WLA provide for such an intake credit.

(e) The director shall grant credit for water quality-based effluent limits only if:

- (1) One hundred per cent of the intake water containing the intake pollutant is withdrawn from the same body of water into which the discharge is made;
- (2) The facility does not chemically or physically alter the intake pollutant in a manner that would cause adverse water quality impacts to occur that would not occur if the pollutant was left in-stream;
- (3) The timing and location of the discharge would not cause adverse water quality impacts to occur that would not occur if the intake pollutant were left in-stream; and,
- (4) The director finds that the discharge of intake pollutants into the same body of water will not adversely impact narrative or numeric water quality criteria specified in this chapter.

(f) Effluent limitations must be established so that they comply with all other applicable state and federal laws and regulations including water quality-based requirements and anti-degradation policies.



(g) All requests for the establishment of credit for intake pollutants shall be made on forms furnished by the department and shall be accompanied by:

- (1) Documentation showing a complete and detailed description of present conditions and how present conditions do not conform to standards; and
- (2) Documentation showing that the intake and discharge waterbodies are the "same body of water;" and
- (3) Documentation showing that pollutant(s) for which credits are being request actually come(s) from the intake water.

(h) Credit for intake pollutants shall be specified in the discharger's NPDES permit and shall become effective with the department's issuance of the permit for the specified permittee.

- (1) All permits that include intake credits issued by the department shall include monitoring of all influent, effluent, and ambient water to demonstrate that the conditions in this section are maintained during the permit term.
- (2) All credit for intake pollutants developed under this section shall be re-evaluated upon permit renewal.

(i) Credit for intake pollutants established under this section apply in the vicinity of the discharge for purposes of establishing permit limits for a specified pollutant for the specified permittee.

(j) All other water quality criteria established under this chapter continue to apply. [Eff and comp ] Auth: HRS §§342D-4, 342D-5, 342D-53, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, 342D-6, Ch. 342E)

§11-54-[11]13 Revision. These water quality criteria are based upon the best currently available data. Studies made in connection with the implementation

program may suggest improvements to this chapter. For this reason, the chapter will be subject to periodic review and, where necessary, to change. Any change will be made only after public hearing, held in compliance with chapter 91, HRS and the rules of practice and procedures of the department. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp 12/6/13; ren §11-54-11 and comp ] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

§11-54-[12]14 Severability. If any provisions of this chapter, or the application thereof to any person or circumstances, is held invalid, the invalidity does not affect other provisions or application of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp 12/6/13; ren §11-54-12 and comp ] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

§11-54-15 Field citations; non-compliance.

(a) This section authorizes field citations to effectively and quickly settle easily verifiable violations of chapter 342D, HRS, and this chapter. Settlements under this section are an additional remedy and do not supplant the director's authority to issue orders under section 342D-9, HRS.

(b) Offer to settle.

(1) A field citation is an offer to settle an administrative case against a specific violation on a specific day. Instead of issuing a formal notice and finding of violation and order, the director may, in the director's sole discretion, through any authorized employee, issue a field citation by personal service or certified mail to:

- (A) Any person who discharges or otherwise causes or allows water pollutants to enter State waters and cause violation of this chapter, unless that person acted in compliance with a permit or variance issued by the director pursuant to chapter 342D for that person's discharges;
- (B) Any person who fails to correctly install, implement, maintain, or repair site best management practices as called for in this chapter;
- (C) Any person who violates monitoring requirements as required by the director;
- (D) Any person who violates record keeping requirements as required by the director.

(2) A field citation shall indicate the following amounts for violations:

- (A) \$500 for any person who violates paragraph (a)(1)(A), (B), or (C) for first violation, and \$2,000 for a subsequent violation; and
- (B) \$100 for any person who violates paragraph (a)(1)(D) for first violation, and \$200 for a subsequent violation.

(c) Resolution of field citation.

(1) A person issued a field citation may accept the citation by:

- (A) Signing the field citation;

- (B) Paying the full amount indicated on the field citation. Payment shall be made to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director;
  - (C) Mailing or delivering the signed citation and full payment to the clean water branch in Honolulu or to the district health office for the county where the violation occurred. The department must receive the signed field citation and full payment within twenty days after the person receives the field citation; and
  - (D) Correction within seven (7) days, or unless otherwise specified on the field citation, of the violation of this chapter.
- (2) By signing the field citation, the person to whom it was issued agrees to:
- (A) Give up the right to a contested case hearing under chapter 91 or 342D, HRS, or otherwise challenge the field citation;
  - (B) Pay the full amount indicated; and
  - (C) Correct the violation.
- (3) If the field citation is not accepted in compliance with paragraph (1), the director may seek for that cited violation any remedies available under this chapter; chapter 342D, HRS; or any other law. For all other violations the director retains authority to seek any available remedies.
- (d) Form of citation. The department shall prescribe a field citation form." [Eff and compiled ] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

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 compilation are not underscored.

4. These amendments to and compilation of chapter 11-54, 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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LINDA ROSEN, M.D.  
M.P.H.  
Director of Health

APPROVED AS TO FORM:

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EDWARD G. BOHLEN  
Deputy Attorney General

**Appendix A**

**July 1, 2014**

Class 1, Inland Waters

Hawaii

Akaka Falls State Park  
Hakalau Forest National Wildlife Refuge  
Hakalau Forest National Wildlife Refuge South Kona Section  
Hamakua Forest Reserve (Hoea Kaa Section)  
Hamakua Forest Reserve (Kainehe Section)  
Hamakua Forest Reserve (Kalopa Section)  
Hamakua Forest Reserve (Paauilo Section)  
Hapuna Beach State Recreation Area  
Hawaii Volcanoes National Park  
Hilo Forest Reserve (Humuula Section)  
Hilo Forest Reserve (Laupahoehoe Section)  
Kahaualea Natural Area Reserve  
Kalopa State Rec. Area  
Keaoi Islet Sea Bird Sanctuary  
Kekaha Kai State Park  
Kipahoehoe Natural Area Reserve  
Kohala Forest Reserve (Pololu Section)  
Kohala Historical Sites State Monument  
Kona Hema Preserve (Nature Conservancy)  
Lapakahi State Historical Park  
Laupahoehoe Natural Area Reserve  
Lava Tree State Monument  
Mackenzie State Recreation Area  
Manowaialee Forest Reserve  
Manuka Natural Area Reserve  
Manuka State Wayside  
Mauna Kea Ice Age Natural Area Reserve  
Mauna Kea State Recreation Area/Mauna Kea Fr  
Mokupuku Islet Sea Bird Sanctuary  
Ookala Cooperative Game Management Area  
Paokalani Islet Sea Bird Sanctuary  
Puu Honau O Honaunau National Historical Park  
Puu Waawaa Forest Bird Sanctuary  
Puu Waawaa Forest Reserve  
Puukohola Heiau National Historic Site  
Wailoa River State Recreation Area  
Wailuku River State Park

Kauai

Ahukini State Recreation Pier  
Haena State Park  
Hanalei National Wildlife Refuge  
Kilauea Point National Wildlife Refuge  
Kuia Natural Area Reserve  
Mokuaeae Rock Islet Sea Bird Sanctuary  
Na Pali Coast State Wilderness Park  
Polihale State Park  
Russian Fort Elizabeth State Historical Park  
Wailua River State Park  
Waimea Canyon State Park  
Waimea State Recreation Pier

Lanai

Moku Naio Sea Bird Sanctuary  
Nanahoa Islets Sea Bird Sanctuary  
Poopoo Islet Sea Bird Sanctuary  
Puupehe Islet Sea Bird Sanctuary

Maui

Ahihi-Kinau Natural Area Reserve  
Alau Island Sea Bird Sanctuary  
Haleakala National Park  
Halekii-Pihana Heiaus State Monument  
Hanawi Natural Area Reserve  
Iao Valley State Monument  
Kanaha Pond Wildlife Sanctuary  
Kanaio Natural Area Reserve  
Kaumahina State Wayside  
Kealia Pond National Wildlife Refuge  
Keopuka Islet Sea Bird Sanctuary  
Makena State Park  
Mokeehia Islet Sea Bird Sanctuary  
Moku Hala Sea Bird Sanctuary  
Moku Mana Islet Sea Bird Sanctuary  
Molokini Sea Bird Sanctuary  
Papanui O Kane Islet Sea Bird Sanctuary  
Pauwalu Point Wildlife Sanctuary  
Polipoli Spring State Recreation Area

Puaa Kaa State Wayside  
Puuku Island Sea Bird Sanctuary  
Waianapanapa State Park  
Wailua Valley State Wayside  
West Maui Natural Area Reserve (Honokowai Section)  
West Maui Natural Area Reserve (Lihau Section)  
West Maui Natural Area Reserve (Panaewa Section)

Molokai

Huelo Islet Sea Bird Sanctuary  
Kakahaia National Wildlife Refuge  
Kalaupapa National Historical Park  
Kamiloloa Plant Sanctuary  
Kanaha Rock Sea Bird Sanctuary  
Mokapu Islet Sea Bird Sanctuary  
Mokumanu Islet Sea Bird Sanctuary  
Molokai Forest Reserve  
Okala Islet Sea Bird Sanctuary

Niihau

Kaula Island Sea Bird Sanctuary  
Lehua Island Sea Bird Sanctuary

Oahu

Aiea Bay State Recreation Area  
Diamond Head State Monument  
Hamakua Marsh Wildlife Sanctuary  
James Campbell National Wildlife Refuge (Kii)  
Kaohikaipu Island Sea Bird Sanctuary  
Kawainui Marsh Wildlife Sanctuary (Proposed)  
Keaiwa Heiau State Recreation Area  
Kekepa Island Sea Bird Sanctuary  
Kukaniloko Birthstones State Monument  
Kukuihoolua Island Sea Bird Sanctuary  
Makiki Valley State Recreation Area  
Malaekahana State Recreation Area  
Mokualai Island Sea Bird Sanctuary  
Mokuauia Island Sea Bird Sanctuary  
Mokulua Island Sea Bird Sanctuary  
Mokumanu Islet Sea Bird Sanctuary  
Oahu Forest National Wildlife Refuge



Pahole Natural Area Reserve  
Paiko Lagoon Wildlife Sanctuary  
Pearl Harbor National Wildlife Refuge (Mid Loch)  
Pearl Harbor National Wildlife Refuge (W Loch)  
Pearl Harbor Nat'l Wildlife Refuge (Kalaeloa)  
Popoia Island Sea Bird Sanctuary  
Pouhala Marsh Wildlife Sanctuary  
Pulemoku Rock Sea Bird Sanctuary  
Puu Ualakaa State Park  
Royal Mausoleum State Monument  
Sacred Falls State Park  
Sand Island State Recreation Area  
Ulu Po Heiau State Monument  
Waiahole Forest Reserve (Waiahole Section)  
Waianae Kai Forest Reserve

**Appendix B**

**July 1, 2014**

Class AA, Marine Waters and Embayments

Hawaii

Puako Bay

Waiulua Bay

Anaehoomalu Bay

Kiholo Bay

Kailua Harbor

Kealakekua Bay

Honaunau Bay

Oahu

Waialua Bay

Kahana Bay

Kaneohe Bay

Hanauma Bay

Kauai

Hanalei Bay

**Appendix C**

**July 1, 2014**

Class A, Marine Waters and Embayments

Hawaii

Hilo Bay (inside breakwater)  
Kawaihae Boat Harbor  
Honokohau Boat Harbor  
Keauhou Bay

Maui

Kahului Bay  
Lahaina Boat Harbor  
Maalaea Boat Harbor

Lanai

Manele Boat Harbor  
Kaunalapau Harbor

Molokai

Hale o Lono Harbor  
Kaunakakai Harbor  
Kaunakakai Boat Harbor

Oahu

Kaiaka Bay  
Paiko Peninsula to Koko Head  
Ala Wai Boat Harbor  
Kewalo Basin  
Honolulu Harbor  
Keehi Lagoon  
Barbers Point Harbor  
Pokai Bay  
Heeia Kea Boat Harbor  
Waianae Boat Harbor  
Haleiwa Boat Harbor  
Ko Olina

Kauai

Hanamaulu Bay  
Nawiliwili Bay  
Kukuiula Bay  
Wahiawa Bay  
Hanapepe Bay (inside breakwater)  
Kikiaola Boat Harbor  
Port Allen Boat Harbor

**Appendix D**

**July 1, 2014**

Class AA, Open Coastal Waters

Measured in a clockwise direction from the first-named to the second-named location, where applicable):

Hawaii

The open coastal waters from Leleiwi Point to Waiulaula Point.

Maui

The open coastal waters between Nakalele Point and Waihee Point and between Huelo Point and Puu Olai.

Kahoolawe

All open coastal water surrounding the island.

Lanai

All open coastal waters surrounding the island.

Molokai

The open coastal waters between the westerly boundary of Hale o Lono Harbor to Lamaloa Head. Also, the open coastal waters from Cape Halawa to the easterly boundary of Kaunakakai Harbor.

Oahu

Waimanalo Bay from the southerly boundary of Kaiona Beach Park, and including the waters surrounding Manana and Kaohikaipu Islands, to Makapuu Point. Also, Waialua Bay from Kaiaka Point to Puaena Point, and the open coastal waters along Kaena Point between a distance of 5.6 kilometers (3.5 miles) from Kaena Point towards Makua and 5.6 kilometers (3.5 miles) from Kaena Point toward Mokuleia.

Kauai

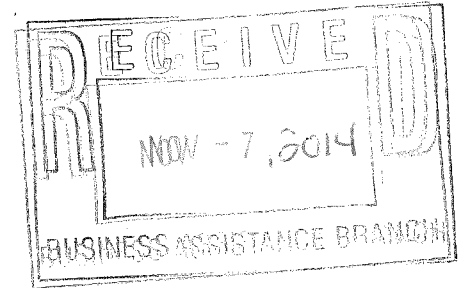
The open coastal waters between Hikimoe Valley and Makahoa Point. Also, the open coastal waters between Makahuena Point and the westerly boundary of Hoai Bay.

Niihau

All open coastal waters surrounding the island.

All other islands of the state

All open coastal waters surrounding the islands not classified in Appendix D or 11-54-6(b)(2)(A).



Department of Health

Rules Amending Title 11  
Hawaii Administrative Rules

(insert adoption date)

1. Chapter 55 of Title 11, Hawaii Administrative Rules, entitled "Water Pollution Control", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 55

WATER POLLUTION CONTROL

\$11-55-01	Definitions
\$11-55-02	General policy of water pollution control
\$11-55-03	General prohibition
\$11-55-04	Application for NPDES permit, notice of intent, or conditional "no exposure" exclusion
\$11-55-05	Receipt of federal information
\$11-55-06	Transmission of information to regional administrator
\$11-55-07	Identity of signatories to NPDES forms
\$11-55-08	Formulation of tentative determinations and draft permit
\$11-55-09	Public notice of applications
\$11-55-10	Fact sheet
\$11-55-11	Notice to other government agencies
\$11-55-12	Public access to information
\$11-55-13	Public hearings
\$11-55-14	Public notice of public hearings
\$11-55-15	Issuance of NPDES permits
\$11-55-16	Modification or revocation and reissuance of NPDES permits

§11-55-17 Termination of permits and denial of  
renewal  
 §11-55-18 Reporting discontinuance or dismantlement  
 §11-55-19 Application of effluent standards and  
limitations, water quality standards,  
and other requirements  
 §11-55-20 Effluent limitations in issued NPDES  
permits  
 §11-55-21 Schedule of compliance in issued NPDES  
permits  
 §11-55-22 Compliance schedule reports  
 §11-55-23 Other terms and conditions of issued  
NPDES permits  
 §11-55-24 National pretreatment standards and users  
of publicly owned treatment works  
 §11-55-25 Transmission to regional administrator of  
proposed NPDES permits  
 §11-55-26 Transmission to regional administrator of  
issued NPDES permits  
 §11-55-27 Renewal of NPDES permits  
 §11-55-28 Monitoring  
 §11-55-29 Recording of monitoring activities and  
results  
 §11-55-30 Reporting of monitoring results  
 §11-55-31 Sampling and testing methods  
 §11-55-32 Malfunction, maintenance, and repair of  
equipment  
 §11-55-33 Agency board membership  
 §11-55-34 General permit definitions  
 §11-55-34.01 General permit policy  
 §11-55-34.02 General permit authority and adoption  
 §11-55-34.03 General permit terms  
 §11-55-34.04 General permit conditions  
 §11-55-34.05 Requiring an individual permit  
 §11-55-34.06 Reserved  
 §11-55-34.07 Degree of waste treatment  
 §11-55-34.08 Notice of intent  
 §11-55-34.09 Notice of intent review, notice of  
general permit coverage, additional  
conditions, terms, renewals, effective  
dates, and automatic coverage  
 §11-55-34.10 Review of coverage issues and notice of  
intent and notice of general permit  
coverage decisions



\$11-55-34.11	Notice of general permit coverage revocation and termination
\$11-55-34.12	General permit compliance
\$11-55-35	Penalties and remedies
\$11-55-36	Hearings and appeals
\$11-55-37	Severability clause
\$11-55-38	Repealed
\$11-55-39	Public interest
\$11-55-40	Field Citations; non-compliance with NPDES requirements
Appendix A	Department of Health Standard General Permit Conditions
Appendix B	NPDES General Permit Authorizing Discharges of Storm Water Associated with Industrial Activities
Appendix C	NPDES General Permit Authorizing Discharges of Storm Water Associated with Construction Activity
Appendix D	NPDES General Permit Authorizing Discharges of Treated Effluent from Leaking Underground Storage Tank Remedial Activities
Appendix E	NPDES General Permit Authorizing Discharges of Once Through Cooling Water Less Than One (1) Million Gallons Per Day
Appendix F	NPDES General Permit Authorizing Discharges of Hydrotesting Waters
Appendix G	NPDES General Permit Authorizing Discharges Associated with Construction Activity Dewatering
Appendix H	NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals
Appendix I	NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Well Drilling Activities
Appendix J	NPDES General Permit Authorizing Occasional or Unintentional Discharges from Recycled Water Systems

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- Appendix K NPDES General Permit Authorizing  
Discharges of Storm Water from Small  
Municipal Separate Storm Sewer Systems
- Appendix L NPDES General Permit Authorizing  
Discharges of Circulation Water from  
Decorative Ponds or Tanks
- Appendix M NPDES General Permit Authorizing  
Point Source Discharges from the  
Application of Pesticides

Historical Note: Chapter 55 of Title 11 is based  
substantially on Public Health  
Regulations, Chapter 37, Water  
Pollution Control, Department of  
Health, State of Hawaii. [Eff.  
5/25/74, am 1/20/75, 8/19/75, 1/31/81;  
R 11/27/81]

§11-55-01 Definitions

"13 CFR" means the Code of Federal Regulations,  
Title 13, Business Credit and Assistance, revised as of  
January 1, 2013 unless otherwise specified.

"40 CFR" means the Code of Federal Regulations,  
Title 40, Protection of Environment, revised as of  
July 1, 2012 unless otherwise specified.

"Act" means the Clean Water Act (formerly referred  
to as the Federal Water Pollution Control Act or  
Federal Water Pollution Control Act Amendments of 1972)  
Public Law 92-500, as amended by Public Law 95-217,  
Public Law 95-483 and Public Law 97-117, 33 U.S.C. 1251  
et. seq.

"Action threshold" means the point at which pest  
populations or environmental conditions necessitate  
that pest control action be taken based on economic,  
human health, aesthetic, or other effects. An action  
threshold may be based on current and/or past  
environmental factors that are or have been  
demonstrated to be conducive to pest emergence and/or  
growth, as well as past and/or current pest presence.  
Action thresholds are those conditions that indicate

both the need for control actions and the proper timing of such actions.

"Active ingredient" means any substance (or group of structurally similar substances if specified by the United States Environmental Protection Agency) that will prevent, destroy, repel or mitigate any pest, or that functions as a plant regulator, desiccant, or defoliant within the meaning of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) section 2(a). (See 40 CFR 152.3). Active ingredient also means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for the production of such a pesticidal substance. (See 40 CFR 174.3).

"Administrator" means the Administrator of the U.S. Environmental Protection Agency or an authorized agent.

"Adverse incident" means an unusual or unexpected incident that an operator has observed upon inspection or of which the operator otherwise becomes aware, in which:

- (1) There is evidence that a person or non-target organism has likely been exposed to a pesticide residue; and
- (2) The person or non-target organism suffered a toxic or adverse effect.

The phrase "toxic or adverse effects" includes effects that occur within [state] State waters on non-target plants, fish or wildlife that are unusual or unexpected (e.g., effects are to organisms not otherwise described on the pesticide product label or otherwise not expected to be present) as a result of exposure to a pesticide residue, and may include: distressed or dead juvenile and small fishes; washed up or floating fish; fish swimming abnormally or erratically; fish lying lethargically at water surface or in shallow water; fish that are listless or nonresponsive to disturbance; stunting, wilting, or desiccation of non-target submerged or emergent aquatic plants; other dead or visibly distressed non-target aquatic organisms (amphibians, turtles, invertebrates, etc.). The phrase "toxic or adverse effects" also includes any adverse

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effects to humans (e.g., skin rashes) or domesticated animals that occur either from direct contact with or as a secondary effect from a discharge (e.g., sickness from consumption of plants or animals containing pesticides) to [state]State waters that are temporally and spatially related to exposure to a pesticide residue (e.g., vomiting, lethargy).

"Animal feeding operation" or "AFO" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

- (1) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and
- (2) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

"Annual treatment area threshold" means the additive area (in acres) or linear distance (in miles) in a calendar year to which a decision-maker is authorizing and/or performing pesticide applications in that area for activities covered under Appendix M. For calculating annual treatment areas for mosquitoes and other flying insect pest control and forest canopy pest for comparing with any threshold in table 1 of Appendix M, count each pesticide application activity to a treatment area (i.e., that area where a pesticide application is intended to provide pesticidal benefits within the pest management area) as a separate area treated. For example, applying pesticides three times a year to the same three thousand acre site should be counted as nine thousand acres of treatment area for purposes of determining if such an application exceeds an annual treatment area threshold. Similarly, for calculating annual treatment areas for weed and algae control and animal pest control for comparing with any threshold in table 1 of Appendix M, calculations should include either the linear extent of or the surface area of waters for each application made to [state]State waters or at water's edge adjacent to [state]State waters. For calculating the annual treatment area,

count each treatment area as a separate area treated. Also, for linear features (e.g., a canal or ditch), count the length of the linear feature each time an application is made to that feature during the calendar year, including counting separately applications made to each bank of the water feature if pesticides are applied to both banks. For example, applications four times a year to both banks of a three-mile long reach of stream will count as a total of twenty four linear miles (three miles \* two banks \* four applications per year = twenty four miles to which pesticides are applied in a calendar year).

"Applicable effluent standards and limitations" means all state and federal effluent standards and limitations to which a discharge is subject under the Act; chapter 342D, HRS; and rules of the department including, but not limited to, effluent limitations, standards of performance, toxic effluent standards and prohibitions, and pretreatment standards.

"Applicable water quality standards" means all water quality standards to which a discharge is subject under the Act; chapter 342D, HRS; rules of the department; and which have been:

- (1) Approved or permitted to remain in effect by the Administrator under Section 303(a) or Section 303(c) of the Act, 33 U.S.C. §1313(a) or §1313(c); or
- (2) Promulgated by the Administrator under Section 303(b) of the Act, 33 U.S.C. §1313(b).

"Applicator" means any entity who performs the application of a pesticide or who has day-to-day control of the application (i.e., they are authorized to direct workers to carry out those activities) that results in a discharge to [state]State waters.

"Best management practices" or "BMPs" means schedules of activities, prohibitions or designations of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of [state]State waters. Best management practices also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or

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leaks, sludge or waste disposal, or drainage from raw material storage.

"Biological control agents" are organisms that can be introduced to your sites, such as herbivores, predators, parasites, and hyperparasites. (Source: US Fish and Wildlife Service (FWS) Integrated Pest Management (IPM) Guidance, 2004)

"Biological pesticides" (also called biopesticides) include microbial pesticides, biochemical pesticides and plant-incorporated protectants (PIP). "Microbial pesticide" means a microbial agent intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or dessicant, that:

- (1) is a eucaryotic microorganism including, but not limited to, protozoa, algae, and fungi;
- (2) is a procaryotic microorganism, including, but not limited to, eubacteria and archaeobacteria; or
- (3) is a parasitically replicating microscopic element, including but not limited to, viruses. (See 40 CFR 158.2100(b)).

"Biochemical pesticide" means a pesticide that is a naturally-occurring substance or structurally-similar and functionally identical to a naturally-occurring substance; has a history of exposure to humans and the environment demonstrating minimal toxicity, or in the case of a synthetically-derived biochemical pesticides, is equivalent to a naturally-occurring substance that has such a history; and has a non-toxic mode of action to the target pest(s). (See 40 CFR 158.2000(a)(1)).

"Plant-incorporated protectant" means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for production of such a pesticidal substance. It also includes any inert ingredient contained in the plant, or produce thereof. (See 40 CFR 174.3).

"Bypass" means the same thing as defined in 40 CFR §122.41(m).

"Chemical Pesticides" means all pesticides not otherwise classified as biological pesticides.

"Concentrated animal feeding operation" or "CAFO" means an animal feeding operation that is defined as a large CAFO or as a medium CAFO under 40 CFR §122.23(b)(4) or (6), or that is designated as an AFO in accordance with 40 CFR §122.23(c). Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.

"Continuous discharge" means a "discharge" which occurs without interruption throughout the operating hours of the facility, except for infrequent shut-downs for maintenance, process changes, or other similar activities.

"Cooling water" means water used for contact or noncontact cooling, including water used for equipment cooling, evaporative cooling tower makeup, and dilution of effluent heat content. The intended use of the cooling water is to absorb waste heat rejected from the process or processes used, or from auxiliary operations on the facility's premises. Cooling water that is used in a manufacturing process either before or after it is used for cooling is considered process water for the purposes of calculating the percentage of a facility's intake flow that is used for cooling purposes in 40 CFR §125.91(a)(4).

"Cooling water intake structure" means the total physical structure and any associated constructed waterways used to withdraw cooling water from [state]State waters. The cooling water intake structure extends from the point at which water is withdrawn from the surface water source up to, and including, the intake pumps.

"Cultural methods" means manipulation of the habitat to increase pest mortality by making the habitat less suitable to the pest.

"Decision-maker" means any entity with control over the decision to perform pesticide applications including the ability to modify those decisions that result in a discharge to [state]State waters.

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"Decision-maker who is or will be required to submit an NOI" means any decision-maker covered under Appendix M who knows or should have known that an NOI will be required for those discharges beginning 60 calendar days from when section 11-55-34.02(b)(12) becomes effective ten days after filing with the office of the lieutenant governor. Excluded from this definition are those activities for which an NOI is required based solely on that decision-maker exceeding an annual treatment area threshold.

"Declared pest emergency situation" means the same thing as defined in section 11-54-4(e)(1).

"Department" means the state department of health.

"Director" means the director of the department or an authorized agent.

"Discharge" when used without qualification, means the "discharge of a pollutant". (See 40 CFR 122.2).

"Discharge of a pollutant" means any addition of any pollutant or combination of pollutants to [state]State waters from any point source, or any addition of any pollutant or combination of pollutants to the water of the contiguous zone or the ocean from any point source other than a vessel or other floating craft that is being used as a means of transportation.

This includes additions of pollutants into [state]State waters from: surface runoff that is collected or channeled by man; or discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. (Excerpted from 40 CFR 122.2).

"Draft permit" means a document prepared under 40 CFR §124.6 indicating the director's tentative decision to issue or modify, revoke and reissue, terminate, or reissue a "permit." A notice of intent to terminate a permit as discussed in 40 CFR §124.5(d) and defined in 40 CFR §124.2, and a notice of intent to deny a permit as defined in 40 CFR §124.2 are types of "draft permit." A denial of a request for modification, revocation and reissuance, or termination, as discussed in 40 CFR §124.5(b), is not a "draft permit."



"Effluent" means any substance discharged into [state]State waters or publicly owned treatment works or sewerage systems, including but not limited to, sewage, waste, garbage, feculent matter, offal, filth, refuse, any animal, mineral, or vegetable matter or substance, and any liquid, gaseous, or solid substances.

"EPA" means the U.S. Environmental Protection Agency.

"EPA approved or established total maximum daily loads (TMDLs)" (EPA Approved TMDLs) means those that are developed by a state and approved by EPA.

"EPA established TMDLs" are those that are issued by EPA.

"Facility" or "activity" means any NPDES "point source" or any facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.

"Federal facility" means any buildings, installations, structures, land, public works, equipment, aircraft, vessels, and other vehicles and property, owned, operated, or leased by, or constructed or manufactured for the purpose of leasing to, the federal government.

"FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act.

"General permit" means an NPDES permit issued as a rule or document that authorizes a category of discharges into [state]State waters from a category of sources within a geographical area.

"HRS" means the Hawaii Revised Statutes.

"Hawaiian fishponds" means the same thing as defined in section 183B-1, HRS.

"Impaired water" (or "water quality impaired water" or "water quality limited segment") means waters that have been identified by the state pursuant to Section 303(d) of the Clean Water Act as not meeting applicable state water quality standards (these waters are called "water quality limited segments" under 40 CFR 130.2(j)). Impaired waters include both waters with approved or established TMDLs, and those for which a TMDL has not yet been approved or established.

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"Indirect discharge" means the introduction of pollutants into a publicly owned treatment works from any non-domestic source regulated under Section 307(b), (c), or (d) of the Act.

"Individual permit" means an NPDES permit, other than a general permit, issued under this chapter to a specified person to conduct a discharge at a specified location.

"Industrial user" means a source of indirect discharge.

