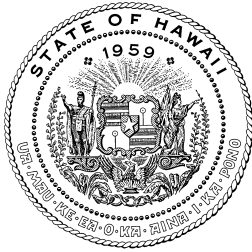


Small Business Regulatory Review Board Meeting

November 19, 2020

10:00 a.m.



SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)
No. 1 Capitol District Building, 250 S. Hotel Street, Fifth Floor, Honolulu, HI 96813
Mailing Address: P.O. Box 2359, Honolulu, HI 96804
Email: dbedt.sbrrb.info@hawaii.gov
Website: sbrrb.hawaii.gov

Tel: 808 586-2419

AGENDA

Thursday, November 19, 2020 ★ 10:00 a.m.

David Y. Ige
Governor

Mike McCartney
DBEDT Director

Members

Robert Cundiff
Chairperson
O'ahu

Mary Albitz
Vice Chairperson
Maui

Garth Yamanaka
2nd Vice Chairperson
Hawai'i

Harris Nakamoto
O'ahu

Dr. Nancy Atmospera-
Walch
O'ahu

William Lydgate
Kaua'i

James (Kimo) Lee
Hawai'i

Jonathan Shick
O'ahu

Taryn Rodighiero
Kaua'i

Mark Ritchie for
Director, DBEDT
Voting Ex Officio

As authorized under the Governor's October 13, 2020, Fourteenth Proclamation Related to the COVID-19 Emergency, the meeting will be held remotely with Board Members, Staff, and Agencies participating via online meeting venue. The public can participate in the meeting via video-audio livestream; to join the meeting, go to:

<https://zoom.us/j/97762596961>

Copies of the Board Packet will be available on-line for review at: <https://sbrrb.hawaii.gov/meetings/agendas-minutes?yr=2020>.

An electronic draft of the minutes for this meeting will also be made available at the same location when completed.

Members of the public may submit written testimony via e-mail to: DBEDT.sbrrb.info@hawaii.gov. Please include the word "Testimony" and the subject matter following the address line. All written testimony should be **received no later than 4:30 p.m., Wednesday, November 18, 2020.**

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

I. Call to Order

II. Approval of October 15, 2020 Meeting Minutes

III. New Business – Before Public Hearing

- A. Discussion and Action on Proposed Amendments to Hawaii Administrative Rules (HAR) Title 13 Chapter 241, **Numbering of Vessels**, promulgated by Department of Land and Natural Resources – **Discussion Leader – Taryn Rodighiero**

IV. Old Business – After Public Hearing

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 12 Chapter 229, **General, Administrative and Legal Provisions**, promulgated by Department of Labor and Industrial Relations – **Discussion Leader** – **Mary Albitz**

V. Administrative Matters

- A. Discussion and Action on the Board’s Draft 2020 *Annual Report Summary* for Submission to the Hawaii State Legislature, under Section 201M-5(f), Hawaii Revised Statutes (HRS)
- B. Review of Proposed Board Meeting Dates for 2021
- C. Update on the Board’s Upcoming Advocacy Activities and Programs in accordance with the Board’s Powers under Section 201M-5, HRS

VI. Next Meeting: Thursday, December 10, 2020 at 10:00 a.m.

VII. Adjournment

II. Approval of October 15, 2020 Meeting Minutes

Small Business Regulatory Review Board

MEETING MINUTES - HELD THROUGH VIDEO-CONFERENCING - **DRAFT** October 15, 2020

I. **CALL TO ORDER:** Chair Cundiff called the meeting to order at 10:02 a.m., with a quorum present, which was open to the public.

MEMBERS PRESENT:

- Robert Cundiff, Chair
- Mary Albitz, Vice Chair
- Garth Yamanaka, 2nd Vice Chair
- Harris Nakamoto
- Jonathan Shick
- James (Kimo) Lee
- Taryn Rodighiero
- Mark Ritchie

ABSENT MEMBERS:

- Dr. Nancy Atmospera-Walsh
- William Lydgate

STAFF: DBEDT

Dori Palcovich
Jet'aime Alcos

Office of the Attorney General

Jennifer Polk-Waihee

II. **APPROVAL OF September 17, 2020 MINUTES**

Mr. Ritchie made a motion to accept the September 17, 2020 meeting minutes, as presented. Vice Chair Albitz seconded the motion, and the Board members unanimously agreed.

III. **NEW BUSINESS** - Before Public Hearing

A. Discussion and Action on the Proposed Amendments to HAR Title 19 Chapter 133.2, Periodic Inspection of Vehicles, promulgated by Department of Transportation (DOT)

Mr. John Lovstedt, DOT's Highway Safety Manager, explained that because there are so many proposed amendments to the rules that he will only convey those changes that have small business impact.

One of the more noteworthy changes is that while no new fines will be imposed, the rules warn that should violations occur, fines will be incurred. Also, the existing 15-day requirement for setting up safety check appointments was removed for efficiency purposes.

In terms of stakeholder outreach, Mr. Lovstedt noted that it is not DOT's intent to take stations out of the vehicle inspection program but to ensure that stations are performing inspections correctly in order to remain in the program. As such, county officers who monitor the stations to ensure inspections are performed in compliance with the rule requirements, and are the

conduit for outreach by providing instruction and receiving feedback. Once feedback between the officers and county inspectors is received, DOT and the inspectors subsequently meet and use the recommendations and feedback to help amend and draft proposed rules.

Regarding the difference between station managers and station inspectors, station managers oversee the station inspectors working at a specific station. Further, the inspector is the person who inspects the cars for the safety checks, whereas in most cases, the manager generally does not do inspections. Discussion leader Mr. Lee thanked Mr. Lovstedt for the comprehensive listing of the rules' proposed changes.

Mr. Ritchie made a motion to move the proposed amendments to public hearing. Mr. Shick seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on the Proposed Amendments to HAR Title 19, Chapter 133.2, Fine, Suspension or Revocation of an Official Inspection Station or Inspector's Certification, promulgated by DOT

Mr. Lovstedt explained that penalties were readjusted in the rules regarding the classification levels. While the current rules provide for "major, minor, and serious" categories, the proposed rules require only two classifications, "major and minor." The rule proposal also breaks out station violations and inspector violations.

One significant rule change is the fine schedule. In reviewing the schedule, Chair Cundiff suggested DOT consider creating fines as a percentage of revenue. Mr. Lovstedt responded that the attorney general's office stated that fines could not be based on percentage of revenue. However, in response to Chair Cundiff's suggestion to create tiers for proposed fines with corresponding dollar amounts based on the station's revenue, Mr. Lovstedt believed this was a good suggestion and will check with the attorney general's office.

It was explained that the anticipated \$17,000 in fines collected per year is minimal as DOT attempts to do as much instruction as possible rather than impose fines and penalize station owners. An example of when a fine is imposed is where a station is using a broken or faulty device and unable to properly detect a defect in the vehicle. In such a case, the station will be suspended indefinitely from performing inspections until such time that a device is fixed.

Mr. Ritchie made a motion to move the proposed amendments to public hearing. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

IV. ADMINISTRATIVE MATTERS

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

No updates to the Board's advocacy activities and programs were provided.

V. NEXT MEETING - Thursday, November 19, 2020 at 10:00 a.m.

VI. ADJOURNMENT – Vice Chair Albitz made a motion to adjourn the meeting and Mr. Ritchie seconded the motion; the meeting adjourned at 10:36 a.m.

DRAFT

III. New Business – Before Public Hearing

A. Discussion and Action on the Proposed Amendments to Hawaii Administrative Rules (HAR) Title 13, Chapter 241, Numbering of Vessels, promulgated by Department of Land and Natural Resources (DLNR)

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

Date: _____

Department or Agency: _____

Administrative Rule Title and Chapter: _____

Chapter Name: _____

Contact Person/Title: _____

E-mail: _____ Phone: _____

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

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

Yes No

If "Yes," provide details: _____

I. Rule Description:

New Repeal Amendment Compilation

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

Yes No

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

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

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

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

Yes No

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

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

Yes No

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

* * *

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

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

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

7. How the agency involved small business in the development of the proposed rules.
 - a. If there were any recommendations made by small business, were the recommendations incorporated into the proposed rule? If yes, explain. If no, why not.

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

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

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

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

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

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

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

* * *

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

This Statement may be found on the SBRRB Website at: <http://dbedt.hawaii.gov/sbrrb/resources/small-business-impact-statements>

**Hawaii Administrative Rule Chapter 13-241
Pre-Public Hearing Small Business Impact Statement Attachment**

2. a. Current Fees (HAR § 13-241-25 & 13-241-26), which were last increased in January 2010:

For all persons except boat manufacturers and boat dealers:

Issuance of an original certificate of number for a vessel less than 20 feet in length	\$18.00
Issuance of an original certificate of number for a vessel 20 feet or more in length	\$30.00
Issuance of an original certificate of number for an amphibious vehicle	\$20.00
Annual renewal of a certificate of number for a vessel less than 20 feet in length	\$15.00
Annual renewal of a certificate of number for a vessel 20 feet or more in length	\$20.00
Annual renewal of a certificate of number for an amphibious vehicle	\$15.00
Re-registration of a vessel whose certificate of number has been cancelled	Same as the fee for issuance of a new certificate of number
Transfer of a certificate of number	\$10.00
Replacement of a certificate of number	\$10.00
Replacement of registration decals	\$10.00 each
Modify a certificate of number	\$10.00

For boat manufacturers and boat dealers:

Issuance of a new certificate of number for any vessel	\$25.00
Renewal of a certificate of number for any vessel	\$20.00
Reissuance of a certificate of number that has been cancelled	\$25.00
Replacement of a certificate of number	\$10.00
Replacement of registration decals	\$10.00 each

Penalties:

Failure to obtain a certificate of number as required by the chapter	Applicable fee + 10% penalty fee each month
Failure to renew a certificate of number on or before its expiration date	Applicable fee + 10% penalty fee each month
Failure to submit paperwork for transfer of a certificate of number	Applicable fee + 10% penalty fee each month
Service charge for any dishonored negotiable instrument	\$12.00

**Hawaii Administrative Rule Chapter 13-241
Pre-Public Hearing Small Business Impact Statement Attachment**

2. b. Proposed Fees (HAR § 13-241-25 & 13-241-26):

For all persons except boat manufacturers and boat dealers:

Issuance of an original certificate of number for a vessel less than 20 feet in length	\$25.00 (38%)
Issuance of an original certificate of number for a vessel 20 feet or more in length	\$40.00 (33%)
Issuance of an original certificate of number for an amphibious vehicle	\$30.00 (50%)
Annual renewal of a certificate of number for a vessel less than 20 feet in length	\$20.00 (33%)
Annual renewal of a certificate of number for a vessel 20 feet or more in length	\$35.00 (75%)
Annual renewal of a certificate of number for an amphibious vehicle	\$25.00 (66%)
Re-registration of a vessel whose certificate of number has been cancelled	2x the fee for issuance of a new certificate of number (200%)
Transfer of a certificate of number	Unchanged
Replacement of a certificate of number	Unchanged
Replacement of registration decals	Unchanged
Modify a certificate of number	Unchanged
Changing status of registration to "stored"	\$25.00 (new fee)
Issuance of an original certificate of title	\$20.00 (new fee)
Transfer of a certificate of title	\$20.00 (new fee)
Replacement of a certificate of title	\$50.00 (new fee)
Record a supplemental lien on a previously titled vessel	\$10.00 (new fee)
Convenience fee for renewing a certificate of number online	\$5.00 each (new fee)

For boat manufacturers and boat dealers:

Issuance of a new certificate of number for any vessel	\$40.00 (60%)
Renewal of a certificate of number for any vessel	\$30.00 (50%)
Reissuance of a certificate of number that has been cancelled	\$40.00 (60%)
Replacement of a certificate of number	Unchanged
Replacement of registration decals	Unchanged

Penalties:

Failure to obtain a certificate of number as required by the chapter	2x the applicable fee
Failure to renew a certificate of number on or before its expiration date	2x the applicable fee

Hawaii Administrative Rule Chapter 13-241
Pre-Public Hearing Small Business Impact Statement Attachment

Failure to submit paperwork for transfer of a certificate of number	2x the applicable fee
Failure to obtain a certificate of title as required by HRS 200A	3x the applicable fee (new fee)
Failure to notify the department within 5 business days that a vessel has been lost, destroyed, abandoned, sunk, or that the owner's address on the title has changed	\$50.00 (new fee)
Service charge for any dishonored negotiable instrument	\$50.00 (316%)

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to and compilation of
Chapter 13-241
Hawaii Administrative Rules

[Date of adoption by agency]

1. Chapter 13-241, Hawaii Administrative Rules, is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 11

OCEAN RECREATION AND COASTAL AREAS

PART 2

BOATING

CHAPTER 241

NUMBERING AND TITLING OF VESSELS

Historical note

- §13-241-1 [~~Operation of certain unnumbered vessels prohibited~~] Definitions
- §13-241-2 [~~Exemption from numbering provisions of this chapter~~] Vessel numbering and titling requirements; operation of certain vessels prohibited.
- §13-241-3 Numbering system
- §13-241-4 Number display
- §13-241-5 Application for number or title; contents; requirements

- §13-241-6 Authority to grant or refuse applications
- §13-241-7 Certificate of number and certificate of title; contents
- §13-241-8 Certificate of number [~~to be carried aboard vessel,~~] and certificate of title; description
- §13-241-9 Cancellation of certificate [~~and voiding~~] of number; withdrawal of number
- §13-241-10 Period of validity and renewal of certificate of number; dormant certificate of number; stored vessels
- §13-241-11 Owner required to report change of address, ownership, loss, destruction or abandonment of vessel
- §13-241-12 New owner must secure new certificate of number and certificate of title
- §13-241-13 Registration [~~stickers (decals)~~] decals
- §13-241-14 Stolen or mutilated certificates or registration [~~stickers (decals)~~] decals
- §13-241-15 Falsified, unauthorized, or removed identification number, registration decal, or title
- §13-241-16 Improper use of certificate of number or certificate of title
- §13-241-17 Seizure of documents and [~~stickers (decals)~~] decals
- §13-241-18 Numbering of manufacturer's and dealer's vessels
- §13-241-19 Livery boat number
- §13-241-20 [~~Documented vessels not to be numbered~~] Repealed
- §13-241-21 [~~Issue~~] Issuance of certificate of number [~~by department's agents~~] ; certificate of title to only be issued by the department
- §13-241-22 [~~Authorization of~~] Third-party vessel registration agents
- §13-241-23 Public records
- §13-241-24 Transmittal of statistical information
- §13-241-25 Fees and charges
- §13-241-26 Negotiable instruments; service charge

Historical note. [~~This chapter is based on the numbering of vessels effective November 5, 1981, and as amended thereafter by the Department of Transportation, Harbors Division.~~] The administrative jurisdiction for recreational boating and related vessel activity was transferred from the Department of Transportation, Harbors Division, to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, effective July 1, 1992, in accordance with Act 272, SLH 1991. Hawaii became a vessel title state effective July 1, 2018, with the enactment of Act 46, SLH 2018, relating to the Uniform Certificate of Title for Vessels Act. [Eff 2/24/94; am and comp]

§13-241-1 [~~Operation of certain unnumbered vessels prohibited.~~ Every undocumented vessel on the waters of the State, except those expressly exempted as provided in section 13-241-2 shall be numbered. No person shall place, operate or give permission for the placement or operation of any undocumented vessel on the waters of the State unless the vessel is numbered in accordance with this chapter, except as provided for in section 13-241-2.] **Definitions.** As used in this chapter, unless otherwise provided or the context clearly indicates otherwise:

"Background" means the portion of the hull or superstructure, or a specially provided backing plate, upon which displayed numbers are placed, but shall not include any border, trim, outlining or shading of the numerals or letters.

"Block characters of good proportion" means numerals and letters that are vertical, not slanted, and of a plain style, not script or of varying thickness and preferably without border, trim, outlining or shading. Border, trim, outlining, or shading of characters shall be disregarded in determining height of the character, or its style or color contrast. Numerals and letters shall be of one solid color exclusive of any colored border, trim, outlining or shading which will form a good contrast with the color of the background and so maintained as to be clearly visible and legible.

"Contrast with the color of the background" means that numerals and letters in a displayed number is of such a different color from that of the background as to be distinctly visible and legible. [Eff 2/24/94; am and comp] (Auth: HRS §200-24) (Imp: HRS §§200-24, 200-31)

§13-241-2 [~~Exemption from numbering provisions of this chapter.~~] **Vessel numbering and titling requirements; operation of certain vessels prohibited.**

(a) Except as provided in subsections (b) and (c):

- (1) Every undocumented vessel in or on the waters of the State shall be numbered in accordance with this chapter;
- (2) No person shall place, operate, or give permission for the placement or operation of any undocumented vessel, or any vessel whose number has been cancelled, in or on the waters of the State unless the vessel is properly numbered in accordance with this chapter; and
- (3) No person shall place, operate, or give permission for the placement or operation of any vessel whose certificate of number has expired, has become dormant, or has the status of "stored vessel", in or on the waters of the State.

(b) A vessel shall not [~~he~~] be required to be numbered under this chapter if it is any of the following:

- (1) A vessel which has a valid marine document issued by the United States Coast Guard or any federal agency successor thereto.
- (2) A vessel already covered by a number in full force and effect which has been issued to it pursuant to federal law or a federally approved numbering system of another jurisdiction; provided that the vessel shall not have remained within this State for a period in excess of sixty days.
- (3) A vessel from a country other than the United States, provided that the vessel has not been in the waters of the State for a period in excess of sixty days.
- (4) A vessel whose owner is the United States, used exclusively in the public service and is clearly identifiable as such a vessel.
- (5) A vessel's lifeboat if the boat is used solely for lifesaving purposes. This exemption does not include craft carried aboard a vessel and used for other than lifesaving purposes.