"Inert ingredient" means any substance (or group of structurally similar substances if designated by the EPA), other than an active ingredient, that is intentionally included in a pesticide product, (see 40 CFR 152.3). Inert ingredient also means any substance, such as a selectable marker, other than the active ingredient, where the substance is used to confirm or ensure the presence of the active ingredient, and includes the genetic material necessary for the production of the substance, provided that the genetic material is intentionally introduced into a living plant in addition to the active ingredient (see 40 CFR 174.3).

"Large Entity" means any entity that is not a "small entity".

"Large municipal separate storm sewer system" means the same thing as defined in 40 CFR §122.26(b)(4).

"Major facility" means any NPDES facility or activity classified by the regional administrator in conjunction with the director.

"Mechanical/physical methods" means mechanical tools or physical alterations of the environment for pest prevention or removal.

"Medical waste" means isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes and potentially contaminated laboratory wastes, dialysis wastes, and additional medical items as the Administrator shall prescribe by regulation.

"Medium municipal separate storm sewer system" means the same thing as defined in 40 CFR §122.26(b)(7).

"Minimize" means to reduce and/or eliminate pollutant discharges to [state]State waters through the use of pest management measures to the extent technologically available and economically practicable and achievable.

"Municipal separate storm sewer" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains as defined in 40 CFR §122.26(b)(8)).

"Municipal separate storm sewer system" or "MS4" means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems under 40 CFR §122.26(b)(4), (b)(7), and (b)(16) or that the director designates consistently with 40 CFR §122.26(a)(1)(v). A "municipal separate storm sewer system" is also known as a "municipal separate storm water drainage system."

"National Pollutant Discharge Elimination System" or "NPDES" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 402, 318, and 405 of the Act.

"New discharger" means any building, structure, facility, activity, or installation:

- (1) From which there is or may be a discharge of pollutants;
- (2) That did not begin the discharge of pollutants at a particular site before August 13, 1979;
- (3) Which is not a new source; and
- (4) Which has never received a finally effective NPDES permit for discharges at the site.

"New source" means any building, structure, facility, activity, or installation from which there is or may be a "discharge of pollutants," the construction of which began:

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- (1) After the adoption, by the director, of rules prescribing a standard of performance which will be applicable to the source; or
- (2) After the publication by the Administrator of regulations prescribing a standard of performance which will be applicable to the source, if the standard is thereafter promulgated by the administrator, whichever occurs first.

"No exposure" means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, or runoff or any combination of the above. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

"Non-target Organisms" includes the plant and animal hosts of the target species, the natural enemies of the target species living in the community, and other plants and animals, including vertebrates, living in or near the community that are not the target of the pesticide.

"Notice of cessation" or "NOC" means a form used to notify the director, within a specified time, that a discharge or activity, or phase of discharge or activity has ceased. Submission of this form means that the permittee is no longer authorized to discharge from the facility or project under the NPDES program.

"Notice of general permit coverage" or "NGPC" means an authorization issued to the owner or operator by the department to comply with the NPDES general permit.

"Notice of intent" or "NOI" means a form used to notify the director, within a specified time, that a person seeks coverage under a general permit.

"NPDES form" means any form provided by the Administrator or director for use in obtaining or

complying with the individual permit, notice of general permit coverage, or conditional "no exposure" exclusion. These forms include the NPDES permit applications, notice of intent forms, "no exposure" certification form, NPDES discharge monitoring report form, notice of cessation form, and other forms as specified by the director.

"NPDES permit" means an authorization, license, or equivalent control document issued by the EPA or the director to implement the requirements of 40 CFR Parts 122, 123, and 124. NPDES permit includes an NPDES general permit according to 40 CFR §122.28 and a notice of general permit coverage or NGPC, as the context requires. NPDES permit does not include any permit which has not yet been the subject of final agency action, such as a draft permit.

"NPDES permit application" means a form used to apply for an individual permit.

"Once-through cooling water system" means a system designed to withdraw water from a natural or other water source, use it at the facility to support contact or noncontact or both cooling uses, and then discharge it to a waterbody without recirculation. Once-through cooling systems sometimes employ canals, channels, ponds, or nonrecirculating cooling towers to dissipate waste heat from the water before it is discharged.

"Operator" for the purpose of Appendix M, means any entity associated with the application of pesticides which results in a discharge to [state]State waters that meets either of the following two criteria:

- (1) Any entity who performs the application of a pesticide or who has day-to-day control of the application (i.e., they are authorized to direct workers to carry out those activities; or
- (2) Any entity with control over the decision to perform pesticide applications including the ability to modify those decisions.

"Owner" or "operator" means the person who owns or operates any "facility" or "activity" subject to regulation under the NPDES program.

"Person" means the same thing as defined in section 342D-1, HRS.

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"Permittee" means the person to whom the individual permit or notice of general permit coverage is issued or the person who obtains automatic general permit coverage under section 11-55-34.09(e) (2).

"Pest" means the same thing as defined in section 11-54-4(e) (1).

"Pest management area" means the area of land, including any water, for which an operator has responsibility and is authorized to conduct pest management activities as covered by Appendix M (e.g., for an operator who is a mosquito control district, the pest management area is the total area of the district).

"Pest management measure" means any practice used to meet the effluent limitations that comply with manufacturer specifications, industry standards and recommended industry practices related to the application of pesticides, relevant legal requirements and other provisions that a prudent Operator would implement to reduce and/or eliminate pesticide discharges to [state]State waters.

"Pesticide" means the same thing as defined in section 11-54-4(e) (1).

"Pesticide product" means a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide.

"Pesticide residue" includes that portion of a pesticide application that is discharged from a point source to [state]State waters and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.

"Point source" means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated

agriculture or agricultural storm water runoff, except return flows from agriculture irrigated with reclaimed water. (See 40 CFR §122.2).

"Publicly owned treatment works" or "POTW" means any device or system used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a publicly owned treatment works providing treatment.

"R-1 water" means recycled water that has been oxidized, filtered, and disinfected to meet the corresponding standards set in chapter 11-62.

"Recycled water" or "reclaimed water" means treated wastewater that by design is intended or used for a beneficial purpose.

"Regional Administrator" means the regional administrator of the U.S. Environmental Protection Agency Region 9 or an authorized agent.

"Representative storm" means a rainfall that accumulates more than 0.1 inch of rain and occurs at least seventy-two hours after the previous measurable (greater than 0.1 inch) rainfall event.

"Sewage sludge" means the same thing as defined in section 342D-1, HRS.

"Silvicultural point source" means the same thing as defined in 40 CFR §122.27.

"Site" means the land or water area where any "facility" or "activity" is physically located or conducted, including adjacent land used in connection with the "facility" or "activity."

"Small entity" means any:

- (1) private enterprise that does not exceed the Small Business Administration size standard as identified at 13 CFR 121.201, or
- (2) local government that serves a population of 10,000 or less.

"Small municipal separate storm sewer system" or "small MS4" means all separate storm sewers that are:

- (1) Owned or operated by the United States, a state, city, town, borough, county, parish,

district, association, or other public body (created by or under state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under Section 208 of the Act that discharges to [state]State waters;

- (2) Not defined as "large" or "medium" municipal separate storm sewer systems under 40 CFR §122.2(b)(4) and (b)(7), or designated under section 11-55-04(a)(4) or 11-55-34.08(k)(2) or 40 CFR §122.26(a)(1)(v); and
- (3) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

"Standard of performance" means a standard for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction which the director determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants; provided that the standard shall not be less stringent than required under Section 306 of the Act, 33 U.S.C. §1316.

"State waters" means the same thing as defined in section 11-54-1.

"Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm water discharge associated with industrial activity" means the same thing as defined in 40 CFR §122.26(b)(14).

"Target pest" means the organism(s) toward which pest management measures are being directed.



"Total maximum daily loads (TMDLs)" is a calculation of the maximum amount of a pollutant that a water body can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges; load allocations (LAs) for nonpoint sources and/or natural background, and must include a margin of safety (MOS) and account for seasonal variations. (See section 303(d) of the Clean Water Act and 40 CFR 130.2 and 130.7).

"Treatment area" means the entire area, whether over land or water, where a pesticide application is intended to provide pesticidal benefits within the pest management area. In some instances, the treatment area will be larger than the area where pesticides are actually applied. For example, the treatment area for a stationary drip treatment into a canal includes the entire width and length of the canal over which the pesticide is intended to control weeds. Similarly, the treatment area for a lake or marine area is the water surface area where the application is intended to provide pesticidal benefits.

"Treatment works" means the plant or other facility and the various devices used in the treatment of wastes including the necessary intercepting sewers, outfall sewers or outlets, pumping, power, and other equipment.

"Treatment works treating domestic sewage" or "TWTDS" means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, "domestic sewage" includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works.

"Upset" means the same thing as defined in 40 CFR §122.41(n).

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"Waste" means sewage, industrial and agricultural matter, and all other liquid, gaseous, or solid substance, including radioactive substance, whether treated or not, which may pollute or tend to pollute [state]State waters.

"Water pollution" means the same thing as defined in section 342D-1, HRS.

"Water quality impaired" see "Impaired Water".

"Wetlands" means the same thing as defined in section 11-54-1.

The definitions of the following terms contained in Section 502 of the Act, 33 U.S.C. §1362, shall be applicable to the terms as used in this part unless the context otherwise requires: "biological monitoring," "contiguous zone," "discharge," "discharge of a pollutant," "effluent limitations," "municipality," "navigable waters," "ocean," "pollutant," "schedule of compliance," "territorial seas," and "toxic pollutant." [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; am and comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; am and comp 10/21/12; am and comp 12/6/13; am and comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§6E-42(a), 183B-1, 342D-1, 342D-2, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subpart A and D; Part 125; §122.2)

§11-55-02 General policy of water pollution control. (a) It is the public policy of this State:

- (1) To conserve [state]State waters;
- (2) To protect, maintain, and improve the quality of [state]State waters:
  - (A) For drinking water supply, and food processing;
  - (B) For the growth, support, and propagation of shellfish, fish, and other desirable species of marine and aquatic life;
  - (C) For oceanographic research;
  - (D) For the conservation of coral reefs and wilderness areas; and

- (E) For domestic, agricultural, industrial, and other legitimate uses;
- (3) To provide that no waste be discharged into any [state]State waters without first being given the degree of treatment necessary to protect the legitimate beneficial uses of the waters;
- (4) To provide for the prevention, abatement, and control of new and existing water pollution; and
- (5) To cooperate with the federal government in carrying out the objectives listed in paragraphs (1) through (4).

(b) Any industrial, public, or private project or development which could be considered a new source of pollution or an increased source of pollution shall, in its initial project design and subsequent construction, provide the highest and best degree of waste treatment practicable under existing technology.

(c) Permits issued under this chapter, and the related applications, processing, issuance, and post-issuance procedures and requirements, shall be at least as stringent as those required by 40 CFR §123.25(a).  
[Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; am and comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1251, 1288, 1311, 1312, 1316, 1317, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §123.25(a))

§11-55-03 General prohibition. No person shall violate any provision of section 342D-50, HRS, or any NPDES permit issued under this chapter. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp ] (Auth: HRS §§342D-4, 342D-5, 603-23;

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33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50, 603-23; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

S11-55-04 Application for NPDES permit, notice of intent, or conditional "no exposure" exclusion. (a) Before discharging any pollutant, or beginning construction activities that disturb one or more acres of land or construction activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area, or substantially altering the quality of any discharges, or substantially increasing the quantity of any discharges, a person shall submit a complete NPDES permit application (which shall include whole effluent toxicity testing data as specified in 40 CFR §122.21(j)(5)), submit a complete notice of intent, except for the point source discharges from the application of pesticides, if not required (refer to Appendix M) or, for certain storm water discharges, meet all requirements for a conditional "no exposure" exclusion. Submittal of a notice of intent for coverage under a general permit shall comply with and be regulated by sections 11-55-34.08 through 11-55-34.10. Conditional "no exposure" exclusions shall comply with and be regulated by subsection (e). An NPDES permit application shall be submitted:

- (1) At least one hundred eighty days before the discharge or construction begins or before the expiration date of the existing permit. The director may waive this one hundred eighty day requirement by issuing the permit with an effective date before the one hundred eighty days expire;
- (2) In sufficient time prior to the beginning of the discharge of pollutants to ensure compliance with the requirements of new source performance standards under Section

306 of the Act, 33 U.S.C. §1316, or with any applicable zoning or site requirements established under Section 208(b)(2)(C) of the Act, 33 U.S.C. §1288(b)(2)(C), and any other applicable water quality standards and applicable effluent standards and limitations;

- (3) For any storm water discharge associated with industrial activity from an existing facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, power-plant, or uncontrolled sanitary landfill;
- (4) For any discharge from an existing regulated small municipal separate storm sewer system which is not qualified to obtain coverage under the general permit. The permit application shall be made under 40 CFR §122.33 if the small municipal separate storm sewer system is designated under 40 CFR §122.32(a)(1). A small municipal separate storm sewer system, including but not limited to systems operated by federal, state, and local governments, including state departments of transportation, is regulated when it is located in an urbanized area as determined by the latest decennial census by the Bureau of the Census. (If the small municipal separate storm sewer system is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated.) Small municipal separate storm sewer systems located outside of urbanized areas shall submit an NPDES permit application if the department determines that the system's storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including

habitat and biological impacts. The department shall evaluate the small municipal separate storm sewer system with the following elements, at a minimum: discharge to sensitive waters, high growth or growth potential, high population density, contiguity to an urbanized area, significant contributor of pollutants to [state]State waters, and ineffective protection of water quality by other programs. The NPDES permit application shall be submitted within one hundred eighty days of notice from the department;

- (5) For any discharge from a regulated concentrated animal feeding operation. The permit application shall be made under 40 CFR §122.21;
- (6) (Reserved); or
- (7) At least one hundred eighty days before the construction activity as identified in 40 CFR §122.26 (b) (14) (x) or small construction activity as defined in 40 CFR §122.26(b) (15) (i) begins and is not qualified to obtain coverage under the general permit.

(b) Application for an individual permit shall be made by the owner or operator on an NPDES permit application provided by the director. The NPDES permit application shall be submitted with complete data, site information, plan description, specifications, drawings, and other detailed information. The information submitted shall comply with 40 CFR §§122.21(f) through (l) and (r) to determine in what manner the new or existing treatment works or wastes outlet, including a facility described in 40 CFR §§122.23, 122.24, 122.25, 122.26, or 122.27, will be constructed or modified, operated, and controlled. When a facility or activity is owned by one person, but is operated by another person, it is the operator's duty to obtain a permit on behalf of the owner. The operator shall provide written evidence that the owner authorizes the operator to apply on behalf of the owner

and that the owner agrees to comply with all permit conditions. Only one permit is required for a single facility or activity.

(c) The director may require the submission of additional information after an NPDES permit application has been submitted, and shall ensure that, if an NPDES permit application is incomplete or otherwise deficient, processing of the application shall not be completed until the owner or its duly authorized representative has supplied the missing information or otherwise corrected the deficiency.

(d) Every owner or operator applying for an individual permit or renewal of an individual permit shall pay a filing fee of \$1,000. This filing fee shall be submitted with the NPDES permit application and shall not be refunded nor applied to any subsequent NPDES permit application following final action of denial of the NPDES permit application.

- (1) When an NPDES permit application is submitted for an individual permit for a substantial alteration or addition to a treatment works or waste outlet and where an individual permit had previously been granted for the treatment works or waste outlet, the owner or operator shall pay a \$1,000 filing fee which shall be submitted with the NPDES permit application;
- (2) A new owner of a discharge facility covered by an individual permit shall submit a new NPDES permit application for a new individual permit unless the new owner submits a notice of automatic transfer that meets 40 CFR §122.61(b). The owner or operator shall pay a \$500 filing fee which shall be submitted with the NPDES permit application or notice of automatic transfer that meets 40 CFR §122.61(b);
- (3) An NPDES individual permittee shall submit a new NPDES permit application for the transfer of discharge from one permanent location to another permanent location. The owner or

operator shall pay the \$1,000 filing fee which shall be submitted with the NPDES permit application;

- (4) Fees shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director.

(e) Discharges composed entirely of storm water are not storm water discharges associated with industrial activity, and do not require an individual permit or general permit coverage, if there is "no exposure" of industrial materials and activities to rain, snow, snowmelt or runoff or any combination of the above, and the owner or operator of the discharge:

- (1) Meets the conditions of 40 CFR §§122.26(g)(1) through 122.26(g)(4), except 40 CFR §122.26(g)(1)(iii);
- (2) Submits a properly completed and signed "no exposure" certification on a form provided by the director;
- (3) Submits a properly completed and signed "no exposure" certification form at least once every five years, or earlier if specified by the director or upon the change of ownership, operator, or location; and
- (4) Provides any additional information requested by the director after a "no exposure" certification has been submitted.

The conditional "no exposure" exclusion is effective upon receipt by the department of the certification, assuming all other conditions are met, and the director may specify the term of a conditional "no exposure" exclusion, or any renewal, for any period not to exceed five years. There is no filing fee for submittal of a "no exposure" certification.

(f) (Reserved)

(g) Industrial activities, except construction activities under 40 CFR §122.26(b)(14)(x) and 40 CFR §122.26(b)(15), which provide calculations and certify that they do not discharge storm water to [state]State



waters are not required to obtain an individual permit or general permit coverage.

(h) (Reserved) [Eff 11/27/81; am and comp 10/29/92; am 09/23/96; am and comp 09/22/97; am and comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; am and comp 6/25/09; am and comp 10/21/12; am and comp 12/6/13; am and comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§6E-42(a), 342D-2, 342D-4, 342D-5, 342D-6, 342D-13; 33 U.S.C. §§1251, 1288(b)(2)(C), 1316, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.21, 122.23, 122.24, 122.25, 122.26, 122.27, 122.61, 123.25(a), 124.3)

§11-55-05 Receipt of federal information. The director shall receive any relevant information collected by the regional administrator prior to participation in the NPDES in a manner as the director and the regional administrator shall agree. Any agreement between the director and the regional administrator shall provide for at least the following:

- (1) Prompt transmittal to the director from the regional administrator of copies of any NPDES permit applications, or other relevant information collected by the regional administrator prior to the state or interstate agency's participation in the NPDES; and
- (2) A procedure to ensure that the director will not issue an individual permit on the basis of any NPDES permit application received from the regional administrator which the regional administrator has identified as incomplete or otherwise deficient until the director has received information sufficient to correct the deficiency to the satisfaction of the regional administrator. [Eff 11/27/81; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp

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10/22/07; comp 6/25/09; comp 10/21/12; comp  
12/6/13; comp ] (Auth: HRS  
§§342D-4, 342D-5; 33 U.S.C. §§1251, 1342,  
1370) (Imp: HRS §§342D-2, 342D-4, 342D-5; 33  
U.S.C. §§1251, 1342, 1370, 1251-1387;  
40 CFR Parts 122; 123; 124, Subparts A and D;  
125; §123.42)

§11-55-06 Transmission of information to regional administrator. The director shall transmit to the regional administrator copies of NPDES forms received by the State in a manner as the director and regional administrator shall agree. Any agreement between the State and the regional administrator shall provide for at least the following:

- (1) Prompt transmittal to the regional administrator of a complete copy of any NPDES form received by the State;
- (2) Procedures for the transmittal to the national data bank of a complete copy, or relevant portions thereof, of any appropriate NPDES forms received by the State;
- (3) Procedures for acting on the regional administrator's written waiver, if any, of the regional administrator's rights to receive copies of NPDES forms with respect to classes, types, and sizes within any category of point sources and with respect to minor discharges or discharges to particular [state]State waters or parts thereof subject to the limits in 40 CFR §123.24(d);
- (4) An opportunity for the regional administrator to object in writing to deficiencies in any NPDES permit application or reporting form received by the regional administrator and to have the deficiency corrected. If the regional administrator's objection relates to an NPDES permit application, the director shall send the regional administrator any information necessary to correct the

deficiency and shall, if the regional administrator so requests, not issue the individual permit until the department receives notice from the regional administrator that the deficiency has been corrected;

- (5) Procedures for the transmittal, if requested by the regional administrator, of copies of any notice received by the director from publicly owned treatment works under section 11-55-23(7) and 11-55-23(8); and
- (6) Variance applications shall be processed in accordance with the procedures set forth in section 342D-7, HRS, and 40 CFR §§122.21(m) through (o), 124.62, and 403.13. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; am and comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-14; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-14; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.21(m), 122.21(n), 122.21(o), 123.25(a), 123.43, 123.44, 124.62, 403.13)

§11-55-07 Identity of signatories to NPDES forms.

(a) Any NPDES form and its certification, as stated in 40 CFR §122.22(d), submitted to the director shall be signed as follows:

- (1) For a corporation. By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:
  - (A) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar

- policy- or decision-making functions for the corporation, or
- (B) The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;
- (2) For a partnership or sole proprietorship. By a general partner or the proprietor, respectively; or
  - (3) For a municipality, state, federal, or other public agency. By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes:
    - (A) The chief executive officer of the agency, or
    - (B) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., regional administrators of EPA);
  - (4) For a trust. By a trustee; or
  - (5) For a limited liability company (LLC). By a manager or a member authorized to make

management decisions for the LLC and who is in charge of a principal business function, or who performs similar policy- or decision-making functions for the LLC.

(b) All other reports or information required to complete the application or information to comply with the conditions of the individual permit or notice of general permit coverage or responses to requests for information required by the director shall be signed by a person designated in subsection (a) or by a duly authorized representative of that person. A person is a duly authorized representative only if:

- (1) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company, (A duly authorized representative may thus be either a named individual or any individual occupying a named position.);
- (2) The authorization is made in writing by a person designated under subsection (a); and
- (3) The written authorization is submitted to the director.

(c) If an authorization under subsection (b) is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (b) must be submitted to the director prior to or together with any reports, information, or applications to be signed by an authorized representative. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS

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§§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.22, 123.25(a))

§11-55-08 Formulation of tentative determinations and draft permit. (a) The director shall formulate and prepare tentative staff determinations with respect to an NPDES permit application in advance of public notice of the proposed issuance or denial of an individual permit. Tentative determinations shall include at least the following:

- (1) A proposed determination, including those contained in 40 CFR §122.44(m) if applicable, to issue or deny an individual permit for the discharge described in the NPDES permit application; and
- (2) If the determination is to issue the individual permit, the following additional tentative determinations:
  - (A) Proposed effluent limitations, identified under sections 11-55-19 and 11-55-20 for those pollutants proposed to be limited;
  - (B) A proposed schedule of compliance, if required, including interim dates and requirements, for meeting the proposed effluent limitations, identified under sections 11-55-21 and 11-55-22;
  - (C) Monitoring requirements identified under sections 11-55-28, 11-55-29, and 11-55-30; and
  - (D) A brief description of any other proposed special conditions (other than those required in section 11-55-23) which will have a significant impact upon the discharge described in the NPDES permit application.

(b) If a tentative determination is to issue an individual permit, the director shall organize the

tentative determination under subsection (a) into a draft permit.

(c) The director shall prepare draft permits when required by 40 CFR §124.5(c) or (d). [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.44(m), 123.25(a), 124.5, 124.6)

§11-55-09 Public notice of applications. (a) The director shall notify the public of every complete application for an individual permit in a manner designed to inform interested and potentially interested persons of the proposed discharge and of the proposed determination to issue an individual permit for the proposed discharge. Public notification of an application for a variance from an individual permit, under Section 316(a) of the Act, 33 U.S.C. §1326(a), and section 342D-7, HRS, shall also comply with the requirements contained in 40 CFR §124.57(a). Public notice procedures shall include at least the following:

- (1) Notice shall be circulated within the geographical areas of the proposed discharge; circulation includes any or all of the following:
  - (A) Posting in the post office and public places of the municipality nearest the premises of the owner or operator in which the effluent source is located;
  - (B) Posting near the entrance to the owner's or operator's premises and in nearby places; or
  - (C) Publishing in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation.

- (2) Notice shall be mailed to any person or group upon request and the persons listed in 40 CFR §§124.10(c)(1)(i) through (v); and
- (3) The director shall add the name of any person, including those specified in 40 CFR §§124.10(c)(1)(ix) and (x), or group upon request to a mailing list to receive copies of notices for all NPDES permit applications within the State or within a certain geographical area.

(b) The director shall provide a period of not less than thirty days following the date of the public notice during which time interested persons may submit their written views on the tentative determinations with respect to the NPDES permit application. All written comments submitted during the thirty-day comment period shall be retained by the director and considered in the formulation of the director's final determination with respect to the NPDES permit application. The director shall respond to comments, at a minimum, when and as required by

40 CFR §§124.17(a) and (c). The comment period may be extended at the discretion of the director.

(c) The public notice shall include at least the following:

- (1) Name and address of the agency issuing the public notice;
- (2) Name and address of each owner or operator or both and the name and address of the facility or activity;
- (3) A brief description of the activities or operations which result in the discharge described in the NPDES permit application;
- (4) Name of the state water to which each discharge is made, a short description of the location of each discharge, and whether the discharge is a new or an existing discharge;
- (5) A statement of the tentative determination to issue or deny an individual permit for the discharge described in the NPDES permit application;



- (6) A brief description of the procedures for the formulation of final determinations, including the procedures for public comment, requesting a public hearing, and any other means of public participation offered;
- (7) Name, address, and telephone number of a person at the state or interstate agency where interested persons may:
  - (A) Obtain further information;
  - (B) Request a copy of the draft permit prepared under section 11-55-08(b);
  - (C) Request a copy of the fact sheet prepared under section 11-55-10 (if prepared); and
  - (D) Inspect and copy NPDES forms and related documents; and
- (8) Requirements applicable to cooling water intake structures under section 316(b) of the Act, in accordance with Part 125, Subparts I and J.

(d) All publication and mailing costs associated with the public notification of the director's tentative determinations with respect to the NPDES permit application shall be paid by the owner or operator to the appropriate publishing agency or agencies determined by the director. The owner or operator shall submit the original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for public notification, as deemed appropriate by the director, is a basis to delay issuance of an individual permit. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp ]  
(Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-13; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1326(a), 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10, 124.13, 124.17, 124.57)

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§11-55-10 Fact sheet. (a) The director shall prepare a fact sheet for every draft permit for a major facility or activity, for every class I sludge management facility, for every draft permit that incorporates a variance or requires an explanation under 40 CFR §124.56(b), and for every draft permit which the director finds is the subject of widespread public interest or raises major issues. The director shall send the fact sheet to the owner or operator, its authorized representative, and, upon request, to any other person.

(b) Fact sheets shall include at least the following information:

- (1) A sketch or detailed description of the location of the discharge described in the NPDES permit application; a brief description of the type of facility or activity which is the subject of the draft permit;
- (2) A quantitative description of the discharge described in the NPDES permit application which includes at least the following:
  - (A) The rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow in gallons per day or million gallons per day or cubic feet per second;
  - (B) For thermal discharges subject to limitation under the Act, the average summer and winter temperatures in degrees Fahrenheit or Celsius; and
  - (C) The average daily discharge in pounds per day of any pollutants which are present in significant quantities or which are subject to limitations or prohibition under Sections 301, 302, 306, or 307 of the Act, 33 U.S.C. §§1311, 1312, 1316 or 1317, and regulations published under those sections;

- (3) The tentative determinations required under section 11-55-08;
- (4) A brief citation, including a brief identification of the uses for which the receiving [state]State waters have been classified, of the water quality standards, and effluent standards and limitations applied to the proposed discharge;
- (5) A more detailed description of the procedures for the formulation of final determinations than that given in the public notice including:
  - (A) The thirty-day comment period required by section 11-55-09(b);
  - (B) Procedures for requesting a public hearing and the nature thereof; and
  - (C) Any other procedures by which the public may participate in the formulation of the final determinations;
- (6) The name and telephone number of a person to contact for additional information; and
- (7) The information required by 40 CFR §§124.8(b)(5), 124.56(a), 124.56(b), 124.56(c), 124.56(e), and Part 125, subpart M.

(c) The director shall add the name of any person or group upon request to a mailing list to receive copies of fact sheets. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; am and comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1311, 1312, 1316, 1317, 1342, 1370, 1252-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 501; §§123.25(a), 124.8, 124.56, 501.15(d)(4))

§11-55-11 Notice to other government agencies.

- (a) The director shall notify other appropriate

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government agencies of each complete NPDES permit application for an individual permit and shall provide the agencies an opportunity to submit their written views and recommendations.

(b) When notifying the public under section 11-55-09, a fact sheet shall be transmitted to the appropriate District Engineer of the Army Corps of Engineers of NPDES permit applications for discharges into [state]State waters.

(c) The director and the District Engineer for each Corps of Engineers district within the State or interested area may arrange for:

- (1) Waiver by the District Engineer of the District Engineer's right to receive fact sheets with respect to classes, types, and sizes within any category of point sources and with respect to discharges to particular [state]State waters or parts thereof; and
- (2) Any procedures for the transmission of forms, period for comment by the District Engineer (e.g., thirty days), and for objections of the District Engineer.

(d) A copy of any written agreement between the director and the District Engineer shall be forwarded to the regional administrator and shall be made available to the public for inspection and copying.

(e) The director shall mail copies of public notice (or, upon specific request, copies of fact sheets) of applications for individual permits to any federal, state, or local agency, upon request, and shall provide the agencies an opportunity to respond, comment, or request a public hearing. The notice and opportunity shall extend to at least the following:

- (1) The agency responsible for the preparation of an approved plan under Section 208(b) of the Act, 33 U.S.C. §1288(b); and
- (2) The state agency responsible for the preparation of a plan under an approved continuous planning process under Section 303(e) of the Act, 33 U.S.C.

§1313(e), unless the agency is under the supervision of the director.

(f) The director shall notify and coordinate with appropriate public health agencies for the purpose of assisting the owner or its duly authorized representative in coordinating the applicable requirements of the Act with any applicable requirements of the public health agencies. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; am and comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1288(b), 1313(e), 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10)

§11-55-12 Public access to information. (a) In accordance with chapter 2-71, the director shall ensure that any NPDES forms (including the draft permit prepared under section 11-55-08(b)), any public comment upon those forms under section 11-55-09(b), or information required, kept, or submitted under section 11-55-24 shall be available to the public for inspection and copying during established office hours. The director, at the director's discretion, may also make available to the public any other records, reports, plans, or information obtained by the state agency under its participation in NPDES.

(b) The director shall protect any information (other than effluent data) as confidential upon a request and showing by any person at the time of submission that the information, if made public, would divulge methods or processes entitled to protection as trade secrets of a person. Any information obtained from a state and subject to a claim of confidentiality shall be treated in accordance with the regulations in 40 CFR Part 2 and section 92F-13, HRS. Claims of confidentiality shall be denied regarding the following: name and address of any owner or operator

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or permittee applying for an individual permit, notice of general permit coverage, or "no exposure" certification; NPDES permits; and effluent data. Information required by NPDES permit application forms may not be claimed confidential. This includes information supplied in attachments to the NPDES permit application forms. If, however, the information being considered for confidential treatment is contained in an NPDES form, the director shall forward the information to the regional administrator for the regional administrator's concurrence in any determination of confidentiality. If the regional administrator advises the director that the regional administrator does not concur in the withholding of the information, the director shall then make available to the public, upon request, that information determined by the regional administrator not to constitute trade secrets.

(c) Any information accorded confidential status, whether or not contained in an NPDES form, shall be disclosed, upon request, to the regional administrator, who shall maintain the disclosed information as confidential.

(d) The director shall provide facilities for the inspection of information relating to NPDES forms and shall ensure that state employees honor requests for inspection with due regard for the dispatch of other public duties. The director shall either:

- (1) Ensure that a machine or device for the copying of papers and documents is available for a reasonable fee; or
- (2) Otherwise provide for or coordinate with copying facilities or services so that requests for copies of nonconfidential documents may be honored promptly. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-14; 33 U.S.C. §§1251,

1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-14, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 2; 122; 123; 124, Subparts A and D; 125; §§122.7, 123.25(a), 123.41)

§11-55-13 Public hearings. (a) The owner or operator, regional administrator, any interested agency, person, or group of persons may request or petition for a public hearing with respect to NPDES permit applications. Any request or petition for public hearing shall be submitted within the thirty-day period prescribed in section 11-55-09(b) and shall indicate the interest of the party submitting the request and the reasons why a hearing is warranted.

(b) The director shall provide the public notice of public hearing to the owner or operator or its duly authorized representative for publication according to section 11-55-14. The public notice shall include the information required by 40 CFR §§124.10(d)(1) and (d)(2).

(c) The director shall hold a hearing if the director determines that there is a significant public interest (including the submitting of requests or petitions for a hearing) in holding a hearing. Instances of doubt should be resolved in favor of holding the hearing. Any hearing brought under this subsection shall be held in the geographical area of the proposed discharge or other appropriate area, at the director's discretion, and may, as appropriate, consider related groups of NPDES permit applications.

(d) Any person may submit oral or written statements and data concerning the draft permit. The public comment period under section 11-55-09 shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp ]

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(Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-57; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10, 124.11, 124.12)

§11-55-14 Public notice of public hearings. (a)

Public notice of any hearing held under section 11-55-13 shall be circulated as widely as the notice of the draft permit. Public notice for hearings held under section 11-55-13 shall be:

- (1) Published at least once in a newspaper of general circulation within the geographical area of the discharge;
- (2) Sent to all persons and government agencies which received a copy of the notice or the fact sheet for the NPDES permit application;
- (3) Mailed to any person or group upon request and the persons listed in 40 CFR §§124.10(c)(1)(i) through (v), (ix), and (x); and
- (4) Effected under paragraphs (1) and (3) at least thirty days in advance of the hearing.

(b) The public notice of any hearing held under section 11-55-13 shall include at least the following information:

- (1) Name and address of the agency holding the public hearing;
- (2) Name and address of each owner or operator or both whose NPDES permit application will be considered at the hearing and the name and address of the facility or activity;
- (3) Name of the state water to which each discharge is made, a short description of the location of each discharge, and whether the discharge is a new or an existing discharge;
- (4) A brief reference to the public notice for proposed action issued for each NPDES permit application, including identification number and date of issuance, if applicable;



- (5) Information regarding the date, time, and location of the hearing;
- (6) The purpose of the hearing, including a concise statement of the issues raised by the persons requesting the hearing, as applicable;
- (7) A brief description of the nature of the hearing, including the rules and procedures to be followed; and
- (8) Name, address, and telephone number of a person at the state or interstate agency where interested persons may:
  - (A) Obtain further information;
  - (B) Request a copy of each draft permit prepared under section 11-55-08(b);
  - (C) Request a copy of the fact sheet prepared under section 11-55-10 (if prepared); and
  - (D) Inspect and copy NPDES forms and related documents.

(c) All publication and mailing costs associated with the public notification of the director's determinations to hold public hearing with respect to the NPDES permit application shall be paid by the owner or operator to the appropriate publishing agency or agencies determined by the director. The owner or operator shall submit the original signed affidavit of publication to the department within four weeks of the publication date. Failure to provide and pay for public notification, as deemed appropriate by the director, is a basis to delay issuance of an individual permit. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp ]  
(Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-13; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.25(a), 124.10)

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§11-55-15 Issuance of NPDES permits. (a) The director may issue an NPDES permit for any period not exceeding five years and may renew a permit for any additional periods not exceeding five years. The director may administratively extend the permit until the effective date of the new permit for discharges that the permit covered prior to expiration. If the director administratively extends the permit, all permit limitations and conditions remain in force and effect. Projects that do not submit a renewal NPDES application prior to the expiration date may not be administratively extended.

(b) The director shall issue or renew an NPDES permit on the following basis:

- (1) The existing treatment works or waste outlet is designed, built, and equipped in accordance with:
  - (A) The best practicable control technology currently available or the best available technology economically achievable or the best conventional pollutant control technology for point sources other than publicly owned treatment works; and
  - (B) For publicly owned treatment works, secondary treatment or the best practicable waste treatment technology, so as to reduce wastes to a minimum;
- (2) New treatment works or waste outlets are designed and built in compliance with the applicable standards of performance;
- (3) The new or existing treatment works or waste outlet is designed and will be constructed or modified to operate without causing a violation of applicable rules of the department;
- (4) The new or existing treatment works or waste outlet will not endanger the maintenance or attainment of applicable water quality standards;

- (5) The facility shall comply with effluent standards and limitations, water quality standards and other requirements, as applicable in sections 11-55-19, 11-55-20, and 11-55-22; and
  - (6) The facility shall comply with sections 11-55-27 through 11-55-32.
- (c) NPDES permits at a minimum shall include conditions and requirements at least as stringent as:
- (1) Those conditions contained in sections 11-55-16, 11-55-17, 11-55-23, and 40 CFR §122.41;
  - (2) The requirement that the owner or operator provide the facilities as necessary for monitoring of the authorized waste discharge into [state]State waters and the effects of the wastes on the receiving [state]State waters. The monitoring program shall comply with sections 11-55-28 through 11-55-32;
  - (3) The requirement of compliance with any applicable effluent standards and limitations, water quality standards, and other requirements imposed by the director under sections 11-55-19, 11-55-20, and 11-55-22; and
  - (4) Conditions requested by the Corps of Engineers and other government agencies as described in 40 CFR §124.59.
- (d) In permits where more stringent effluent limitations are included, compliance schedules may be provided in the permits if the requirements of 11-55-21 and 40 CFR 122.2 and 122.47 are met.
- (e) In acting upon an NPDES permit application for an individual permit the director shall deny the application unless the information submitted shows that the new or existing treatment works or waste outlet described in the NPDES permit application can, conditionally or otherwise, meet the conditions of subsection (b) or (c).
- (f) Notwithstanding the provisions of subsections (a) through (e), the director shall not issue a permit

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or grant a modification or variance for any of the following:

- (1) Discharge of any radiological or biological warfare agent, or high-level radioactive waste into [state]State waters;
- (2) Discharge which the Secretary of the Army, acting through the Chief of Engineers, finds would substantially impair anchorage and navigation;
- (3) Discharge to which the regional administrator has objected in writing under any right to object provided the Administrator in Section 402(d) of the Act, 33 U.S.C. §1342(d);
- (4) Discharge from a point source which is in conflict with a plan or amendment thereto approved under Section 208(b) of the Act, 33 U.S.C. §1288(b); or
- (5) When prohibited by 40 CFR §122.4.

(g) The issuance of a permit does not convey any property rights of any sort or any exclusive privilege. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; am and comp 12/6/13; am and comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1288(b), 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.4, 122.5, 122.41, 122.43, 122.44, 122.45, 122.46, 123.25(a), 124.5, 124.59)

§11-55-16 Modification or revocation and reissuance of NPDES permits. (a) Each NPDES permit shall be subject to modification or revocation and reissuance by the director after notice and opportunity for a contested case hearing.

(b) Permits may be modified for the reasons and under the procedures specified in 40 CFR §§122.62 and 122.63.

(c) Permits may be revoked and reissued for the reasons and under the procedures specified in 40 CFR §122.62.

(d) The procedures and criteria for minor permit modifications are those specified in 40 CFR §122.63.

(e) All applications made under section 342D-7, HRS, for a variance from the terms and conditions of an NPDES permit shall also be deemed as applications for a modification under this section. Any variances, if granted, shall be for a period not to exceed five years. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp ]

(Auth: HRS §§342D-4, 342D-5, 342D-6, 342D-7; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-7, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.5, 122.62, 122.63, 123.25(a), 124.5)

§11-55-17 Termination of permits and denial of renewal. (a) On the expiration date specified in the NPDES permit, the NPDES permit shall automatically terminate and the permittee shall be divested of all rights therein.

(b) Each NPDES permit renewal application shall be subject to denial and each issued NPDES permit shall be subject to termination by the director after notice and opportunity for a contested case hearing.

(c) The following are causes for terminating a permit during its term or for denying a permit renewal application:

- (1) Noncompliance by the permittee with any condition of the permit;
- (2) The permittee's failure in the application or during the permit issuance process to

disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;

- (3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or
- (4) A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit (for example, plant closure or termination of discharge by connection to a publicly owned treatment works).

(d) The director shall follow the applicable state procedures in terminating any NPDES permit under this section, except that if the entire discharge is permanently terminated by elimination of the flow or by connection to a publicly owned treatment works (but not by land application or disposal into a well), the director may terminate the permit by notice to the permittee. Termination by notice shall be effective thirty days after notice is sent ("expedited termination"), unless the permittee objects in writing during that time. If the permittee objects during that period, the director shall follow applicable state procedures for termination. Expedited termination is not available to permittees who are subject to pending state or federal or both enforcement actions including citizen suits brought under state or federal law. If requesting expedited termination, a permittee shall certify that it is not subject to any pending state or federal enforcement actions including citizen suits brought under state or federal law. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under 40 CFR §124.6. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp ]  
(Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251,

1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.5, 122.64, 122.64(b), 123.25(a), 124.5, 124.5(d), 124.15(a))

§11-55-18 Reporting discontinuance or dismantlement.  
An NPDES permittee shall report within thirty days after the permanent discontinuance or dismantlement of that treatment works or waste outlet for which the NPDES permit had been issued by submitting a notice of cessation. [Eff 11/27/81; comp 10/29/92; comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp ]  
(Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1252, 1342, 1370, 1251-1387; 40 CFR 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §122.64, 124.5)

§11-55-19 Application of effluent standards and limitations, water quality standards, and other requirements. (a) NPDES permits shall apply and ensure compliance with the following whenever applicable:

- (1) Effluent limitations under Sections 301 and 302 of the Act, 33 U.S.C. §§1311 and 1312;
- (2) Standards of performance for new sources;
- (3) Effluent standards, effluent prohibitions, and pretreatment standards under Section 307 of the Act, 33 U.S.C. §1317;
- (4) More stringent limitation, including those:
  - (A) Necessary to meet water quality standards, treatment standards, or schedules of compliance, established under any state law or rules (under authority preserved by Section 510 of the Act, 33 U.S.C. §1370); or

- (B) Necessary to meet any other federal law or regulations including, but not limited to:
  - (i) Toxic pollutant effluent standards in 40 CFR Part 129;
  - (ii) Secondary treatment regulation in 40 CFR Part 133;
  - (iii) Effluent guidelines and standards in 40 CFR Chapter I, subchapter N, Parts 400 to 471;
  - (iv) Criteria and standards in 40 CFR Part 125, Subparts A, B, C, D, H, I, J, K, and M;
  - (v) Standards for sludge handling in 40 CFR §122.44(b)(2), 40 CFR Part 503 and state rules; and
  - (vi) Nutrient management requirements and technical standards for concentrated animal feeding operations in 40 CFR §123.36, 40 CFR §122.42, and 40 CFR Part 412; or
- (C) Required to implement any applicable water quality standards; the limitations to include any legally applicable requirements necessary to implement total maximum daily loads established under Section 303(d) of the Act, 33 U.S.C. §1313(d), or incorporated in the continuing planning process approved under Section 303(e) of the Act, 33 U.S.C. §1313(e), and any regulations and guidelines issued pursuant thereto;
- (5) More stringent legally applicable requirements necessary to comply with a plan approved under Section 208(b) of the Act, 33 U.S.C. §1288(b);
- (6) Prior to promulgation by the Administrator of applicable effluent standards and limitations under Sections 301, 302, 306, and 307 of the Act, 33 U.S.C. §§1311, 1312, 1316, and 1317,



the conditions, as the director determines are necessary to carry out the provisions of the Act; and

- (7) If the NPDES permit is for the discharge of pollutants into the [state]State waters from a vessel or other floating craft, any applicable regulations promulgated by the secretary of the department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage, and stowage of pollutants.
- (8) Other requirements developed under the continuing planning process under Section 303(e) of the Act and any regulations and guidelines issued under it.
- (9) Intake credits in accordance with 40 CFR §122.45(g) and HAR section 11-54-12.
- (10) Recreational criteria for all State waters in HAR section 11-54-8. To comply with HAR sections 11-54-8(b) and (c) requirements, at least one sample shall be collected on every fifth day of the thirty day sampling period. Each sample shall be collected and analyzed pursuant to 40 CFR Part 136. The director may require samples to be collected more frequently within the thirty day period.

(b) In any case where an issued NPDES permit applies the effluent standards and limitations described in subsection (a)(1), (2), and (3), the director shall state that the discharge authorized by the permit shall not violate applicable water quality standards and shall have prepared some explicit verification of that statement. In any case where an issued NPDES permit applies any more stringent effluent limitation based upon applicable water quality standards, a waste load allocation shall be prepared to ensure that the discharge authorized by the permit is consistent with applicable water quality standards.  
 [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and

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comp 08/01/05; am and comp 10/22/07; comp 6/15/09; am and comp 10/21/12; comp 12/6/13; am and comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1288(b), 1311, 1312, 1313, 1316, 1317, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125, Subparts A, B, C, D, H, I, J, K, L, M; 129; 133; 136; 401; 403; 405-432; 434-436; 439-440; 443; 446-447; 454-455; 457-460; 503; 400-471, Subparts N; §122.42, 122.43, 122.44, 122.45(g), 123.25(a))

§11-55-20 Effluent limitations in issued NPDES permits. In the application of effluent standards and limitations, water quality standards, and other legally applicable requirements under section 11-55-19, each issued NPDES permit shall specify average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge in terms of weight (except pH, temperature, radiation, and any other pollutants not appropriately expressed by weight). The director, at the director's discretion, in addition to the specification of daily quantitative limitations by weight, may specify other limitations, such as average or maximum concentration limits. [Eff 11/27/81; comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §122.45(f), 123.25(a))

§11-55-21 Schedule of compliance in issued NPDES permits. (a) With respect to any discharge which is not in compliance with applicable effluent standards and limitations, applicable water quality standards, or other legally applicable requirements listed in section

11-55-19, the permit shall require the permittee to take specific steps to achieve compliance with the following:

- (1) In accordance with any legally applicable schedule of compliance contained in:
  - (A) Applicable effluent standards and limitations;
  - (B) If more stringent, effluent standards and limitations needed to meet water quality standards; or
  - (C) If more stringent, effluent standards and limitations needed to meet legally applicable requirements listed in section 11-55-19; or
- (2) In the absence of any legally applicable schedule of compliance, in the shortest, reasonable period of time, which shall be consistent with the guidelines and requirements of the Act.

(b) When a schedule specifies compliance longer than one year after permit issuance, the schedule of compliance shall specify interim requirements and the dates for their achievement and in no event shall more than one year elapse between interim dates. If the time necessary for completion of the interim requirement (such as the construction of a treatment facility) exceeds one year and is not readily divided into stages for completion, the schedule shall specify interim dates for the submission of reports of progress towards completion of the interim requirements. For each NPDES permit schedule of compliance, interim dates, reporting dates, and the final date for compliance shall, to the extent practicable, fall on the last day of the month of March, June, September, and December. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp ]  
(Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-

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1387 40 CFR Parts 122; 123; 124, Subparts A and D; 125;  
§§122.43, 122.47, 123.25(a))

§11-55-22 Compliance schedule reports. (a)

Either before or up to fourteen days following each interim date and the final date of compliance, the permittee shall provide the director with written notice of the permittee's compliance or noncompliance with the interim or final requirement.

(b) On the last day of the months of February, May, August, and November, the director shall transmit to the regional administrator a Quarterly Noncompliance Report (QNCR) which is a list of all instances, as of thirty days prior to the date of the report, of failure or refusal of a permittee to comply with an interim or final requirement or to notify the director of compliance or noncompliance with each interim or final requirement (as required under subsection (a)). The list shall be available to the public for inspection and copying and shall contain at least the following information with respect to each instance of noncompliance:

- (1) Name, address, and permit number of each noncomplying permittee;
- (2) A short description of each instance of noncompliance for which 40 CFR §123.45(a)(2) requires reporting (e.g., failure to submit preliminary plans; two weeks delay in beginning construction of treatment facility; failure to notify director of compliance with interim requirement to complete construction by June 30th, etc.);
- (3) The date(s) and a short description of any actions or proposed actions by the permittee or the director to comply or enforce compliance with the interim or final requirement; and
- (4) Any details which tend to explain or mitigate an instance of noncompliance with an interim or final requirement (e.g., construction

delayed due to materials shortage, plan approval delayed by objection from state fish and wildlife agency, etc.).

(c) The first NPDES permit issued to a new source shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after beginning construction but less than three years before beginning the relevant discharge. For permit renewals, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before beginning the discharge again.

(d) If a permittee fails or refuses to comply with an interim or final requirement in an NPDES permit, noncompliance shall constitute a violation of the permit for which the director may modify, revoke and reissue, or terminate the permit under sections 11-55-16 and 11-55-17 or may take direct enforcement action. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp ]  
(Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122, 123; 124, Subparts A and D; 125; §§122.43, 122.47, 123.25(a), 123.45)

§11-55-23 Other terms and conditions of issued NPDES permits. In addition to the requirements previously specified, each permit shall be subject to the following terms and conditions:

- (1) All discharges authorized by the NPDES permit shall be consistent with the terms and conditions of the NPDES permit;
- (2) The permittee shall report at least as required by 40 CFR §122.41(1), and where applicable, 40 CFR §122.42(a), (b), (c), (d), and (e);

- (3) Facility expansions, production increase, or process modifications which result in new or increased discharges of pollutants shall be reported by submission of a new NPDES permit application, or, if the discharge does not violate effluent limitations specified in the NPDES permit, by submission to the director of notice of the new or increased discharges of pollutants under 40 CFR §122.42(a);
- (4) The discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by the NPDES permit shall constitute a violation of the terms and conditions of the NPDES permit;
- (5) The permittee shall allow the director or an authorized agent, including a contractor of the Administrator, upon the presentation of credentials to:
  - (A) Enter the permittee's premises in which an effluent source is located or in which any records are kept under terms and conditions of the NPDES permit;
  - (B) Have access to and copy any records kept under terms and conditions of the NPDES permit;
  - (C) Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the NPDES permit; or
  - (D) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location;
- (6) Any treatment facility treating domestic sewage and also receiving industrial waste from one or more indirect dischargers may be required to develop for the director's approval a pretreatment program in accordance with applicable requirements in 40 CFR Part

403. The pretreatment program approved by the director may then be incorporated into the NPDES permit as a permit condition;
- (7) If the NPDES permit is for a discharge from a publicly or privately owned treatment works, the permittee shall notify the director in writing of the following:
- (A) Any new introduction of pollutants into a publicly or privately owned treatment works from an indirect discharger which would be subject to Sections 301 and 306 of the Act, 33 U.S.C. §1311 and §1316, if the indirect discharger were directly discharging those pollutants;
  - (B) Any substantial change in volume or character of pollutants being introduced into the treatment works by a source introducing pollutants into the treatment works at the time of issuance of the permit;
  - (C) The quality and quantity of effluent to be introduced into a treatment works; and
  - (D) Any anticipated impact caused by a change in the quality or quantity of effluent to be discharged from a publicly or privately owned treatment works;
- (8) If the NPDES permit is for a discharge from a publicly owned treatment works with an approved pretreatment program under section 11-55-24, the director shall incorporate the approved pretreatment program into the NPDES permit as a permit condition. The permittee shall require any industrial user of the treatment works to comply with the requirements contained in the approved pretreatment program and the requirements of Sections 204(b), 307, and 308 of the Act, 33 U.S.C. §§1284, 1317, and 1318. The permittee shall also require each industrial user

subject to the requirements of Section 307 of the Act, 33 U.S.C. §1317, to forward copies of periodic reports (over intervals not to exceed nine months) of progress towards full compliance with Section 307 of the Act, 33 U.S.C. §1317 requirements, to the permittee and the director;

- (9) The permittee at all times shall maintain in good working order and operate as efficiently as possible any facility or system of control installed by the permittee to achieve compliance with the terms and conditions of the NPDES permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit; and
- (10) If a toxic effluent standard or prohibition (including any schedule of compliance specified in the effluent standards or prohibition) is promulgated under Section 307(a) of the Act, 33 U.S.C. §1317(a), for a toxic pollutant which is present in the permittee's discharge and the standard or prohibition is more stringent than any limitation upon the pollutant in the NPDES permit, the director shall revise or modify the permit in accordance with the toxic effluent standard or prohibition and notify the permittee; and
- (11) A copy of the NPDES permit application, notice of intent, "no exposure" certification, individual permit, notice of general permit coverage, and conditional "no exposure" exclusion, as applicable, shall be retained on-site or at a nearby office or field office. [Eff 11/27/81; am and comp



10/29/92; am and comp 09/22/97; comp  
01/06/01; am and comp 11/07/02; am and comp  
08/01/05; am and comp 10/22/07; comp 6/15/09;  
comp 10/21/12; comp 12/6/13;  
comp ] (Auth: HRS §§342D-4,  
342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370)  
(Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6,  
342D-8, 342D-50, 342D-55; 33 U.S.C. §§1251,  
1284, 1311, 1316, 1317, 1318, 1342, 1370,  
1251-1387; 40 CFR Parts 122; 123; 124,  
Subparts A and D; 125; 403; §§122.41, 122.42,  
122.44, 123.25(a))

§11-55-24 National pretreatment standards and users of publicly owned treatment works. (a) Any county desiring to administer its own publicly owned treatment works pretreatment program shall submit to the director for approval a program description which shall at a minimum include the information set forth in 40 CFR §403.9(a) or 403.9(c).

(b) The director, upon receipt of the request for an approval of a pretreatment program, shall review and decide on the request in accordance with procedures described in 40 CFR §403.11.

(c) Any person discharging any pollutant or effluent into a publicly owned treatment works shall permit the director, upon presentation of credentials, to:

- (1) Enter the premises of a person subject to pretreatment requirements in which an effluent source is located or in which any records are kept under terms and conditions of a pretreatment requirement;
- (2) Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations required by a pretreatment requirement; and
- (3) Sample any discharge of pollutants or effluent.

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(d) No person shall introduce into any publicly owned treatment works any pollutant or effluent in violation of 40 CFR §403.5.

(e) The director may require any person discharging any pollutant or effluent into a publicly owned treatment works to:

- (1) Establish and maintain records;
- (2) Make reports;
- (3) Install, use, and maintain monitoring equipment or methods;
- (4) Sample effluent and [state]State waters;
- (5) Provide access to and copying of any records which are maintained; and
- (6) Provide other information as the department may require. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; am and comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-8, 342D-50, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 403, §§122.41(i))

§11-55-25 Transmission to regional administrator of proposed NPDES permits. The director shall transmit to the regional administrator copies of NPDES permits proposed to be issued by the agency in a manner as the director and regional administrator shall agree upon or as stated in 40 CFR §123.44(j). Any agreement between the State and regional administrator shall provide for at least the following:

- (1) Except as waived under paragraph (4), the transmission by the director of any and all terms, conditions, requirements, or documents which are a part of the proposed NPDES permit or which affect the authorization by the

proposed NPDES permit of the discharge of pollutants;

- (2) A period of time (up to ninety days) in which the regional administrator, under any right to object provided in Section 402(d) of the Act, 33 U.S.C. §1342(d), may comment upon, object to, or make recommendations with respect to the proposed NPDES permit;
- (3) Procedures for state acceptance or rejection of a written objection by the regional administrator; and
- (4) Any written waiver by the regional administrator of the regional administrator's rights to receive, review, object to, or comment upon proposed NPDES permits for classes, types, or sizes within any category of point sources. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§123.24(d), 123.43, 123.44)

§11-55-26 Transmission to regional administrator of issued NPDES permits. The director shall transmit to the regional administrator a copy of every issued NPDES permit, immediately following issuance, along with any and all terms, conditions, requirements, or documents which are a part of the NPDES permit or which affect the authorization by the NPDES permit of the discharge of pollutants. [Eff 11/27/81; comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251,

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1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 123.43(a)(3))

§11-55-27 Renewal of NPDES permits. (a) The director shall review applications for reissuance of NPDES permits. Any permittee who wishes to continue to discharge after the expiration date of the permittee's NPDES permit shall submit for renewal of the permit at least one hundred eighty days prior to its expiration.

(b) The scope and manner of any review of an application for renewal of an NPDES permit shall be within the discretion of the director and shall be sufficiently detailed as to ensure the following:

- (1) The permittee is in compliance with or has substantially complied with all the terms, conditions, requirements, and schedules of compliance of the current or expired NPDES permit;
- (2) That the director has current information on the permittee's production levels; permittee's waste treatment practices; nature, contents, and frequency of permittee's discharge through the submission of new forms and applications or from monitoring records and reports submitted to the director by the permittee; and
- (3) That the discharge is consistent with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements, including any additions to, revisions, or modifications of the effluent standards and limitations, water quality standards, or other legally applicable requirements during the term of the permit.

(c) The director shall follow the notice and public participation procedures specified in this

chapter in connection with each request for reissuance of an NPDES permit.

(d) Notwithstanding any other provision in this section, any point source, the construction of which began after October 18, 1972 and which is constructed to meet all applicable new source performance standards, shall not be subject to any more stringent new source performance standard, except as specified in 40 CFR §122.29(d)(2), for the earliest ending of the following period;

- (1) A ten-year period beginning on the date of completion of the construction;
- (2) A ten-year period from the date the source begins to discharge process or other non-construction related wastewater; or
- (3) During the period of depreciation or amortization of the facility for the purposes of Section 167 or 169 or both of the Internal Revenue Code of 1954, whichever period ends first.

(e) Application for renewal of an NPDES permit shall comply with section 11-55-04. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp

] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.21(d), 122.29, 122.41(b), 122.41(l), 122.44, 123.25(a))

§11-55-28 Monitoring. (a) Any discharge authorized by an NPDES permit may be subject to monitoring requirements as may be reasonably required by the director, including the installation, use, and maintenance of monitoring equipment or methods (including, where appropriate, biological monitoring methods).

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(b) Any discharge authorized by an NPDES permit which:

- (1) Is not a minor discharge;
- (2) The regional administrator requests, in writing, be monitored; or
- (3) Contains toxic pollutants for which an effluent standard has been established by the Administrator under Section 307(a) of the Act, 33 U.S.C. §1317, shall be monitored by the permittee for at least the items listed in subsection (c).

(c) Monitored items:

- (1) Flow (in gallons per day or cubic feet per second); and
- (2) All of the following pollutants:
  - (A) Pollutants (either directly or indirectly through the use of accepted correlation coefficient or equivalent measurements) which are subject to reduction or elimination under the terms and conditions of the NPDES permit;
  - (B) Pollutants which the director finds, on the basis of available information, could have a significant impact on the quality of [state] State waters;
  - (C) Pollutants specified by the Administrator in regulations issued under the Act, as subject to monitoring; and
  - (D) Any pollutants in addition to the above which the regional administrator requests, in writing, to be monitored.