- (6) A vessel belonging to a class of boats which has been exempted from numbering by the department after it has found that the numbering of vessels of such class will not materially aid in their identification; and, if any agency of the federal government has a numbering system applicable to the class of vessels to which the boat in question belongs, after the department has further found that the vessel would also be exempt from numbering if it were subject to federal law.
- (7) A vessel manually propelled.
- (8) A vessel eight feet or less in length propelled solely by sail.
- (9) A motorboat used exclusively for racing.
- (10) A vessel operating under a valid temporary certificate of number.
- (11) A motorboat whose propulsion machinery produces less than five horsepower.

~~(b)~~ (c) A vessel documented by the U.S. Coast Guard, or any federal successor agency thereto, shall be prohibited from obtaining a certificate of title pursuant to chapter 200A, Hawaii Revised Statutes, and shall be prohibited from being numbered under this chapter. A vessel documented by the U.S. Coast Guard may only be titled pursuant to chapter 200A, Hawaii Revised Statutes, or numbered under this chapter, or both, when the department receives satisfactory proof as may be necessary to determine that the vessel has been deleted from documentation in accordance with title 46, part 67, code of federal regulations, as amended.

(d) Nothing in this section shall prohibit the numbering of any undocumented vessel hereunder upon request by the owner even though such vessel is exempt from the numbering requirements of this chapter. [Eff 2/24/94; am and comp] (Auth: HRS §§200-24, 200-31) (Imp: HRS §§200-24, 200-31)

§13-241-3 Numbering system. (a) In the event that an agency of the United States shall have in force an overall system of identification numbering for vessels within the United States, the numbering system employed pursuant to this chapter by the department shall be in conformity therewith.

(b) The vessel identification numbers issued pursuant to these rules shall consist of three parts. The first part shall consist of the capital letters HA identifying the State of Hawaii as the state of principal use. The second part shall consist of not more than four arabic numerals. The third part shall consist of not more than two capital letters. Each part will be separated from the other by hyphens or equivalent spaces. For example: HA-1240-AD; HA-124-AA; HA 1240 AD. The hyphen or space shall be equal to the width of any letter except "I" or any numeral except "1."

(c) Since the letters "I," "O" and "Q" may be mistaken for arabic numerals, all letter sequences using "I," "O" and "Q" shall be omitted. Objectionable words formed by the use of two or three letters will not be used. [Eff 2/24/94; comp
] (Auth: HRS §200-24) (Imp: HRS §§200-24,
200-31)

§13-241-4 Number display. (a) The identification number awarded to any vessel as indicated in the certificate of number shall be painted on, attached to, or otherwise permanently displayed on each side of the bow (i.e. the forward half of the hull) or on the permanent superstructure located on the forward half of the hull which is as nearly vertical as possible where such number may be easily observed and provide maximum opportunity for identification, or ~~when~~ , if due to vessel configuration, the above will not provide ready identification, on a bracket or fixture firmly attached to the forward half of the vessel. ~~The~~ A displayed number shall not be placed on the obscured underside of a flared bow where the angle is such that

the numbers cannot be easily seen from another vessel or ashore. The numerals and letters in a displayed number shall read from left to right, shall be in block characters of good proportion, and ~~[must]~~ shall measure not less than three full inches from top to bottom. A displayed number meets the sizing requirements of this section if it is clearly visible and legible from a distance of at least one hundred feet away. ~~[The phrase "block characters of good proportion" means that the numerals and letters are vertical, not slanted, and of a plain style, not script or of varying thickness and preferably without border, trim, outlining or shading. Border, trim, outlining, or shading of character shall be disregarded in determining height of the character, or its style or color contrast. The numerals and letters shall be of one solid color exclusive of any colored border, trim, outlining or shading which will form a good contrast with the color of the background and so maintained as to be clearly visible and legible. The phrase "contrast with the color of the background" means that the numerals and letters in the number will be of such a different color from that of the background as to be distinctly visible and legible. As used in this section, background shall mean that portion of the hull or superstructure, or a specially provided backing plate, upon which the numbers are placed, but shall not include any border, trim, outlining or shading of the numerals or letters. The test of legibility and for the determination of adequacy of contrast is the ability to read the letters and numbers at approximately one hundred feet distance.]~~

(b) No numerals, letters, or devices other than those used in connection with the ready identification numbers issued to a vessel shall be carried on the forward half of the vessel and no devices which might interfere with the ready identification of the vessel by its number shall be carried on any part of the vessel.

(c) No identification numbers other than those awarded to a vessel as indicated in a valid

certificate of number that is in full force and effect shall be displayed on the forward half of any undocumented vessel. Any other previously awarded number or numbers awarded in a certificate of number that has expired or been cancelled or withdrawn shall be covered or removed. [Eff 2/24/94; am and comp] (Auth: HRS §200-24) (Imp: HRS §§200-24, 200-31)

§13-241-5 Application for number or title; contents; requirements. (a) The application for a certificate of title shall be made in accordance with chapter 200A, Hawaii Revised Statutes. The application for a certificate of number shall be made by the owner to the department or any agency authorized by the department in accordance with procedure prescribed by the department on the form it prescribes and shall contain:

- (1) The name, driver's license or civil identification number, residence, and mailing address of the owner.
- (2) [~~Date of birth of owner.~~] The owner's date of birth.
- (3) [~~Present citizenship of owner.~~] The owner's present citizenship.
- (4) [~~State~~] The state in which the vessel is principally used.
- (5) [~~Location~~] The location where vessel is principally kept.
- (6) [~~Present state or Coast Guard number on vessel,~~] The present U.S. Coast Guard number, if any, or number if numbered in a state other than Hawaii.
- (7) [~~Date~~] The date the vessel entered Hawaii, if numbered in another state.
- (8) [~~Date~~] The date the vessel was first operated by the applicant.
- (9) A description of the vessel including, but not limited to, the following so far as [~~it exists:~~] they exist: hull material (wood, steel, aluminum, plastic, other), type of

propulsion (outboard, inboard, inboard-outboard, sail, other), type of fuel (gas, diesel, other), length of vessel, make, model, type, manufacturer, builder, maker, year built, and country in which the vessel was built.

(10) [~~The names and addresses of any lienholders in the order of their priority.~~

~~(11) Statement] A statement as to [use] the primary operation of the vessel [~~(pleasure, livery, government, youth group, dealer, manufacturer, commercial fishing, charter fishing, carrying passengers for hire, commercial other, other).~~] , including, but not limited to, charter fishing, commercial fishing, commercial passenger carrying, dealer demonstration, manufacturer demonstration, other commercial operation, pleasure, rent or lease (livery), or other.~~

[~~(12)~~ Builder's] (11) The manufacturer's or builder's hull identification number. Where there is no [~~builder's~~] hull identification number on the vessel or where a [~~builder's~~] hull identification number has been destroyed or obliterated, the [~~application~~] applicant shall [se] state so on the application.

[~~(13)~~] (12) Any further information the department reasonably requires: (1) to identify the vessel, (2) to enable a determination that the owner is entitled to a certificate of number, (3) to determine if a security interest in the vessel exists, or (4) for the use by federal[7] or other state or local agencies.

[~~(14)~~] (13) A certification of ownership by the applicant.

[~~(15)~~ Signature of owner.] (14) The applicant's physical signature. Except as otherwise required by law, an electronic signature shall not be acceptable for the purposes of this section.

~~(b) [If the application refers to a vessel purchased from or through a boat dealer, it shall contain the name and address of any lienholder holding a security interest created or reserved at the time of the sale and the date of this security agreement and be signed by the boat dealer as well as the owner. The boat dealer shall promptly mail or deliver the application to the department.~~

~~(e)] Every initial application for a certificate of number shall be accompanied by:~~

(1) Appropriate evidence establishing proof of ownership of the vessel by the applicant. Proof of such ownership shall only be established for the purposes of this section by one of the following:

(A) ~~[Certificate of sale signed by the seller, showing the name and address of the seller, name and address of the purchaser, the location and date of sale, and description of the vessel.]~~ A certificate of title issued in accordance with chapter 200A, Hawaii Revised Statutes.

(B) A properly endorsed document indicating title to the vessel, if the vessel has been numbered and issued a title by another state or country.

~~[(C) Where neither subparagraphs (A) nor (B) is appropriate, an affidavit executed by the applicant fully setting forth the facts to support applicant's claim of ownership in the vessel.~~

~~(D) The department, if not satisfied with the evidence submitted as proof of ownership, may require additional information and documents, including any additional statements under oath to establish proof of ownership.]~~

(2) A statement under oath, or ~~[the certificate of]~~ a certification by a person authorized by the department, that the builder's hull identification number, if any, of the vessel

has been inspected and found to conform to the description given in the application, or any other proof of the identity of the vessel the department reasonably requires.

The department, if not satisfied with the evidence submitted as proof of ownership, may require additional information and documents, including any additional statements under oath, as is necessary to establish purported ownership of a vessel.

(d) All requirements governing the application for certificate of number shall apply to livery (rental) boats, except that the description of the motor, if any, and type of fuel need not be completed on the application in every case where the engine is not rented as part of the boat.

(e) ~~[Application]~~ An application for certificate of number for a dealer's or manufacturer's ~~[vessels]~~ vessel shall not require a description of the vessel ~~[since the number issued may be transferred from one vessel to another]~~. In lieu of the description, the word "manufacturer" or ~~["dealer,"]~~ "dealer", whichever is appropriate, shall be plainly indicated on the application.

(f) The department shall require any person applying for a certificate of number or title pertaining to a foreign built vessel to furnish evidence of payment of custom duties upon reasonable belief that any United States Customs duty pertaining to the vessel has not been paid.

~~(g) [A person applying for a certificate of number for a vessel that is presumptively five net tons or more (thirty two feet in length, eight feet in beam, and two and one half feet in depth, or greater) and to be used in coasting trade or commercial fishing shall be granted a temporary certificate of number valid for thirty days. The applicant shall be notified of the necessity for having his vessel measured. If, on admeasurement, the vessel is found to be less than five net tons, a certificate of number may be awarded. If the vessel is found to be five net tons or over, the temporary certificate shall be cancelled and notice of the action by the department~~

~~shall be sent to the Coast Guard. An application for any vessel of five net tons or over shall not be accepted and notice of the action by the department shall be sent to the Coast Guard.~~

~~(h)~~ An application for a certificate of number pertaining to a foreign built vessel or a vessel owned by a person not a citizen of the United States and to be used in ~~[coasting]~~ coastwise trade or commercial fishing shall not be accepted, and notice of the action by the department shall be sent to the U.S. Coast Guard.

~~(i)~~ (h) An application for issuance of a certificate of number pertaining to a vessel previously owned in whole or in part by a citizen of the United States and purchased by a person not a citizen of the United States shall be accompanied by evidence that the transaction was approved by the ~~[United States]~~ U.S. Maritime Administration, except in those instances where federal laws and regulations do not require approval. [Eff 2/24/94; am and comp] (Auth: HRS §§200-24, 200A-29) (Imp: HRS §§200-24, 200-31, 200A-29)

§13-241-6 Authority to grant or refuse applications. (a) The department shall examine and determine the genuineness, regularity, and legality of ~~[very]~~ every application for numbering of a vessel and any other application lawfully made to the department relating to this chapter and may in all cases conduct any investigation as may be deemed necessary or require additional information. The department shall reject any application if not satisfied with the genuineness, regularity, or legality thereof or the truth of any statement contained therein, or for any other reason, when authorized by law.

(b) The issuance of a certificate of number under this chapter, or a certificate of title under chapter 200A, Hawaii Revised Statutes, shall not in any way be construed that the department is warranting or guaranteeing the title ~~[of]~~ to the vessel ~~[as it appears on]~~ named in the certificate. [Eff 2/24/94; am

and comp] (Auth: HRS §§200-24, 200A-29) (Imp: HRS §§200-24, 200-31, 200A-29)

§13-241-7 Certificate of number and certificate of title; contents. (a) [The] A certificate of number shall contain the following information:

- (1) The name and address of the owner.
- (2) Manufacturer's or builder's hull identification number, if any.
- (3) Hull material [~~wood, steel, aluminum plastic, other~~]. (aluminum, fiberglass, plastic, rubber/vinyl/canvas, steel, wood, other).
- (4) Type of propulsion [~~outboard, inboard, inboard-outboard, sail, other~~]. (inboard, outboard, pod drive, sterndrive, other).
- (5) Type of fuel [~~gasoline, diesel, other~~]. (electric, diesel, gasoline, other).
- (6) Length of vessel.
- (7) Make, model, type or builder of vessel and year built.
- (8) Statement as to use [~~pleasure, livery, dealer, manufacturer, commercial fishing, vessel carrying passenger for hire, commercial other, other~~]. (charter fishing, commercial fishing, commercial passenger carrying, dealer demonstration, manufacturer demonstration, other commercial operation, pleasure, rent or lease (livery), other).
- (9) Number issued to vessel.
- (10) Expiration date of certificate.
- (11) Notice [~~to~~] that the owner [~~that he~~] shall report within seven days changes of ownership or address and destruction or abandonment of vessel.
- (12) Notice that the operator shall:
 - (A) Always carry the certificate on vessel when in use.
 - (B) Report to the department all boating accidents in accordance with chapter 13-242.

(C) Stop and render aid or assistance if involved in a boating accident.

(13) Any other data considered necessary by the department.

(b) The description of the vessel will be omitted from the certificate of number awarded to a boat dealer or boat manufacturer pursuant to section 13-241-18 since the number and the certificate of number issued may be transferred from one vessel to another. In lieu of the description, the word "manufacturer" or "dealer", whichever is appropriate, will be plainly marked on each certificate.

(c) The description of the motor and type of fuel will be omitted from the certificate of number of a livery boat in any case where the motor is not rented with the vessel.

(d) In addition to the requirements of section 200A-9(a), Hawaii Revised Statutes, a certificate of title shall contain any other information considered necessary by the department. [Eff 2/24/94; am and comp] (Auth: HRS §§200-24, 200A-29) (Imp: HRS §§200-24, 200-31, 200A-29)

§13-241-8 Certificate of number [~~to be carried aboard vessel;~~] and certificate of title; description.

(a) The size and format of a certificate of number shall be [of pocket size and water resistant, as prescribed by the chairperson of the board of land and natural resources.] determined by the department. The operator of the vessel shall ensure that the certificate of number is readily available at all times for examination on the vessel for which it is issued, whenever the vessel is in operation.

(b) The size and format of a certificate of title shall be determined by the department. The owner shall not be required to keep the certificate of title on the vessel for which it is issued. [Eff 2/24/94; am 6/13/03; am and comp] (Auth: HRS §§200-24, 200-31, 200A-29) (Imp: HRS §§200-24, 200-31, 200A-29)

§13-241-9 Cancellation of certificate [and voiding] of number; withdrawal of number. (a) Except as provided in [~~subsection (b)~~] this section or as otherwise required by law, a number issued [~~under this chapter~~] to a vessel pursuant to this chapter shall be permanent.

(b) The chairperson [~~of the board of land and natural resources~~] may cancel a certificate of number [~~or withdraw a number~~] issued to a vessel under this chapter even though the action occurs before the expiration date of the certificate of number and regardless of whether or not the certificate of number is surrendered to [the issuing office. Certain causes] the department. Causes for cancellation of certificates of number [~~and withdrawing of number are:]~~ include, but are not limited to:

- (1) Issuance of a marine document by the U.S. Coast Guard for the same vessel.
- (2) False or fraudulent certification in an application for number.
- (3) [~~Failure to renew a certificate of number within one year of date of expiration.~~
- (4) ~~If a~~ The vessel to which the number is assigned is lost, destroyed, abandoned, sunk, or permanently removed from the State.
- [~~(5)~~] (4) Other reasons when necessary and proper to carry out this chapter.

(c) A vessel permanently removed from the State shall not have its certificate of number automatically cancelled, and the owner shall be responsible for any and all fees incurred and owed to the department.

(d) A certificate of number shall be automatically cancelled if the corresponding certificate of title is cancelled.

(e) Any vessel whose certificate of number has been cancelled shall also have its number automatically withdrawn. Any number that has been withdrawn shall be removed from further use, except that the board may reinstate a number that has been withdrawn. [Eff 2/24/94; am and comp

] (Auth: HRS §200-24) (Imp: HRS §§200-24, 200-31)

§13-241-10 Period of validity and renewal of certificate of number; dormant certificate of number; stored vessels.

(a) The original certificate of number initially issued to a vessel pursuant to this chapter shall continue in full force and effect for a period ending one year from the date of issuance of the certificate unless sooner terminated or discontinued in accordance with [these rules.] applicable rules or laws.

(b) If the owner named in a certificate of number is deceased, the certificate of number may be designated as "dormant" status upon submission of a valid death certificate to the department. Subject to compliance with the above, a certificate of number becomes "dormant" beginning on the date of the owner's death and ending on the date that the deceased owner's name is properly removed from the corresponding certificate of title. A vessel properly designated as "dormant" may maintain its assigned number past the expiration date on the vessel's certificate of number or may be assigned a new number.

(c) Any vessel not owned by or operated under the custody or control of a boat manufacturer or boat dealer, and which has a valid certificate of number issued pursuant to this chapter, may be stored; provided that:

- (1) An owner desiring to change the status of their vessel's certificate of number to or from "stored" shall make written application to the department on a form prescribed by it at least five business days before the desired date of the status change.
- (2) Changing the status of a certificate of number to or from "stored" shall not be effective until all applicable fees owed to the department are paid and the department approves the change in status.
- (3) The owner of a stored vessel shall surrender the last issued certificate of number to the department.

(4) The effective date for a certificate of number being changed to or from "stored" status shall only be the date approved by the department.

(d) Except for stored vessels and vessels with a dormant certificate of number, the following shall apply to all certificates of number:

(1) A certificate of number issued pursuant to this chapter may be renewed [at any time within a ninety day period preceding the] no earlier than ninety days before its expiration date. The same number shall be assigned if the renewal application is received within [a] one year after the expiration date of the certificate of number.

~~[(e)]~~ (2) A certificate of number renewed on or prior to the expiration date shall be valid for a period ending one year from the date of expiration of the certificate being renewed. A certificate of number renewed after the [date of] expiration [of the certificate being renewed] date shall be valid for a period ending one year from the date of [the certificate being renewed.] renewal.

~~[(d)]~~ (3) A renewal application received more than [a] one year after the date of expiration of the certificate of number shall be treated in the same manner as an application for an original number.

~~(e) [A certificate of number is void after the date of expiration indicated thereon.]~~ A renewal application for a certificate of number that has been cancelled or a number that has been withdrawn, or both, shall be treated in the same manner as an application for an original number.

(f) Fees that would be assessed pursuant to section 13-241-25, except those relating to stored vessels, may be waived by the department for the period that a vessel remains stored or a certificate of number remains dormant.

(g) Members of the U.S. Armed Forces on active duty, stationed or on order to be stationed in Hawaii, their spouses, and their dependents, shall be exempt from subsection (d); provided that this exemption shall only apply for the period that the U.S. Armed Forces member is on active duty and stationed in Hawaii, and the department receives satisfactory proof as may be necessary to determine such status.

(h) Only the owner or a co-owner named in a vessel's certificate of title or certificate of number, or a person who has been given the power of attorney for an owner or co-owner, established by satisfactory proof as may be necessary to determine such status, may renew a certificate of number or change the certificate of number to "stored" status. A person desiring to renew the certificate of number for a vessel shall, at minimum, provide the vessel's assigned number or hull identification number to be allowed to proceed with the renewal. [Eff 2/24/94; am and comp] (Auth: HRS §200-24) (Imp: HRS §§200-24, 200-31)

§13-241-11 Owner required to report change of address, ownership, loss, destruction or abandonment of vessel. (a) The owner of any vessel for which a certificate of number or certificate of title has been issued in accordance with this chapter or chapter 200A, Hawaii Revised Statutes, shall notify the department in writing within [~~seven~~] five business days if:

- (1) The vessel is documented by the U.S. Coast Guard; lost, destroyed, abandoned, or sunk; or permanently removed from the State; or
- (2) [~~The owner transfers all or any part of the owner's interest in such vessel, other than a security interest to another person or persons; or~~
- ~~(3)]~~ The owner's address no longer conforms to the address appearing on the certificate of number or certificate of title.

(b) The ~~[holder of a certificate of number,~~ owner, as a part of the notification required by subsection (a), shall furnish the department with the ~~[holder's] owner's~~ new address, if the ~~[holder's] owner's~~ address no longer conforms to the address appearing on ~~[the] a~~ certificate of number or certificate of title. If the change in status involves a transfer of ownership, the name and address of the new owner shall be included in the notification. ~~[A transfer by an owner is not effective until this section has been complied with and the owner has delivered possession of the vessel to the transferee.]~~ A notification required pursuant to this section sent by mail shall not be effective until the department receives the notification.

(c) The certificate of number for a vessel shall terminate if:

- (1) The vessel is documented by the U.S. Coast Guard, lost, destroyed, abandoned, sunk, or permanently removed from the State; or
- (2) The owner transfers all or any part of the owner's interest in the vessel, other than a security interest to another person or persons. [Eff 2/24/94; am and comp
] (Auth: HRS §§200-24, 200A-29)
(Imp: HRS §§200-22, 200-24, 200-31, 200A-29)

§13-241-12 New owner must secure new certificate of number and certificate of title. (a) The new owner of all or any part of the interest in any vessel for which a certificate of number or certificate of title has been issued pursuant to this chapter shall, within ~~[seven]~~ ten business days after acquiring same, make application to the department upon forms prescribed by it, for transfer or revision, whichever is appropriate, of the certificate of number or certificate of title issued to such vessel. ~~[The application shall contain, in addition to the information prescribed in section 13-241-5 for certificate of number applications a statement concerning the date of purchase by the applicant and~~

~~the name and address of the person from whom the vessel or an interest therein was acquired.]~~ The amended [~~certification~~] certificate of number shall, if in full force and effect at the time of the transfer, remain valid for so long as the original certificate of number would have been valid under this chapter. Except as provided in subsection (b), unless [~~the~~] an application is made [and fee] , the appropriate fees are paid, and an amended certificate of number is obtained within [seven days,] the time limit prescribed by this subsection, the vessel shall be deemed to be without certificate of number, and it shall be unlawful for any person to operate the vessel on the waters of the State until a valid certificate is issued.

(b) Subsection (a) notwithstanding, if a boat dealer (1) buys a vessel for which a certificate of number has been awarded pursuant to this chapter, (2) procures the certificate of number from the owner, (3) holds the vessel for resale, and (4) notifies the department of the purchase within [~~seven~~] ten business days after delivery of the vessel, the boat dealer need not apply to the department for transfer of the certificate of number issued to the vessel. A copy of the dealer's notification of purchase to the department shall, together with the certificate of number, be available at all times for examination on the vessel for which issued, whenever the vessel is in operation. The boat dealer, upon transferring the vessel to another person, shall promptly mail or deliver the certificate of number to the department with the transferee's application for a new certificate of number as prescribed in subsection (a).

(c) Every boat dealer shall maintain, for a minimum of three years, a written record, in [~~the form the chairperson of the board of land and natural resources, prescribes,~~] such a form prescribed by the department, of every vessel bought, sold or exchanged, or received for sale or exchange. The record shall [~~for the purpose of enforcing these rules,~~] be open to inspection by a representative of the department or law enforcement personnel during reasonable business

hours for the purposes of verifying compliance with this subsection. [Eff 2/24/94; am and comp] (Auth: HRS §§200-24, 200A-29) (Imp: HRS §§200-24, 200-31, 200A-29)

§13-241-13 Registration [~~stickers (decals)~~]

decals. (a) Every vessel required to be numbered in the State shall display [~~stickers issued by the department~~] registration decals to identify the vessel as [~~currently registered.~~] having a valid certificate of number. No decals other than decals issued by the department shall meet the requirements of this subsection.

(b) Registration [~~stickers~~] decals shall have a dominant-colored border around their edge which shall change from year to year. Effective January 1, 1981, the color of the border shall be blue; international orange in 1982; green in 1983; red in 1984; and the cycle to be repeated commencing in 1985.

(c) Registration [~~stickers~~] decals shall be securely affixed on each side of the vessel three inches aft (towards the stern) of, and directly in line with, the registration numbers required by this chapter, and shall be [~~so~~] maintained so as to be clearly [~~legible and~~] visible and legible at all times. Only current registration [~~stickers~~] decals shall be [~~displaced.~~] displayed. [~~All previous year stickers will~~] Any registration decals that are expired or otherwise invalid shall be covered or removed. [Eff 2/24/94; am and comp

] (Auth: HRS §200-24) (Imp: HRS §§200-24, 200-31)

§13-241-14 Stolen or mutilated certificates or registration [~~stickers (decals)~~] **decals.** (a) If any [~~certificates~~] certificate of number or registration [~~sticker~~] decals becomes lost, destroyed, stolen, mutilated, or illegible, the owner of the vessel for which the same was issued shall, within [~~seven~~] five business days of the occurrence, [~~forward to~~] notify the department [~~a report~~] in writing, describing the

circumstances of the loss or destruction and certifying ~~[to]~~ its loss ~~[together with]~~ .

(b) If the owner wishes to obtain a replacement certificate of number or registration decal, or both, the owner shall also submit a completed application form as prescribed by the department for the replacement of the certificate of number or registration ~~[sticker]~~ decal, or both. The duplicate certificate of number or registration ~~[sticker]~~ decal, or both, that are issued as a result of such application ~~[will]~~ shall replace the certificate of number or registration ~~[sticker so lost or destroyed. Any]~~ decal, or both.

(c) If an owner wishes to replace a certificate of number or registration ~~[sticker so mutilated as to be illegible]~~ decal, or both, due to mutilation, the owner shall ~~[be forwarded]~~ forward the mutilated certificate of number or registration decal, or both, to the department with the application for replacement. [Eff 2/24/94; am and comp

] (Auth: HRS §200-24) (Imp: HRS §§200-24, 200-31)

§13-241-15 Falsified, unauthorized, or removed identification number, registration decal, or title.

(a) No person shall buy, receive, operate, possess, sell, or dispose of a vessel with knowledge that an identification number or registration ~~[sticker]~~ decal on the vessel has been removed or falsified, or that the title has been falsified, with intent to avoid compliance with this chapter or to conceal or misrepresent the identity of the vessel or its owner.

(b) No person shall remove or falsify a vessel identification number or registration ~~[sticker]~~ decal or affix to a vessel an identification number or registration ~~[sticker]~~ decal not authorized by law for use on the vessel ~~[in order]~~ with the intent to avoid compliance with this chapter or to conceal or misrepresent the identity of the vessel or its owner.

[Eff 2/24/94; am and comp] (Auth: HRS §§200-24, 200A-29) (Imp: HRS §§200-24, 200-31, 200A-29)

§13-241-16 Improper use of certificate of number or certificate of title. (a) No person shall permit another not entitled to use or have possession of a certificate of number ~~[or]~~ , registration ~~[sticker.]~~ decal, or certificate of title.

(b) No person shall alter, forge, or counterfeit a certificate of number ~~[or]~~ , registration ~~[sticker.]~~ decal, or certificate of title.

(c) No person shall have possession of or use a certificate of number ~~[or]~~ , registration ~~[sticker.]~~ decal, or certificate of title knowing it to have been altered, forged, or counterfeited.

(d) No person shall use a false or fictitious name or address, make a false statement, or conceal any material fact in an application for a certificate of number or its transfer or in an application for a certificate of title. [Eff 2/24/94; am and comp] (Auth: HRS §§200-24, 200A-29) (Imp: HRS §§200-24, 200-31, 200A-29)

§13-241-17 Seizure of documents and ~~[stickers (decals).]~~ decals. The department ~~[is authorized to]~~ may take possession of any certificate of number, permit ~~[or]~~ , registration ~~[sticker]~~ decal, or certificate of title issued by it upon expiration, revocation, cancellation, or suspension thereof, or which is fictitious, or which has been unlawfully or erroneously issued. [Eff 2/24/94; am and comp] (Auth: HRS §§200-24, 200A-29) (Imp: HRS §§200-24, 200-31, 200A-29)

§13-241-18 Numbering of manufacturer's and dealer's vessels. (a) ~~[Numbering]~~ The numbering requirements of ~~[these rules]~~ this section shall apply to unnumbered vessels operated by boat manufacturers or boat dealers.

(b) A boat dealer or boat manufacturer, upon application to the department using forms prescribed

by it, may obtain a certificate of number as prescribed by the department for use in the testing, demonstration, delivery or transportation of unnumbered vessels that the applicant owns upon payment of a required fee for each certificate. A certificate of number so issued may be used by the applicant in the testing, demonstration, delivery or transportation of unnumbered vessels that the applicant owns by temporary placement of the number assigned by the certificates on the vessel so tested, demonstrated, delivered, or transported. The temporary placement of numbers shall otherwise be as prescribed by these rules.

(c) ~~[The boat manufacturer or boat dealer]~~ A boat dealer or boat manufacturer may have ~~[the]~~ a number, issued by the department, printed upon or attached to a movable sign or signs to be temporarily but firmly mounted upon or attached to an unnumbered vessel that the ~~[manufacturer or]~~ dealer or manufacturer owns being tested, demonstrated, delivered, or transported~~[, demonstrated or tested so long as]~~ provided that the [display] number being displayed meets the requirements of section 13-241-4.

(d) No person other than a boat dealer or boat manufacturer or ~~[a]~~ an authorized representative of a boat dealer or boat manufacturer shall display or use a boat dealer's or boat manufacturer's identifying number.

(e) No boat dealer or boat manufacturer or representative of a boat dealer or boat manufacturer shall use a boat dealer's or boat manufacturer's number for any purpose other than the ~~[purpose described]~~ purposes specified in subsection (b).

(f) The boat manufacturer or boat dealer may ~~[have]~~ be issued more than one certificate of number ~~[issued]~~ if the boat manufacturer or boat dealer is the owner of more than one vessel required to be numbered; provided that upon the sale of any such vessel by said boat manufacturer or boat dealer~~[, then a number shall be applied for by]~~ the new owner shall submit an application for a number and obtain a new number for the purchased vessel in the manner provided

for in these rules. [Eff 2/24/94; am and comp
] (Auth: HRS §200-24) (Imp: HRS §§200-24,
200-31)

§13-241-19 Livery boat number. A person who is engaged in the business of boat livery, upon proper application to the department upon forms prescribed by the department, may obtain a certificate of number for use on vessels so rented. [Eff 2/24/94; am and comp
] (Auth: HRS §200-24) (Imp: HRS §§200-24, 200-31)

~~§13-241-20 Documented vessels not to be numbered.~~ A vessel documented by the Coast Guard or any federal successor thereto shall not be numbered under this chapter. [Eff 2/24/94; R
] (Auth: HRS §§200-24) (Imp: HRS §§200-24, 200-31)

§13-241-21 [Issue] Issuance of certificate of number [by department's agents] ; certificate of title to only be issued by the department. The department [may] , and any third-party vessel registration agent who is properly authorized pursuant to section 13-241-22, shall have the authority to issue any certificate of number directly [or may authorize any person to act as agent for the issuance thereof. In the event that a person accepts such authorization, that person may be assigned registration stickers, a block of numbers, and certificates which, upon issuance in conformity with this chapter shall be valid as if issued directly by the department] , provided that third-party vessel registration agents shall only have the authority to issue and renew vessel certificates of number and shall be prohibited from processing vessel transfers. Only the department shall have the authority to issue certificates of title, and the department shall not delegate this authority. [Eff 2/24/94; am and comp

] (Auth: HRS §§200-24, 200A-29) (Imp:
HRS §§200-24, 200-31, 200A-29)

§13-241-22 [Authorization of] Third-party vessel registration agents. (a) ~~[Agents]~~ Persons who are not employees of the department and who are authorized [by the department] in accordance with this section to conduct vessel registration [of vessels] tasks shall be known as "third-party vessel registration agents."

(b) ~~[Vessel]~~ A third-party vessel registration [agents] agent's authority to issue and renew vessel certificates of number shall only be valid if they have been appointed by the chairperson [of the board of land and natural resources] and are in compliance with all requirements of this section.

(c) No compensation shall be given to third-party vessel registration agents for their services.

(d) ~~[Each vessel registration agent shall be bonded under a good and sufficient bond conditioned as deemed necessary, the premium to be paid by the State.]~~ Each third-party vessel registration agent properly authorized pursuant to this section may be assigned registration decals, a range of registration numbers, and blank certificates of number which, upon issuance in conformity with this chapter, shall be valid as if issued directly by the department.

(e) All moneys received by a third-party vessel registration agent [from registration of vessels] relating to issuance and renewal of vessel certificates of number shall be kept separate from any other funds of the agent, and all [the] such moneys received shall at all times belong to the State.

(f) Each third-party vessel registration agent shall have, and shall maintain as a condition of appointment, the following [qualifications]:

- (1) An established place of business[-] ;
- (2) Be engaged in [an] a business activity directly related to boating[-] ; and
- (3) A means of identification[,- which will] that clearly [indicate] indicates to the public the name of the business[,- the means of

~~identification to be required for each separate branch of the business which will be authorized to conduct registration of vessels.] and clearly indicates the third-party vessel registration agent's authorization from the department to issue and renew vessel certificates of number.~~

[Eff 2/24/94; am and comp

] (Auth: HRS §200-24) (Imp: HRS §§200-24, 200-31)

§13-241-23 Public records. [Records]

Notwithstanding any law to the contrary, records of the department made or kept pursuant to this chapter, or chapter 200A, Hawaii Revised Statutes, shall be public records. [Eff 2/24/94; am and comp

] (Auth: HRS §§200-24, 200A-29) (Imp: HRS §§200-24, 200-31, 200A-11, 200A-29)

§13-241-24 Transmittal of statistical

information. (a) In accordance with any written request duly made by an [authorized official or] employee of a government agency [of the United States], any information to be used for official business of the agency relating to numbered vessels, compiled or otherwise available to the department pursuant to this chapter, shall be transmitted to the [official] employee or agency [of the United States].

(b) In accordance with any written request made on a form prescribed by the department, any information relating to numbered vessels, compiled or otherwise available to the department pursuant to this chapter, may be transmitted to the requester; provided that the information requested will be used only for research or educational purposes. The department may require any information as necessary to verify the identity of the requester and the purpose for requesting information.

(c) In accordance with any written request duly made by a law enforcement agency or ocean safety

agency for official use only, the department may grant access to its database containing information on numbered vessels.