(d) Each effluent flow or pollutant required to be monitored under subsection (c) shall be monitored at intervals sufficiently frequent to yield data which reasonably characterizes the nature of the discharge of the monitored effluent flow or pollutant. Variable effluent flows and pollutant levels shall be monitored at more frequent intervals than relatively constant effluent flows and pollutant levels. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01;

am and comp 11/07/02; comp 08/01/05; comp 10/22/07;  
comp 6/15/09; comp 10/21/12; comp 12/6/13; am and  
comp ] (Auth: HRS §§342D-4, 342D-5; 33  
U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2,  
342D-4, 342D-5, 342D-6, 342D-55; 33 U.S.C. §§1251,  
1317, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123;  
124, Subparts A and D; 125; §§122.41, 122.43, 122.48,  
123.25(a))

§11-55-29 Recording of monitoring activities and results. When any NPDES permit requires monitoring of the authorized discharge:

- (1) The permittee shall maintain records of all information resulting from any monitoring activities required by the NPDES permit;
- (2) Any records of monitoring activities and results shall include for all samples:
  - (A) The date, exact place, and time of sampling or measurements;
  - (B) The individual(s) who performed the sampling or measurements;
  - (C) The date(s) the analyses were performed;
  - (D) The individual(s) who performed the analyses;
  - (E) The analytical techniques or methods used; and
  - (F) The results of the analyses; and
- (3) The permittee shall retain for a minimum of five years any records of monitoring activities and results including all original strip chart recording for continuous monitoring instrumentation and calibration and maintenance records. This period of retention shall be extended during the course of any unresolved litigation or administrative enforcement action regarding the discharge of pollutants by the permittee or when requested by the director or regional administrator. [Eff 11/27/81; comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and

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comp 11/07/02; comp 08/01/05; comp 10/22/07;  
comp 6/15/09; comp 10/21/12; comp 12/6/13;  
comp ] (Auth: HRS §§342D-4,  
342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp:  
HRS §§342D-2, 342D-4, 342D-5, 342D-6,  
342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-  
1387; 40 CFR Parts 122; 123; 124, Subparts A  
and D; 125; 122.41(j))

§11-55-30 Reporting of monitoring results. The director shall require periodic reporting (at a frequency of not less than once per year) on the proper NPDES discharge monitoring report form, or other form as specified by the director, of monitoring results obtained by a permittee under monitoring requirements in an NPDES permit. In addition to the NPDES discharge monitoring report form, or other form as specified by the director, the director may require submission of any other information regarding monitoring results as determined to be necessary. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 122.41(l)(4), 122.44(i))

§11-55-31 Sampling and testing methods. (a) All sampling and testing shall be done in accordance with test procedures approved under 40 CFR Part 136 unless other test procedures have been specified in the permit or approved by the director and, when applicable, with guidelines establishing test procedures for the analysis of pollutants published by the Administrator in accordance with Section 304(h) of the Act, 33 U.S.C. §1314(h). All tests shall be made under the direction



of persons knowledgeable in the field of water pollution control.

(b) The director may conduct tests of waste discharges from any source. Upon request of the director, the person responsible for the source to be tested shall provide necessary sampling stations and other safe and proper sampling and testing facilities, exclusive of instruments and sensing devices, as may be necessary for proper determination of the waste discharge. [Eff 11/27/81; comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-55; 33 U.S.C. §§1251, 1314, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.41(j)(4), 136)

§11-55-32 Malfunction, maintenance, and repair of equipment. (a) There shall be no shut-down of water pollution treatment facilities for purposes of maintenance unless a schedule or plan for the maintenance has been submitted to and approved by the director prior to the shut-down.

(b) In the case of a shut-down of water pollution control equipment for necessary maintenance, the intent to shut down the equipment shall be reported to and approved by the director at least twenty-four hours prior to the planned shut-down. The prior notice shall include, but is not limited to, the following:

- (1) Identification of the specific facility to be taken out of service, as well as its location and NPDES permit number;
- (2) The expected length of time that the water pollution control equipment will be out of service;
- (3) The nature and quantity of discharge of water pollutants likely to be emitted during the shut-down period;

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- (4) Measures that will be taken to minimize the length of the shut-down period, such as the use of off-shift labor and equipment;
- (5) Identification of any adverse impacts to the receiving [state]State waters which could be caused by the wastes which are to be bypassed; and
- (6) The reasons that it would be impossible or impractical to shut down the source operation during the maintenance period.

(c) In the event that any water pollution control equipment or related facility breaks down in a manner causing the discharge of water pollutants in violation of applicable rules, the person responsible for the equipment shall immediately notify the director of the failure or breakdown and provide a statement giving all pertinent facts, including the estimated duration of the breakdown. The director shall be notified when the condition causing the failure or breakdown has been corrected and the equipment is again in operation.

[Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; am and comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-55; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-33 Agency board membership. (a) Any board or body which approves NPDES permit applications, notices of intent, or "no exposure" certifications, or portions thereof shall not include as a member any person who receives, or has during the previous two years received, a significant portion of the person's income directly or indirectly from permittees or persons applying for an NPDES permit.

(b) For the purposes of this section, the term "board or body" includes any individual, including the director, who has or shares authority to approve permit

applications or portions thereof either in the first instance or on appeal.

(c) For the purposes of this section, the term "significant portion of the person's income" shall mean ten per cent or more of gross personal income for a calendar year, except that it shall mean fifty per cent or more of gross personal income for a calendar year if the recipient is over sixty years of age and is receiving that portion under retirement, pension, or similar arrangement.

(d) For the purposes of this section, the term "permittees or persons applying for an NPDES permit" shall not include any state department or agency.

(e) For the purposes of this section, the term "income" includes retirement benefits, consultant fees, and stock dividends.

(f) For the purposes of this section, income is not received "directly or indirectly from permittees or persons applying for an NPDES permit" where it is derived from mutual fund payments or from other diversified investments over which the recipient does not know the identity of the primary sources of income. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp ] (Auth: HRS §§342D-3, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-3, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; 123.25(c))

§11-55-34 General permit definitions. As used in sections 11-55-34.01 through 11-55-34.12:

"Category of sources" means either:

- (1) Storm water point sources; or
- (2) A group of point sources other than storm water point sources if all sources in the group:
  - (A) Involve the same or substantially similar types of operations;

- (B) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices;
- (C) Require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal;
- (D) Require the same or similar monitoring; and
- (E) In the opinion of the director, are more appropriately controlled under a general permit than under an individual permit.

"Geographical area" means existing geographical or political boundaries such as:

- (1) Designated planning areas under Sections 208 and 303 of the Act;
- (2) Sewer districts or sewer authorities;
- (3) City, county, or state political boundaries;
- (4) State highway systems;
- (5) Standard metropolitan statistical areas as defined by the Office of Management and Budget;
- (6) Urbanized areas as designated by the Bureau of the Census according to criteria in 30 Federal Register 15202 (May 1, 1974); or
- (7) Any other appropriate division or combination of boundaries. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.2, 122.28, 123.25(a)(11))

§11-55-34.01 General permit policy. It is the policy of the State that general permits shall comply, at a minimum, with federal requirements for general permits, especially 40 CFR §122.28. [Eff and comp

10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp ]  
(Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

§11-55-34.02 General permit authority and adoption. (a) The director may adopt general permits.

(b) The appendices located at the end of this chapter are adopted and incorporated by reference as general permits for the following applicable categories of sources:

- (1) Appendix B, titled "NPDES General Permit Authorizing Discharges of Storm Water Associated with Industrial Activities" for discharges composed entirely of storm water associated with certain industrial activities as identified in 40 CFR §§122.26(b)(14)(i) through 122.26(b)(14)(ix) and §122.26(b)(14)(xi);
- (2) Appendix C, titled "NPDES General Permit Authorizing Discharges of Storm Water Associated with Construction Activity" for storm water discharges from construction activities which result in the disturbance of five acres or more of total land area or small construction activities which result in the disturbance of one to less than five acres of total land area or construction activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area;
- (3) Appendix D, titled "NPDES General Permit Authorizing Discharges of Treated Effluent from Leaking Underground Storage Tank

- Remedial Activities" for the discharge of treated effluent from the leaking underground storage tank remedial activities;
- (4) Appendix E, titled "NPDES General Permit Authorizing Discharges of Once Through Cooling Water Less Than One (1) Million Gallons Per Day" for the discharge of once-through, non-contact cooling water for one million gallons per day or less;
  - (5) Appendix F, titled "NPDES General Permit Authorizing Discharges of Hydrotesting Waters" for the discharge of non-polluted hydrotesting water;
  - (6) Appendix G, titled "NPDES General Permit Authorizing Discharges Associated with Construction Activity Dewatering" for the discharge of dewatering effluent from a construction activity;
  - (7) Appendix H, titled "NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals" for the discharge of treated process wastewater effluent from petroleum bulk stations and terminals;
  - (8) Appendix I, titled "NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Well Drilling Activities" for the discharge of treated process wastewater effluent associated with well drilling activities;
  - (9) Appendix J, titled "NPDES General Permit Authorizing Occasional or Unintentional Discharges from Recycled Water Systems" for the discharge of treated process wastewater effluent from recycled water distribution systems;
  - (10) Appendix K, titled "NPDES General Permit Authorizing Discharges of Storm Water and Certain Non-Storm Water Discharges from Small Municipal Separate Storm Sewer Systems" for the discharge of storm water and certain

non-storm water discharges from a small municipal separate storm sewer system as defined in 40 CFR §122.26(b)(16);

- (11) Appendix L, titled "NPDES General Permit Authorizing Discharges of Circulation Water from Decorative Ponds or Tanks" for the discharge of circulation water from decorative ponds or tanks; and
- (12) Appendix M, titled "NPDES General Permit Authorizing Point Source Discharges from the Application of Pesticides," dated August 2012. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; am and comp 10/21/12; am and comp 12/6/13; comp ]  
(Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28)  
(Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122;; 124; 125; §§122.26, 122.28, 123.25(a)(11))

§11-55-34.03 General permit terms. General permits shall be for terms of not more than five years. [Eff and comp 10/29/92; comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 10/21/12; comp 12/6/13; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.26, 122.28, 122.46, 123.25(a)(11))

§11-55-34.04 General permit conditions.

(a) Discharges covered by general permits shall comply with the applicable sections of state water quality standards in chapter 11-54, and the applicable provisions of this chapter, including, but not limited

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to, sections 11-55-18, 11-55-19, 11-55-20, 11-55-21, 11-55-22, 11-55-23, 11-55-28, 11-55-29, 11-55-30, 11-55-31, 11-55-32, and 11-55-34.07.

(b) Appendix A, titled "Department of Health Standard General Permit Conditions" and located at the end of this chapter is adopted, incorporated by reference, and applies to each general permit.

(c) Special conditions apply as specified in each general permit, e.g., appendices B through M, respectively. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; am and comp 10/21/12; am and comp 12/6/13; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1318, 1319, 1321, 1323, 1342, 1345, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.26, 122.28, 122.41, 122.42, 123.25(a)(11))

§11-55-34.05 Requiring an individual permit.

(a) Notwithstanding the provisions of a general permit, the director may require any person covered by a general permit to apply for and obtain an individual permit. Cases where an individual permit may be required include, but are not limited to, the following:

- (1) The discharger or "treatment works treating domestic sewage" is not in compliance with the conditions of the general permit;
- (2) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;
- (3) Effluent limitation guidelines are promulgated for point sources covered by the general permit;



- (4) A water quality management plan containing requirements applicable to the point sources is approved;
- (5) Circumstances have changed since the time of the request to be covered so that the permittee is no longer appropriately controlled under the general permit or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;
- (6) Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general permit; or
- (7) The discharge(s) is a significant contributor of pollutants to [state]State waters. In making this determination, the director may consider the following factors:
  - (A) The location of the discharge with respect to [state]State waters;
  - (B) The size of the discharge;
  - (C) The quantity and nature of the pollutants discharged to the [state]State waters; and
  - (D) Other relevant factors.

(b) The director may require any owner or operator authorized by a general permit to apply for an individual NPDES permit as provided in section 11-55-34.05(a), only if the owner or operator has been notified in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, application information, a statement setting a time for the owner or operator to file the application, and a statement that on the effective date of the individual NPDES the general permit as it applies to the individual permittee shall automatically terminate, unless coverage under a general permit had already been terminated by the director in accordance with 11-55-34.11. The director may grant additional time upon request of the applicant.

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(c) Any owner or operator covered by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application with reasons supporting the request to the director.

(d) When an individual permit is issued to an owner or operator otherwise covered by a general permit, the coverage of the general permit to the individual permittee is automatically terminated on the effective date of the individual permit.

(e) A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

(f) The director may require any activity and/or discharge that has commenced prior to obtaining the required coverage under a general permit to apply for an individual NPDES permit. For construction activities which have commenced prior to obtaining general permit coverage, restoration of the site to preconstruction conditions may re-qualify it for coverage under the general permit. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; am and comp 12/6/13; am and comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28(b)(3), 123.25(a)(11))

§11-55-34.06 (Reserved)

§11-55-34.07 Degree of waste treatment. All discharges covered by a general permit shall receive treatment or corrective action to ensure compliance

with the terms and conditions of the issued permit and with the following, whenever applicable:

- (1) Effluent limitations established by the EPA under Sections 301, 302, 306, 307, 318, and 405 of the Act;
- (2) Criteria and standards for best management practices established by the EPA under Section 304(e) of the Act;
- (3) Notwithstanding paragraphs (1) and (2), more stringent effluent limitations may be required as deemed necessary by the director:
  - (A) To meet any existing federal laws or regulations; or
  - (B) To ensure compliance with any applicable state water quality standards, effluent limitations, treatment standards, or schedule of compliance; and
- (4) Calculations and specifications of effluent limits and standards shall be made in accordance with the provisions of federal regulations, 40 CFR §122.45. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp ]  
(Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28)  
(Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1312, 1314, 1316, 1317, 1318, 1342, 1345, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

§11-55-34.08 Notice of intent. (a) Persons seeking coverage under a general permit shall submit a notice of intent, except for the point source discharges from the application of pesticides, if not required (refer to Appendix M).

(b) A notice of intent shall:

- (1) Be submitted on forms provided by the director;
- (2) Comply with the notice of intent requirements of the respective general permit; and
- (3) Be accompanied by all pertinent information which the director may require in order to establish effluent limitations or best management practices, including, but not limited to, complete engineering reports, schedule of progress, plans, specifications, maps, measurements, quantitative and qualitative determinations, records, and all related materials.

(c) The director may require that all reports, plans, specifications, and other material submitted to the director be prepared by a licensed professional engineer.

(d) Material submitted shall be complete and accurate.

(e) Any notice of intent form submitted to the director shall be signed in accordance with section 11-55-07(a).

(f) All other reports or responses to requests for information required by the director shall be signed in accordance with section 11-55-07(b).

(g) Any change in the written authorization submitted to the director under subsection (f) which occurs after the issuance of a permit shall be reported to the director by submitting a copy of a new written authorization which meets the requirements of subsections (e) and (f). (h) Any person signing a document under subsections (e) and (f) shall make a certification in accordance with 40 CFR §122.22(d).

(i) Each owner or operator who submits a notice of intent to be covered under the general permit provisions or for renewal of general permit coverage shall pay a filing fee of \$500. This filing fee shall be submitted with the notice of intent and shall not be refunded nor applied to any subsequent NPDES individual permit application following final action denying coverage under the general permit provisions.

- (1) When a notice of intent is submitted to the director for a substantial alteration or addition to the treatment works or waste outlet and where a general permit authorization has previously been granted for the treatment works or waste outlet, the owner or operator shall be assessed the fee of \$500;
  - (2) A new owner or operator or both of a discharge facility covered by the general permit provisions shall submit a new notice of intent unless the new owner submits a notice of automatic transfer that meets 40 CFR §122.61(b). The new owner or operator shall be assessed the fee of \$500;
  - (3) Fees shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director.
- (j) A notice of intent shall be submitted to the director at least thirty days before the earlier of:
- (1) The beginning of any discharge, which is not covered under Appendix C or except for coverage under Appendix M for a declared pest emergency situation where the notice of intent shall be submitted no later than thirty days after beginning the pesticide discharge;
  - (2) The beginning of any construction activity which is covered under Appendix C, unless coverage is required for an emergency-related construction activity where an NOI shall be submitted no later than 30 calendar days after the start of construction activities;
  - (3) The expiration date of the existing general permit; or
  - (4) The expiration date of the existing notice of general permit coverage.
- (k) (Reserved).
- (l) (Reserved).

(m) A notice of intent shall be submitted to the director for:

- (1) Any storm water discharge associated with industrial activity from an existing facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, power-plant, or uncontrolled sanitary landfill; or
- (2) Any discharge from an existing regulated small municipal separate storm sewer system which is qualified to obtain coverage under the general permit. A small municipal separate storm sewer system, including but not limited to systems operated by federal, state, and local governments, including state departments of transportation, is regulated when it is located in an urbanized area as determined by the latest decennial census by the Bureau of the Census. (If the small municipal separate storm sewer system is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated.) Small municipal separate storm sewer systems located outside of urbanized areas are designated to submit a notice of intent if the department determines that the storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts. The notice of intent shall be submitted within thirty days of notice from the department.

(n) (Reserved).

(o) The submittal date is the date the department receives the notice of intent. The thirty day period includes weekends and holidays. If the director notifies the owner or operator or its duly authorized representative that the notice of intent is incomplete,

the thirty day period shall start over upon receipt of the revised notice of intent. The director may waive this thirty day requirement by notifying the owner or operator in writing of a notice of general permit coverage before the thirty days expire. [Eff and comp 10/29/92; am 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; am and comp 6/15/09; am and comp 10/21/12; am and comp 12/6/13; comp ]  
 (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§6E-42(a), 342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.22, 122.26, 122.28(b)(2)(ii) and (iii), 123.25(a)(11))

§11-55-34.09 Notice of intent review, notice of general permit coverage, additional conditions, terms, renewals, effective dates, and automatic coverage. (a) After receipt of a notice of intent, the director may notify the owner or operator or its duly authorized representative in writing that the notice of intent is complete or incomplete, whether the proposed activity or discharge(s) is covered under a general permit, or whether an individual permit application is required. The director may deny without prejudice the notice of intent to be covered by a general permit if the owner or operator or its duly authorized representative does not respond or failed to respond in writing within thirty days of the date of the director's written notification that the notice of intent is incomplete.

(b) After receipt of the complete notice of intent, the director may notify the owner or operator in writing of a notice of general permit coverage. This includes issuing a notice of general permit coverage after automatic coverage applies under subsection (e)(2) even if the owner or operator has not waived automatic coverage. The director may impose conditions in a notice of general permit coverage or add conditions to an issued notice of general permit

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coverage to ensure that the activity or discharge(s) complies with the terms and conditions of the general permit and to ensure that state water quality standards will not be violated.

(c) A notice of general permit coverage may limit coverage under the general permit to a term of less than five years.

(d) The director may, automatically or by notification, administratively extend a notice of general permit coverage upon receipt of a complete notice of intent for renewal of a notice of general permit coverage before the expiration of the general permit or when the notice of general permit coverage specifies, whichever occurs first. A notice of general permit coverage shall be considered to have been automatically extended unless the department informs the Permittee otherwise. An administrative extension of an NGPC granted, automatically or by notification, for a project which later is found to be in non-compliance will be automatically terminated and may be required to apply for individual NPDES permit coverage. If administratively extended, the terms and conditions of the expired permit will continue to be effective for projects that submitted NOIs prior to the expiration date. The department intends that projects that do not submit NOIs prior to the expiration date will not be administratively extended.

The permittee who submits a notice of intent for renewal of the notice of general permit coverage shall be treated as an owner or operator applying for permit renewal under section 342D-6(h), HRS.

(e) Authorization to discharge under the general permit is effective upon the earlier of:

- (1) Notification by the department of general permit coverage under subsection (b); or
- (2) The thirtieth day after receipt at the clean water branch of the department of a complete notice of intent for a new notice of general permit coverage and the applicable filing fee, unless before the thirtieth day the director notifies the owner or its duly



authorized representative that the notice of intent is incomplete. This paragraph does not apply to a notice of intent for renewal of a notice of general permit coverage.

(f) A person claiming coverage in writing under the automatic provision of subsection (e)(2), instead of under an issued notice of general permit coverage under subsections (a) through (d), assumes the risks that:

- (1) The notice of intent may later be found to be incomplete by the director or by a court;
- (2) The person may not be covered under the terms of the general permit, even if the notice of intent is complete;
- (3) The person may be acting in noncompliance with the general permit or this chapter, even if the person is complying with its notice of intent; and
- (4) The director may modify, revoke and reissue, or terminate a notice of general permit coverage under section 11-55-34.11. The director may revoke automatic coverage and issue a notice of general permit coverage or terminate an automatic coverage under section 11-55-34.11.

The person claiming automatic coverage on the notice of intent shall submit all site-specific plans, general contractor information, and all necessary permits and approvals (i.e., county-approved erosion and sediment control plan or approved substitute, approval to connect or discharge to a separate storm sewer system, etc.). Nothing in or with the notice of intent shall be submitted less than thirty days before the start of construction activities.

(g) A person may waive automatic coverage under subsection (e)(2) by notifying the director in writing that the person will wait for a notice of general permit coverage before starting the activity or discharge.

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(h) Written notification by the department under this section is complete upon mailing or sending a facsimile transmission or electronic mailing of the document or actual receipt of the document by the owner or its duly authorized representative.

(i) All submittals in compliance with a condition of the notice of general permit coverage shall be signed in accordance with section 11-55-34.08(e), (f), or (g) and include a certification in accordance with 40 CFR §122.22(d). [Eff and comp 10/29/92; am 09/23/96; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; am and comp 12/6/13; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

§11-55-34.10 Review of coverage issues and notice of intent and notice of general permit coverage decisions. Any interested person may petition the director under section 91-8, HRS, for a declaratory ruling on whether an individual permit is required for, or a general permit covers, a discharge. The director's decision requiring a person to apply for an individual permit or excluding a person from general permit coverage shall remain effective pending the outcome of the petition. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; §11-55-34.1; am, ren, and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

§11-55-34.11 Notice of general permit coverage revocation and/or termination. A notice of general permit coverage and automatic coverage under section 11-55-34.09(e)(2) may be revoked and/or terminated in accordance with section 11-55-34.05 or as determined by the director. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; am and comp 12/6/13; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

§11-55-34.12 General permit compliance. Any person who discharges under a general permit shall comply with section 11-55-34.04, all general permit standard conditions, all applicable special conditions, and all applicable additional notice of general permit coverage conditions. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28, 123.25(a)(11))

§11-55-35 Penalties and remedies. Any person who violates any provision of this chapter or the terms or conditions of any permit issued under this chapter shall be subject to the penalties and remedies provided in chapter 342D, HRS. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-30,

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342D-31, 342D-32, 342D-33, 342D-34, 342D-35; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-9, 342D-11, 342D-17, 342D-30, 342D-31, 342D-32, 342D-33, 342D-34, 342D-35; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-36 Hearing and appeals. Hearings before the director on any violations of these rules and appeals from any of the director's decisions shall comply with chapters 91 and 342D, HRS. [Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-12, 342D-56, 342D-57; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS Ch. 91 and §§342D-2, 342D-4, 342D-5, 342D-6, 342D-9, 342D-11, 342D-12, 342D-31; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-37 Severability clause. If any provision of this chapter, or its application to any person or circumstance, is held invalid, the application of the provision to other persons or circumstances, and the remainder of this chapter, shall not be affected. [Eff 11/27/81; comp 10/29/92; comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125)

§11-55-38 Repealed. [Eff and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; R 6/15/09] (Auth: HRS ch. 6E, §§6E-1, 6E-42(a)) (Imp: HRS ch. 6E, §§6E-1, 6E-42(a))

§11-55-39 Public interest. (a) A person submitting an NPDES permit application shall explain in writing why the proposed action meets the public interest as defined in section 342D-6(g), HRS. The explanation shall address:

- (1) The environmental impact of the proposed action beside the water quality effects already covered in the application and supporting materials;
- (2) Any adverse environmental effects which cannot be avoided should the action be implemented;
- (3) The alternatives to the proposed action;
- (4) The relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity;
- (5) Any irreversible and irretrievable commitment of resources which would be involved in the proposed action should it be implemented; and
- (6) The optimum balance between economic development and environmental quality.

(b) The person submitting an NPDES permit application may submit a document prepared for another permit, license, or approval, including an environmental assessment or environmental impact statement prepared under chapter 343, HRS, or other similar document. The person submitting the NPDES permit application may also submit supplementary documents to meet this section. In either case, the department shall review the document(s) submitted for compliance with this section. The department shall seek to avoid redundant work.

(c) The department may consider other information relevant to the public interest, including information in an environmental assessment; environmental impact statement; other document prepared for another permit, license, or approval; or elsewhere. If the department considers information unknown to the applicant, the department shall notify the applicant and allow the

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applicant to respond in a timely manner. [Eff and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp ] (Auth: HRS §§342D-4, 342D-5, 342D-6) (Imp: HRS §§342D-4, 342D-5, 342D-6)

§11-55-40 Field citations; non-compliance with NPDES requirements. This section authorizes citations to effectively and quickly settle easily verifiable violations of chapter 342D, HRS, and this chapter. Settlements under this section are an additional remedy and do not supplant the director's authority to issue orders under section 342D-9, HRS.

(1) Offer to settle[; penalties].

(A) A field citation is an offer to settle an administrative case against a specific violation on a specific day. Instead of issuing a formal notice and finding of violation and order, the director may, in the director's sole discretion, through any authorized employee, issue a field citation by personal service or certified mail to:

- (i) Any person who discharges or causes or allows a discharge of pollutants into [state] State waters or municipal separate storm sewer systems without coverage under an NPDES permit, or in excess of limitations established by an NPDES permit;
- (ii) Any person who begins an activity [and/or discharges pollutants] prior to obtaining the required individual NPDES permit, coverage under a general permit, and/or authorization from the director;
- (iii) Any person who fails to correctly install, implement, maintain, or repair site best management

practices as called for in their storm water pollution control plan or best management practices plan or other plan;

(iv) Any person who fails to monitor as required by the applicable NPDES permit, in whole or in part;

~~[(iv)]~~ (v) Any person who fails to retain on-site or at a nearby office or field office:

- a) a copy of the NPDES permit application or notice of intent or "no exposure" certification[;],
- b) storm water pollution control plan, [ or] best management practices plan or other plan[, ] and all subsequent revisions[;], or
- c) individual NPDES permit, [ or] notice of general permit coverage, or conditional "no exposure" exclusion [on-site or at a nearby office or field office];

~~[(v)]~~ (vi) Any person who fails to submit documents, reports, and/or submittals as required by the applicable NPDES permit, in whole or in part, including but not limited to discharge monitoring reports, monthly compliance information, pollution prevention plans, notification to the director, and/or notices of cessation.

(B) A field citation shall [assess the following penalties for

violations:] indicate the following amounts:

- (i) [Any] \$500 for any person who violates [paragraph] paragraphs (1) (A) (i), (ii), (iii), or (iv) [shall be fined \$500] for the first violation, and [ \$1,000] \$2,000 for a subsequent violation;
- [(ii) Any person who violates paragraph (1) (A) (ii) shall be fined \$500 for the first violation, and \$1,000 for a subsequent violation;]
- [(iii) Any person who violates paragraph (1) (A) (iii) shall be fined \$500 for first violation, and \$1,000 for a subsequent violation;]
- [(iv)] (ii) [Any] \$100 for any person who violates paragraph [(1) (A) (iv)] (1) (A) (v) [shall be fined \$100] for the first violation, and \$200 for a subsequent violation;
- [(v)] (iii) [Any] \$500 for any person who violates paragraph [(1) (A) (v)] (1) (A) (vi) [shall be fined \$500] for the first violation, and \$1,000 for a subsequent violation.

(2) Resolution of field citation.

- (A) A person issued a field citation may accept the citation by:
  - (i) Signing the field citation;
  - (ii) Paying the full amount [assessed by] indicated on the field citation. Payment shall be made payable to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money.



- order, or as otherwise specified by the director;
- (iii) Mailing or delivering the signed citation and full payment to the clean water branch in Honolulu or to the district health office for the county where the violation occurred. The department must receive the signed field citation and full payment within twenty days after the person receives the field citation; and
  - (iv) Correction within seven days, or unless otherwise specified on the field citation, of any violation of section 11-55-03;
- (B) By signing the field citation, the person to whom it was issued agrees to:
- (i) Give up the right to a contested case hearing under chapter 91 or 342D, HRS, or otherwise challenge the field citation;
  - (ii) Pay the [penalty assessed]amount indicated; and
  - (iii) Correct the violation;
- (C) If the field citation is not accepted in compliance with paragraph (2)(A), the director may seek for that cited violation any remedies available under this chapter; chapter 342D, HRS; or any other law. For all other violations the director retains authority to seek any available remedies.
- (3) Form of citation. The department shall prescribe a field citation form." [Eff and comp 10/22/07; comp 6/15/09; comp 10/21/12; am and comp 12/6/13; am and comp (Auth: HRS §§321-11, 342D-1, 342D-4, 342D-5) (Imp: HRS §§321-11, 342D-2, 342D-4, 342D-5, 342D-9, 342D-18, 342D-30, 342D-31, 342D-50, 603-23)

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 compilation are not underscored.