(d) The department may charge a fee pursuant to section 13-241-25(h) for providing information in accordance with this section. If any requester is found to be using information provided under this section for any unauthorized purposes, the department shall immediately revoke access to the information and any requests made by the offending requester, their agency, or their organization pursuant to this section shall automatically be denied for no less than two years from the date that the department revokes access to the information. [Eff 2/24/94; am and comp

] (Auth: HRS §200-24) (Imp: HRS §§200-24, 200-31)

§13-241-25 Fees and charges. (a) Except as provided in section 13-241-10, the department shall not waive any fees assessed pursuant to this section. The fees [~~to be charged by the department for registration, annual renewal, transfers, and duplicate certificates and registration stickers~~] for all vessels not owned by or operated under the custody or control of a boat manufacturer or boat dealer shall be as follows:

- (1) [~~Initial annual registration fee.~~] For the issuance of an original certificate of number:
 - (A) For each vessel less than twenty feet in length, [~~\$18.~~] \$25.00;
 - (B) For each vessel twenty feet or more in length, [~~\$30.~~] \$40.00; and
 - (C) For each amphibious vehicle licensed as a motor vehicle, [~~\$20.~~] \$30.00
- (2) [~~Annual certificate renewal fee.~~] For the annual renewal of a certificate of number:
 - (A) For each vessel less than twenty feet in length, [~~\$15.~~] \$20.00;
 - (B) For each vessel twenty feet or more in length, [~~\$20.~~] \$35.00; and

- (C) For each amphibious vehicle licensed as a motor vehicle, [~~\$15.~~] \$25.00.
- (3) [~~Reregistration fee.~~] For the [~~reregistration~~] re-registration of a vessel [~~, after a~~] whose certificate of number has been [~~cancelled or voided,~~] cancelled, two times the appropriate amount provided in paragraph (1);
- (4) [~~Transfer fee.~~] For the transfer of a certificate of number, [~~\$10,~~] \$10.00;
- (5) [~~Certificate and registration sticker replacement fee.~~] For the issuance of a replacement certificate of number or a replacement set of vessel registration [~~stickers, \$10~~] decals, \$10.00 each; [and]
- (6) [~~Certificate modification fee.~~] For modifying a certificate of number, [~~\$10.~~] \$10.00;
- (7) For changing the status of a certificate of number to or from "stored", \$25.00 each;
- (8) For an initial certificate of title, \$20.00;
- (9) For the transfer of a certificate of title, \$20.00;
- (10) For the issuance of a replacement certificate of title, \$50.00; and
- (11) To record a supplemental lien on a previously titled vessel, \$10.00.

(b) [~~For~~] The fees for vessels owned by or operated under the custody or control of a boat manufacturer or boat dealer, [~~the manufacturer or dealer shall pay, in lieu of the fees and charges provided for in subsection (a):~~] to be used by the boat manufacturer or boat dealer for demonstration purposes, shall be as follows:

- (1) [~~Boat manufacturer and boat dealer annual certificate fee.~~] For each new certificate of number, a fee of [~~\$25,~~] \$40.00;
- (2) [~~Annual certificate renewal fee.~~] For the annual renewal of a certificate of number, a fee of [~~\$20,~~] \$30.00;
- (3) [~~Certificate reissuance.~~] For the reissuance of a certificate of number after

a certificate of number has been canceled or voided, a fee of [~~\$25,~~] \$40.00; and

- (4) [~~Certificate and registration sticker replacement fee.~~] For the replacement of a certificate of number or registration [~~sticker,~~] decals, a fee of [~~\$10.~~] \$10.00 each.

(c) For all renewals of certificates of number accomplished online, a non-refundable convenience fee of \$5.00 shall be assessed.

(d) No fee shall be charged by the department for registration, transfer, or annual renewal relating to a vessel whose owner is the United States, the State, or a subdivision thereof.

~~[(d)]~~ (e) [A nonprofit corporation] An eleemosynary organization which has been certified to be tax exempt under sections 501(c)(1) or 501(c)(3) of the Internal Revenue Code of 1986, as amended, whose purposes relate to promoting the ability of children to do things for themselves, to train them in boating, water safety, scout-craft and camping, and to teach them patriotism, courage, self-reliance, and kindred virtues [shall not be required to pay] may be exempted by the department from paying the fees provided in this section [relating to] for vessels owned by the organization and used exclusively for the purposes of the organization.

~~[(e)]~~ (f) [Penalty fees.] The following penalties shall apply for certificates of number and certificates of title:

- (1) If the owner of a vessel fails to obtain a certificate of number as required by this chapter, [~~the applicable fee plus a penalty equal to one tenth of such fee shall~~] the fee for a new certificate of number shall be two times the fee that would be collected [from the owner for each month or fraction of a month the owner is late in registering].
- (2) If a certificate of number is not renewed on or before [~~the date on which it expires, the applicable annual renewal fee plus a penalty~~

~~equal to one-tenth of such fee shall]~~ its expiration date, the fee shall be two times the fee that would be collected [from the owner for each month or fraction of a month the owner is late in renewing] , except where the vessel ~~[has not been on the waters of the State]~~ is not located in the State or in waters of the State on and subsequent to the expiration date.

- (3) If the ~~[purchaser]~~ new owner of any vessel fails to ~~[apply for]~~ submit a timely application for transfer of the certificate of number relating to the vessel as required by section 13-241-12, [the applicable fee plus a penalty of ten per cent for each month or fraction thereof the owner is late in applying for the transfer shall be collected from the owner except where the vessel has not been on the waters of the State] the fee shall be two times the fee that would be collected, except where the vessel is not located in the State or in waters of the State on the date of purchase and subsequent to the purchase.
- (4) If the owner of a vessel fails to obtain a certificate of title as required by chapter 200A, Hawaii Revised Statutes, the fee for a new certificate of title shall be three times the fee that would be collected.
- (5) Any person who fails to provide the notification to the department required by section 13-241-11(a) within the specified time limit shall be assessed a penalty of \$50.00.
- (6) The penalty fees prescribed [in] by this section [are] shall be in addition to any other penalties imposed by the department or a court for violations of these rules.

~~[-(f)]~~ (g) [Payment of fee required prior to processing. No] In addition to the restrictions in section 200-31(b), Hawaii Revised Statutes, an application for a certificate of number, transfer or

renewal of certificate of number, ~~[or for a]~~ duplicate certificate of number ~~[or]~~ , duplicate registration ~~[stickers]~~ decal, certificate of title, transfer of certificate of title, duplicate or replacement certificate of title, or to record a lien on a certificate of title shall not be processed ~~[until the prescribed fees are paid.]~~ if:

- (1) The department has not received the notification required by section 13-241-11(a), if applicable;
- (2) The fees required by this section are not paid in full;
- (3) The applicant is delinquent in payment of any moneys due and payable to the department; or
- (4) The applicant has a pending citation for violation of any of the department's rules.

~~[(g)]~~ (h) ~~[Fees for furnishing information.]~~
Individuals or firms requesting an alphabetical or numerical listing of boat owners and information concerning their boats shall be charged a fee as prescribed by the chairperson~~[, board of land and natural resources]~~. [Eff 2/24/94; am 1/22/10; am and comp]
(Auth: HRS §§200-24, 200A-22, 200A-29) (Imp: HRS §200-32, 200A-7, 200A-22, 200A-29)

§13-241-26 Negotiable instruments; service charge. (a) The service charge for any dishonored check, draft, certificate of deposit, or other negotiable instrument ~~[is \$12.]~~ shall be \$50.00.

(b) Payment to and acceptance by the department of the service charge for a check, draft, certificate of deposit, or other negotiable instrument~~[7]~~ shall not be construed as a waiver of any violation of the Hawaii Penal Code, chapters 701 to 713, Hawaii Revised Statutes, or of these rules." [Eff 2/24/94; am and comp] (Auth: HRS §200-2) (Imp: HRS §200-2)

2. Material, except source notes, to be repealed is bracketed and stricken. New material is underscored.

3. The amendments to and compilation of chapter 13-241, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____ by the Board of Land and Natural Resources, and filed with the Office of the Lieutenant Governor.

SUZANNE D. CASE
Chairperson
Board of Land and Natural Resources

APPROVED AS TO FORM:

Deputy Attorney General

IV. Old Business – After Public Hearing

A. Discussion and Action on the Small Business Impact Statement After Public Hearing and Proposed Amendments to HAR Title 12 Chapter 229, General, Administrative and Legal Provisions, promulgated by Department of Labor and Industrial Relations

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

Department or Agency: Labor & Industrial Relations

Administrative Rule Title and Chapter: 12-229

Chapter Name: General, Administrative and Legal Provisions

Contact Person/Title: Bill Kunstman, Asst. to the Director

Phone Number: 808-586-8845

E-mail Address: william.g.kunstman@hawaii.gov Date: 11/09/2020

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

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

Yes No

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

I. Rule Description: New Repeal Amendment Compilation

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

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

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

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

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

Yes No

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

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

Yes No

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

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

HIOSH conducted stakeholder meetings before the pre-SBRRB meeting and post-meeting in order to open the changes up for comments.

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

No. There were no recommendations from stakeholders or other parties in relations to these rule changes.

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

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

Opinions and comments were solicited at both stakeholder meetings that were held before and after our initial SBRRB meeting. Comments were also received at the initial SBRRB meeting. No opinions or comments were given at the public hearing in person or in writing.

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

Comments received centered on improving operational efficiency to benefit stakeholders. No opinions or comments were given at the public hearing in person or in writing.

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

The B&E agency worked with the stakeholders on potential efficiencies, and incorporated these efficiencies in the agency's operational procedures. Stakeholders liked changes and had no more comments at 2nd mtg. No opinions or comments were given at the public hearing in person or in writing.

4. The number of persons who:

(i) Attended the public hearing: 0

(ii) Testified at the hearing: 0

(iii) Submitted written comments: 0

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

Yes No

(i) If "Yes," was the change adopted? Yes No

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

No request for changes were made.

Small Business Regulatory Review Board / DBEDT
Phone: (808) 586-2594 / Email: DBEDT.sbrrb.info@hawaii.gov
This statement may be found on the SBRRB Website at:

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

Small Business Regulatory Review Board

MEETING MINUTES - HELD THROUGH VIDEO-CONFERENCING September 17, 2020

I. **CALL TO ORDER:** Chair Cundiff called the meeting to order at 10:03 a.m., with a quorum present, which was open to the public.

MEMBERS PRESENT:

- Robert Cundiff, Chair
- Mary Albitz, Vice Chair
- Garth Yamanaka, 2nd Vice Chair
- Harris Nakamoto
- Dr. Nancy Atmospera-Walsh
- William Lydgate
- James (Kimo) Lee
- Taryn Rodighiero
- Mark Ritchie

ABSENT MEMBERS:

- Jonathan Shick

STAFF: DBEDT

Dori Palcovich
Jet'aime Alcos

Office of the Attorney General

Jennifer Polk-Waihee

II. **APPROVAL OF August 20, 2020 MINUTES**

Mr. Ritchie made a motion to accept the August 20, 2020 meeting minutes, as amended. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

III. **NEW BUSINESS - Before Public Hearing** September 17th 2020 Meeting Minutes

- A. Re-discussion and Action on the Proposed Amendments to Title 12, Subtitle 8 Hawaii Occupational Safety and Health (HIOSH) Division, Part 11 Elevators and Related Systems, Chapter 229 General, Administrative, and Legal Provisions, promulgated by Department of Labor and Industrial Relations (DLIR)

Discussion leader and Vice Chair Ms. Albitz requested that DLIR's HIOSH Administrator Mr. Norman Ahu provide an update from last month's meeting of the recent stakeholder meeting. Mr. Ahu stated that HIOSH followed-up on the Board's recommendation and met with the major stakeholders where a list of suggestions and improvements were agreed upon.

On September 11th a list of the agreed upon suggestions and improvements was sent to the stakeholders who were anxious to know when the improvements were to take effect. As a result of the mutual agreement all resolutions of violations will now be affirmed by the businesses when they are fixed, and permits will be sent out faster so that an efficiency of time for both HIOSH and the business owners can be accomplished.

Mr. Ahu added that there are still concerns relating to COVID-19 involving HIOSH's limited resources and the current restrictions for neighbor island travel. Due to the resignation of three inspectors, extended timeframes for inspections on neighbor islands were implemented. In the meantime, HIOSH will attempt to continue the work schedule as usual while keeping staff morale up.

Chair Cundiff noted that it was difficult to determine what changes were made to the rules since the last stakeholder meeting. Mr. Ahu responded that most of the agreed upon changes as a result of the stakeholder meeting were operational in nature. These changes are expected to improve upon HIOSH's efficiencies, which were deemed worthy in relation to the amount of the fee increases; the fees will be the same as presented during last month's meeting.

Chair Cundiff commended Mr. Ahu for the great amount of information presented in the packets. He and Vice Chair Albitz also thanked him for understanding the purpose of partaking in stakeholder meetings, which appears to have been used very wisely and productively. Mr. Ahu thanked the Board for its suggestion to meet prior to submitting the rules for public hearing.

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

C. Discussion and Action on Proposed New Chapters to HAR Title 17, as follows, promulgated by Department of Human Services (DHS)

1. Repeal of HAR Chapter 798.2 Child Care Services and Approval of New HAR Chapter 798.3 Child Care Payments

31:32 – Discussion leader, Mr. Nakamoto, stated that he recently met with DHS representatives to go over the key areas of the rules and the purpose of the proposed changes; he introduced Ms. Dana Balansag, Child Care Program Administrator from DHS's Benefit, Employment & Support Service Division.

Ms. Balansag explained that although Chapter 798.3 is new, it is substantially based on Chapter 798.2, which is being repealed. The new rules will comply with the federal law, Child Care Development Block Grant Act of 2014 (CCDBG). CCDBG is expected to improve upon the provisions of protecting the health and safety of childcare. It was noted that the federal government has allocated approximately \$20 to \$29 million to Hawaii for this program.

CCDBG helps support Hawaii's statewide childcare licensing program by regulating 900 licensed and registered childcare facilities and homes. It also provides annual childcare subsidy programs to over 3,000 low-income, working families, and provides over 5,000 children access to quality childcare options. Overall, the federal funds provide support and services to promote and ensure healthy childcare for these families and their children.

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

Amendment and Compilation of Chapter 12-229
Hawaii Administrative Rules

()

1. Chapter 12-229, Hawaii Administrative Rules, entitled "General, Administrative, and Legal Provisions", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 8

HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION

PART 11

ELEVATORS AND RELATED SYSTEMS

CHAPTER 229

GENERAL, ADMINISTRATIVE, AND LEGAL PROVISIONS

- §12-229-1 Scope and application
- §12-229-2 Definitions
- §12-229-3 Repealed
- §12-229-3.1 Codes incorporated and adopted by reference
- §12-229-4 Repealed
- §12-229-4.1 Installation and alteration permits

§12-229-1

§12-229-5	Repealed
§12-229-5.1	Permits to operate
§12-229-6	Repealed
§12-229-6.1	Fees
§12-229-7	Repealed
§12-229-7.1	Inspections and tests
§12-229-8	Repealed
§12-229-8.1	Rights and enforcement
§12-229-9	Repealed
§12-229-9.1	Complaints
§12-229-10	Repealed
§12-229-10.1	Reporting of accidents
§12-229-11	Repealed
§12-229-11.1	Investigations
§12-229-12	Repealed
§12-229-12.1	Violations and penalties
§12-229-13	Repealed
§12-229-13.1	Review and appeal
§12-229-14	Repealed
§12-229-14.1	Trade secrets
§12-229-15	Repealed
§12-229-15.1	Notifications of transfer and location
§12-229-16	Repealed
§12-229-16.1	Variances
§12-229-17	Records

Historical Note: Chapter 12-229 is based substantially on chapter 12-241, Hawaii Administrative Rules. [Eff 7/6/98; R 6/19/00]

§12-229-1 Scope and Application. This part contains general and administrative rules and legal provisions which apply to this part. This part applies to all elevators, escalators, moving walks, dumbwaiters, material lifts, lifts for the mobility impaired, personnel hoists, and amusement rides in the State, with the following exceptions:

- (1) Equipment or apparatus installed in private

- residences provided the equipment or apparatus is not accessible to the public or to other occupants in the building;
- (2) Coin or token operated amusement rides considered or known in the amusement trade as kiddie rides;
 - (3) Material hoists used to raise or lower materials during construction, alteration or demolition. (within the scope of ANSI A10.5); and
 - (4) Equipment or apparatus installed in buildings or structures wholly owned and operated by the United States government. [Eff 6/19/00; am and comp 6/30/14; comp 11/10/16; am and comp 2/15/19; comp] (Auth: HRS §394-4) (Imp: HRS §397-4)

§12-229-2 Definitions. As used in this part:

"Alteration" means any change to equipment, including parts, components, or subsystems other than maintenance, repair, or replacement.

"Amusement ride" means a mechanically or electrically operated device designed to carry passengers in various modes and used for entertainment and amusement.

"ANSI" means the American National Standards Institute.

"ANSI/American Society of Safety Engineers A10.4" means ANSI/ASSE, Personnel Hoists and Employee Elevators on Construction and Demolition Sites, as adopted and incorporated by reference in section 12-229-3.1.

"Appeals board" means the labor and industrial relations appeals board, department of labor and industrial relations.

"Approved" means approved by the department.

"Appurtenance" means a device installed on and used in the normal operation of an elevator, escalator, or kindred equipment.

"ASME" means American Society of Mechanical Engineers.

"ASME A17.1" means ASME A17.1, Safety Code for Elevators and Escalators, as adopted and incorporated by reference in section 12-229-3.1.

"ASME A17.3" means ASME A17.3, Safety Code for Existing Elevators and Escalators, as adopted and incorporated by reference in section 12-229-3.1.

"ASME A17.6" means ASME A17.6, Standard for Elevator Suspension, Compensation and Governor Systems, as adopted and incorporated by reference in section 12-229-3.1.

"ASME A18.1" means ASME A18.1, Safety Standard for Platform Lifts and Stairway Chairlifts, as adopted and incorporated by reference in section 12-229-3.1.

"ASTM" means American Society for Testing and Materials.

"ASTM-F24" means ASTM-F24 1997 standard on amusement rides and devices.