4. These amendments to and compilation of chapter 11-55, 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.

---

LINDA ROSEN, M.D.  
M.P.H.  
Director of Health

APPROVED AS TO FORM:

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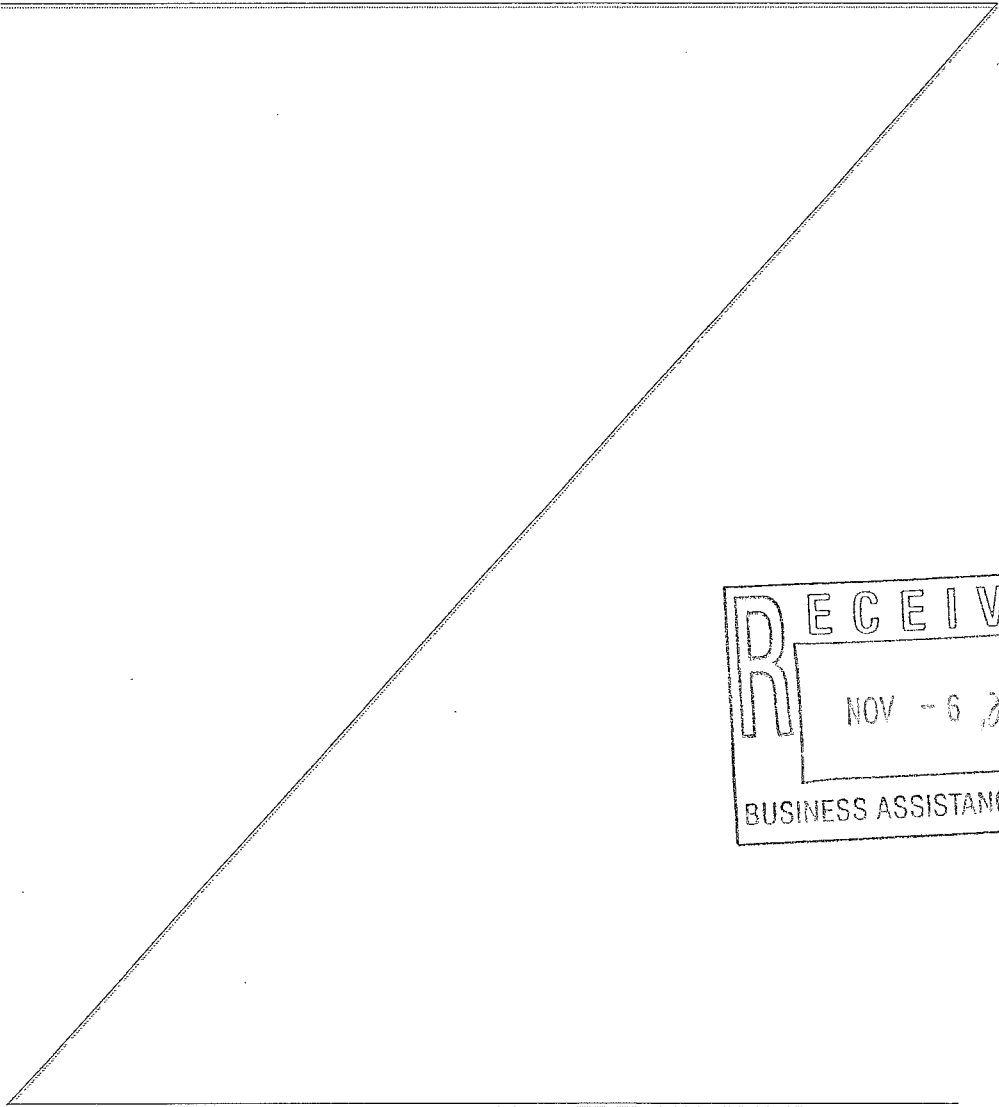
Edward G. Bohlen  
Deputy Attorney General

## Exhibit 4

DEPARTMENT OF HUMAN SERVICES

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

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



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"HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 12

MED-QUEST DIVISION

CHAPTER 1719.1

STATE FUNDED AGED, BLIND, AND DISABLED PROGRAM

Subchapter 1 General Provisions

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

Subchapter 2 Eligibility Requirements

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

Subchapter 3 Freedom of Choice, Enrollment,  
Benefits and Disenrollment

§17-1719.1-20 Purpose  
§17-1719.1-21 Freedom of choice  
§17-1719.1-22 Enrollment into a participating  
health plan

§17-1719.1-23 Benefits  
§17-1719.1-24 Disenrollment from a health plan  
§§17-1719.1-25 to 17-1719.1-29 (Reserved)

## SUBCHAPTER 1

### GENERAL PROVISIONS

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

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

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

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

## SUBCHAPTER 2

### ELIGIBILITY REQUIREMENTS

§17-1719.1-8 Purpose. This subchapter describes the basic, categorical, and financial eligibility requirements for participation under this chapter. [Eff ] (Auth: HRS §346-14) (Imp: HRS §346-14)

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

- (1) Meet the basic eligibility requirements described in chapter 17-1714.1, with the exception of citizenship or non-citizen status;
- (2) Be a qualified non-citizen, nonimmigrant, or a non-citizen paroled into the United States under section 212(d)(5) of the INA for less than one year; and
- (3) Be ineligible for Medicaid, with the exception of emergency medical assistance.

[Eff ] (Auth: 8 U.S.C. §1622; HRS §346-14) (Imp: HRS §346-14)

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

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

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

(c) Countable income, as set forth in chapter 17-1724.1, after allowable disregards and exemptions,

shall be compared to the standards of assistance set forth under chapter 17-1719.

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

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

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

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

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

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

(c) An individual who is requesting or receiving coverage of long-term care services shall be subject to the requirements of chapter 17-1725.1, subchapter 7. [Eff \_\_\_\_\_] (Auth: HRS §346-14) (Imp: HRS §346-14)

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

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

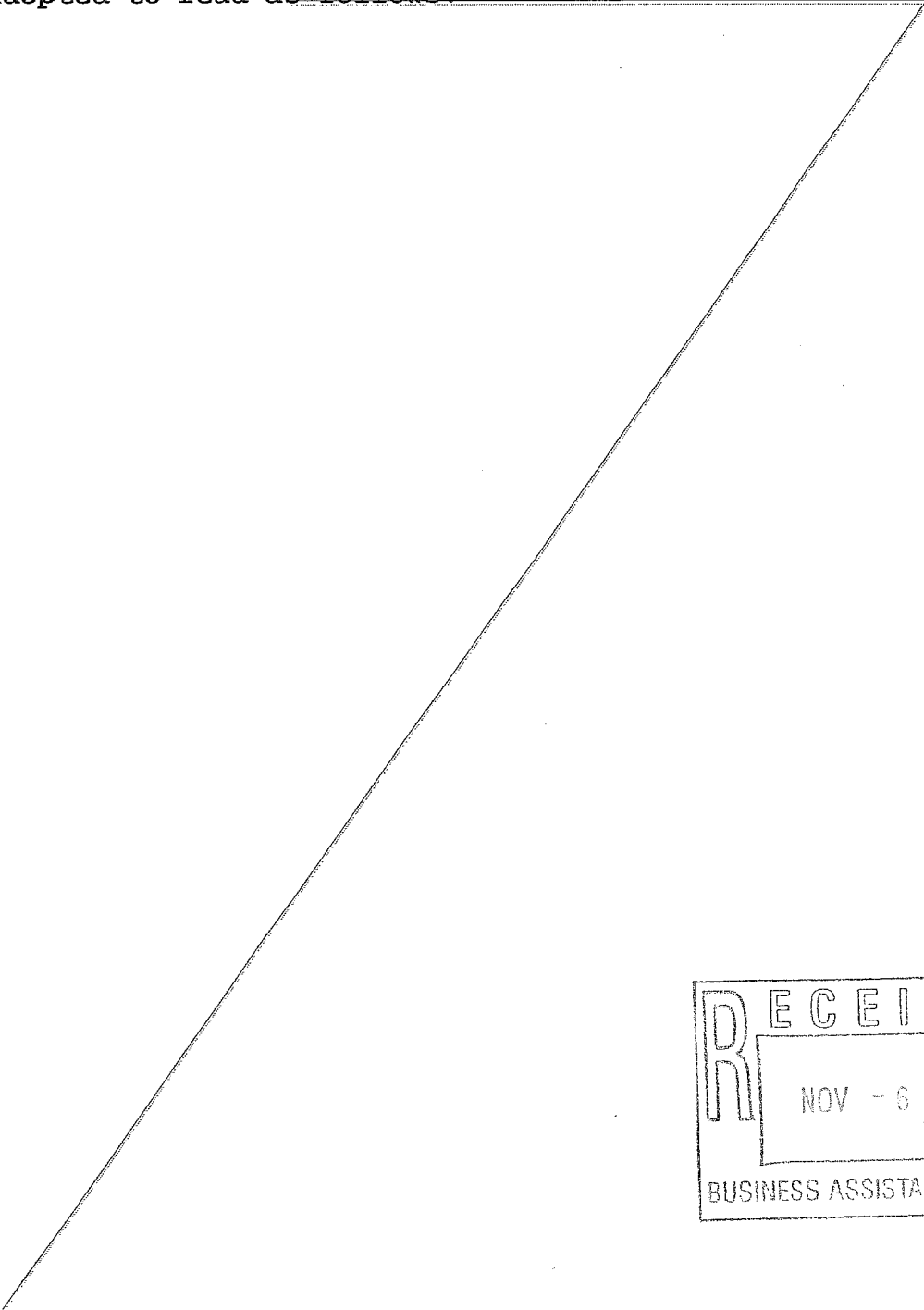








3. Chapter 17-1731, Hawaii Administrative Rules, entitled "Premium Assistance Program", is adopted to read as follows:



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"HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 12

MED-QUEST DIVISION

CHAPTER 1731

PREMIUM ASSISTANCE PROGRAM

§17-1731-1	Purpose	
§17-1731-2	Definitions	
§17-1731-3	Eligibility requirements	
§17-1731-4	Benefits	
§17-1731-5	Termination of premium assistance	
§17-1731-6	Administration of the premium assistance program	
§17-1731-7	Appeal process	
§§17-1731-8 to 17-1731-10		(Reserved)

§17-1731-1 Purpose. This chapter establishes, subject to the availability of State funds, a premium assistance program for a low-income individual who purchases a silver level qualified health plan through the Hawaii health insurance exchange and receives advanced premium tax credit (APTC) and maximum cost-sharing reduction (CSR). The department shall pay the eligible individual's share of the premium to the qualified health plan in which the eligible individual is enrolled. [Eff . . . . .] (Auth: HRS §346-14) (Imp: HRS §346-14)

§17-1731-2 Definitions. The following definitions shall apply to this subchapter:



- (1) The department shall pay an eligible individual's share of premium to the qualified health plan only upon receipt of an invoice submitted by the qualified health plan to the department;
- (2) The department shall not make any payments directly to eligible individuals; and
- (3) The department shall not pay and the eligible individual shall be responsible for, any cost-sharing including, but not limited to, deductibles, co-payments or co-insurance.

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

§17-1731-5 Termination of premium assistance.

Premium assistance payable under this chapter on behalf of an eligible individual shall be terminated at any time for any of the following reasons:

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

§17-1731-6 Administration of the premium assistance program. (a) The department may contract with a third party or parties to administer any

component of this program, including, but not limited to, payment, auditing, and recovery.

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

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

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

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

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

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

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

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

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

- (1) A request for an informal review must:



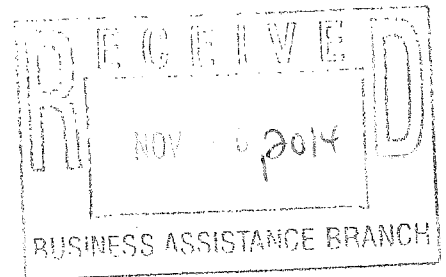
- (A) Be submitted in writing and received by the department within thirty (30) calendar days after the date of the bill sent by the qualified health plan to the individual.
  - (B) Include both a copy of the bill sent by the qualified health plan to the individual and a copy of the notice from the qualified health plan stating that the individual was sent a bill because the department did not timely pay the health plan's invoice.
- (2) The eligible individual is not required to seek an informal review prior to filing a request for an administrative hearing.
  - (3) The department shall respond in writing to the request for an informal review and provide notice to the eligible individual of the right to request an administrative hearing under subsection (f). An individual shall have fifteen (15) calendar days from the date of the informal review decision to file a request for an administrative hearing.
- (f) An eligible individual or the individual's authorized representative may file a request for an administrative hearing.
    - (1) A request for an administrative hearing must:
      - (A) Be submitted in writing and received by the department within thirty (30) calendar days after the date of the bill sent by the qualified health plan to the individual, or within fifteen (15) calendar days from the date of the decision notice for an informal review.
      - (B) Include both a copy of the bill sent by the qualified health plan to the individual and a copy of the notice from the health plan stating that the individual was sent a bill because the

department did not timely pay the health plan's invoice.

- (2) The provisions of chapter 17-1703.1 shall not apply to appeals under this chapter, except for section 17-1703.1-6.  
[Eff \_\_\_\_\_ ] (Auth: HRS §346-14)  
(Imp: HRS §346-12)

§§17-1731-8 to 17-1731-10 (Reserved)."

4. The adoption of chapter 17-1719.1, repeal of chapter 17-1722.3, and the adoption of chapter 17-1731, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.



4. The adoption of chapter 17-1719.1, repeal of chapter 17-1722.3, and the adoption of chapter 17-1731, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

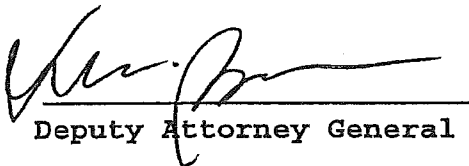
I certify that the foregoing are copies of the Hawaii Administrative Rules, drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on November 5, 2014 and filed with the Office of the Lieutenant Governor.



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PATRICIA McMANAMAN  
Director  
Department of Human Services

APPROVED AS TO FORM:



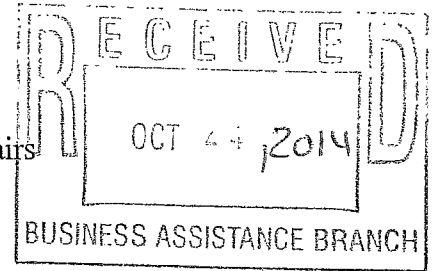
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Deputy Attorney General

## Exhibit 5

Department of Commerce and Consumer Affairs

Amendments to Chapter 16-85  
Hawaii Administrative Rules



[Adopted on \_\_\_\_\_ ]

1. Section 16-85-49, Hawaii Administrative Rules, is amended to read as follows:

"§16-85-49 Degree of supervision. (a) The supervising physician or osteopathic physician shall:

- (1) Possess a current and unrestricted Hawaii license [to practice medicine and surgery] that is in good standing with the board;
- (2) Submit a statement that the supervising physician or osteopathic physician; will direct and exercise supervision over any subordinate physician assistant in accordance with this subchapter and recognizes that the supervising physician or osteopathic physician retains full professional and legal responsibility for the performance of the physician assistant and the care and treatment of the patient;
- (3) Permit the physician assistant to be utilized in any setting authorized by the supervising physician or osteopathic physician including, but not limited to, clinics, hospitals, ambulatory centers, patient homes, nursing homes, other lodging, and other institutional settings;
- (4) Provide adequate means for direct communication between the physician assistant and the supervising physician[;] or osteopathic physician; provided that where the physical presence of the supervising physician or osteopathic physician is not required, the direct communication may occur through the use of technology which may include but is not limited to, two way radio, telephone, fax machine, modem, or other telecommunication device;
- (5) Personally review the records of each patient seen by the physician assistant within seven working days;
- (6) Designate an alternate supervising physician or osteopathic physician in the [physician's absence;] absence of the supervising physician or osteopathic physician;
- (7) Supervise no more than [two] four physician assistants at any one time; [and]

- (8) Be registered under section 329-33, HRS, when supervising and delegating to the physician assistant, the authority to prescribe, dispense, and administer Schedule II through V medications; and
- [(8)](9) Be authorized to allow the physician assistant to prescribe, dispense, and administer medications and medical devices to the extent delegated by the supervising physician or osteopathic physician and subject to the following requirements:
- (A) Prescribing [and], dispensing, or administering of medications may include Schedule [III] II through V and all legend medications [. No physician assistant may prescribe Schedule II medications];
- (B) A physician assistant who has been delegated the authority to prescribe Schedule [III] II through V medications shall register with the Narcotics Enforcement Division of the Department of Public Safety and Drug Enforcement Administration (DEA);
- (C) Each prescription [written] issued by a physician assistant shall include the printed, stamped, typed or hand-printed name, address, and phone number of the supervising physician or osteopathic physician and physician assistant. [The printed name of the supervising physician shall be on one side of the form and the printed name of the physician assistant shall be on the other side. A] When prescribing Schedule II through V medications, the written prescription or order shall include the DEA registration number of the supervising physician or osteopathic physician. The physician assistant [who has been delegated the authority to prescribe] shall sign the prescription [next] in close proximity to the printed, stamped, typed, or hand-printed name of the physician assistant;
- [(D)] A physician assistant employed or extended privileges by a hospital or extended care facility may, if allowed under the bylaws, rules, and regulations of the hospital or extended care facility, write orders for medications Schedule II through V, for inpatients under the care of the supervising physician;]
- [(E)](D) The board [of medical examiners shall] may notify the pharmacy board in writing, at least annually or more frequently if required by changes, of each physician assistant authorized to prescribe;
- [(F)](E) A physician assistant may request, receive, and sign for professional samples and may distribute professional samples

to patients[;], provided that the professional samples are not controlled substances; and

[(G)](F) All prescribing, dispensing, or administering activities shall comply with appropriate federal and state laws, rules, and regulations.

(b) The supervising physician [or physicians and] or osteopathic physician or the physician assistant shall notify the board within ten days of severance of supervision or employment of the physician assistant." [Eff 6/30/81; am and comp 7/27/87; comp 10/28/89; comp 8/25/90; am and comp 12/22/97; am ] (Auth: HRS §§453-5.1, 453-5.3) (Imp: HRS §§453-5.1, 453-5.3, 460-1)

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 compilation are not underscored.

4. These amendments to chapter 16-85, 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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NIRAJ S DESAI, M.D.  
Chairperson, Hawaii Medical Board

APPROVED AS TO FORM:

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Deputy Attorney General

## Exhibit 6

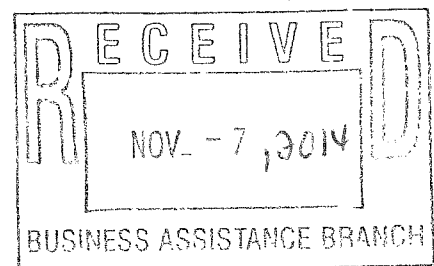
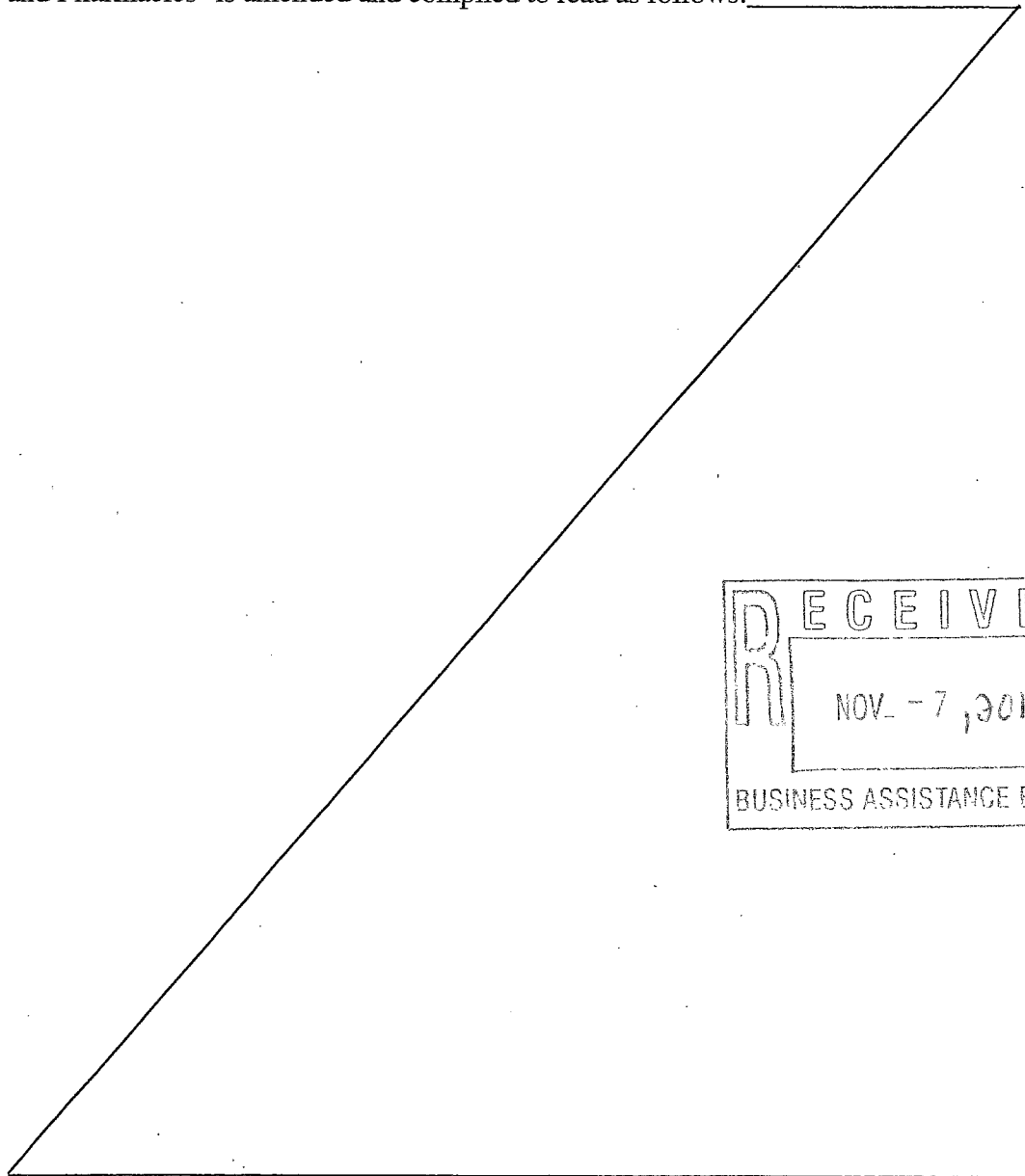


**DRAFT 7**

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendment and Compilation of Chapter 16-95  
Hawaii Administrative Rules

1. Chapter 16-95, Hawaii Administrative Rules, entitled "Pharmacists and Pharmacies" is amended and compiled to read as follows:



HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 95

PHARMACISTS AND PHARMACIES

Subchapter 1 General Provisions

§16-95-1	Objective; scope
§16-95-2	Definitions
§16-95-3	Repealed
§16-95-4	Repealed
§16-95-5	Repealed
§16-95-6	Repealed
§16-95-7	Repealed
§16-95-8	Repealed
§16-95-9	Repealed
§16-95-10	Repealed
§16-95-11	Repealed
§16-95-12	Repealed
§16-95-13	Repealed
§16-95-14	Display of license or permit
§16-95-15	Repealed
§16-95-16	Repealed
§16-95-17	Repealed
§16-95-18	License or permit required
§16-95-19	License or permit nontransferable

Subchapter 2 Applications

§16-95-21	Forms, documentation, and notification
§16-95-22	Application and requirements for pharmacist license by examination
§16-95-22.5	Application and requirements for pharmacist license by reciprocity
§16-95-23	Temporary license

- §16-95-24 Pharmacy intern permit
- §16-95-25 Repealed
- §16-95-26 Pharmacy permit
- §16-95-27 Repealed
- §16-95-28 Repealed
- §16-95-29 Repealed
- §16-95-30 Wholesale prescription drug distributor license requirements
- §16-95-31 Miscellaneous permit
- §16-95-32 Criminal conviction
- §16-95-32.2 Denial or rejection of application

#### Subchapter 3 Education and Experience Documentation

- §16-95-33 Education documentation for a pharmacist license
- §16-95-33.2 Education documentation for a pharmacy intern permit
- §16-95-34 Experience verification for a pharmacist by examination
- §16-95-35 Repealed
- §16-95-36 Experience verification for a pharmacist licensed by reciprocity or temporary pharmacist license

#### Subchapter 4 Repealed

- §16-95-39 Repealed
- §16-95-40 Repealed
- §16-95-41 Repealed
- §16-95-42 Repealed
- §16-95-43 Repealed

#### Subchapter 5 Repealed

- §16-95-44 Repealed
- §16-95-45 Repealed
- §16-95-46 Repealed
- §16-95-47 Repealed
- §16-95-48 Repealed
- §16-95-49 Repealed
- §16-95-50 Repealed

#### Subchapter 6 Repealed

- §16-95-51 Repealed
- §16-95-52 Repealed
- §16-95-53 Repealed
- §16-95-54 Repealed

#### Subchapter 7 Repealed

- §16-95-55 Repealed
- §16-95-56 Repealed
- §16-95-57 Repealed
- §16-95-58 Repealed
- §16-95-59 Repealed
- §16-95-60 Repealed
- §16-95-61 Repealed
- §16-95-62 Repealed
- §16-95-63 Repealed
- §16-95-64 Repealed

#### Subchapter 8 Repealed

- §16-95-65 Repealed

#### Subchapter 9 Renewal

- §16-95-70 Notice of renewal
- §16-95-71 Date for filing
- §16-95-72 Automatic forfeiture for failing to renew
- §16-95-73 Restoration of forfeited license or permit
- §16-95-74 Board may refuse to renew a license or permit

#### Subchapter 10 Scope of Practice

- §16-95-79 Supervision by a registered pharmacist
- §16-95-80 Physical presence of a registered pharmacist
- §16-95-81 Emergency kits
- §16-95-82 Valid prescriptions
- §16-95-83 Substitution; drug product selection
- §16-95-84 Transfer of prescriptions
- §16-95-85 Scope of practice of a pharmacy intern
- §16-95-86 Scope of practice of a pharmacy technician

§16-95-87 Return or exchange of drugs prohibited

#### Subchapter 11 Record Keeping Requirements

§16-95-93 Records of dispensing

§16-95-94 Automated data processing systems

§16-95-95 Security of records

§16-95-96 Record keeping for wholesale prescription drug distributors

#### Subchapter 12 Advertising Practices

§16-95-101 Procedures to advertise prescription drugs

§16-95-102 Procedures to advertise related pharmacy services

§16-95-103 Advertising of controlled substances prohibited

#### Subchapter 13 Disciplinary Sanctions, Application Denial, Hearings, Administrative Practice and Procedure

§16-95-110 Grounds for revocation, suspension, refusal to renew or restore,  
denial, or conditioning of license or permit

§16-95-111 Denial

§16-95-112 Demand for hearing; proceedings upon demand for hearing

§16-95-113 Administrative practice and procedure

#### Subchapter 14 Oral Testimony

§16-95-118 Oral testimony

#### Subchapter 15 Fees

§16-95-123 Fees established

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## SUBCHAPTER 1

### GENERAL PROVISIONS

§16-95-1 Objective; scope. This chapter is intended to clarify and implement chapter 461, Hawaii Revised Statutes, to the end that the provisions thereunder may be best effectuated and the public interest and welfare most effectively served and protected. Other requirements of state or federal law, including the laws enforced by the state department of health and department of public safety, which also may be applicable to the practice of pharmacy or to licensees or permittees under chapter 461 Hawaii Revised Statutes, are not encompassed within the scope of this chapter. [Eff 5/16/64; am and ren §16-95-1, 6/22/81; am and comp 12/24/92; comp 12/25/04; comp ]  
(Auth: HRS §461-4.5) (Imp: HRS §461-4.5)

§16-95-2 Definitions. As used in this chapter unless the context clearly indicates otherwise:

"ACPE" means the Accreditation Council for Pharmacy Education, formerly known as the American Council on Pharmaceutical Education, which is the national agency for the accreditation of professional degree programs in pharmacy and providers of continuing pharmacy education.

"Automated data processing system" or "ADP system" means a system utilizing computer software and hardware for the purpose of record keeping.

"Board" means the board of pharmacy.

"BREG" means the business registration division of the department.

"Department" means the department of commerce and consumer affairs.

"Director" means the director of commerce and consumer affairs.

"Dispense" or "dispensing" means the furnishing of drugs pursuant to a prescription in a suitable container, appropriately labeled for subsequent administration to, or use by, a patient or other individual entitled to receive the drug.

"HRS" means the Hawaii Revised Statutes.

"Immediate supervision" means that a registered pharmacist is physically present in the area or location[, ] where a pharmacy intern or pharmacy technician is working and [performs a final assessment of each ingredient and quantity used and the prescription label to insure the correctness and accuracy thereof.] oversees the correctness and accuracy of the prescription's ingredients, quantity, and label.

"Institutional facility" includes a:

- (1) Hospital;

- (2) Convalescent home;
- (3) Nursing home;
- (4) Extended care facility;
- (5) Mental institution;
- (6) Rehabilitation center;
- (7) Health maintenance organization;
- (8) Psychiatric center;
- (9) Mental retardation center;
- (10) Penal institution; or
- (11) Any other organization whose primary purpose is to provide a physical environment for patients to obtain health care services or at-home care services, except those places where physicians, dentists, veterinarians, osteopaths, podiatrists, or other prescribers who are duly licensed, engage in private practice.

"Institutional pharmacy" means a pharmacy providing services to an institutional facility

"NABPLEX" means the National Association of Boards of Pharmacy Licensure Examination, now known as the NAPLEX.

"NAPLEX" means the North American Pharmacist Licensure Examination, previously known as the NABPLEX.

"Partnership" means a general partnership, a limited partnership, a limited liability partnership, or a limited liability limited partnership.

["Pharmacist assistant"] "Pharmacy intern" means a student or graduate of a school or college of pharmacy, that is accredited or is a candidate for accreditation by the ACPE, and who is issued a permit by the board to work under the immediate supervision of a registered pharmacist.

"Pharmacy technician" means a nonlicensed individual, other than a pharmacy [assistant,] intern, who assists the pharmacist in various activities under the immediate supervision of a registered pharmacist.

["Prescriber" means a licensed practitioner of medicine, osteopathy, podiatry, dentistry, or veterinary medicine, holding a current and valid license by the proper authority to prescribe drugs.

"Prescription" means a written, facsimile, or telephone order from a prescriber for dispensation of a drug. A telephone order from a prescriber or the prescriber's authorized agent, shall only be valid if the order is immediately reduced to writing by the pharmacist. Prescription also includes an order written in the chart of a patient in an institutional facility by a prescriber.]