"Attorney general" means the attorney general of the State of Hawaii or any of the attorney general's deputies.

"Authority Having Jurisdiction" or "AHJ", means the director of labor and industrial relations or the director's designee.

"Authorized inspection agency" means the department of labor and industrial relations, elevator inspection section.

"Building code" means the currently adopted, applicable county code in the revised ordinances of the applicable county, or the code adopted by the State of Hawaii for state buildings.

"Certificate of competency" means a certificate issued to a person who has passed the examination prescribed by the director.

"Contractor" means any person, firm, or corporation installing, repairing, or servicing any amusement ride, elevator, or kindred equipment or structure inspected pursuant to chapter 397, HRS.

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

"Director" means the director of the department

of labor and industrial relations or the director's designee.

"Discrepancy" means the non-conformance to codes, standards, rules, or regulations required by this part.

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

"Elevator" means a hoisting and lowering mechanism equipped with a car that moves within guides and serves two or more fixed landings, and is classified by elevator types as described in ASME A17.1, as adopted and incorporated by reference in section 12-229-3.1.

"Elevators and related systems" means elevators and kindred equipment and amusement rides.

"Existing installation" means any device or equipment where the application for the installation was properly filed with the department before the effective date of this chapter.

"HAW" means the registration number assigned to an elevator and kindred equipment or amusement ride by the AHJ.

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

"IBC" means the International Building Code, as adopted and incorporated by reference in section 12-229-3.1.

"Installation" means a complete elevator or kindred equipment, including its hoistway, hoistway enclosures and related construction, and all machinery and equipment necessary for its operation.

"Installation or alteration permit" means a document, which may be electronic, issued by the department authorizing the installation or alteration of an elevator or kindred equipment, or the department approval of a new amusement ride.

"Kindred equipment" means escalators, moving walks, dumbwaiters, permanently installed material lifts, platform lifts, inclined lifts, stage lifts, stairway chairlifts, personnel hoists, and any other similar mechanized equipment used to convey people in

places other than a public right-of-way, but does not include amusement rides.

"May" means not mandatory.

"New installation" means any device or equipment that is not an existing installation or an existing installation that is being relocated.

"NFPA" means the National Fire Protection Association.

"NFPA 1, UFC" means the NFPA 1, Uniform Fire Code, as adopted and incorporated by reference in section 12-229-3.1.

"NFPA 70" means NFPA 70, National Electrical Code, as adopted and incorporated by reference in section 12-229-3.1.

"Operating permit" means a permit issued by the department authorizing the operation of an elevator, kindred equipment, or amusement ride.

"Order" means a command to perform a mandatory act issued by the department.

"Overtime" means hours outside a regular eight-hour working day.

"Owner" means any person, firm, or corporation with legal title to any amusement ride, and elevator and kindred equipment inspected pursuant to chapter 397, HRS.

"Permit to operate" means a document, which may be electronic, issued by the department authorizing the operation of an elevator, kindred equipment, or an amusement ride.

"Qualified elevator inspector" means an elevator inspector employed by the department holding a valid certificate of competency issued by the department and a Qualified Elevator Inspector certification that meets the criteria of the American Society of Mechanical Engineers and the standards for the qualification of elevator inspectors of the American National Standards Institute. The certificate of competency is valid only while the inspector is employed by the department.

"Regular operating permit" means an operating permit that is not indicated as temporary.

"Shall" means mandatory.

"Unsafe" means potential exposure to a recognized hazard.

"Violation" means the failure to comply with any citation, notice, or order of the department, or rule or standard promulgated under chapter 397, HRS. [Eff 6/19/00; am and comp 6/30/14; am and comp 11/10/16; am and comp 2/15/19; comp] (Auth: HRS §§397-4, 397-6) (Imp: HRS §§397-4, 397-6)

§12-229-3 Repealed. [R 6/30/14]

§12-229-3.1 Codes incorporated and adopted by reference. The following codes are incorporated and adopted by reference and made a part of this chapter and shall apply to elevators, kindred equipment, and amusement rides in this part, unless otherwise modified by the rules pertaining to elevators, kindred equipment, and amusement rides:

- (1) ANSI/ASSE A10.4-2007, Personnel Hoists and Employee Elevators on Construction and Demolition Sites, [~~as copyrighted and~~ published in 2007 by American National Standards Institute, Inc. [~~7, 25 West 43rd Street, New York, NY 10036~~]; ASME A17.1-2010/CSA-B44-10, Safety Code for Elevators and Escalators, [~~as copyrighted and~~ published in 2010 by the American Society of Mechanical Engineers [~~7, Three Park Avenue, New York, NY 10016-5990~~]; ASME A17.3-2011, Safety Code for Existing Elevators and Escalators, [~~as copyrighted and~~ published in 2011 by the American Society of Mechanical Engineers [~~7, Three Park Avenue, New York, NY 10016-5990~~];
- (2) ASME A17.5-2011, Elevator and Escalator Electrical Equipment, [~~as copyrighted and~~ published in 2011 by the American Society of Mechanical Engineers [~~7, Three Park Avenue,~~

- ~~New York, NY 10016-5990];~~
- (3) ASME A17.6-2010, Standard for Elevator Suspension, Compensation and Governor Systems, [~~as copyrighted and~~] published in 2010 by the American Society of Mechanical Engineers [~~, Three Park Avenue, New York, NY 10016-5990];~~
 - (4) ASME A18.1-2011, Safety Standard for Platform Lifts and Stairway Chairlifts, [~~as copyrighted and~~] published in 2011 by the American Society of Mechanical Engineers [~~, Three Park Avenue, New York, NY 10016-5990];~~
 - (5) International Building Code, 2012 edition, [~~as copyrighted and~~] published in 2012 by the International Code Council, Incorporated [~~, 500 New Jersey Avenue, 6th Floor, Washington, DC 20001];~~
 - (6) ICC A117.1-2009, Accessible and Usable Buildings and Facilities, [~~as copyrighted and~~] published in 2010 by the International Code Council, Incorporated [~~, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001];~~
 - (7) NFPA 1, Uniform Fire Code, 2009 Edition, [~~as copyrighted and~~] published in 2009 by the National Fire Protection Association [~~, 1 Batterymarch Park, Quincy, MA 02269-7471];~~
 - (8) NFPA 72, National Fire Alarm and Signaling Code, 2010 edition, [~~as copyrighted and~~] published in 2010 by the National Fire Protection Association [~~, 1 Batterymarch Park, Quincy, MA 02269-7471];~~
 - (9) NFPA 13, Standard for the Installation of Sprinkler Systems, 2010 edition, [~~as copyrighted and~~] published in 2010 by the National Fire Protection Association [~~, 1 Batterymarch Park, Quincy, MA 02269-7471];~~ and
 - (10) NFPA 70, National Electrical Code, 2011 edition, as published in 2011 by the National Fire Protection Association [~~, 1 Batterymarch Park, Quincy, MA 02269-7471].~~
[Eff and comp 6/30/14; comp 11/10/16; am and

comp 2/15/19; am and comp]
(Auth: HRS §397-4) (Imp: HRS §397-4)

§12-229-4 Repealed. [R 6/30/14]

§12-229-4.1 Installation and alteration permits.

(a) No person shall install, construct, reconstruct, relocate, or make an alteration to any elevator, kindred equipment, or amusement ride subject to this part without first obtaining an installation or alteration permit from the department.

The owner shall be responsible for contracting the work with a licensed elevator contractor, and shall ensure that the contractor obtains all permits and inspections required by this part. The contractor shall be responsible for the safe operation of equipment during the installation, alteration, or relocation, until a permit to operate has been issued by the department. An amusement ride owner shall register the new apparatus or an alteration by submitting an application for review and registration.

An application on a form provided by the department shall be submitted and approved prior to commencement of work. The application shall include:

- (1) Applicant's name (elevator contractor licensed to perform the work), business address and license number, expiration date of the license, name and contact information of the licensed mechanic or supervisor in charge of the work;
- (2) Building name and complete address, including island and zip code, of the installation or alteration;
- (3) The name and complete address of the legal owner of the elevator, kindred equipment, or amusement ride;
- (4) The anticipated start date of the installation or alteration and the

- anticipated completion date;
- (5) The type of equipment to be installed or altered, manufacturer of the equipment, maximum rise and number of floors;
 - (6) The plans and specification for installation or alteration of elevators and kindred equipment together with the building details that are pertinent to the installation;
 - (7) Copies of engineering data, tests, and laboratory reports, and any other pertinent information deemed necessary by the department;
 - (8) For amusement rides, the application to review, approve, and register the new apparatus shall be submitted on a form authorized by the department and shall include manufacturers' drawings, and engineering and test data; and
 - (9) Any other information indicated as required by the application.

(b) Applications to install, alter, or register must be accompanied by the payment of the appropriate installation or alteration processing fee for each conveyance subject to this part as per the schedules in Exhibit A, titled "Elevator and Kindred Equipment Installation and Alteration Fees", dated [~~January 1, 2019,~~] January 1, 2021, which is made a part of this chapter and located at the end of this chapter, and Exhibit B, titled "Elevator and Kindred Equipment Inspection Fees", dated [~~January 1, 2019,~~] January 1, 2021, which is made a part of this chapter and located at the end of this chapter.

- (1) Refunds of the initial installation or alteration processing fee minus the department's cost to review the application thus far may be refunded upon written or electronic request to the department. A refund of the initial installation or alteration processing fee may be granted upon satisfactory showing that the withdrawal or amendment of the application was due to circumstances beyond the control

of the applicant; and

- (2) No refunds will be issued for expired permits.

(c) Only a person who is licensed to engage in the business of installing or repairing elevators and kindred equipment by the contractors license board of the Hawaii department of commerce and consumer affairs may apply for an installation permit or alteration permit, except the application to install a personnel hoist may be made by a licensed construction contractor and the application to register an amusement ride may be made by the owner.

(d) All alteration work on elevators and kindred equipment requires an alteration permit prior to the work being performed. Alteration work includes:

- (1) All alteration to elevators and kindred equipment as described in ASME A17.1, section 8.7;
- (2) Any alterations that requires the equipment or conveyance to be tested by the department prior to being returned to service, including:
 - (A) The replacement or repair of any part or parts that would require recalibration or testing per ASME A17.1, section 8.7; or
 - (B) Work performed on components or equipment affecting or necessary for fire safety (e.g., cab interiors, systems associated with fire recall, etc.); and
- (3) Any alteration, renovation, or change to the original design of the car's interior.

(e) The application shall be deemed approved if not acted on by the department within thirty calendar days following the receipt of the completed application. The maximum period of time for the department to act on an application for installation or alteration established pursuant to this section shall be extended in the event of a national disaster, state emergency, or union strike that would prevent

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the applicant or the department from fulfilling application review requirements until the time the emergency conditions improve or are reasonably under control.

(f) Installation or alteration permits issued by the department shall be posted in a conspicuous place on the jobsite near the elevator, kindred equipment, or amusement ride prior to the start of any work being done. They shall remain posted until the department has witnessed all acceptance tests and issued an operating permit for the elevator or kindred equipment.

(g) Installation or alteration permits shall expire within one year of the issuance date if the installation or alteration work described on the application has not yet commenced. Otherwise, the permit is valid for a period of three years.

(h) All new elevators and kindred equipment shall have the Hawaii registration number (HAW) assigned by the department painted on or permanently attached to both the car top crosshead and the controller. The owner is responsible for having the HAW number painted on or attached to the device or equipment, and ensuring that the number remains legible. [Eff and comp 6/30/14; am and comp 11/10/16; am and comp 2/15/19; am and comp]
(Auth: §397-4) (Imp: HRS §397-4)

§12-229-5 Repealed. [R 6/30/14]

§12-229-5.1 Permits to operate. (a) The department shall issue a "permit to operate" for any elevator, kindred equipment, or amusement ride where the inspection and tests required by the department show that the equipment has been designed and installed in accordance with the requirements of chapter 397, HRS, and its related rules, and are in compliance with this part. It shall be a violation for

any person, firm, association, partnership, or corporation to operate an elevator, kindred equipment, or amusement ride regulated by this part unless a permit for the operation has been issued by the department and the permit remains in effect.

(b) A permit to operate an elevator or related systems shall be issued only after a qualified inspector has determined that the equipment, device or apparatus meets all applicable requirements of this part. A permit to operate elevators or related systems shall be valid per the schedules in Exhibit C, titled "Inspection and Test Intervals (In Months)", dated January 1, 2017, which is made a part of this chapter and located at the end of this chapter, unless revoked sooner, and may be renewed only upon satisfactory completion of an inspection by a qualified inspector. A valid permit may be extended for cause by the department if so requested in writing by the owner or contractor prior to the expiration date.

(c) The owner, or the owner's duly appointed agent, shall be responsible for:

- (1) The safe operation and proper maintenance of elevators and related systems after the installation or alteration has been approved and an initial permit to operate has been issued;
- (2) Conducting all periodic or maintenance tests required by this part;
- (3) Arranging for inspection of closed buildings and not readily accessible elevators and related systems by qualified inspectors. Elevators and kindred equipment not inspected as a result of the owner's failure to provide convenient access shall be considered removed from service and shall comply with section 12-229-7.1(b)(4); and
- (4) Requesting and scheduling with the department all safety tests in accordance with the schedule in Exhibit C, titled "Inspection and Test Intervals (In Months)", dated January 1, 2017, which is made a part of this chapter and located at the end of

this chapter.

(d) The permit to operate shall indicate the type of equipment for which it is issued. In the case of elevators and kindred equipment, the permit shall state whether it is passenger or freight, and the rated load and speed for the elevator, dumbwaiter, escalator, or moving walk. For new or altered elevators, after the effective date of these rules, a copy of the permit to operate shall be posted conspicuously in the car of the elevator, and on or near the dumbwaiter, escalator, moving walk, or other kindred equipment.

(e) The department may immediately revoke any permit to operate for any equipment required to be inspected by this chapter that is found to be in an unsafe condition; or when an owner or contractor fails to comply with a department order to correct specific defects or hazards and continues to use or operate the equipment, device, or apparatus without abating the hazards or defects. The department shall reissue a permit to operate when a subsequent inspection by a qualified inspector finds that the hazardous condition has been corrected or when the department receives documentation that the noncompliant item has been abated.

(f) Exhibit C, titled "Inspection and Test Intervals (In Months)", dated January 1, 2017, which is made a part of this chapter and located at the end of this chapter, establishes the required maximum intervals for the periodic reinspection and renewal of the permits to operate. The department may require that specific equipment be re-inspected more frequently if conditions found during an inspection require closer or more frequent monitoring to ensure its safe operation.

(g) The department may provide for the issuance of a temporary permit to operate while any noncomplying elevator or kindred equipment is being brought into full compliance with chapter 397, HRS.

(h) The owner or contractor may petition the department for additional time to correct any discrepancy or violation by submitting a request in

writing by no later than the correction due date or the expiration date of the temporary permit, whichever is applicable, and shall include:

- (1) Specific additional time needed;
- (2) Efforts made to date to effect correction; and
- (3) Any interim steps or actions taken to ensure the safe operation of the equipment, device or apparatus.