"Wholesale distribution" means the [distribution] transfer of prescription drugs to persons other than a consumer or patient, but does not include:

- (1) Intracompany sales, defined as any transaction or transfer between an entity and any division, subsidiary, parent, or affiliated or related company under common ownership and control;
- (2) The purchase or other acquisition, by [hospital or other health care entity] an institutional facility that is a member of a group purchasing organization, of a drug for use by the entity's [own use,] patient, from the group purchasing organization or from other [hospitals or health care entities] institutional facilities that are members of the group purchasing organization;
- (3) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended, to a nonprofit affiliate of the organization to the extent otherwise permitted by law;
- (4) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among [hospitals or other health care entities] institutional facilities that are under common control[; for]. For purposes of this [section,] paragraph, "common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, working rights by contract, or otherwise;
- (5) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons[; for]. For purposes of this [section,] paragraph, "emergency medical reasons" includes, but is not limited to, transfers of prescription drugs by a [retail] pharmacy to another [retail] pharmacy to alleviate a temporary shortage, except that the gross dollar value of such transfers shall not exceed five [percent] per cent of the total prescription drug sales revenue of either the transferor or transferee pharmacy during any period of twelve consecutive months;
- (6) The sale, purchase, or trade of a drug, or an offer to sell, purchase, or trade a drug, or the dispensing of a drug pursuant to a prescription;
- (7) The distribution of drug samples by manufacturers' representatives or distributors' representatives. For purposes of this [section,] paragraph, "drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug; or
- (8) The sale, purchase, or trade of blood and blood components intended for transfusion. For purposes of this [section,] paragraph,



"blood" means whole blood collected from a single donor and processed either for transfusion or further manufacturing; and "blood component" means that part of blood separated by physical or mechanical means.

"Wholesale distributor" means any person or entity in this State engaged [in wholesale distribution of prescription drugs,] in the transfer of prescription drugs to a person other than a consumer or patient, including, but not limited to, manufacturers; repackers; own label distributors; private label distributors; jobbers; brokers; warehouses, including manufacturers' and distributors' warehouses, chain drug warehouses, and wholesale drug warehouses; independent wholesale drug traders; prescription drug repackagers; [physicians; dentists; veterinarians,] practitioners; birth control and other clinics; individuals; hospitals; nursing homes and their providers; health maintenance organizations and other health care providers; and retail and hospital pharmacies that conduct wholesale distributions. The term "wholesale distributor" shall not include any carrier for hire or person or entity hired solely to transport prescription drugs. For purposes of this [section,] definition, "manufacturer" means anyone who is engaged in manufacturing, preparing, propagating, compounding, processing, packaging, repackaging; or labeling of a prescription drug; and "prescription drug" means any human drug required by federal law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act. [Eff 5/16/64; am 8/7/70; am and ren §16-95-2, 6/22/81; am and comp 12/24/92; comp 12/25/04; am and comp ] (Auth: HRS §461-4.5) (Imp: HRS §461-4.5)

§16-95-3 Repealed. [R 12/24/92]

§16-95-4 Repealed. [R 12/24/92]

§16-95-5 Repealed. [R 12/24/92]

§16-95-6 Repealed. [R 12/24/92]

§16-95-7 Repealed. [R 12/24/92]

§16-95-8 Repealed. [R 12/24/92]

§16-95-9 Repealed. [R 12/24/92]

§16-95-10 Repealed. [R 12/24/92]

§16-95-11 Repealed. [R 12/24/92]

§16-95-12 Repealed. [R 12/24/92]

§16-95-13 Repealed. [R 12/24/92]

§16-95-14 Display of license or permit. [The license or permit, together with evidence of current validation, shall be conspicuously displayed in the place of business and the holder of a license] The holder of a license or permit shall conspicuously display, in the place of business, that license or permit and shall have the [holder's license or] evidence of current validation in the holder's possession at all times[, provided that a relief pharmacist shall not be required to display a license or permit]. [Eff 5/16/64; am and ren §16-95-14, 6/22/81; am and comp 12/24/92; comp 12/25/04; am and comp ] (Auth: HRS §§461-4, 461-9, 461-16) (Imp: HRS §§461-4, 461-9, 461-16)

§16-95-15 Repealed. [R 12/24/92]

§16-95-16 Repealed. [R 12/24/92]

§16-95-17 Repealed. [R 12/24/92]

§16-95-18 License or permit required. It shall be unlawful for a person who is not licensed or who has not been issued a permit under chapter 461, HRS,

and this chapter to engage in the practice of a pharmacist, to perform the duties of a [pharmacist assistant,] pharmacy intern, to operate a pharmacy, to engage in the wholesale distribution of drugs, or to engage in any activities requiring a miscellaneous permit. [Eff and comp 12/24/92; comp 12/25/04; am and comp ] (Auth: HRS §461-4.5) (Imp: HRS §§461-4.5, 461-10)

§16-95-19 License or permit nontransferable. Any license or permit issued by the board shall be valid only [in the name] for the person to which it is issued and shall not be transferable. [Eff and comp 12/24/92; comp 12/25/04; am and comp ] (Auth: HRS §461-4.5) (Imp: HRS §461-4.5)

## SUBCHAPTER 2

### APPLICATIONS

§16-95-21 Forms, documentation, and notification. (a) An application for license or permit shall be made under oath on forms provided by the board and shall not be considered complete unless accompanied with the required documentation and fees. It shall be each applicant's responsibility to furnish all information and any documentation requested by the board.

(b) The application form may require the applicant and any personnel of the applicant to provide the following:

- (1) The applicant's full name;
- (2) A statement that the applicant has attained the age of majority;
- (3) The applicant's current business or mailing address for publication, and the applicant's current residence address;
- (4) The applicant's social security number;
- (5) The applicant's educational history and evidence of the education;
- (6) The date and place of any conviction of a crime directly related to the practice of pharmacy, drugs, drug samples, wholesale or retail drug distribution, or distribution of controlled substances, unless the conviction has been expunged or annulled or is otherwise precluded from consideration by section 831-3.1, HRS;
- (7) The [state(s)] state or states or United States territory in which the applicant is currently licensed, and any information regarding any disciplinary proceedings pending or disciplinary actions taken by any state or jurisdiction against the license;
- [(8) A photograph of the applicant for identification purposes;

- (9)] (8) A statement that the applicant is a United States citizen or an alien authorized to work in the United States;
  - [(10)] (9) The names, addresses, phone numbers, and social security numbers of corporate officers or partners or other personnel of the applicant;
  - [(11)] (10) Verification that the corporation, partnership, or entity is properly registered with [the business registration division of the department of commerce and consumer affairs] BREG;
  - [(12)] (11) Verification that the trade name, if any, is properly registered with [the business registration division of the department of commerce and consumer affairs] BREG;
  - [(13)] (12) The name and license number of the pharmacist in charge of the prescription area and the [name(s)] name or names and license [number(s)] number or numbers of any other pharmacists employed;
  - [(14)] (13) The name, position, and title of any person responsible for the distribution of drugs; and
  - [(15)] (14) Any other information the board may require to investigate the applicant's qualifications for license or permit.
- (c) Any requirement that the board provide notice to licensees or permittees shall be deemed met if notice is sent to the address on file with the board.
- (d) Any change in the application or of any information filed with the board shall be reported to the board, in writing, within ten days of the change.
- (e) Upon closure of a pharmacy located in this State, the pharmacy shall:
- (1) Provide written notice to the board within ten days;
  - (2) Return all indicia of licensure. [Eff 5/16/64; am and ren §16-95-21, 6/22/81; am and comp 12/24/92; comp 12/25/04; am and comp ] (Auth: HRS §461-4.5) (Imp: HRS §§461-4.5, 461-5, 461-6, 461-7, 461-8.6, 461-14, 461-15)

Historical note: The substance of this section is based in part upon sections 16-95-13 and 16-95-35. [Eff 5/12/64; am and ren §§16-95-13, 16-95-35, 6/22/81; R 12/24/92]

§16-95-22 Application and requirements for pharmacist license by examination. (a) An application for license by examination shall [be filed at least sixty days before the examination date and must] be accompanied by the required application fee, which shall not be refunded, and [by] the examination fee. An

examination fee may be refunded provided a written request for refund is made prior to the application deadline.

(b) An applicant shall:

- (1) Have attained the age of majority; and
- (2) Hold a degree from a school or college of pharmacy which has received candidate status with or has been accredited by the [American Council on Pharmaceutical Education (ACPE);] ACPE;

(c) For issuance of the license, the applicant shall provide evidence of:

- (1) At least [two thousand] fifteen hundred hours of practical experience; and
- (2) Passage of either the [National Association of Boards of Pharmacy Licensing Examination (NABPLEX), the Federal Drug Law Examination (FDLE), and a state jurisprudence examination by a passing score of at least seventy-five points.] NABPLEX or the NAPLEX, and the Hawaii Multistate Pharmacy Jurisprudence Examination (MPJE). The MPJE requires a passing score of at least seventy-five points.

(d) An applicant who is a participant in the National Association of Boards of [Pharmacy] Pharmacy's (NABP) score transfer program shall be responsible for having the score report sent to the board.

(e) A foreign graduate, in addition to the requirements above and in lieu of the candidacy or accreditation requirements by the ACPE in (b)(2), shall provide verification of passing the following:

- (1) The Foreign Pharmacy Graduate Equivalency Examination (FPGEE); and
- (2) The Test of English as a Foreign Language (TOEFL);[ and
- (3) The Test of Spoken English (TSE)]. [Eff 5/16/64; am 3/16/80; am and ren §16-95-22, 6/22/81; am and comp 12/24/92; comp 12/25/04: am and comp ] (Auth: HRS §461-4.5) (Imp: HRS §§461-5, 461-6)

§16-95-22.5 Application and requirements for pharmacist license by reciprocity. (a) An application for license by reciprocity shall be filed on forms provided by the board. The applicant shall submit:

- (1) Evidence of current and valid licensure to practice pharmacy in another state or jurisdiction with qualifications which equal or exceed those of this State;

- (2) Information regarding any disciplinary action taken or any [unresolved] complaints or investigations pending against the applicant;
  - (3) Evidence of having practiced for at least [two thousand] fifteen hundred hours as a licensed pharmacist within the five years preceding the date of application; and
  - (4) A completed official NABP licensure transfer application within ninety days from the date of issuance by the NABP, unless extended by the NABP.
- (b) The board shall not issue a license by reciprocity unless the other state or jurisdiction grants reciprocal licensure to this state's licensees.
- (c) The board may deny licensure by reciprocity if the applicant fails to fulfill the requirements herein or has had any disciplinary action taken or if any [unresolved] complaints are pending. [Eff and comp 12/24/92; comp 12/25/04; am and comp ] (Auth: HRS §461-4.5) (Imp: HRS §461-8.5)

§16-95-23 Temporary license. (a) An application for temporary license may be filed at the same time as an application for examination and shall be accompanied by the [required] non-refundable application fee [which shall not be refunded and an examination fee]. Following a determination by the board that the qualifications for admission to the examinations listed in section 461-6, Hawaii Revised Statutes exist, a temporary license to practice pharmacy may be issued, provided the applicant:

- (1) Passes the [state jurisprudence examination with a score of not less than seventy-five points;] Hawaii MPJE with a score of at least seventy-five points;
  - (2) Submits [a photocopy] a verification, by an official of the licensing authority of that other state or territory of the United States, of a current and valid license to practice pharmacy in the other state or [jurisdiction] territory of the United States and
  - (3) Submits evidence that the applicant has practiced for at least [two thousand] fifteen hundred hours as a licensed pharmacist within the five years preceding the date of application.
- (b) The temporary license shall be valid only until the results of the next administration of the NABPLEX [and FDLE] or the NAPLEX examinations are received by the board.
- (c) In the event the pharmacist fails to take and pass [the examinations] either the NABPLEX or NAPLEX examination, the temporary license may be extended, for good and just cause, provided a request for extension

is made in writing. In no case shall the temporary license be extended beyond three consecutive administrations of the examinations. [Eff 5/16/64; am 3/16/80; am and ren §16-95-23, 6/22/81; am and comp 12/24/92; comp 12/25/04; am and comp ] (Auth: HRS §§461-4.5, 461-7) (Imp: HRS §§461-4.5, 461-7)

§16-95-24 [Pharmacist assistant permit] Pharmacy intern permit (a) An application for a permit to work as [an assistant to a pharmacist] a pharmacy intern may be filed at any time. The board may delegate to the board's executive [secretary] officer the authority to issue a [pharmacist assistant] pharmacy intern permit to qualified applicants.

(b) An applicant shall provide verification that the applicant has satisfactorily completed at least one year of instruction in a college of pharmacy and is currently enrolled in or is a graduate of a college of pharmacy which has received candidate status with or has been accredited by the ACPE.

(c) A copy of the applicant's diploma, [or] an official transcript showing the date of graduation, or a letter from the dean or registrar that the applicant has completed the first year of school at a college of pharmacy shall be submitted with the application.

(d) The applicant shall provide the name and license number of the supervising pharmacist and the name and address of the pharmacy at which the applicant is employed or will be employed. [Eff 5/16/64; am and ren §16-95-24, 6/22/81; am and comp 12/24/92; comp 12/25/04; am and comp ] (Auth: HRS §461-4.5) (Imp: HRS §§461-4.5, 461-5, 461-9)

Historical note: The substance of this section is based substantially upon sections 16-95-44 and 16-95-45. [Eff 5/16/64; am 8/7/70; am 6/11/77; am and ren §§16-95-44, 16-95-45, 6/22/81; R 12/24/92]

§16-95-25 Repealed. [R 12/24/92]

§16-95-26 Pharmacy permit. (a) An application for a pharmacy permit shall be filed in duplicate at least fifteen days before a board meeting and must be accompanied by the application fee which shall not be refunded.

(b) The application shall include:

(1) A floor plan of the prescription area which shall diagram the space and location of fixtures such as counters, tables, drawers, shelves,

storage cabinets including a locked cabinet, library, sink with hot and cold water, proper sewage outlet, and refrigeration storage equipment;

[(2)] (2) The date the pharmacy will be ready for inspection;

(3)] (2) The name and license number of the pharmacist in charge and any other pharmacists employed;

[(4)] (3) A letter of verification or bill of sale that the pharmacy has been bought with the effective date of sale if the pharmacy was purchased;

[(5)] (4) Evidence that the entity is currently registered with [the business registration division (BREG), department of commerce and consumer affairs] BREG. If a corporation [or], partnership, or limited liability company has been registered for more than one year, a "Certificate of Good Standing" [or "Certificate of Qualification"] from the department shall be attached. If a corporation [or], partnership, or limited liability company has been registered for less than one year, a "file-stamped" copy of the document filed with BREG shall be attached; [and]

[(6)] (5) Evidence that the trade name, if any, is properly registered with [the business registration division, department of commerce and consumer affairs.] BREG;

(6) An attestation that, at a minimum, the pharmacy possess or has electronic access to the following reference materials:

[(c)] A permit shall not be issued prior to an inspection report by the regulated industries complaints office (RICO) of the department of commerce and consumer affairs which indicates that the applicant has the minimum reference materials and technical clinical equipment and supplies.

(1) The minimum reference materials that a pharmacy shall possess are as follows:]

(A) United States Pharmacopeia National Formulary, and all supplements;

(B) [Federal Drug Enforcement Agency Regulations;] Federal Drug Enforcement Administration regulations;

(C) State uniform controlled substances laws, [Hawaii Revised Statutes,] chapter 329 HRS. [, and Hawaii Administrative Rules, chapter 11-32];

(D) State food and drug laws, [Hawaii Revised Statutes, chapter] 328 HRS;



- (E) State pharmacy law, [Hawaii Revised Statutes], chapter 461, HRS and [Hawaii Administrative Rules,] chapter 16-95 HAR; [and]
- (F) Prescription files[.] and;
- (G) Drug Facts and Comparison or other current drug information guide; and

[(2)] (7) [The minimum technical equipment and supplies that a pharmacy shall possess are as follows:] An attestation that, at a minimum, the pharmacy possesses the following technical equipment and supplies:

- (A) Class A prescription balance or a balance of greater sensitivity and appropriate weights;
- (B) Mortar and pestle (glass or porcelain);
- (C) Refrigerator;
- (D) Bottles and vials of assorted sizes;
- (E) Graduates or other similar measuring device; and
- (F) Prescription labels.

[(d)] (c) No permit shall be issued unless all deficiencies have been corrected and approved by the board.

[(e)] (d) The board may delegate to its executive [secretary] officer the authority to issue a permit upon receipt of [the inspection report from RICO verifying that all requirements have been met.] a completed application and documentation evidencing clear compliance with this section. [Eff 5/16/64; am and ren §16-95-26, 6/22/81; am and comp 12/24/92; comp 12/25/04; am and comp ] (Auth: HRS §461-4.5) (Imp: HRS §§461-4.5, 461-12, 461-14)

Historical note: The substance of this section is substantially based upon section 16-95-51. [Eff 5/16/64; am 6/11/77; am and ren §16-95-51, 6/22/81; R 12/24/92]

§16-95-27 Repealed. [R 12/24/92]

§16-95-28 Repealed. [R 12/24/92]

§16-95-29 Repealed. [R 12/24/92]

§16-95-30 Wholesale prescription drug distributor license requirements.

(a) Application for a wholesale prescription drug distributor license shall be made under oath on a form to be provided by the board. In addition to providing information required by [§] section 16-95-21(b), the applicant shall provide the following information as it pertains to the applicant including any officer, director, manager, or other persons in charge of wholesale drug distribution, storage, or handling:

- (1) Any convictions under any federal, state, or local laws relating to drug samples, wholesale or retail drug distribution, or distribution of controlled substances;
- (2) Any felony conviction under federal, state, or local laws;
- (3) Each person's past experience in the manufacture or distribution of prescription and controlled drugs;
- (4) Any suspension [or], revocation, disciplinary action, or pending investigation by any federal, state, or local government of any license currently or previously held for the manufacture or distribution of any drugs, including controlled substances;
- (5) Verification of at least one year of experience in the distribution or handling of prescription drugs for any person responsible for the distribution of drugs; and
- (6) A current list of officers, directors, managers, and other persons in charge of the wholesale distribution, storage, and handling of prescription drugs, including a description of each person's duties and a summary of each person's qualifications.

(b) A map of the facilities shall also be submitted. The map shall identify:

- (1) The storage area for drugs;
- (2) The storage area for quarantined drugs; and
- (3) The placement of the lighting, ventilation, and temperature control equipment.

(c) No license shall be issued prior to receipt of a satisfactory inspection report from the department of health. At a minimum, the board requests that department of health shall [insure] ensure that:

- (1) The facilities are of suitable size and construction to facilitate cleaning, maintenance, and proper operations;
- (2) The storage areas are designed to provide adequate ventilation, temperature, sanitation, humidity, space, equipment, and security conditions;
- (3) A quarantine area is available for prescription drugs that are outdated, damaged, deteriorated, misbranded, or adulterated, or

- whose immediate or sealed outer or sealed secondary containers have been opened;
- (4) The facility is maintained in a clean and orderly fashion;
  - (5) The facility is free from infestation by insects, rodents, birds, or vermin of any kind;
  - (6) The facility is secure from unauthorized entry;
  - (7) Access from outside the premises is kept to a minimum and well controlled;
  - (8) The outside perimeter of the premises is well-lighted;
  - (9) Entry into areas where prescription drugs are held is limited to authorized personnel;
  - (10) The facilities are equipped with an alarm system to detect entry after hours;
  - (11) The facilities are equipped with a security system that will provide suitable protection against theft and diversion;
  - (12) All prescription drugs are stored at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of the drugs, or in accordance with the standards regarding conditions and temperatures for the storage of prescription drugs adopted by the state department of health.
    - (A) If no storage requirements are established for a prescription drug, the drug may be held at controlled room temperature, as defined in [an official compendium,] the current United States Pharmacopeia National Formulary and all supplements, to help ensure that its identity, strength, quality, and purity are not adversely affected;
    - (B) Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices, or logs shall be used to document the proper storage of prescription drugs;
  - (13) Upon receipt, each outside shipping container of prescription drugs is examined visually to confirm the identity of the drugs and to prevent the acceptance of contaminated prescription drugs that are unfit for distribution. This examination shall be adequate to reveal container damage that would suggest possible contamination or other damage to the contents;
  - (14) Each outgoing shipment of prescription drugs is inspected carefully to confirm the identity of the drugs and to ensure that no prescription drugs are delivered that have been damaged in storage or held under improper conditions;

- (15) Returned, damaged, outdated, deteriorated, mishandled, or adulterated prescription drugs are physically separated from other prescription drugs and stored, in such a way that no cross-contamination or confusion is possible, until they are destroyed or returned to the supplier;
  - (16) Any prescription drugs whose immediate or sealed outer or sealed secondary containers are found upon arrival to have been opened or used are identified as such, and are physically separated from other prescription drugs and stored, in such a way that no cross-contamination or confusion is possible, until they are destroyed or returned to the supplier; and
  - (17) If the conditions under which a prescription drug has been returned cast doubt on the drug's safety, identity, strength, quality, or purity, then the drug is either destroyed or returned to the supplier, unless examination, testing, or other investigation proves that the drug meets appropriate standards of safety, identity, strength, quality, and purity. In determining whether the conditions under which a drug has been returned cast doubt on the drug's safety, identity, strength, quality, or purity, the wholesale distributor shall consider, among other things, the conditions under which the drug has been held, stored, or shipped before or during its return and the condition of the drug and its container, carton, or labeling as a result of storage or shipping.
- (d) Written policies and procedures for the receipt, security, storage, inventory, and distribution of prescription drugs, including policies and procedures for identifying, recording, and reporting losses or thefts and for correcting all errors and inaccuracies in inventories shall be submitted. Written policies and procedures shall include:
- (1) A procedure whereby the oldest approved stock of a prescription drug is distributed first. The procedure may permit deviation from this requirement if the deviation is temporary and appropriate;
  - (2) A procedure for handling recalls and withdrawals of prescription drugs. The procedures shall be adequate to deal with recalls and withdrawals caused by:
    - (A) Any action initiated at the request of the department of health, the Food and Drug Administration, or any other federal, state, or local law enforcement or other government agency;
    - (B) Any voluntary action by the manufacturer to remove defective or potentially defective drugs from the market; or

- (C) Any action undertaken to promote public health and safety by replacing existing merchandise with an improved product or new package design;
- (3) A procedure to ensure that the distributor prepares for, protects against, and handles properly any crisis that affects security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or in other emergencies; and
- (4) A procedure to ensure that all outdated prescription drugs are segregated from other drugs and either returned to the manufacturer or destroyed. This procedure shall require written documentation of the disposition of outdated prescription drugs. The documentation shall be maintained for five years after disposition of the outdated drugs. [Eff and comp 12/24/92; comp 12/25/04; am and comp ] (Auth: HRS §461-4.5) (Imp: §461-4.5)

§16-95-31 Miscellaneous permit. An application for a miscellaneous permit shall be filed at least fifteen days before a board meeting and [must] shall be accompanied by the application fee, which shall not be refunded; and required fees. [Eff and comp 12/24/92; comp 12/25/04; am and comp ] (Auth: HRS §461-4.5) (Imp: HRS §§461-4.5, 461-16)

§16-95-32 Criminal conviction. When an applicant or the applicant's personnel has been convicted of a crime related to the pharmacy profession and it is determined that the conviction may be considered under section 831-3.1, HRS, the board may request the following documents from the applicant:

- (1) Copies of any court records, judgments, orders, or other documents that state the facts and statutes upon which the applicant was convicted, the [verdict] judgment of the court with regard to that conviction, the sentence imposed, and [the actual terms of the sentence,] the record of compliance with the sentence imposed; and
- (2) Affidavits from any parole officer, employer, or other persons who can attest to a firm belief that the applicant has been sufficiently rehabilitated to warrant the public trust. [Eff and comp 12/24/92; comp 12/25/04; am and comp ] (Auth: HRS §461-4.5) (Imp: HRS §§461-4.5, 461-21)

§16-95-32.2 Denial or rejection of application. (a) An application for issuance of a license or permit shall be denied when an application is insufficient or incomplete; is not accompanied with the required fees; or when an applicant has failed to provide satisfactory proof that the applicant meets the requirements for the license or permit. In addition, the board may deny issuance of a license or permit[:] in accordance with sections 436B-19 and 461-21, HRS, and section 16-95-110.

(1) When the applicant or the applicant's personnel is known to have committed any of the acts for which a license or permit may be suspended or revoked under subchapter 13; or

(2) If the applicant has had any disciplinary action taken by any jurisdiction, including any federal or state regulatory body.]

(b) An application shall be automatically rejected and the applicant shall be denied a license or permit when the applicant, after having been notified to do so:

- (1) Fails to pay the appropriate fees within sixty days from notification; or
- (2) [Fails to submit, after notification, any of the information or documentation requested to comply with any of the requirements for licensure or certification within sixty days of notification.] After being requested by the board, fails to provide any information or documentation concerning the requirements for licensure or permit within sixty days of the request.

(c) Any application which has been denied or rejected shall remain in the possession of the board and shall not be returned.

(d) An applicant, whose application has been denied or rejected, may file for an administrative hearing pursuant to chapter 91, HRS. [Eff and comp 12/24/92; comp 12/25/04; am and comp ] (Auth: HRS §461-4.5) (Imp: HRS §§461-4.5, 461-5, 461-14, 461-15, 461-21)

### SUBCHAPTER 3

#### EDUCATION AND EXPERIENCE DOCUMENTATION

§16-95-33 Education documentation for a pharmacist license. (a) The board will accept the following as verification of education requirements for a pharmacist:

- (1) A [photostat or certified copy of a diploma or a] certified copy of an official transcript showing the date of graduation from a college

of pharmacy which has received candidate status with or has been accredited by the [American Council on Pharmaceutical Education (ACPE),] ACPE.

- (2) In lieu of the above, at the time of application, the board will accept a certified letter from the college registrar or dean verifying that the applicant is on track to graduate. However, prior to [being allowed to sit for any examination, the applicant shall provide a copy of the diploma or a certified letter from the college registrar that all credits have been completed and that the applicant has graduated] the issuance of the license, the applicant shall have complied with chapter 461, HRS, and shall have provided a certified copy of an official transcript from a college of pharmacy, which has received candidate status with or has been accredited by the ACPE and has been conferred a degree.

(b) The board will accept the following as verification of education requirements from a foreign graduate:

- (1) A [photostat or] certified copy of the foreign diploma or a certified copy or official transcript showing the date of graduation from the foreign college of pharmacy; and
- (2) [Photostat] An original or certified [copies] copy of the certificates evidencing the passage of the [TOEFL, TSE, and the] FPGEE [examinations.] examination. [Eff 5/16/64; am 6/11/77; am and ren §16-95-33, 6/22/81; am and comp 12/24/92; comp 12/25/04; am and comp ] (Auth: HRS §461-4.5) (Imp: HRS §461-5)

§16-95-33.2 Education documentation for a [pharmacist assistant] pharmacy intern permit. The board will accept the following as verification of education requirements for a [pharmacist assistant] pharmacy intern permit:

- (1) A [photostat or] certified copy of a diploma or a certified copy of an official transcript showing the date of graduation from a college of pharmacy which has received candidate status with or has been accredited by the ACPE; or
- (2) A verification letter from the college dean or registrar that the applicant has completed the first year of pharmacy school at a school or college which has received candidate status with or has been accredited by the ACPE. [Eff and comp 12/24/92; comp 12/25/04; am and comp ] (Auth: HRS §461-4.5) (Imp: HRS §§461-4.5, 461-5, 461-9)

Historical note: The substance of this section is based substantially upon sections 16-95-44 and 16-95-45. [Eff 5/16/64; am 8/7/70; am 6/11/77; am and ren §§16-95-44, 16-95-45, 6/22/81; R 12/24/92]

§16-95-34 Experience verification for a pharmacist by examination. (a) [The board will accept a notarized statement to verify] An applicant shall have at least [two thousand] fifteen hundred hours of practical experience under the supervision of a registered pharmacist. Practical experience shall have been acquired subsequent to graduation or completion of the first year's attendance at a school or college of pharmacy which has received candidate status with or has been accredited by the ACPE and may include:

- (1) Post graduate experience;
- (2) Supervised practice during vacations;
- (3) Experience gained concurrent with attendance at a pharmacy school; and
- (4) Experience gained during pharmacy school coordinated externships and clinical clerkship programs.

(A) For purposes of this section, externship means a pharmacy school coordinated practical experience program which was:

- (i) Conducted outside the classroom in licensed pharmacies;
- (ii) Developed to provide a broad experience in all distributive and patient oriented practice tasks;
- (iii) Supervised by a licensed preceptor or licensed pharmacist with a one to one teaching and supervisory relationship between the preceptor or pharmacist and the extern; and
- (iv) A component of the pharmacy school's curriculum for which academic credit is given.

(B) For purposes of this section, clinical clerkship means a pharmacy school coordinated practical experience program which:

- (i) Was conducted in patient care settings where the student is provided with actual experience in patient care;
- (ii) Placed emphasis on all phases of drug therapy relative to the disease states of individual patients;
- (iii) Provided clinical service on either an outpatient or an inpatient basis as a primary student activity;



- (iv) May minimize general drug distributive functions; and
- (v) Is a component of the pharmacy school's curriculum for which academic credit is given.

(b) The board will accept a [notarized] written statement of practical experience, signed by [a licensed pharmacist] an official of the licensing authority of another state, the pharmacy school, the employing pharmacy, or the supervising pharmacist who is licensed in any state or territory of the United States, attesting that the applicant worked under the [direct] immediate supervision of the pharmacist in a pharmacy in the United States or territory of the United States, selling drugs, billing prescriptions, preparing pharmaceutical preparations, and keeping records and making reports required under state and federal statutes. The statement shall also show the beginning and ending dates of the applicant's practical experience and the total number of hours worked.

(c) The board will not accept any pro gratis practical experience hours granted upon graduation for which an applicant has not actually worked. [Eff 5/16/64; am 6/11/77; am and ren §16-95-34, 6/22/81; am and comp 12/24/92; comp 12/25/04; am and comp ] (Auth: HRS §461-4.5) (Imp: HRS §§461-4.5, 461-5)

Historical note: The substance of this section is based substantially upon sections 16-95-44, 16-95-45 and 16-95-47. [Eff 5/16/64; am 8/7/70; am 6/11/77; am and ren §§16-95-44, 16-95-45, 16-95-47, 6/22/81; R 12/24/92]

§16-95-35 Repealed. [R 12/24/92]

§16-95-36 Experience verification for a pharmacist license by reciprocity or temporary pharmacist license. The [board will accept the following to verify two thousand] applicant for a pharmacist license by reciprocity shall provide proof or current licensure and at least fifteen hundred hours of practical experience as a registered pharmacist within five years preceding the date of application[:] in the form of:

- (1) A statement signed by an official of the licensing authority from another state or territory of the United States, attesting that the license is current, is valid, unencumbered, and in good standing and a statement signed by the applicant's employer or employers attesting that the applicant has practiced pharmacy as a licensed

- pharmacist for [two thousand] fifteen hundred hours or more within the five years preceding the date of application; or
- (2) If the applicant is [not an employee, a notarized] self employed, a statement by the applicant attesting that the applicant owned and operated an independent pharmacy and that the applicant has practiced pharmacy as a licensed pharmacist for [two thousand] fifteen hundred hours or more within the five years preceding the date of application. [Eff and comp 12/24/92; comp 12/25/04; am and comp ] (Auth: HRS §461-4.5) (Imp: HRS §§461-4.5, 461-5, 461-8.5)

#### SUBCHAPTER 4 REPEALED

§16-95-39 Repealed. [R 12/24/92]

§16-95-40 Repealed. [R 12/24/92]

#### SUBCHAPTER 5 REPEALED

§16-95-44 Repealed. [R 12/24/92]

§16-95-45 Repealed. [R 12/24/92]

§16-95-46 Repealed. [R 12/24/92]

§16-95-47 Repealed. [R 12/24/92]

§16-95-48 Repealed. [R 12/24/92]

§16-95-49 Repealed. [R 12/24/92]

§16-95-50 Repealed. [R 12/24/92]

SUBCHAPTER 6 REPEALED

§16-95-51 Repealed. [R 12/24/92]

§16-95-52 Repealed. [R 12/24/92]

§16-95-53 Repealed. [R 12/24/92]

§16-95-54. Repealed. [R 12/24/92]

SUBCHAPTER 7 REPEALED

§16-95-55 Repealed. [R 12/24/92]

§16-95-56 Repealed. [R 12/24/92]

§16-96-57 Repealed. [R 12/24/92]

§16-95-58 Repealed. [R 12/24/92]

§16-95-59 Repealed. [R 12/24/92]

§16-95-60 Repealed. [R 12/24/92]

§16-95-61 Repealed. [R 12/24/92]

§16-95-62 Repealed. [R 12/24/92]

§16-95-63 Repealed. [R 12/24/92]

§16-95-64 Repealed. [R12/24/92]

#### SUBCHAPTER 8 REPEALED

§16-95-65 Repealed. [R 12/24/92]

#### SUBCHAPTER 9

##### RENEWAL

§16-95-70 Notice of renewal. [All licenses and permits (except the pharmacist assistant permit) shall expire on December 31 of each odd-numbered year. Before November 30 of each odd-numbered year the board's authorized delegate shall mail to every license and permit holder, except those whose license or permit has been forfeited, suspended, or revoked, a renewal application to the address of the license or permit holder on record]. [Eff and comp 12/24/92; comp 12/25/04; am and comp ] (Auth: HRS §461-4.5) (Imp: HRS §§461-4.5, 461-8; 461-9, 461-16)

§16-95-71 Date for filing. All licensees and permit holders shall complete and submit a renewal application together with the required fees on or before December 31 of the odd-numbered year. A completed renewal application with the required fees sent by the United States mail shall be considered timely filed if the envelope bears a postmark no later than December 31 of the odd-numbered year[.] or if filed on-line with the department by that date. [Eff and comp 12/24/92; comp 12/25/04; am and comp ] (Auth: HRS §461-4.5) (Imp: HRS §§461-8, 461-16)

Historical note: The substance of this section is based in part upon section 16-95-15. [Eff 5/16/64; am and ren §16-95-15, 6/22/81; R 12/24/92]

§16-95-72 Automatic forfeiture for failing to renew. The failure to timely renew the license or permit or to pay the applicable fees or paying fees with a check which is dishonored upon first deposit shall cause the license or permit to be automatically forfeited. [Eff and comp 12/24/92; comp 12/25/04; comp ] (Auth: HRS §461-4.5) (Imp: HRS §§461-4.5, 461-8, 461-16, Act 196, SLH 1992)

§16-95-73 Restoration of forfeited license or permit. (a) A forfeited pharmacist license [which has been forfeited] may be restored within three years of the forfeiture provided the applicant:

- (1) [Submits a notarized statement from a licensed pharmacist attesting that the applicant has been employed for a minimum of two thousand hours as a pharmacist within the previous five years; or] Within the first year of the forfeiture:
  - (A) Applies for restoration on a form provided by the board;
  - (B) Pays the penalty, current biennial and renewal fees; and
  - (C) Complies with the continuing education requirements under section 461-8 HRS.
- (2) [If the applicant is licensed out-of-state, a copy of the out-of-state license and a statement signed by the out-of-state licensing official that the out-of-state license is current and in good standing and that the applicant has been employed for a minimum of two thousand hours within the preceding five years;] Within the second and third year of the forfeiture:
  - (A) Applies for restoration on a form provided by the board;
  - (B) Submits an official statement signed by the applicant's employer or employers or if the applicant was self-employed, a statement signed by the applicant attesting that the applicant has been employed for a minimum of fifteen hundred hours as a licensed pharmacist within the five years preceding the date of application;
  - (C) If applicable, provides a statement signed by a licensing official of each other state or territory of the United States in which a license is held or once held, indicating that the license is current, valid, unencumbered, and in good standing or, if the license is not current, valid unencumbered, and if any disciplinary action had been taken against the license. The applicant shall be responsible for obtaining any additional information

required by the board to review the reasons the license is not current, valid, unencumbered, or in good standing;

[(3)] (D) Takes and passes the Hawaii [state jurisprudence examination] MPJE; and

[(4)] (E) Pays the penalty, current biennial, and renewal fees[.] and;

(F) Complies with the continuing education requirements under section 461-8

(b) A forfeited pharmacy or miscellaneous permit, or a wholesale distributor license [which has been forfeited] may be restored within three years of the forfeiture, provided the applicant:

(1) [Pays all penalty fees, current biennial, and renewal fees; and] Applies for restoration on a form provided by the board;

(2) [In the case of a pharmacy, passes a pharmacy inspection conducted by the regulated industries complaints office of the department; or] Pays all penalty fees, current biennial, and renewal fees;

(3) [In the case of a wholesale distributor, passes a facility inspection conducted by the department of health.] Submits a signed statement to report changes, if any to the information on file with the board; and

(4) In the case of a wholesale distributor, passes a facility inspection conducted by the department of health.

(c) The board may deny restoration of a forfeited license or permit [against which disciplinary action has been taken since the date of forfeiture of the license or permit, or if the applicant or applicant's personnel has been convicted of any crime directly related to the practice of pharmacy, drugs, drug samples, wholesale or retail drug distribution, or distribution of controlled substances unless the conviction has been expunged or annulled or is otherwise precluded from consideration by chapter 831-3.1, HRS.] if during the time the license or permit was forfeited, the license or permit holder engaged in any activities identified in section 436B-19 or 461-21, HRS, or both.

(d) A person whose license or permit has been forfeited and who fails to restore the license or permit as provided in this section, shall apply as a new applicant. [Eff and comp 12/24/92; comp 12/25/04; am and comp ] (Auth: HRS §461-4.5) (Imp: HRS §§461-4.5, 461-8, 461-16)

Historical note: The substance of this section is based substantially upon sections 16-95-16 and 16-95-17. [Eff 5/16/64; am 3/16/80; am and ren §§16-95-16, 16-95-17, 6/22/81; R 12/24/92]

§16-95-74 Board may refuse to renew [or restore.] a license or permit. (a) The board may refuse to renew or restore a license or permit for failure or refusal of the licensee or permit holder to:

- (1) Properly complete or timely submit the renewal application form and submit all fees and required documentation;
- (2) Meet and maintain the conditions and requirements necessary to qualify for the issuance of the license or permit; and
- (3) Comply with chapter 461, HRS, and this chapter.

(b) An applicant, whose application has not been renewed or restored for the above reasons, may file for an administrative hearing [as provided for in subchapter 13] pursuant to chapter 91, HRS. [Eff and comp 12/24/92; comp 12/25/04; am and comp \_\_\_\_\_] (Auth: HRS §461-4.5) (Imp: HRS §461-4.5)

## SUBCHAPTER 10

### SCOPE OF PRACTICE

§16-95-79 Supervision by a registered pharmacist. (a) A registered pharmacist shall [directly] immediately supervise all activities and operations of a pharmacy, and immediately supervise the functions and activities of [pharmacist assistants] pharmacy interns and pharmacy technicians to [insure] ensure that all functions and activities are performed in accordance with [procedures and the scope of a pharmacist assistant or a pharmacy technician and further shall initial all prescriptions filled by pharmacist assistants and pharmacy technicians] laws and rules governing the practice of pharmacy.

(b) A pharmacist either employed within an institutional facility or providing services to an institutional facility shall be responsible for ensuring that the institutional facility establishes, maintains, and operates in accordance with written policies and procedures as outlined in section 16-95-80. [Eff and comp 12/24/92; comp 12/25/04; am and comp \_\_\_\_\_] (Auth: HRS §461-4.5) (Imp: HRS §§461-4.5, 461-9, 461-10, 461-11, 461-12, 461-13)

Historical note: The substance of this section is based in part on section 16-95-46. [Eff 5/16/64; am and ren §16-95-46, 6/22/81; R 12/24/92]

§16-95-80 Physical presence of a registered pharmacist. (a) A registered pharmacist [must] shall be physically present during the hours of operation of a prescription area.

(b) At any time a registered pharmacist is not in the prescription area, (except in cases of emergencies), the entire stock of prescription drugs shall be secured from access to unauthorized persons and the means of access shall only be in the [possession] control of the pharmacist.

(c) A pharmacist in an institutional pharmacy shall ensure that written policies and procedures have been established by the institutional facility for [provision of] providing drugs to the medical staff and other authorized personnel of the institutional facility by use of night cabinets, and access to the institutional pharmacy and emergency kits when the pharmacist is not in the area. A [night cabinet] "night cabinet" is a cabinet, room, or any other enclosure not located within the prescription area. The written policies and procedures shall provide that a pharmacist shall be "on call" during those periods when night cabinets are utilized and shall provide policies and procedures regarding the following:

- (1) Security of the night cabinet to ensure that the night cabinet is sufficiently secured to deny access to unauthorized persons by force or otherwise;
- (2) The development and maintenance of an inventory listing of all drugs included in the cabinet and the requirement that the pharmacist ensures, at a minimum, that:
  - (A) Drugs available therein are properly labeled;
  - (B) Only prepackaged drugs are available therein in amounts sufficient for immediate therapeutic requirements; and
  - (C) [A prescription is attached to the inventory list for any drug that was withdrawn from the cabinet;] An appropriate practitioner's prescription regarding the dispensing of drugs exists.
  - [(D) All drugs therein are inventoried no less than once per calendar quarter; and
  - (E) A complete audit of all activity concerning such cabinet is conducted no less than once per month.]
- (3) Access to the pharmacy. In the event a drug is not available from floor supplies or night cabinets and the drug is required to treat the immediate needs of a patient whose health would otherwise be jeopardized, the drug may be obtained from the institutional pharmacy in accordance with this subsection. Authorized personnel may remove drugs therefrom provided:



- (A) The authorized personnel are designated, in writing, by the institutional facility;
  - (B) The authorized personnel have been instructed by the pharmacist of the proper methods of access, and the records and procedures regarding removal of the drugs; and
  - (C) The authorized personnel are required to complete a form which shall include the patient's name and room number, the name of drug, drug strength, dosage, quantity of drug removed, date, time, and the signature of the authorized personnel.
- (4) [Use of drugs that have a "stop date." For purposes of this section, "stop date" in an institutional setting is the length of time to administer a medication as indicated on a drug order. In the absence of such a notation, if an order is necessary or advisable to stop the particular drug, a committee of the institutional facility will have determined by policy, the length of time for administration of the drug.] The prompt detection, removal, disposal, handling, and replacement, if possible, of a drug which has been recalled by the U.S. Food and Drug Administration or the manufacturer to ensure that recalled drugs are removed from the pharmacy's inventory, emergency kit, night cabinet, remote dispensing machine, or from the patient if deemed necessary according to the federal and manufacturer's guidelines. [Eff and comp 12/24/92; comp 12/25/04; am and comp ]  
(Auth: HRS §461-4.5) (Imp: HRS §§461-1, 461-4.5, 461-9, 461-10, 461-11, 461-12)

Historical note: The substance of this section is based in part on section 16-95-4. [Eff 5/16/64; am and ren §16-95-4, 6/22/81; R 12/24/92]

§16-95-81 Emergency kits. (a) A pharmacist may provide emergency kits to an institutional facility which does not have an institutional pharmacy to meet the immediate therapeutic needs of patients.

(b) The pharmacist and the medical staff of the institutional facility shall jointly determine the drugs, and quantity, to be included in the emergency kit.

(c) The exterior of emergency kits shall be labeled by the pharmacist to clearly [and unmistakably] indicate that the kit is an emergency drug kit [and that the kit is for use in emergencies only]. In addition, [the label shall also

contain] there shall be a listing of the drugs contained [therein,] in the emergency kit, including name, strength, quantity, and expiration date of the [contents, and] drugs, which shall be maintained and kept in an accessible location near to the emergency kit, along with the name, address, and telephone number of the supplying [pharmacist.] pharmacy.

(d) All drugs contained within the emergency kit shall be labeled to identify, at a minimum, the brand or generic name, strength, route[,] of administration, if other than oral, quantity, source, manufacturer, if generic, lot number, expiration date, and other information as may be required by the medical staff of the institutional facility to prevent any misunderstanding or risk of harm to the patients of the facility.

(e) On or before the earliest expiration date of any drug contained in the emergency kit, the pharmacist shall replace any expired drugs, relabel, and reseal the kit.

(f) The pharmacist shall ensure that the institutional facility has established written policies and procedures which shall provide, but not be limited to, policies and procedures covering:

- (1) Storage of emergency kits in secured areas which shall be in an environment for preservation of the drugs;
- (2) Procedures to ensure that drugs are removed only pursuant to a valid prescription or practitioner's order and recordation of any removal; and
- (3) Procedures to notify the pharmacist within twenty-four hours of any removal of any drug from the emergency kit. [Eff and comp 12/24/92; comp 12/25/04; am and comp ]  
(Auth: HRS §461-4.5) (Imp: HRS §§461-1, 461-9, 461-10, 461-11, 461-12)

§16-95-82 Valid prescriptions. (a) A pharmacist may fill and dispense prescriptions provided the prescription is valid. A valid prescription shall be legibly written and contain, at the minimum, the following information:

- (1) The date of issuance;
- (2) The original signature of the [prescriber;] practitioner;
- (3) The [prescriber's] practitioner's name and business address;
- (4) The name, strength, quantity, and [directions;] specific instructions for the drug to be dispensed;
- (5) The name and address of the person for whom the prescription was [filled] written or the name of the animal and address of the owner

- of the animal for which the drug is prescribed, [(unless the pharmacy filling the prescription has such address on file)];
- (6) The room number and route of administration if the patient is in an institutional facility; and
  - (7) If refillable, the number of allowable refills.
- (b) Except where a written prescription is required by law a practitioner or the practitioner's agent may use a phone order [is acceptable from prescribers or their authorized agent] provided:
- (1) Only a pharmacist or a pharmacy intern shall receive the oral prescription;
  - (2) The oral prescription [is] shall be [promptly] immediately reduced to writing, including the practitioner's oral code designation, by the pharmacist or pharmacy intern and shall [and] be kept on file for five years; and
  - (3) The oral prescription contains all of the information required under subsection (a).
  - (c) A faxed prescription for a noncontrolled substance sent by a practitioner or the practitioner's agent is acceptable [from prescribers provided the facsimile is sent by the prescriber or the prescriber's authorized agent, and] provided it contains all of the information required under subsection (a) and is kept on file for five years.
  - [(d) No prescription which is coded shall be filled or dispensed.
  - (e)] (d) Any pharmacist shall comply with any applicable state or federal laws or rules governing the validity of prescriptions. [Eff and comp 12/24/92; comp 12/25/04 ; am and comp ] (Auth: HRS §461-4.5) (Imp: HRS §§461-11, 461-13)

Historical note: The substance of this section is based in part upon sections 16-95-9 and 16-95-10. [Eff 5/16/64; am and ren §§16-95-9, 16-95-10, 6/22/81; R 12/24/92]

§16-95-83 Substitution; drug product selection. (a) It shall be unlawful to dispense a different drug in place of the drug prescribed without the express consent of the person prescribing.

(b) Drug product selection shall comply with [Part] part VI of chapter 328, HRS. [Eff and comp 12/24/92; comp 12/25/04; am and comp ] (Auth: HRS §461-4.5) (Imp: HRS §§328-92, 328-94, 328-97, 328-98, 461-11, 461-13, 328)

Historical note: The substance of this section is based in part upon section 16-95-83 is based substantially upon §16-95-11. [Eff 5/16/64; am and ren §16-95-11, 6/22/81; R 12/24/92]

§16-95-84 Transfer of prescriptions. (a) Transfers of prescription information for the purpose of refill dispensing is permissible between pharmacies provided the pharmacist transferring the prescription provides all information necessary for a valid prescription, and[:

- (1) Writes the words "void" and "invalid" on the face of the prescription; and
- (2) Records] records on the [reverse side of the] prescription, the name and location of the pharmacy receiving the prescription, the name of the pharmacist receiving the prescription information, the date of transfer, [and] the name of the pharmacist transferring the prescription[.] or note the pharmacist's name on the electronic files, and record that the prescription is inactivated or made void for future refills at the location from which it is being transferred.

(b) The pharmacist receiving the transferred prescription information shall[:

- (1) Write the word "Transfer" on the face of the valid transferred prescription; and
- (2) The] indicate the name of the pharmacist transferring the prescription as well as the transferring pharmacist's or [pharmacy's] pharmacy name, the transferring pharmacy's name, location, and original prescription number[.], the original date the prescription was written, the number of refills or quantity remaining on the prescription, and the last date the prescription was filled.

(c) All records of transferred prescriptions shall be maintained for a period of five years from the date of filling or refilling.

[Eff and comp 12/24/92; comp 12/25/04; am and comp ]  
(Auth: HRS §461-4.5) (Imp: HRS §§461-10, 461-11, 461-13)

§16-95-85 Scope of practice of a pharmacy intern. A pharmacy intern may perform all functions under the definition of "practice of pharmacy" as stated in section 461-1 HRS, except where prohibited by any state or federal law or rule and excluding the final drug verification before it is dispensed. The pharmacy intern shall at all times be under the immediate supervision of a licensed or registered pharmacist. [ eff and comp ]

§16-95-86 Scope of practice of a pharmacy technician. A pharmacy technician may perform the following tasks, not requiring professional judgment, under the immediate supervision of a pharmacist:

- (1) [Typing of] Process prescription labels, drug packaging, stocking, delivery, record keeping, pricing, documentation of third party reimbursements, and preparing, labeling, compounding, storing, and providing medication;
- (2) [Mixing drugs with parenteral fluids] Medication preparation is permissible provided that the pharmacy technician:
  - (A) Has a working knowledge of the pharmaceutical medical terms, abbreviations, and symbols commonly used in the prescribing, dispensing, and charting of medications;
  - (B) Is able to perform the arithmetic calculations required for the usual dosage determination and solution preparation;
  - (C) Has a thorough knowledge and understanding of the pharmacy technician's duties and responsibilities, including standards of ethics and applicable laws and regulations governing the practice of pharmacy;
  - (D) Has a working knowledge of drug dosages, route of administration, and dosage forms[;] and therapeutics;
  - (E) Has a working knowledge of the procedures and operations relating to the manufacturing, packaging, and labeling of drug products; and
  - (F) Has [a] an appropriate working knowledge of the procedures and operations relating to aseptic compounding and parenteral admixture operations. [Eff and comp 12/24/92; comp 12/25/04; am and comp ] (Auth: HRS §461-4.5) (Imp: HRS §§461-9, 461-10, 461-11)

§16-95-87 Return or exchange of drugs prohibited. No prescription drug shall be accepted for return or exchange after [such] the drug has been taken from the premises where dispensed or sold by prescription. [Eff and comp 12/24/92; comp 12/25/04; am and comp ] (Auth: HRS §461-4.5) (Imp: HRS §461-11)

Historical note: Section 16-95-87 is substantially identical to section 16-95-12. [Eff 5/15/64; am and ren §16-95-12, 6/22/81; R 12/24/92]

## SUBCHAPTER 11

### RECORD KEEPING REQUIREMENTS

§16-95-93 Records of dispensing. (a) Records of dispensing for original and refill prescriptions are to be made and kept by pharmacies for five years and, in addition to the requirements of section 16-95-82, shall include[,] but not be limited to[,] the following:

- (1) Quantity prescribed and quantity dispensed;
- (2) Date of dispensing;
- (3) Serial number or, if an institution, equivalent control system;
- (4) Identification of the pharmacist responsible for dispensing; and
- (5) Record of refills to date.

(b) An institutional pharmacy will have fulfilled the requirements of this section if the information required by paragraphs (1) to (4) of subsection (a) is kept on accurate patient profiles or medication administration records showing all drugs administered to the patient for five years; and the institutional facility keeps the original patient charts evidencing the prescription orders and medication administration records in the institutional facility's files for at least five years. [Eff and comp 12/24/92; comp 12/25/04; am and comp ]  
(Auth: HRS §461-4.5) (Imp: HRS §§461-4.5, 461-10, 461-11, 461-13)

§16-95-94 Automated data processing systems. As an alternative to procedures set forth in section 16-95-93, an [automated data processing] ADP system may be employed for the record keeping system provided the following conditions have been met:

- (1) The [automated data processing (ADP)] ADP system shall have the capability of producing hard copy documents of all drug orders of original and refilled prescription information. The hard copy produced must be of a print size that is readable without the aid of any special device;
- (2) Information to be kept on the ADP system shall include, but not be limited to[, ]the information required in section 16-95-82, valid prescriptions, and section 16-95-93, records of dispensing;
- (3) The pharmacist responsible for entries into the ADP system shall ensure that the information entered into the computer is accurate and complete;

- (4) The documentation used to satisfy the above requirements shall be provided to the pharmacy within seventy-two hours of the date of dispensing;
- (5) An auxiliary record keeping system shall be established for the documentation of refills in the event the ADP system is inoperative for any reason. The auxiliary system shall [insure] ensure that all refills are authorized by the original prescription and that the maximum number of refills is not exceeded. When the ADP system is restored to operation, the information regarding drug orders and prescriptions filled and refilled during the inoperative period shall be entered in the ADP system within ninety-six hours;
- (6) Any pharmacy using an ADP system shall comply with all applicable state and federal laws, rules, and regulations; and
- (7) A pharmacy shall make arrangements with the supplier of data processing services or materials to assure that the pharmacy continues to have adequate and complete records for any drug order, prescription, and dispensing if the relationship with such supplier terminates for any reason. The pharmacy shall assure continuity in the maintenance of records. [Eff and comp 12/24/92; comp 12/25/04; am and comp \_\_\_\_\_] (Auth: HRS §461-4.5) (Imp: HRS §§461-9, 461-10, 461-11, 461-12, 461-13)

§16-95-95 Security of records. To maintain the confidentiality of patient's prescriptions or drug orders, there shall exist adequate safeguards for security of the records whether kept manually or in an ADP system. [Eff and comp 12/24/92; comp 12/25/04; comp \_\_\_\_\_] (Auth: HRS §461-4.5) (Imp: HRS §§461-9, 461-10, 461-11, 461-12, 461-13)

§16-95-96 Record keeping for wholesale prescription drug distributors.

(a) Wholesale distributors shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of prescription drugs. These inventories and records shall include the following information:

- (1) The source of the drugs, including the name and principal address of the seller or transferor, and the address of the location from which the drugs were shipped;

- (2) The identity and quantity of the drugs received and distributed or disposed of; and
- (3) The dates of receipt and distribution or other disposition of the drugs.
- (b) The wholesale distributor shall also maintain records to reflect:
  - (1) Storage. All prescription drugs shall be stored at appropriate temperatures and under appropriate conditions in accordance with the requirements, if any, in the labeling of the drugs, or in accordance with the standards regarding conditions and temperatures for the storage of prescription drugs.
    - (A) If no storage requirements are established for a prescription drug, the drug may be held at controlled room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality, and purity are not adversely affected.
    - (B) Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices, or logs shall be used to document the proper storage of prescription drugs.
  - (2) Examination of materials.
    - (A) Documentation shall be maintained for at least five years demonstrating that each outside shipping container of prescription drugs was examined visually to confirm the identity of the drugs and to prevent the acceptance of contaminated prescription drugs or prescription drugs that are otherwise unfit for distribution shall be maintained. This examination shall be adequate to reveal container damage that would suggest possible contamination or other damage to the contents.
    - (B) Documentation shall be maintained for at least five years demonstrating that each outgoing shipment of prescription drugs was inspected carefully to confirm the identity of the drugs and to ensure that no prescription drugs were delivered that have been damaged in storage or held under improper conditions [shall be maintained].
  - (3) Returned, damaged, outdated, deteriorated, misbranded, and adulterated prescription drugs.
    - (A) Prescription drugs that are damaged, outdated, deteriorated, misbranded, or adulterated shall be physically separate from other prescription drugs and stored, in such a way that no



cross-contamination or confusion are possible, until they are destroyed or returned to the supplier.

- (B) Any prescription drugs whose immediate or sealed outer or sealed secondary containers are found upon arrival to have been opened or used shall be identified as such, and shall be physically separated from other prescription drugs and stored, in such a way that no cross-contamination or confusion are possible, until they are destroyed or returned to the supplier.
- (C) If the conditions under which a prescription drug has been returned cast doubt on the drug's safety, identity, strength, quality, or purity, then the drug shall be either destroyed or returned to the supplier, unless examination, testing, or other investigation proves that the drug meets appropriate standards of safety, identity, strength, quality, and purity. In determining whether the conditions under which a drug has been returned cast doubt on the drug's safety, identity, quality, or purity, the wholesale distributor shall consider, among other things, the conditions under which the drug has been held, stored, or shipped before or during its return and the condition of the drug and its container, carton, or labeling as a result of storage or shipping.

(c) Inventories and records shall be made available for inspection and photocopying by the department or any authorized federal, state, or local law enforcement officials for a period of five years following disposition of the drugs.

(d) Records described in this section that are kept at the inspection site or that can be retrieved immediately by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two working days of a request by the department or any authorized official of a federal, state, or local law enforcement agency. [Eff and comp 12/24/92; comp 12/25/04; am and comp ] (Auth: HRS §461-4.5)

## SUBCHAPTER 12

### ADVERTISING PRACTICES

§16-95-101 Procedures to advertise prescription drugs. (a) Advertising of prescription drugs is to provide the public with information in a manner consistent with public health and safety. Prescription drug advertising is for the purpose of providing information and not to create a demand for drugs. A pharmacy, if it chooses to advertise, will advertise prescription prices, drugs, and reference to prescription prices and drugs in accordance with this section:

(1) A pharmacy may post its prices for prescription drugs on a prescription price poster. The form of [such] the posting shall be legible.

(2) A pharmacy may advertise prescription prices by publication or display in any media. For purposes of this section, "media" includes[,] but is not limited to[,] newspapers, magazines, calling cards, and directories, including all listings in telephone directories.

(3) Any advertisement for prescription drugs shall be made in three commonly prescribed quantities.

[(4) Any advertisement for prescription drugs shall contain the brand name of that drug.]

[(5)] (4) Any advertisement for prescription drugs or prices shall be truthful, reasonable, fully informative, and understandable to the public and shall not be false or misleading.

[(6)] (5) Any advertisement for prescription drugs shall state the time period during which the prices advertised will be effective.

(b) The price for prescription drugs advertised shall not be below cost as defined in section 481-3, HRS, as amended.

(c) A pharmacist or the pharmacist's agent upon request however communicated to the pharmacist shall give the current price for any drug sold at the pharmacist's pharmacy for informational purposes only and [such] the price quoted shall not be false or misleading but must be truthful, reasonable, informative, and understandable to the public. [Eff and comp 12/24/92; comp 12/25/04; am and comp ] (Auth: HRS §§461-1, 461-4.5, 461-21) (Imp: HRS §§461-4.5, 461-21)

Historical note: The substance of this section is substantially identical to sections 16-95-5, 16-95-6 and 16-95-7. [Eff 5/16/64; 9/1/74; am 2/3/78; am and ren §§16-95-5, 16-95-6, 16-95-7, 6/22/81; R 12/24/92]

§16-95-102 Procedures to advertise related pharmacy services.

Advertising of related pharmacy services is to provide the public with information in a manner consistent with public health and safety and shall be truthful, reasonable, fully informative, and understandable to the public and shall not be false or misleading. A pharmacy may advertise that it performs the following services:

- (1) Personal medication record. To qualify as providing this service, a system must be maintained which enables the immediate retrieval of information concerning individual pharmacy patients which is of sufficient scope to enable a determination by the pharmacist of rational drug utilization. In accomplishing this purpose the design and use of the system must be to ascertain and record all patient information necessary to assist the pharmacist in avoiding adverse drug reactions, drug-drug interactions, and inappropriate use of drugs.
- (2) Professional consultation with patient and [doctor.] practitioners. The availability of patient consultation means that the pharmacist routinely informs the patient, either directly or indirectly, on what the patient is taking, how to take it, what to expect, what special precautions should be observed, and how the medication is to be properly stored. This service is to assure that the patient understands the proper use of the drug and that the [physician's] practitioner's intentions will materialize in a drug regimen of optimal effectiveness, safety, and duration. [Doctor or prescriber] Practitioner consultation denotes the availability and practice of pharmacists acting as drug information specialists who discuss with [prescribers] practitioners drug [effect,] effects interactions, side effects, and drugs of choice for diseased conditions.
- (3) "Emergency prescription service" means the providing of pharmaceutical services, which includes prescription dispensing, at any time after usual pharmacy hours. This means that a pharmacist is available, can be readily contacted, and will respond with reasonable expediency at any hour, day or night, in a manner consistent with security and personal safety.