(i) No elevator, kindred equipment, or amusement ride that is required to be inspected pursuant to chapter 397, HRS, shall be operated except as necessary to install, repair, or test the elevator, kindred equipment, or amusement ride unless a permit to operate has been issued by the department and remains valid. [Eff and comp 6/30/14; am and comp 11/10/16; am and comp 2/15/19; comp]
(Auth: §397-4) (Imp: HRS §397-4)

§12-229-6 Repealed. [R 6/30/14]

§12-229-6.1 Fees. (a) Departmental inspection fees. The department shall collect from the owner or contractor, the fee listed in the schedules in Exhibit A, titled "Elevator and Kindred Equipment Installation and Alteration Fees", dated [~~January 1, 2019,~~] January 1, 2021, which is made a part of this chapter and located at the end of this chapter, and Exhibit B, titled "Elevator and Kindred Equipment Inspection Fees", dated [~~January 1, 2019,~~] January 1, 2021, which is made a part of this chapter and located at the end of this chapter, for each inspection made by a qualified inspector. The following shall apply to departmental inspection fees:

- (1) The fees for scheduled inspection delayed or canceled by the requester, shall be charged to the requester in accordance with the scheduled fee for the type of inspection

- ~~[scheduled,]~~ scheduled, however, if the notice of cancellation or delay of the scheduled inspection is provided at least forty-eight hours prior to the scheduled date and time, not counting weekends and state holidays, no additional fee will be charged. A delayed inspection includes situations where the equipment is not ready for the inspection or the requester is not ready to conduct the required tests within one hour of the scheduled date and time;
- (2) Where an inspection must be re-scheduled due to untimely notification of delay or cancellation, the appropriate inspection fee must be paid prior to the re-scheduling of the inspection;
 - (3) Permit renewal and witness fees are per inspection, which may constitute one day or part of the day. If the inspector is required or requested to return on another day or at another time on the same day, additional fees shall be assessed at the rate of ~~[\$325]~~ \$400 per day for up to two hours and ~~[\$650]~~ \$800 per day for more than two hours. Fees for overtime hours shall be ~~[\$650]~~ \$800 per day for up two hours and ~~[\$1,300]~~ \$1,600 per day for more than two hours;
 - (4) When a special or dedicated inspection is made at the request of the owner, contractor, or vendor, the sum of expenses incurred shall be charged in addition to the inspection fee;
 - (5) Whenever the requester of an inspection fails to pay the fees required pursuant to this section within sixty days after notification, the requester shall pay, in addition to the fees required, a penalty equal to fifty percent of the fee. For the purpose of this section, the date of invoice shall be considered the date of notification. For online inspection

- requests, fees must be paid at the time of the request, except for additional fees for special, dedicated, return, or overtime inspections for which the amount owed could not be determined in advance. In such cases, the requester shall be invoiced by the department;
- (6) Departmental reports of inspections for which expenses must be added to the basic fee shall be accompanied by an itemized account of the inspections made and the expenses incurred;
- (7) For elevators that have considerable rise but few openings, such as observation or deep well elevators, each ten feet of vertical rise shall be considered on floor in determining installation permit fees; and
- (8) The department shall charge and collect the fee listed in Exhibit B, titled "Elevator and Kindred Equipment Inspection Fees", dated [~~January 1, 2019,~~] January 1, 2021, which is made a part of this chapter and located at the end of this chapter, for each category 3 or 5, or internal escalator inspection, witnessed by qualified inspectors of the department during regular working hours. If the inspector is required or requested to return on another day or at another time on the same day, additional fees shall be assessed at the rate of [~~\$325~~] \$400 per day for up to two hours and [~~\$650~~] \$800 per day for more than two hours. Fees for overtime hours shall be [~~\$650~~] \$800 per day for up to two hours and [~~\$1,300~~] \$1,600 per day for more than two hours.
- (b) Departmental installation and alteration permit and test fees. The following shall apply to installation, alteration, and test fees:
- (1) The department, before accepting an application for installing, constructing, re-constructing, or relocating an elevator or a related system, shall charge and

- collect a fee for each object in accordance with Exhibit A, titled "Elevator and Kindred Equipment Installation and Alteration Fees", dated [~~January 1, 2019,~~] January 1, 2021, which is made a part of this chapter and located at the end of this chapter;
- (2) The department, before accepting an application for an alteration, shall charge and collect a fee for each object in accordance with Exhibit A, titled "Elevator and Kindred Equipment Installation and Alteration Fees", dated [~~January 1, 2019,~~] January 1, 2021, which is made a part of this chapter and located at the end of this chapter. For online applications, fees must be paid electronically at the time of the application. Any transaction failure shall void the application;
 - (3) For each instance requiring an installation or alteration permit fee, the department shall provide the final installation drawing review, inspection and witnessing of the initial acceptance test on the installation, any resulting permit to operate, and on additional follow-up inspection per permit, and the follow-up inspection shall be at the convenience of the department;
 - (4) Fees in accordance with Exhibit A, titled "Elevator and Kindred Equipment Installation and Alteration Fees", dated [~~January 1, 2019,~~] January 1, 2021, which is made a part of this chapter and located at the end of this chapter, or the fee in effect on the application submittal date shall be charged and collected for all applications for installation or alteration permits;
 - (5) For each instance requiring a building plan review, the department shall charge a fee in accordance with Exhibit A, titled "Elevator and Kindred Equipment Installation and Alteration Fees", dated [~~January 1, 2019,~~] January 1, 2021, which is made a part of

- this chapter and located at the end of this chapter;
- (6) For additional follow-up inspections for final acceptance, the fee shall be [~~\$325~~] \$400 per day for up to two hours and [~~\$650~~] \$800 per day for more than two hours if during the normal workday. Fees for overtime hours shall be [~~\$650~~] \$800 per day for up to two hours and [~~\$1,300~~] \$1,600 per day for more than two hours; and
 - (7) For elevators that have considerable rise but few openings, such as observation or deep well elevators, each ten feet of vertical rise shall be considered one floor in determining installation permit fees.
- (c) Amusement rides, fees. The following shall apply to amusement ride fees:
- (1) The fee for an inspection of an amusement ride shall be \$200;
 - (2) Inspections, for which a fee is to be charged, shall include, but are not limited to:
 - (A) A reinspection of a ride at a site to allow it to operate at that site after the ride was found at an earlier inspection to be unsafe;
 - (B) An inspection made at a site after being unable to complete an earlier inspection at that site due to delay within the control of the requester;
 - (C) A permit to operate; and
 - (D) Scheduled inspections delayed or canceled by the requester where notification was provided to the department less than forty-eight hours prior to the scheduled inspection date and time (not including weekends and state holidays);
 - (3) When an unscheduled inspection is made at the request of the owner or contractor, the sum of expenses incurred shall be charged in addition to the inspection fee;

- (4) For additional follow-up inspections for final acceptance, the fee shall be [~~\$300~~] \$400 per day for up to two hours and [~~\$600~~] \$800 per day for more than two hours if during the normal workday. Fees for overtime hours shall be [~~\$600~~] \$800 per day for up to two hours and [~~\$1,200~~] \$1,600 per day for more than two hours; and
- (5) Whenever the requester fails to pay the fees required under this section within sixty days after notification, the requester shall pay in addition to the fees required, a penalty equal to fifty percent of the fee. For the purpose of this section, the date of the invoice shall be considered the date of notification. For online inspection requests, fees must be paid at the time of the request, except for additional fees for unscheduled, return, or overtime inspections, which will be invoiced to the requester. [Eff and comp 6/30/14; am and comp 11/10/16; am and comp 2/15/19; am and comp] (Auth: §397-4) (Imp: HRS §397-5)

§12-229-7 Repealed. [R 6/30/14]

§12-229-7.1 Inspections and tests. (a) The department shall inspect to ensure compliance with chapter 397, HRS, any activity related to the erection, construction, alteration, demolition, or maintenance of buildings, structure, bridges, highways, roadways, dams, tunnels, sewers, underground buildings or structures, underground pipelines or ducts, and other construction projects or facilities containing elevators or kindred equipment.

(b) Elevators and kindred equipment. The following shall apply to inspections and tests:

- (1) All permit renewal inspections and witnessing of tests of elevators or kindred equipment as required under this chapter shall be performed by qualified inspectors employed by the department;
- (2) Where notifications of discrepancies, recommendations, or requirements are made, these notations shall refer to the applicable code, rule, or standard;
- (3) Elevator or kindred equipment regulated under this part shall be inspected and tested in accordance with the schedule in Exhibit C, titled "Inspection and Test Intervals (In Months)", dated January 1, 2017, which is made a part of this chapter and located at the end of this chapter;
 - (A) Internal inspection of escalators and moving walks shall be performed at intervals of thirty-six months;
 - (B) Personnel hoists shall be load tested at intervals of three months;
 - (C) The category 3 test shall be performed on all holed and holeless hydraulic elevator systems. The interval may be extended at the discretion of the department for those hydraulic elevator installations such as holeless hydraulic elevators in which all components are readily accessible for visual inspection; and
 - (D) The period between inspections may be extended by the department for cause. A written application by the owner must be received by the department prior to the expiration date for review;
- (4) Any elevator or kindred equipment that is out of service and not continuously maintained for a period exceeding one year or has not been inspected in accordance with paragraph (3) shall be taken out of service by the owner by complying with the

following:

- (A) Car and counterweight (if any) shall be landed at the bottom of the hoistway and hoisting ropes shall be disconnected at both ends. For hydraulic driven elevators and hydraulic driven kindred equipment, the car shall be lowered to the bottom of the hoistway, oil line disconnected with partial or total oil supply line removal, and oil removed from the tank reservoir;
 - (B) All electric power shall be removed by disconnected and removing the power feeders; and
 - (C) All hoistway entrances or escalator entrances and exits shall be permanently blocked or barricaded to prevent inadvertent entry. The owner or the owner's agent shall submit a certification that the unit has been properly taken out of service as indicated in this paragraph, on a form provided by the department. Prior to placing the elevator or kindred equipment back in service, the department shall be notified and an inspection made; and
- (5) While conducting tests and inspections required by section 12-229-5.1 for acceptance of new elevators for load testing of elevators, a positive means of communication, such as a walkie-talkie system, between the various testing and witnessing personnel shall be furnished by the elevator maintenance company performing the test or inspection.
- (c) Amusement rides. The following shall apply to amusement rides:
- (1) The department shall inspect and witness load tests, in accordance with ASTM-F24 and chapter 12-250 at least semi-annually, for

- all amusement rides at a carnival, circus, fair, amusement park, or other public venue, for protecting the safety of the public;
- (2) After the initial inspection, each amusement ride shall be inspected as often as necessary to ensure safe operation but not less than twice annually at intervals of not less than five months nor greater than seven months;
 - (3) If the department finds, upon inspection, that an amusement ride is in a safe operating condition and meets with the requirements of this chapter and chapter 12-250, the department shall affix to the ride in a prominent location a permit to operate bearing upon its face the date of the inspection and the permit expiration date; and
 - (4) No ride shall be operated unless it has affixed to it a current permit to operate. [Eff and comp 6/30/14; am and comp 11/10/16; am and comp 2/15/19; comp] (Auth: §397-4) (Imp: HRS §397-4)

§12-229-8 Repealed. [R 6/30/14]

§12-229-8.1 Rights and enforcement. (a)

Rights.

- (1) Authorized representatives of the director may enter without delay during regular working hours and at other reasonable times, any place, establishment, or premises in which are located amusement rides, or elevators and kindred equipment requiring inspection pursuant to chapter 397, HRS;
- (2) The department may question any employer, owner, operator, agent, or employee in

- investigation, enforcement, and inspection activities covered by this chapter; and
- (3) Any employee of the State acting within the scope of the employee's office, employment, or authority under this chapter shall not be liable for or made a party to any civil action growing out of administration and enforcement of chapter 397, HRS.
- (b) Enforcement.
- (1) Whenever the right of entry to a place to inspect an amusement ride, elevator, or kindred equipment required by this chapter to be inspected is refused to an authorized representative of the director, the department may apply to the circuit court where the equipment is located for a search warrant providing on its face that the wilful interference with its lawful execution may be punished as a contempt of court;
 - (2) Whenever the department finds that the construction of or the operation of any amusement ride, or elevator and kindred equipment required to be inspected under this part is not safe, or that any practice, means, method, operation, or process employed or used is unsafe or is not in conformance with the standards and codes adopted pursuant to chapter 91, HRS, the department shall issue an order to render the construction or operation safe or in conformance with chapter 397, HRS, or its standards and codes and deliver the same to the contractor or owner. Each order shall be in writing and may be delivered by mail, electronically, or in person. The department may in the order direct that, in the manner and within a time specified, such additions, repairs, improvements, or changes be made and such safety devices and safeguards be furnished, provided, and used as are reasonably required to ensure compliance

- with the purposes and provisions of chapter 397, HRS. An order to bring the operation of elevator or kindred equipment into compliance may require the owner to submit a plan of compliance that addresses interim corrective plans to ensure public and worker safety as well as the schedule for the correction of the non-conforming element. A plan of compliance shall not exceed five years for residential buildings or three years for all other buildings. The owner or contractor shall obey and observe all orders issued by the department or be subject to appropriate civil penalties;
- (3) Whenever, in the opinion of the department, the condition of or the operation of amusement rides, or elevators and kindred equipment required to be inspected by chapter 397, HRS, or any practice, means, method, operation, or process employer or used, is unsafe, or is not properly guarded, or is dangerously placed, its use may be prohibited by the department. An order to that effect shall be posted prominently on the equipment or near the place or condition referred to in the order. The order shall be removed when a determination has been made by an authorized representative of the department that the amusement rides, or elevators and kindred equipment are safe and the required safeguards or safety devices are provided;
- (4) Pursuant to section 397-4(d)(4), HRS, when an imminent hazard exists, the department may apply for a restraining order from a circuit court to effect enforcement restraining the use or operation until the use or operation is made safe;
- (5) Pursuant to section 397-4(d)(5), HRS, the director, or an authorized representative, shall have the same powers as are possessed by the court respecting administering of

- oaths, compelling attendance of witnesses, producing documentary evidence, and examining witnesses or causing them to be examined, and may take depositions and certify to official acts;
- (6) Where a condition or practice involving any amusement ride, or elevator and kindred equipment required to be inspected by chapter 397, HRS, could reasonably be expected to cause death or serious physical harm, the department shall have the right, independent of any other enforcement powers under this chapter, to:
- (A) Immediately take steps to obtain abatement by informing the owner, contractor, and all person in harm's way of the hazard by meeting, posted notice, or otherwise;
 - (B) Take steps to immediately obtain abatement through direct control or elimination of the hazard if, after reasonable search, the owner, contractor, or their representative is not available;
 - (C) Take steps to obtain immediate abatement when the nature and imminence of the danger or hazard does not permit a search for the owner or contractor; and
 - (D) Where appropriate, initiate necessary legal proceedings to require abatement by the owner or contractor; and
- (7) The department may prosecute, defend, and maintain actions in the name of the department for the enforcement of the provisions of chapter 397, HRS, including the enforcement of any order issued by it, the appeal of an administrative or court decision, and other actions necessary to enforce chapter 397, HRS. [Eff and comp 6/30/14; comp 11/10/16; am and comp 2/15/19;

comp] (Auth: HRS §397-
4) (Imp: HRS §§397-4, 397-6, 397-8)

§12-229-9 Repealed. [R 6/30/14]

§12-229-9.1 Complaints. (a) Complaints may be made to the department and where reasonable grounds exist for the department to believe there may be a hazard, there shall be an inspection in response to the complaint.

(b) Names of all complainants and witnesses shall be held in confidence by the department, unless prior permission has been given by the complainants or witnesses to release his or her names, or unless it has been determined by the state attorney general that disclosure is necessary for the enforcement and review under this chapter. [Eff and comp 6/30/14; comp 11/10/16; com 2/15/19; comp] (Auth: HRS §397-4) (Imp: HRS §397-7)

§12-229-10 Repealed. [R 6/30/14]

§12-229-10.1 Reporting of accidents. (a) Whenever an accident occurs involving either an amusement ride, or an elevator and kindred equipment, the owner shall promptly notify the division within eight hours by telephone at (808)586-9141. For reporting purposes, "accident" is defined as an occurrence resulting in significant damage to an elevator and kindred equipment and amusement device, including when it is rendered inoperative or any occurrence resulting in physical injury to a person or persons.

An accident report shall be submitted to the

department within two calendar days after the owner has completed the accident investigation, and shall include the following information:

- (1) The date and time of the accident;
- (2) Hawaii registration number (HAW number) of the amusement ride, elevator, or kindred equipment involved;
- (3) Name and address of the victim or victims;
- (4) A brief description of the accident, including the nature and scope of the injuries;
- (5) Whether the amusement ride, elevator, or kindred equipment sustained any damage rendering it inoperative for any period of time;
- (6) Names and contact information of any witnesses interviewed;
- (7) A brief description of any inspections or tests conducted of the equipment to determine probable causation and who conducted them;
- (8) The investigators' conclusions as to the cause of the accident; and
- (9) The name and contact information of the investigator. For purposes of this section, the owner may contract another to perform the actual accident investigation, however, the owner is responsible for the report and its timely submittal to the department. If the accident investigation cannot be completed within three months of the date of the incident, the owner shall submit the incomplete report to the department with information as to when the investigation is expected to be completed. The final report shall be submitted as soon as the investigation is completed.

(b) Whenever an accident occurs which results in loss of life, the owner shall promptly notify the division by telephone at (808)586-9141, or messenger, within eight hours, and neither the amusement ride, or elevator and kindred equipment, or any of their parts,

shall be removed or disturbed before permission has been given by the department except for the purpose of saving human life or limiting consequential damage.

(c) Additional reports, in writing or otherwise, may be required by the director. [Eff and comp 6/30/14; am and comp 11/10/16; comp 2/15/19; comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-229-11 Repealed. [R 6/30/14]

§12-229-11.1 Investigations. The department may investigate accidents reported under section 12-229-10.1 involving amusement rides, and elevators and kindred equipment inspected under this chapter and may issue orders and recommendations with respect to the elimination and control of the causal factors. [Eff and comp 6/30/14; comp 11/10/16; comp 2/15/19; comp] (Auth: HRS §397-4) (Imp: HRS §§397-4, 397-6)

§12-229-12 Repealed. [R 6/30/14]

§12-229-12.1 Violations and penalties. (a) The director may assess all civil penalties provided in this section, giving due consideration to the gravity of the violation, the good faith of the owner or contractor, and the history of previous violations.

(b) Violations. The following shall apply to violations:

- (1) Any owner or contractor who violates chapter 397, HRS, or any safety standards and codes adopted pursuant to chapter 91, HRS, or who violates or fails to comply with any order

- made under or by virtue of chapter 397, HRS, or who defaces, displaces, destroys, damages, or removes without the authority of the department any safety device, safeguard, notice, order, or warning required by chapter 397, HRS, its standards, or codes, shall be assessed a civil penalty of not more than \$10,000 for each such violation;
- (2) Any owner who allows the installation, construction, reconstruction, relocation, or alteration of any elevator or kindred equipment prior to obtaining an installation or alteration permit as required by section 12-229-5.1 shall be assessed a civil penalty of not more than \$10,000. The penalty may be reduced by a maximum of ten percent for history of past violations;
 - (3) Owners who fail to report an accident as required by section 12-229-10.1 shall be assessed a civil penalty of not more than \$5,000 per instance. Consideration may be given for good faith and history of violations;
 - (4) Owners who fail to maintain or provide records or reports to the department as required by this part shall be assessed a civil penalty of not more than \$5,000 per record not maintained or provided;
 - (5) Repeated violations shall be assessed a civil penalty of not more than \$10,000. Consideration may be given for gravity only;
 - (6) Owners who fail to take an elevator or kindred equipment out of service as specified in section 12-229-7.1(b)(4) shall be assessed a civil penalty of not more than \$10,000; and
 - (7) Each day a violation continues shall constitute a separate violation except during an abatement period.
- (c) Discrepancies and penalties. The following shall apply to discrepancies and penalties:
- (1) Any conditions found not in conformance with

applicable standard or codes adopted pursuant to chapter 397, HRS, shall be regarded as discrepancies and shall be made known to the owner or contractor by letter or written order to correct or both. All discrepancies shall be satisfactorily resolved as soon as possible. When, in the opinion of the department, a discrepancy constitutes a potentially serious hazard, the department may prohibit the use of the equipment until the condition is abated. Failure to abate unsafe conditions or failure to correct discrepancies within the time prescribed shall be a violation subject to the civil penalties prescribed in this section;

(2) Assessing penalties.