Should the pharmacy choose to advertise the performance of the foregoing services, it [must] shall conform with the definition of that service as herein set forth. [Eff and comp 12/24/92; comp 12/25/04; am and comp ] (Auth: HRS §461-4.5) (Imp: HRS §§461-1, 461-4.5, 461-21.)

Historical note: The substance of this section is based substantially on section 16-95-5. [Eff 5/16/64; am 2/3/78; am and ren §16-95-5, 6/22/81; R 12/24/92]

§16-95-103 Advertising of controlled substances prohibited. No person shall advertise or promote to the public in any manner the sale of a Scheduled II, III, IV, or V controlled substance as defined in the Federal Controlled Substances Act and the rules promulgated thereunder as well as any other controlled substances as defined in chapter 329, HRS, as amended, and the rules promulgated thereunder by the state department of health. [Eff and comp 12/24/92; comp 12/25/04; comp ] (Auth: HRS §461-4.5) (Imp: HRS §461-4.5)

Historical note: The substance of this section is substantially identical to section 16-95-8. [Eff 9/1/74; am 2/3/78; am and ren §16-95-8, 6/22/81; R 12/24/92]

### SUBCHAPTER 13

#### DISCIPLINARY SANCTIONS, APPLICATION DENIAL, HEARINGS, ADMINISTRATIVE PRACTICE AND PROCEDURE

§16-95-110 Grounds for revocation, suspension, refusal to renew or restore, denial, or conditioning of license or permit. (a) In addition to any other acts or conditions provided by law, the board may revoke, suspend, refuse to renew or restore, deny, or condition a license or permit for any one or more of the following acts or omissions:

- (1) Procuring a license or permit through misrepresentation or deceit;
- (2) Failing to meet or maintain the requirements or conditions necessary to qualify for license or permit;
- (3) Conviction of, or pleading nolo contendere to a crime that is substantially related to the qualification, functions, or duties of a pharmacist;
- (4) Committing any act or omission in the practice of pharmacy or wholesale distribution which constitutes dishonesty, fraud, or misrepresentation with the intent to substantially benefit the pharmacist or wholesale distributor or with the intent to substantially injure another person;
- (5) Aiding or abetting an unlicensed person to directly or indirectly evade chapter 461, HRS, or this chapter;

- (6) Failing to maintain records or to make accessible any records as required in subchapter 11;
- (7) Violating any provisions of the department of health or department of public safety;
- (8) [Accepting] Except as provided by law, accepting returns or exchanges of prescription drugs after [such] the drugs [had] have been [taken from the premises where it was dispensed or sold by a prescription; dispense;] dispensed;
- (9) Dispensing a different drug or brand in place of the drug or brand prescribed without the express consent of the person prescribing;
- (10) Failing to comply with the state's drug formulary or substitution laws as set forth in part VI of chapter 328, HRS;
- (11) Professional misconduct, gross carelessness, or manifest incapacity;
- (12) Violation of any state or federal law, including violation of a drug, controlled substance, or poison law;
- (13) False, fraudulent, or deceptive advertising;
- (14) Making a false statement on any document submitted or required to be filed by this chapter;
- (15) Habitual intemperance or addiction to the use of habit-forming drugs;
- (16) Violating the provisions of chapter 461, HRS, this chapter, or any order of the board.
- (17) Failure to comply with the pharmaceutical compounding requirements found in Chapters 795 (nonsterile preparations) and 797 (sterile preparations) of the United States Pharmacopeia National Formulary, as amended;
- 18) Failure to report, in writing to the licensing authority, any disciplinary decision issued against the licensee or the applicant in another jurisdiction within thirty days of the disciplinary decision.

(b) The board may make recommendations regarding quality improvements to prevent or minimize errors. The board may also fine or impose conditions or limitations upon a license or permit. [after a] A hearing on that fine, condition, or limitation may be conducted in accordance with chapter 91, HRS. The violation of any condition or limitation on a license or permit may be cause to impose additional sanctions against the licensee or permittee. Any fine imposed by the board after a hearing in accordance with chapter 91, HRS, shall be no less than \$100 and no more than \$1,000 for each violation, and each day of violation may be deemed a separate violation. [Eff and comp 12/24/92; comp 12/25/04; am

and comp ] (Auth: HRS §461-4.5) (Imp: HRS §§461-4.5, 461-17, 461-21, 461-22,)

§16-95-111 Denial. In the event an application for the issuance of a license or permit or for the reinstatement thereof is denied, the board shall notify the applicant by letter of the board's action which shall include a concise statement of the reasons therefor and a statement informing the applicant of the applicant's right to a hearing if the applicant so desires. [Eff and comp 12/24/92; comp 12/25/04; comp ] (Auth: HRS §461-4.5) (Imp: HRS §§461-4.5, 461-8, 461-14, 461-21, 461-22)

Historical note: The substance of this section is substantially identical to section 16-95-27. [Eff 5/16/64; am and ren §16-95-27; 6/22/81; R 12/24/92]

§16-95-112 Demand for hearing; proceedings upon demand for hearing.  
(a) Any person whose application for a license or permit or whose application for the reinstatement of a license or permit has been denied by the board shall be entitled to a hearing, provided that a demand for a hearing is filed with the board within sixty days of the date of denial of the application.

(b) If a demand for hearing is filed within the time prescribed, the board shall order a hearing in accordance with chapter 91, HRS, relating to contested cases and unless the context otherwise requires, the rules set forth in chapter 16-201, [Hawaii Administrative Rules,] the rules of practice and procedure of the department. [Eff and comp 12/24/92; comp 12/25/04; am and comp ] (Auth: HRS §461-4.5) (Imp: HRS §§91-9, 91-9.5, 91-10, 91-11, 91-12, 461-4.5, 461-21)

Historical note: The substance of this section is substantially identical to sections 16-95-28 and 16-95-29. [Eff 5/16/64; am and ren §§16-95-28, 16-95-29, 6/22/81; R 12/24/92]

§16-95-113 Administrative practice and procedure. The rules of practice and procedure for pharmacies and pharmacists shall be as provided in chapter 16-201, the rules of practice and procedure of the department as adopted, and as may subsequently be amended, which are incorporated by reference and made a part of this chapter. [Eff and comp 12/24/92; comp 12/25/04; comp ] (Auth: HRS §461-4.5) (Imp: HRS §§91-2, 461-4.5)

## SUBCHAPTER 14

### ORAL TESTIMONY

§16-95-118 Oral testimony. (a) The board shall accept oral testimony on any item which is on the agenda, provided that the testimony shall be subject to the following conditions:

- (1) Each person seeking to present oral testimony is requested to notify the board not later than forty-eight hours before the meeting, and at that time to state the item on which testimony is to be presented;
- (2) The board may request that any person providing oral testimony submit the remarks, or a summary of the remarks, in writing to the board;
- (3) The board may rearrange the items on the agenda for the purpose of providing for the most efficient and convenient presentation of oral testimony;
- (4) Persons presenting oral testimony at the beginning of the testimony shall identify themselves and the organization, if any, that they represent;
- (5) The board may limit oral testimony to a specified time period but in no case shall the period be less than five minutes, and the person testifying shall be informed prior to the commencement of the testimony of the time constraints to be imposed; and
- (6) The board may refuse to hear any testimony which is irrelevant, immaterial, or unduly repetitious to the agenda item on which it is presented.

(b) Nothing in this section shall require the board to hear or receive any oral or documentary evidence from a person on any matter which is the subject of another proceeding pending subject to the hearings relief, declaratory relief, or rule relief provisions of chapter 16-201.

(c) Nothing in this section shall prevent the board from soliciting oral remarks from persons present at the meeting or from inviting persons to make presentations to the board on any particular matter on the board's agenda. [Eff and comp 12/24/92; comp 12/25/04; am and comp ] (Auth: HRS §461-4.5) (Imp: HRS §§92-3, 461-4.5)

## SUBCHAPTER 15

### FEES

§16-95-123 Fees established. The fees are as established in chapter 16-53. The fees for wholesale prescription drug distributors license shall be the same fees as established for a pharmacy in chapter 16-53. [Eff and comp 12/24/92; comp 12/25/04; comp ] (Auth: HRS §461-4.5) (Imp: HRS §§461-4.5, 26-9)

§16-95-124 Form of fee. The fees, if in the form of a money order or check, shall be made payable to the department [of commerce and consumer affairs]. [Eff and comp 12/24/92; comp 12/25/04; am and comp ] (Auth: HRS §461-4.5) (Imp: HRS §461-4.5)

§16-95-125 Dishonored checks considered failure to meet requirements. The dishonoring of any check upon first deposit shall be considered a failure to meet requirements. [Eff and comp 12/24/92; comp 12/25/04; comp ] (Auth: HRS §461-4.5) (Imp: HRS §461-4.5)

## SUBCHAPTER 16

### EMERGENCY CONTRACEPTION COLLABORATIVE AGREEMENT

§16-95-130 Emergency contraception written collaborative agreement.

(a) Each arrangement between a licensed pharmacist and a licensed physician relating to the distribution to a patient of emergency contraception drugs shall be documented in a signed collaborative agreement in accordance with the form attached hereto as Exhibit "A" entitled Emergency Contraception Drug Therapy Collaborative Agreement dated 1204, located at the end of this chapter and made a part of this chapter. The agreement shall be delivered to the [department] board by the licensed pharmacist within [seven] ten days of the execution of the agreement by the pharmacist and the physician.

(b) Before a pharmacist may participate in the collaborative agreement, the pharmacist shall have completed an emergency contraception training course approved by the [American Council of Pharmaceutical Education (ACPE).] ACPE, curriculum-based programs from an ACPE-accredited college of



pharmacy, applicable state or local health department programs, or programs recognized by the board of pharmacy. Training shall include procedures listed in Exhibit "A", the management of the sensitive communications often encountered in emergency contraception, providing service to minors, quality assurance, referral for additional services, and documentation[, and a crisis plan if the pharmacy operations are disrupted by individuals opposing the emergency contraception].

(c) By executing the collaborative agreement, both the physician and pharmacist agree and acknowledge that:

(1) They accept the responsibility for the distribution of the emergency contraception drugs and that the licensed pharmacist shall dispense only certain drugs approved for emergency contraception by the United States Food and Drug Administration. [The] Some of the currently approved drugs are listed in the attached Exhibit "B" entitled brands and doses, dated 0814 located at the end of this chapter and made a part of this chapter[. Plan B®, an oral contraceptive manufactured by Women's Capital Corporation (or generic equivalent), shall be the preferred drug therapy.] however, drugs approved for emergency contraception are not limited to this list. Other drugs listed in Exhibit "B" may be dispensed instead of Plan B® in the following circumstances:

- (A) Plan B® is unavailable;
- (B) Plan B® is not covered under the patient's health insurance plan and another drug listed in Exhibit "B" is covered; or
- (C) The patient chooses another listed drug after the pharmacist advises the patient that side effects are usually less with Plan B®.

The list of approved drugs in Exhibit "B" also shall include adjunctive drugs for treatment of nausea and vomiting that may be associated with emergency contraceptives;

- (2) The licensed pharmacist shall provide the patient with drug information concerning dosage, potential adverse side effects, and follow-up contraceptive care;
- (3) The collaborative agreement shall be effective for a period of at least two years from the date of its delivery to the [department] board, unless rescinded in writing [earlier] by either the physician or the pharmacist, with written notice to the other and the [department] board, or unless the pharmacy board invalidates the agreement or changes the terms of the agreement. After the two year period, the agreement shall continue to be valid from month to

month unless rescinded, invalidated, or changed as provided herein. The licensed pharmacist or the licensed physician, who rescinds the agreement, shall notify the [department] board within three business days of the rescission. At the time the collaborative agreement is rescinded, the licensed pharmacist shall not have prescriptive authority to dispense emergency contraceptives until another collaborative agreement with a physician is completed and [delivered to] received by the [department;] board; and

(4) Each drug therapy prescription authorized by the physician and dispensed by the pharmacist shall be documented in a patient profile.

(d) Additionally, the collaborative agreement between the licensed pharmacist and licensed physician shall include:

- (1) The name, address, and phone number of the licensed pharmacist and pharmacy and the signature of the licensed pharmacist;
- (2) The name, address, and phone number of the licensed physician and the signature of the licensed physician;
- (3) The purpose of the collaborative agreement, which is to permit emergency contraception drug therapy within one hundred and twenty hours of the patient having unprotected sexual contact and to ensure that the patient receives appropriate information from the licensed pharmacist regarding the drug therapy;
- (4) The procedures, delineated in Exhibit "A", to be followed by the licensed pharmacist when the patient requests drug therapy, including any applicable referrals;
- (5) Any limitation agreed upon by both the licensed pharmacist and the licensed physician including, but not limited to, approved drugs that may not be prescribed to the patient or whether the licensed pharmacist's or the licensed physician's decision shall control in the event of a disagreement on the prescription for a patient;
- (6) A provision that the licensed pharmacist shall refer the patient to [the] a licensed physician;
- (7) A statement that the label placed on the drug therapy product shall contain the names of both the pharmacist and the physician signers of this Agreement;
- (8) An informed consent, included in Exhibit "A", to be used by the licensed pharmacist to inform the patient about the emergency contraception drug therapy. The informed consent shall be signed by both the licensed pharmacist and the patient; and

(9) A screening checklist for emergency contraception pills, included in Exhibit "A", to be filled in by the patient and signed by both the licensed pharmacist and the patient.

(e) Any modification to an existing collaborative agreement previously delivered to the [department] board shall be submitted [also] to the [department] board by the licensed pharmacist at least ten working days prior to the intended implementation of the changed collaborative agreement.

(f) The board [of pharmacy] shall have the authority to reject a collaborative agreement if the board determines that the collaborative agreement is not in compliance with this section or is not in the best interests of the patient.

(g) The form of the collaborative agreement, the informed consent form, and the screening checklist for emergency contraception drugs attached as Exhibit "A" hereto, shall be made available by the board to licensed pharmacists and licensed physicians." [Eff and comp 12/25/04; am and comp ] (Auth: HRS §461-4.5) (Imp: HRS §461-1)

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 compilation are not underscored.

4. These amendments to and compilation of chapter 16-95, 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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KERRI OKAMURA  
Chairperson, Board of Pharmacy

APPROVED AS TO FORM:

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Deputy Attorney General

## EXHIBIT "A"

This Emergency Contraception Drug Therapy collaborative Agreement was developed using the collaborative agreements of Washington and California, who developed their guidelines from the American College of Obstetricians and Gynecologists and the World Health Organization and physicians, pharmacists and nurses. This Agreement has been approved by the Board of Pharmacy, State of Hawaii.

### Emergency Contraception Drug Therapy Collaborative Agreement

As a licensed physician authorized to prescribe medications in the State of Hawaii, I authorize the licensed pharmacist \_\_\_\_\_ to initiate emergency contraception drug therapy according to the terms and conditions that follows and according to Hawaii Administrative Rule §16-95-130. This Agreement provides written terms and conditions for initiating emergency contraception drug therapy in accordance with the laws and rules of the State of Hawaii. This agreement shall be delivered to the Department of Commerce and Consumer Affairs within seven (7) days of the execution of the agreement by the licensed pharmacist and the licensed physician. Any modification to an existing collaborative agreement previously delivered to the Department shall be delivered also to the Department by the licensed pharmacist at least ten working days prior to the intended implementation of the changed collaborative agreement.

**Purpose:** Permit the use of drug therapy within 120 hours of the patient having unprotected sexual contact and to ensure the patient receives adequate information to successfully complete drug therapy.

**Procedures:** When the patient's pharmacist requests drug therapy, the pharmacist shall assess the need for drug therapy and/or referral for contraceptive care and reproductive health care. The pharmacist shall determine the following:

1. The date of the patient's last menstrual period to rule out established pregnancy;
2. Whether the elapsed time since unprotected intercourse is less than 120 hours;
3. Whether the patient has been a victim of sexual assault; and
4. That the patient is at least 14 years of age.

**Referrals:** The licensed pharmacist shall refer the patient to the licensed physician for follow-up. If drug therapy services are not available at the pharmacy, the pharmacist shall refer the patient to another licensed pharmacist. Also, the pharmacist shall refer the patient to see either a medical doctor or family planning clinic provider if:

- A. The pharmacist cannot rule out that the patient is pregnant or if the elapsed time since the patient having unprotected intercourse is greater than 120 hours;

- B. The pharmacist is concerned that the patient may have been exposed to a sexually transmitted disease;
- C. The patient does not have a regular contraceptive method; and
- D. The patient does not have a health care provider and needs free or low cost family planning services.

If the pharmacist is concerned that the patient may have contracted a sexually transmitted disease through unprotected sexual activity and/or if the patient indicates that she has been sexually assaulted, the pharmacist may recommend referral to a medical doctor, a family planning clinic, a sexual assault treatment center, the police, or multiple referrals to these entities as the pharmacist may deem appropriate, while providing drug therapy.

While drug therapy can be used repeatedly without serious health risks, patients who request drug therapy shall be referred to a medical doctor or family planning clinic provider for consideration of the use of a regular contraceptive method.

*Drug Therapy product selection:* The pharmacist shall provide medication from a list of drugs approved for emergency contraception by the United States Food and Drug Administration ("FDA") listed in Exhibit "B" and agreed upon as part of this collaborative Agreement. Plan B® shall be the preferred drug therapy. The list shall include emergency contraceptives and adjunctive medications for treatment of nausea and vomiting associated with emergency contraceptives. The list shall be maintained at the pharmacy and shared by all participants in the agreement. Along with the medication, the pharmacist shall provide drug information concerning dosage, potential adverse effects, and follow-up contraceptive care.

*Prescription labeling:* The label placed on the drug therapy product shall contain the names of both the pharmacist and the physician signers of this Agreement.

*Documentation:* Each drug therapy prescription authorized by the physician and initiated by the pharmacist shall be documented in a patient profile.

**Training:** The pharmacist who participates in the drug therapy shall have received appropriate training that includes programs approved by the American Council of Pharmaceutical Education (ACPE), curriculum-based programs from an ACPE-accredited college of pharmacy, state or local health department programs, or programs recognized by the board of pharmacy. Training must include procedures listed above, the management of the sensitive communications often encountered in emergency contraception, service to minors, quality assurance, referral for additional services, documentation and a crisis plan if the pharmacy operations are disrupted by individuals opposing the emergency contraception.

Further, the pharmacist agrees to participate in the Emergency Contraception Hotline.

**Term of the Agreement:** This agreement shall be effective for a period of at least two years from the date of its delivery to the Department unless rescinded in writing earlier by either the physician or the pharmacist, with written notice to the other and to the Department, or unless the Pharmacy Board invalidates such Agreement or changes the terms of the agreement. After the two year period, the agreement shall continue to be valid month to month unless rescinded, invalidated, or changed as provided herein. The licensed pharmacist or the licensed physician, who rescinds the agreement, shall notify the Department within three business days of the rescission. At the time the collaborative agreement is rescinded, the licensed pharmacist shall not have prescriptive authority to dispense emergency contraceptives until another collaborative agreement with a physician is completed and delivered to the department.

**Additional Terms or Limitations:**

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Physician's Name: \_\_\_\_\_

Street Address/City/State; Zip Code: \_\_\_\_\_

Phone Number: \_\_\_\_\_ MD License No.: \_\_\_\_\_

Physician's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Pharmacist's Name: \_\_\_\_\_

Street Address/City/State/Zip Code where Drug Therapy will occur (include name of pharmacy, pharmacy license number, pharmacist-in-charge and pharmacist-in-charge license number):

\_\_\_\_\_ Pharmacist License No.: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone Number: \_\_\_\_\_

Pharmacist's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Pharmacist-in-charge's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

(Name of Pharmacy)  
**Informed Consent for Emergency Contraception Drug Therapy**

Name of Patient: \_\_\_\_\_ Age: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone No.: \_\_\_\_\_

First day of last menstrual period: \_\_\_/\_\_\_/\_\_\_  
Mo/Day/Year

Date of unprotected sexual intercourse: \_\_\_/\_\_\_/\_\_\_  
Mo/Day/Year

If more than one exposure, give date and time of initial exposure: \_\_\_\_\_

Was this sexual intercourse the result of sexual assault? Yes \_\_\_ No \_\_\_

Before giving your consent, be sure that you understand both the pros and cons of Emergency Contraceptive Pills (ECPs). If you have any questions, we will be happy to discuss them with you. Do not sign your name at the end of this form until you have read and understood each statement and the pharmacist has answered your questions and can witness your signature. This information is confidential.

**I understand that:**

1. ECPs contain hormones that act to prevent pregnancy. These pills are taken after having unprotected sex (sex without birth control or birth control failure). They are to be used as an emergency treatment only and not as a routine method of contraception.
2. ECPs work by preventing or delaying the release of an egg from the ovary, preventing fertilization, or causing changes in the lining of the uterus that may prevent implantation of a fertilized egg. I understand that if I am already pregnant, ECPs will not stop or interfere with the pregnancy.
3. ECP treatment should be started within 5 days (120 hours) of unprotected sex.
4. ECPs are not 100 percent effective.
5. Reactions to the pills may include: nausea and vomiting, fatigue, dizziness, breast tenderness, early or late menstrual period.
6. I should see a physician if my period has not started within 3 weeks after treatment.
7. I should use condoms, spermicides, or a diaphragm, or continue taking birth control pills to prevent pregnancy if I have sex before my next period. After that, I should continue to use a method of contraception.
8. ECPs will not protect me from or treat sexually transmitted diseases and I should seek diagnosis and treatment if I am concerned because I have had sex with a new partner in the past month or my partner has had sex with someone else in the past month or my partner has a sexually transmitted disease.
9. I understand that it may be useful to share this treatment information with my regular health care provider. Therefore, I request and authorize the release of this information to the following designated provider:

Yes \_\_\_ No \_\_\_

10. Designated Provider's Name: \_\_\_\_\_

Patient's Signature: \_\_\_\_\_ Date: \_\_\_\_\_



**Informed Consent for Emergency Contraception Drug Therapy Continued**

Pharmacist's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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Pharmacist only: Referral made to: \_\_\_\_\_

Rx No.: \_\_\_\_\_

## Screening Checklist for Emergency Contraceptive Pills

Patient Name: \_\_\_\_\_

Today's Date: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Age: \_\_\_\_\_

### These questions are to help us understand what you need right now.

1. Have you had unprotected sex during the last 5 days?      Yes \_\_\_      No \_\_\_
2. On what day(s) did you have unprotected sex in the past 5 days?  
Monday \_\_\_ Tuesday \_\_\_ Wednesday \_\_\_ Thursday \_\_\_ Friday \_\_\_ Saturday \_\_\_ Sunday \_\_\_
3. What time of day was the first unprotected sex in the past 5 days?      \_\_\_ A.M.      \_\_\_ P.M.
4. Have you had unprotected sex prior to the last five days?      Yes \_\_\_      No \_\_\_
5. When was the first day of your last menstrual period? Date: \_\_\_\_\_
6. Are you currently using a method of birth control?  
No method \_\_\_      Birth Control Pills \_\_\_  
Condoms \_\_\_      Diaphragm \_\_\_\_\_  
IUD \_\_\_\_\_      Other Method \_\_\_\_\_  
Contraceptive Shot (Depo Provera®) \_\_\_
7. Did you have unprotected sex as a result of sexual assault (or, did anyone pressure you into having sex when you didn't want to?)  
Yes \_\_\_      No \_\_\_
8. Would you like a pharmacist to call you in the next couple of weeks to see how you're doing?  
Yes \_\_\_      No \_\_\_  
If yes, what time of the day is best to call? \_\_\_\_\_ A.M.      \_\_\_\_\_ P.M.

Patient's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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### For Pharmacist Use Only

Date and time of interview: \_\_\_\_\_ EC Provided: Yes \_\_\_ No \_\_\_

Referral made for (check all that apply):

Contraception follow-up \_\_\_      Evaluation for STD \_\_\_      Other medical evaluation \_\_\_  
Pregnancy counseling \_\_\_      Assault Counseling \_\_\_      No referrals made \_\_\_\_\_

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Date and time of callback: \_\_\_\_\_ Referrals made then? \_\_\_\_\_

Pharmacist's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

# EXHIBIT "B"

## Brands and Doses

### Of Oral Contraceptive Pills Used For Emergency Contraception

There are now two prepackaged emergency contraceptive pill products (dedicated emergency contraceptive pills) as well as 14 brands of birth control pills that can be used for emergency contraception.

Brand	Manufacturer	Pills per Dose (Treatment schedule is one dose ASAP after unprotected intercourse, and a second dose 12 hours later)	Ethinyl Estradiol per Dose (mcg)	Levonorgestrel per Dose (mg)*
<i>Dedicated Emergency Contraceptive Pills</i>				
Plan B	Women's Capital Corporation	1 white pill	0	0.75
Preven	Gynetics	2 blue pills	100	0.50
<i>Oral Contraceptive Pills</i>				
Levora	Watson	4 white pills	120	0.60
Levlen	Berlex	4 light-orange pills	120	0.60
Lo/Ovral	Wyeth-Ayerst	4 white pills	120	0.60*
Low-Ogestrel	Watson	4 white pills	120	0.60*
Nordette	Wyeth-Ayerst	4 light-orange pills	120	0.60
Alesse	Wyeth-Ayerst	5 pink pills	100	0.50
Aviane	Duramed	5 orange pills	100	0.50
Levlite	Berlex	5 pink pills	100	0.50
Ogestrel	Watson	2 white pills	100	0.50*
Ovral	Wyeth-Ayerst	2 white pills	100	0.50*
Tri-Levlen	Berlex	4 yellow pills	120	0.50
Triphasil	Wyeth-Ayerst	4 yellow pills	120	0.50
Trivora	Watson	4 pink pills	120	0.50

Adapted from RA Hatcher, et al, *Contraceptive Technology: Seventeenth Revised Edition*. New York NY: Ardent Media, 1998. Updated by Felicia Steward, MD 2001.

\* This progestin in Ovral, Lo/Ovral, Low-Ogestrel, Ogestrel and Ovrette is norgestrel, which contains two isomers only one of which (levonorgestrel) is bioactive; the amount of norgestrel in each dose is twice the amount of levonorgestrel.

## Anti-nausea Treatment Options for use with Emergency Contraception

Drug	Dose	Timing of Administration
<i>Non-prescription Drugs</i>		
Meclizine hydrochloride (Dramamine, Bonine)	One or two 25mg tablets	1 hour before first EC dose; repeat if needed in 24 hours
Diphenhydramine hydrochloride (Benadryl)	One or two 25mg tablets or capsules.	1 hour before first EC dose; repeat as needed every 4-6 hours.
Dimenhydrinate (Dramamine)	One or two 50mg tablets or 4- 8 teaspoons liquid	30 minutes to 1 hour before first ECP dose; repeat as needed every 4-6 hours.
Cyclizine hydrochloride (Marezine)	One 50mg tablet	30 minutes before first EC dose; repeat as needed every 4-6 hours.

Adapted from RA Hatcher, et al, *Contraceptive Technology: Seventeenth Revised Edition*. New York NY: Ardent Media, 1998. Updated by Felicia Steward, MD 2001.

## Exhibit 7

**PART IX. ASSISTANCE TO SMALL BUSINESSES**

**§103D-901 Definitions.** As used in this part, unless the context clearly requires otherwise:

"Geographic bidding" includes the use of a competitive solicitation which provides for one or more contracts to be awarded on a regional or geographic basis with the State.

"Small business" means a business that is independently owned and defined by detailed criteria pursuant to rules adopted by the policy board. The policy board shall adopt rules defining "small business" through detailed criteria that may include the number of employees and similar factors used by the United States Small Business Administration. [L Sp 1993, c 8, pt of §2; am L 1994, c 186, §17; am L 1997, c 352, §23; am L 2005, c 50, §3]

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**§103D-902 Small business assistance.** The policy board shall adopt rules to assist small businesses in learning how to do business with the State. [L Sp 1993, c 8, pt of §2; am L 1997, c 352, §23]

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**§103D-903 Duties of the chief procurement officer.** (a) The chief procurement officer may coordinate the implementation of this part with any similar programs offered by the department of business, economic development, and tourism or any other governmental body.

(b) The chief procurement officer may provide staff to provide service to designated state agencies to assist small businesses in learning how to do business with the State.

(c) In carrying out this part, the chief procurement officer may:

(1) Give special publicity to procurement procedures and issue special publications designed to assist small businesses in learning how to do business with the State;

(2) Compile, maintain, and make available source lists of small businesses for the purpose of encouraging procurement from small business;

(3) Include small businesses on solicitation mailing lists;

(4) Develop and conduct training programs to assist small businesses;

(5) Reduce the level or change the types of bonding normally required or accept alternative forms of security;

(6) Make special provisions for progress payments;

(7) Establish the goal that twenty per cent of the State's annual purchasing expenditure be awarded to small business; and

(8) Impose mandatory evaluation criteria designed to encourage the use of small business as subcontractors on large contracts not susceptible to performance by small business. [L Sp 1993, c 8, pt of §2; am L 2005, c 50, §4]

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**[§103D-904] Geographic bidding.** The chief procurement officer may utilize geographic bidding in providing goods, services, and construction to best meet the needs of the State. [L Sp 1993, c 8, pt of §2]

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§103D-905 REPEALED. L 1994, c 186, §26.

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**[\$103D-906] Preference for small businesses; set-asides; use as subcontractors.** The policy board shall adopt rules to promote the growth and development of small businesses that shall include:

- (1) Set-asides for small businesses in appropriate classifications of requirements suitable to performance by small businesses; and
- (2) Criteria designed to encourage the use of small businesses as subcontractors on large contracts.  
[L 2005, c 50, §2]

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