- (A) Consideration shall be given to the gravity of the violation. For a violative condition that could not or probably would not result in serious harm to life the penalty may be reduced by forty percent;
- (B) Consideration shall be given to the good faith of the owner or contractor. For immediate correction or for attempts to make correction or abate hazards that have been thwarted by conditions beyond the control of the owner or contractor, the penalty may be reduced by forty percent; and
- (C) Consideration shall be given for the history of previous violations. For no previous violations by the owner or contractor, the penalty may be reduced by ten percent.

(d) Anyone who knowingly makes a false statement on any document required by chapter 397, HRS, upon conviction, shall be punished by a fine of not more than \$10,000 or imprisonment or both. Any evidence suggesting that a false statement may have been made shall be immediately referred to the

director, who shall consult with the state attorney general for purposes of initiating appropriate action. [Eff and comp 6/30/14; am and comp 11/10/16; am and comp 2/15/19; comp] (Auth: HRS §397-4) (Imp: HRS §397-8)

§12-229-13 Repealed. [R 6/30/14]

§12-229-13.1 Review and appeal. (a) Any order or citation of the director shall be final and conclusive against an owner or contractor, unless an appeal is made in writing, clearly stating what items are being contested. The notice of contest must be addressed to the director and received or, if mailed, postmarked by no later than the twentieth calendar day following receipt of the order or citation.

(b) The director or the director's designee may hold a formal hearing, which shall result in a decision and order by the director. Any party who disagrees with the director's decision may appeal in writing to the director within twenty calendar days of receipt of the decision and order. The director shall promptly notify the labor and industrial relations appeals board of the notice of the contest. Where a prior formal hearing is held at the department level, the labor and industrial relations appeals board shall conduct a case review using only the record.

(c) An owner or contractor may petition the director for modification of the abatement requirements in an order, as provided in section 397-9, HRS. [Eff and comp 6/30/14; comp 11/10/16; comp 2/15/19; comp] (Auth: HRS §397-4) (Imp: HRS §397-9)

§12-229-14 Repealed. [R 6/30/14]

12-229-14.1 Trade secrets. Information obtained by the department containing or revealing a trade secret shall be held confidential and access shall be limited to authorized representatives of the director for purposes of carrying out chapter 397, HRS. [Eff and comp 6/30/14; comp 11/10/16; comp 2/15/19; comp] (Auth: HRS §397-4) (Imp: HRS §397-11)

§12-229-15 Repealed. [R 6/30/14]

§12-229-15.1 Notifications of transfer and location. (a) The seller of any elevator or kindred equipment regulated by this part shall notify the department in writing using a form provided by the department within thirty calendar days of the sale giving the HAW number, location name, location address of the equipment, and the name and address of the purchaser.

(b) The owner of any elevator or kindred equipment who gives, scraps, demolishes, or removes the device shall report the transaction and the name and address of the new owner, if any, within thirty calendar days of the transaction to the department using the form provided by the department. [Eff and comp 6/30/14; am and comp 11/10/16; comp 2/15/19; comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-229-16 Repealed. [R 6/30/14]

§12-229-16.1 Variances. (a) In cases of

practical difficulties, undue hardships, or new developments, an owner may apply for a variance from any elevator safety standard. The application must be in writing, clearly stating the standard from which a variance is sought, the conditions, means, practices, methods, operations, or processes proposed to be used, together with drawings, specifications, and other supporting data. The director may issue an order for a variance if what is proposed will provide a substantially equivalent level of safety to that provided by the standard.

(b) All variances granted pursuant to this chapter shall have only a future effect. The director may decline to entertain an application for variance on a subject or issue for which a discrepancy letter or citation has been issued to the owner or contractor involved and the discrepancy or violation has not yet been satisfactorily corrected or resolved.

(c) Before granting the variance, the director shall publish a notice in a paper of general circulation or post notice on the department's website notifying all potentially affected parties of the director's intent to grant the variance. The notice shall provide a period of thirty calendar days to object to the granting of the variance, after which time the variance shall become final if no objections are filed or a hearing is requested. The cost of the publication shall be borne by the petitioning party. Every notice shall specify the alternative to the safety standard being considered.

(d) Any party objecting to the granting of the variance must notify the director in writing within the thirty-day period, stating the reasons why the variance should not be granted and the resultant specific impact on public safety. The objecting party's reasons for objection may also be based on grounds other than impact on public safety such as feasibility of compliance or lack of undue hardship to the petitioner. The objecting party may also elect to provide the reasons for the objection at a hearing.

(e) The hearing requested by the objecting party shall be held no later than forty-five days.

after the thirty-day period stated in the public notice as follows:

- (1) The objecting party or parties and the variance applicant shall be provided notice of the date, time, and place of the hearing at least fourteen calendar days before the scheduled hearing;
- (2) Each party shall be prepared to provide evidence supporting the party's case, including a brief oral statement summarizing such evidence;
- (3) The director shall provide a written determination to all parties;
- (4) If the director determines that the evidence does not support denial of the variance request, no further notice is required; and
- (5) If the director determines that the evidence supports a denial of the variance request, a notice shall be published in a newspaper of general circulation stating the reasons why the variance is not granted.

(f) If the variance application does not include all relevant information as indicated in subsection (a), the director may deny the application. The denial shall be submitted in writing to the applicant within thirty calendar days. A notice of denial shall include a brief statement of the grounds for the denial. A denial of an application shall be without prejudice to the filing of another application.

(g) Requests for reconsideration on denied variance requests. The variance applicant whose variance request was denied may file a petition for reconsideration of the denial with the director. The petition must be filed in writing within twenty calendar days of the denial notice and should include all pertinent facts regarding why the variance should be granted.

- (1) The director may review the record on the case along with any additional information provided by the applicant or conduct further inquiries on the matter; and

- (2) Any party objecting to the director's decision shall use the review and appeal process as provided for in section 12-229-13.1. [Eff and comp 6/30/14; am and comp 11/10/16; am and comp 2/15/19; comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

§12-229-17 Records. Records shall be maintained by the elevator inspection branch of the department of labor and industrial relations for the purpose of preserving reports of inspections, witnessing of test and accident investigations, correspondence, prints, and memoranda for all objects inspected pursuant to this chapter. These records shall be maintained for a period of not less than five years for amusement rides, elevators, and kindred equipment." [Eff and comp 6/30/14; comp 11/10/16; comp 2/15/19; comp] (Auth: HRS §397-4) (Imp: HRS §397-4)

**EXHIBIT A
ELEVATOR AND KINDRED EQUIPMENT INSTALLATION AND
ALTERATION FEES**

January 1, 2021

Alterations¹:

Involving only the replacement of a single (1) major component (such as a car door operator, valve, a jack or a cylinder)	\$234
Involving only cosmetic changes (such as car interior modernizations)	\$410
Involving two or more major components and/or subsystems:	
1-3 Floors	\$738
4-9 Floors	\$796
10-19 Floors	\$866
20-29 Floors	\$925
30-39 Floors	\$995
40 or more Floors	\$1,112

New Installations²:

Dumbwaiter or material lift	\$615
Escalator, moving walk, or moving ramp	\$615
Platform lifts or stairway chairlifts	\$615
Elevator:	
1-3 Floors	\$738
4-9 Floors	\$796
10-19 Floors	\$866
20-29 Floors	\$925
30-39 Floors	\$995
40 or More Floors	\$1,112
Personnel hoists	\$527
Temporary use permits (construction car)	\$527

Additional Inspections:

Normal workday, up to two hours	\$400/day
Normal workday, more than two hours	\$800/day
Overtime hours, up to two hours	\$800/day
Overtime hours, more than two hours	\$1,600/day

Building Plan Reviews

\$234

¹ Where alterations to four or more units at the same location are identical, the fee for each additional alteration permit (beyond the initial four) shall be reduced by fifty percent. The applications shall be submitted at the same time to qualify for the fee reduction.

² For elevators which have considerable rise but few openings, such as observation or deep-well elevators, each ten feet of vertical rise shall be considered one floor for the purpose of determining installation or alteration permit fees.

EXHIBIT B
ELEVATOR AND KINDRED EQUIPMENT INSPECTION FEES

January 1, 2021

Permit and Renewal Inspection Fees¹:

Dumbwaiter or material lift	\$176
Escalator, moving walk, or moving ramp	\$264
Platform Lift or Stairway Chairlift	\$264
Hydraulic Elevator - Holed	\$322
Hydraulic Elevator - Holeless	\$322
Hydraulic Elevator - Roped Holeless	\$381
Traction Elevators:	
1-3 Floors	\$293
4-9 Floors	\$322
10-19 Floors	\$351
20-29 Floors	\$410
30-39 Floors	\$498
40 or more Floors	\$585
Personnel Hoist	\$351
Temporary Use Permit (Construction Car)	\$351

Safety, Load, or Internal Test (Witness Fees):

Category 3 Test	\$381
Category 3 Test with Safety Overspeed Valve	\$439
Category 3/5 Test for Roped Hydraulic	\$498
Category 5 Test	\$498
Category 5 with Counterweight Test	\$615
Escalator, Internal	\$498

¹ For elevators which have considerable rise but few openings, such as observation or deep-well elevators, each ten feet of vertical rise shall be considered one floor for the purpose of determining permit renewal inspection fees.

Permit renewal and witness [fess] fees are per inspection, which may constitute one day or part of the day. If the inspector is required to return on another day or at another time on the same day, additional fees shall be assessed at the rate of [\$325] \$400 per day for up to two hours and [\$650] \$800 per day for more than two hours. Fees for overtime hours shall be [\$650] \$800 per day for up to two hours and [\$1,300] \$1,600 per day for more than two hours.

EXHIBIT C
INSPECTION AND TEST INTERVALS (IN MONTHS)

January 1, 2017

Equipment Type	Permit Renewal	Category 3	Category 5
Electrical Elevators	12	N/A	60
Hydraulic Elevators	12	36	N/A
Escalators and Moving Walks ^[1]	12	36	N/A
Dumbwaiters	12	36	60
Material Lifts	12	36	60
Platform Lifts and Stairway Chairlifts	12	N/A	N/A
Inclined Elevators	12	36	60
Screw-Column Elevators	12	36	60
Roof-top Elevators	12	36	60
Limited-use/Limited-Application Elevators	3	36	60
Construction Cars	3	36	60
Personnel Hoists ^[2]	3	N/A	N/A
Amusement Rides	6	N/A	N/A

¹ Internal inspections of escalators and moving walks shall be performed at intervals of 36 months.

² Personnel hoists shall be load tested at intervals of 3 months.

Where an equipment is listed under both Category 3 of 36 months and Category 5 of 60 months, the appropriate testing interval is dependent on whether the lifting mechanism is rope or hydraulic or a combination of rope and hydraulic.

2. Material, except source notes and other notes, to be repealed is bracketed and stricken. New material is underscored.

3. Additions to update source notes and other notes to reflect these amendments are not underscored.

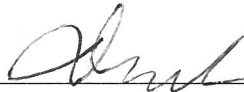
4. These amendments to and compilation of chapter 12-229, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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.



ANNE E. PERREIRA-EUSTAQUIO
Director
Labor and Industrial
Relations

APPROVED AS TO FORM:



Deputy Attorney General

V. Administrative Matters

A. Discussion and Action on the Board's Draft 2020 Annual Report Summary for Submission to the Hawaii State Legislature, under Section 201M-5(f), Hawaii Revised Statutes (HRS)



**HAWAII SMALL BUSINESS
REGULATORY REVIEW BOARD
ANNUAL REPORT SUMMARY**

Results for Calendar Year 2020

DRAFT

**Recommendations and Review of
Hawaii Administrative Rules, Legislation
and
Requests from Small Business Owners for Review
of Any Rule Adopted by a State Agency**

**In Compliance with
Chapter 201M, Hawaii Revised Statutes**

**HAWAII SMALL BUSINESS REGULATORY REVIEW BOARD
ANNUAL REPORT SUMMARY 2020**

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SECTION I



SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)
No. 1 Capitol District Building, 250 S. Hotel Street, Fifth Floor, Honolulu, HI 96813
Mailing Address: P.O. Box 2359, Honolulu, HI 96804
Email: dbedt.SBRRB.info@hawaii.gov
Website: sbrrb.hawaii.gov

Tel: (808) 586-2419

David Y. Ige
Governor

MESSAGE FROM THE CHAIR

Mike McCartney
DBEDT Director

Members

Robert Cundiff
Chairperson
O'ahu

Mary Albitz
Vice Chairperson
Maui

Garth Yamanaka
2nd Vice Chairperson
Hawai'i

Harris Nakamoto
O'ahu

Dr. Nancy
Atmospera-Walch
O'ahu

William Lydgate
Hawai'i

James (Kimo) Lee
Hawai'i

Jonathan Shick
O'ahu

Taryn Rodighiero
Kaua'i

Mark Ritchie
Director, DBEDT
Voting Ex Officio



Robert Cundiff, Chair, 2020

To say the least, 2020 has been a highly unusual year due to the COVID-19 pandemic. In our efforts to ensure that the regulatory review process continues and to not lose momentum in driving a strong small business friendly regulatory environment, we have successfully adjusted to virtual monthly meetings that are open to the public.

While in-person meetings are preferred, we have persevered and continue to have an outstanding team of volunteer members who work toward our mission of enabling a regulatory environment that encourages and supports the vitality of small business in Hawaii.

During 2020, we welcomed one new member on our team, Ms. Taryn Rodighiero, from Kauai County. In addition, members Nancy Atmospera-Walch, Mary Albitz, and myself were re-appointed for another four-year term.

On behalf of all the board members, I extend a big Mahalo to Governor David Ige, DBEDT's Director Mike McCartney and Deputy Director Chung Chan for their continued support of this Board. Mahalo also goes out to the State Legislature for its support, and to all the State and County agencies that come before us each year discussing both proposed and amended regulations that have a potential to negatively impact small business.

OVERVIEW

The Small Business Regulatory Review Board is pleased to provide the Annual Report Summary for the period covering January through December 2020. Pursuant to the Hawaii Small Business Regulatory Flexibility Act, Chapter 201M, Hawaii Revised Statutes, the annual summary is based on the following:

201M-5 Small business regulatory review board; powers.

(f) The board shall submit an annual report to the legislature twenty days prior to each regular session detailing any requests from small business owners for review of any rule adopted by a state agency, and any recommendations made by the board to an agency or the legislature regarding the need for a rule change or legislation. The report shall also contain a summary of the comments made by the board to agencies or the legislature regarding its review of any proposed new or amended rules.

ANNUAL SUMMARY

SMALL BUSINESS REGULATORY FLEXIBILITY ACT

The Small Business Regulatory Review Board was established on July 1, 1998, with the passage of the Small Business Regulatory Flexibility Act, pursuant to Act 168; subsequently the role of the Board was codified in Chapter 201M, Hawaii Revised Statutes (HRS), as amended.

(Appendix 1)

Statutorily, the Board is comprised of eleven members, ten current or former owners or officers of businesses from across the State, and the Director of Business, Economic Development, and Tourism (DBEDT), or the Director's designated representative who serves as an "ex officio" voting member. The Board is administratively attached to DBEDT and has responsibility for providing recommendations to State agencies on new and amended administrative rules that directly impact small business. The Board may also consider any request from small business owners for review of any rule proposed, amended, or adopted by a state agency and to make recommendations to the agency or the legislature regarding the need for a rule change or legislation. For requests regarding county rules, the board may make recommendations to the county council or the mayor for appropriate action.

Members volunteer their time performing outreach activities to small business organizations, such as the local Chambers of Commerce, and testifying on legislation. Statutorily, the Board may also solicit testimony from the public regarding any reports submitted to the Board by State departments.

As an effective means of administrative rule review, each board member is assigned to one or more State departments as a "discussion leader" and each neighbor island member is assigned to his or her own respective island. Members are responsible for the initial review of the

administrative rules of these departments and counties prior to consideration by the full Board.

As of December 2020, the Board was operating with ten (10) members.

ADMINISTRATIVE RULE REVIEW

During 2020 the Board reviewed a lower than usual number of Hawaii Administrative Rules (HAR) due to cancelling the April and May board meetings as a result of COVID-19.

From January through December, a total of **XX** rules, before and after public hearing, were reviewed from State and County Agencies.

Since its inception, the Board reviewed a total of **910** sets of proposed new and amended HAR. (Appendix 2)

Department / County	Chapter / Section Number	Title	Proceed to Public Hearing (Pre-Public Hearing)	Proceed to Adoption (Post Public Hearing)	Other Recommendation(s)
<i>Department of Business, Economic Development & Tourism – Title 15</i>	120	Community-Based Economic Development Loan and Grants Program		X	
	126	Community-Based Development Grants Program		X	
<i>Department of Commerce and Consumer Affairs – Title 16</i>	71	Certified Public Accountants and Public Accountants	X		
<i>Department of Hawaiian Home Lands – Title 10</i>	4.1	Management of Water Systems	X		

Department of Health – Title 11	53, Section 401	Water Quality Certifications	X		
	54	Water Quality Standards	X		
	55	Water Pollution Control	X		
	56	Nonpoint Source Pollution Control	X		
	60.1	Air Pollution Control	X-?		
Department of Human Services – Title 17	Chapters 798.2 & 798.3	Child Care Services & Child Care Payments	X		
	Chapter 800	Listing of Exempt Center-Based Providers	X		
	Chapter 801	Background Checks	X		
Department of Labor & Industrial Relations – Title 12	Chapter 45.4	State Fire Code	X		
	Subtitle 8, Part 11 Elevators and Related Systems Chapter 229	General, Administrative, and Legal Provisions	X		The Board deferred recommendation on the proposed changes until DLIR and the stakeholders met to discuss unresolved concerns and suggestions for resolution. Subsequently, the Board re-reviewed the changes and commended DLIR for understanding

					the value with engaging small business stakeholders and including their input in the rule making process.
<i>Department of Land & Natural Resources – Title 13</i>	Chapter 146	Section 6, Fees		X	
	Chapter 251	Commercial Activities on State Ocean Waters, Navigable Streams, and Beaches			
		Subchapter 1, Catamaran Captain, Canoe Captain, Canoe Second Captain, Surfboard Instructor, Sailboard	X		
		Subchapter 2, Suspension or Revocation of Operator Permits	X		
		Subchapter 3, Violation of Operator Permit Provisions	X		
	Subchapter 7, Special Operating Restrictions	X			
Chapter 104	Rules Regulating Activities Within Forest Reservations		X		
Chapter 241	Numbering of Vessels		X - ?		

<i>Department of Transportation – Title 19</i>	Chapter 108	High Occupancy Vehicle Lanes	X		
	Chapter 133.2	Periodic Inspection of Vehicles	X		
	Chapter 133.5	Fine, Suspension or Revocation of an Official Inspection Station or Inspector’s Certification	X		
<i>County of Kaua’i</i>	Part 5	Reserve Charge, Section III Applicability			
		e. The Facilities Reserve Charge of a Guest House	X		
		f. The Facilities Reserve Charge of an Additional Rental Unit	X		
		Rules & Regulations of the Liquor Control Commission of the County of Kauai	X		
<i>City and County of Honolulu</i>	Chapter 17	Rules and Regulations Governing Recreational Stops		X	

LEGISLATIVE ACTIVITY

Since its inception, the Board has supported legislation by submitting testimony on bills of interest to small business. See “Legislative Review” at the end of the report for legislation the Board followed in 2020.

**SMALL BUSINESS IMPACT STATEMENT *and* GOVERNOR’S ADMINISTRATIVE
DIRECTIVE (AD) NO. 18-02**

AD 18-02 was issued in 2018 to update the policy and procedures by which State departments and agencies request Governor’s approval for a public hearing of any proposed adoption, amendment, or repeal of administrative rules developed under Chapter 91, HRS. (Appendix 3).

Under Section 201M-2, HRS, State agencies wanting to adopt new or modified administrative rules that have an impact on small business are required to submit to the Board a small business impact statement showing the economic impact on those businesses.

CHAIRPERSON / BOARD MEMBERS

During 2020, the Board welcomed new member, Ms. Taryn Rodighiero who reigns from the County of Kauai. In addition, the following members were re-appointed for another four-year term, Ms. Mary Albitz from Maui, Mr. Robert Cundiff and Ms. Nancy Atmospera-Walch both from Oahu.

Under Section 201M-5 (c), “a majority of the board shall elect the chairperson. The chairperson shall serve a term of not more than one year, unless removed earlier by a two-thirds vote of all members to which the board is entitled.” The following elections were held at the June meeting:

- Chair – Robert Cundiff
- Vice Chair – Mary Albitz
- Second Vice Chair – Garth Yamanaka

The Board member nomination process, under Section 201M-5, HRS, states, “the Board shall consist of eleven members, who shall be appointed by the governor pursuant to section 26-34; provided that:

(1) Three members shall be appointed from a list of nominees submitted by the president of the senate;

(2) Three members shall be appointed from a list of nominees submitted by the speaker of the house of representatives;

(3) Two members shall be appointed from a list of nominees submitted by the board;

(4) Two members shall be appointed by the governor;

(5) The director of business, economic development, and tourism, or the director’s designated representative, shall serve as an ex officio voting member of the board;

(6) The appointments shall reflect representation of a variety of businesses in the State;

(7) No more than two members shall be representatives from the same type of business;

and

(8) There shall be at least one representative from each county.”

In addition, nominations shall be solicited from small business organizations, state and county chambers of commerce and other interested business and trade organizations. Except for the ex officio member, all members are either a current or former owner or officer of a business and shall not be an officer or employee of the federal, state, or county government.”

At the end of December 2020, the Board was comprised of the following ten (10) members:

1) Mary Albitz, Island Art Party, County of Maui

- 2) Dr. Nancy Atmospera-Walch, Advantage Health Care Provider, Inc., and AIM Health Institute, City and County of Honolulu
- 3) Robert Cundiff, Business/Management Consultant with Lokama Group, City and County of Honolulu
- 4) James (Kimo) Lee, W. H. Shipman, Ltd., Hawaii County
- 5) William Lydgate, Steelgrass Farm, County of Kauai
- 6) Harris Nakamoto, Health and Community Advocate, City and County of Honolulu
- 7) Taryn Rodighiero, KaiKini Bikinis, County of Kauai
- 8) Jonathan Shick, Pono Consulting Group, LLD., City and County of Honolulu
- 9) Garth Yamanaka, Yamanaka Enterprises, Inc., Hawaii County
- 10) Mark Ritchie, Business Support Program Manager, Business Development & Support Division, DBEDT, Voting Ex Officio Member

ACTIVITIES AND PROJECTS

The following activities and projects were accomplished in 2020:

- **Strategic Plan** – In June, the Board began a strategic plan for the upcoming fiscal 2020 – 2021 year. The plan entailed discussing and reviewing the Board’s current and projected outreach activities, collateral material, and identified small business organizations to explore potential cooperative outreach;
- **e-Newsletter** – The Board continues to send out monthly e-Newsletters to small business organizations, chambers of commerce, trade organizations and State Legislators;
- **Facebook, Twitter, Instagram** – In 2020, an Instagram account was created where, in addition to regularly sending out notices on Facebook and Twitter, board photographs and

notices are sent out to enhance its outreach efforts. **As of December 31, 2020, the Board can proudly boast XX Friends on Facebook, received XXX hits on Twitter; and XXX on Instagram.**

- **Articles, Press Releases, and Other Promotional**

- 1) On January 23, 2020, ThinkTech Hawaii, live-streamed a great interview with Chair Robert Cundiff and Board Member Mary Albitz – go to:
https://www.youtube.com/watch?v=Hog_89kDzjk
- 2) On June 24, 2020, DBEDT submitted a press release that announced the election of the new board officers and the new newly rewed appointment of board members.
- 3) Onn June 30, 2020, *The Garden Island* published the following article, “Residents elected to Small Business Regulatory Review Board.”

REQUESTS FROM SMALL BUSINESS FOR REVIEW
OF ANY RULE ADOPTED BY A STATE AGENCY
“REGULATION FOR REVIEW”

Under Section 201M-5, HRS, 2020 had no requests from small business owners for review of any rule adopted by a state agency and recommendations made by the Board to an agency. It is believed that the COVID-19 pandemic had much to do with small businesses approaching the Board on any regulations for review.

During 2020, there were no requests from small business owners for review of state or county rules.

SECTION II

LEGISLATIVE REVIEW

The Board submitted testimony on the following measures during the 2020 legislative session.

1. **Senate Bill 2078 – Relating to the Small Business Regulatory Flexibility Act** - This measure entitles the small business regulatory review board to a separate line item within the budget of the department of business, economic development, and tourism.

Background: The measure passed the first reading and was referred to the Senate Committee on Government Operations.

Recommendation: The Board strongly supported the measure.

Result: The measure was deferred.

2. **Governor’s Message 672 – Submitting for Consideration for the Gubernatorial Nomination of Ms. Mary Albitz to the Small Business Regulatory Review Board for a term to expire June 30, 2024.**

Background: The measure was submitted to the Senate Committee on Energy, Economic Development and Tourism.

Recommendation: The Board strongly supported the measure.

Result: On May 21, 2020, Ms. Albitz’s nomination was confirmed.

3. **Governor’s Message 673 – Submitting for Consideration for the Gubernatorial Nomination of Ms. Nancy Atmospera-Walch to the Small Business Regulatory Review Board for a term to expire June 30, 2024.**

Background: The measure was submitted to the Senate Committee on Energy, Economic Development and Tourism.

Recommendation: The Board strongly supported the measure.

Result: On May 21, 2020, Ms. Atmospera-Walch’s nomination was confirmed.

4. Governor’s Message 674 – Submitting for Consideration for the Gubernatorial Nomination of Mr. Robert Cundiff to the Small Business Regulatory Review Board for a term to expire June 30, 2024.

Background: The measure was submitted to the Senate Committee on Energy, Economic Development and Tourism.

Recommendation: The Board strongly supported the measure.

Result: On May 21, 2020, Mr. Cundiff’s nomination was confirmed.

5. Governor’s Message 675 – Submitting for Consideration for the Gubernatorial Nomination of Ms. Taryn Rodighiero to the Small Business Regulatory Review Board for a term to expire June 30, 2023.

Background: The measure was submitted to the Senate Committee on Energy, Economic Development and Tourism.

Recommendation: The Board strongly supported this measure.

Result: On May 21, 2020, Ms. Rodighiero’s nomination was confirmed.

Appendix

1. Chapter 201M, Hawaii Revised Statutes
2. Administrative Rules Reviewed Matrix
3. Administrative Directive No. 18-02

1. Chapter 201M, Hawaii Revised Statutes

CHAPTER 201M

SMALL BUSINESS REGULATORY FLEXIBILITY ACT

Section

- 201M-1 Definitions
- 201M-2 Determination of small business impact; small business impact statement
- 201M-3 Small business statement after public hearing
- 201M-4 Advisory committee on small business; consultation process for proposed rules
- 201M-5 Small business regulatory review board; powers
- 201M-6 Petition for regulatory review
- 201M-7 Periodic review; evaluation report
- 201M-8 Waiver or reduction of penalties
- 201M-9 Executive order

§201M-1 Definitions. As used in this chapter, unless the context clearly requires otherwise:

"Advisory committee" means an advisory committee on small business as established in section 201M-4.

"Affected small businesses" or "affects small business" means any potential or actual requirement imposed upon a small business through an agency's proposed or adopted rule that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business.

"Agency" means each state or county board, commission, department, or officer authorized by law to make rules, except those in the legislative or judicial branches.

"Board" means the small business regulatory review board.

"Rule" shall have the same meaning as in section 91-1.

"Small business" means a for-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that:

- (1) Is domiciled and authorized to do business in Hawaii;
- (2) Is independently owned and operated; and
- (3) Employs fewer than one hundred full-time or part-time employees in Hawaii. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §§2, 5; am L 2007, c 217, §2]

§201M-2 Determination of small business impact; small business impact statement. (a) Prior to submitting proposed rules for adoption, amendment, or repeal under section 91-3, the agency shall determine whether the proposed rules affect small business, and if so, the availability and practicability of less

restrictive alternatives that could be implemented. This section shall not apply to emergency rulemaking.

(b) If the proposed rules affect small business, the agency shall consider creative, innovative, or flexible methods of compliance for small businesses and prepare a small business impact statement to be submitted with the proposed rules to the departmental advisory committee on small business and the board when the rules are essentially complete and before the rules are submitted to the governor for approval for public hearing. The statement shall provide a reasonable determination of the following:

- (1) The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules;
- (2) Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected;
- (3) In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance;
- (4) The probable monetary costs and benefits to the implementing agency and other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used;
- (5) The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or any other mitigating techniques;
- (6) How the agency involved small business in the development of the proposed rules; and
- (7) Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

(c) When a proposed rule includes provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, the agency shall, in

addition to the information required by subsection (b), include in the small business impact statement information comparing the costs and benefits of the standard set by the proposed rule to the costs and benefits of the standard under the comparable or related federal, state or county law. The agency shall also include an explanation of its decision to impose the higher standard. The agency's comparison and justification shall include:

- (1) A description of the public purposes to be served by imposing the standard under the proposed rule;
- (2) The text of the related federal, state, or county law, including information about the purposes and applicability of the law;
- (3) A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes and of the standards and their application and administration;
- (4) A comparison of the monetary costs and benefits to the implementing agency and other agencies directly affected, of imposing the proposed standard, with the costs and benefits of imposing or deferring to the related federal, state or county standard, as well as a description of the manner in which any additional fees derived from imposition of the proposed standard are to be used; and
- (5) A comparison of the adverse effects on small businesses of the standard imposed by the proposed rule, with the adverse effects on small business of the related federal, state, or county standard.

(d) This chapter shall not apply to proposed rules adopted by an agency to implement a statute or ordinance that does not require an agency to interpret or describe the requirements of the statute or ordinance, such as federally-mandated regulations that afford the agency no discretion to consider less restrictive alternatives. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2007, c 217, §3; am L 2008, c230, §3]

§201M-3 Small business statement after public hearing. (a) For any proposed rule that affects small business, the agency shall also submit a small business statement to the small business regulatory review board and the departmental advisory committee on small business after the public hearing is held. This section shall not apply to emergency rules. The small business statement required by this section shall provide the following information:

- (1) A description of how opinions or comments from affected small business were solicited, a summary of the public and small business comments, and a summary of the agency's response to those comments;
- (2) The number of persons who:
 - (A) Attended the public hearing;
 - (B) Testified at the hearing; and
 - (C) Submitted written comments; and
- (3) If there was a request to change the proposed rule at the hearing in a way that affected small business, a statement of the reasons for adopting the proposed rule, the reason why a requested change was not made, and the problems or negative result the change would provide if adopted.

(b) If the small business regulatory review board finds that a statement provided pursuant to subsection (a) (3):

- (1) Indicates inconsistency with any of the agency's determinations under section 201M-2(b); or
- (2) Does not address the concerns of public input, the board with good cause may request a written response from the agency explaining the rationale used to deny the public concerns within ten working days of receipt of the small business statement after public hearing. The agency shall respond in writing to the board's concerns within ten working days.

(c) The written response from an agency required in subsection (b), at a minimum, shall:

- (1) Specifically address each issue and concern raised in the board's request for a written response; and
- (2) Affirmatively state that the agency has considered all written and oral testimony received at the agency's public hearing and has addressed all issues or concerns raised in the written or oral testimony. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2012, c 241, §2]

[\$201M-4] Advisory committee on small business; consultation process for proposed rules. (a) There may be established within and administratively attached to every department of the State or county whose rules affect small business activities, an advisory committee on small business. The advisory committee shall consist of three or more odd number of members appointed by the department and may advise more than one department. The department shall have the authority to appoint members to the advisory committee and to fill any vacancies. The members shall serve on a volunteer basis and have experience or knowledge of the effect of

regulation by those departments on the formation, operation, or expansion of a small business. No person shall serve on the small business regulatory review board and an advisory committee on small business concurrently. The advisory committees shall not be subject to the requirements of chapter 91.

(b) When the agency is proposing rules that affect small business, the agency may consult with the administratively attached departmental advisory committee on small business regarding any matter related to the proposed rules prior to complying with the rulemaking requirements provided in chapter 91. Each agency shall develop its own internal management procedures for soliciting comments during the drafting of proposed rules from affected small businesses. The agency may develop creative procedures for the solicitation of comments from affected small businesses during the drafting or development of proposed rules.

(c) If necessary, any group or members of affected small businesses may also be consulted by the agency to formulate the relevant language, develop criteria, and provide any other expertise to ensure that the proposed rules will be drafted in a manner that will protect the public health, welfare, and safety without placing an undue and significant burden upon small business. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5]

§201M-5 Small business regulatory review board; powers. (a) There shall be established within the department of business, economic development, and tourism, for administrative purposes, a small business regulatory review board to review any proposed new or amended rule. If the board determines that a proposed rule will not have a significant economic impact on a substantial number of small businesses, the board shall submit a statement to that effect to the agency that sets forth the reason for the board's decision. If the board determines that the proposed rule will have a significant economic impact on a substantial number of small businesses, the board may submit to the agency suggested changes in the proposed rule to minimize the economic impact of the proposed rule, or may recommend the withdrawal of the proposed rule. The board may also consider any request from small business owners for review of any rule proposed, amended or adopted by a state agency and to make recommendations to the agency or the legislature regarding the need for a rule change or legislation. For requests regarding county rules, the board may make recommendations to the county council or the mayor for appropriate action.

(b) The board shall consist of eleven members, who shall be appointed by the governor pursuant to section 26-34; provided that:

- (1) Three members shall be appointed from a list of nominees submitted by the president of the senate;
- (2) Three members shall be appointed from a list of nominees submitted by the speaker of the house of representatives;
- (3) Two members shall be appointed from a list of nominees submitted by the board;
- (4) Two members shall be appointed by the governor;
- (5) The director of business, economic development, and tourism, or the director's designated representative, shall serve as an ex officio voting members of the board;
- (6) The appointments shall reflect representation of a variety of businesses in the State;
- (6) No more than two members shall be representative from the same type of business; and
- (8) There shall be at least one representative from each county. For purposes of paragraphs (1) and (2),

nominations shall be solicited from small business organizations, state and county chambers of commerce, and other interested business organizations.

(c) **Except for the ex officio member**, all members of the board shall be either a current or former owner or officer of a business and shall not be an officer or employee of the federal, state, or county government. A majority of the board shall elect the chairperson. The chairperson shall serve a term of not more than one year, unless removed earlier by a two-thirds vote of all members to which the board is entitled.

(d) A majority of all the members to which the board is entitled shall constitute a quorum to do business, and the concurrence of a majority of all the members to which the board is entitled shall be necessary to make any action of the board valid.

(e) In addition to any other powers provided by this chapter, the board may:

- (1) Adopt any rules necessary to implement this chapter;
- (2) Organize and hold conferences on problems affecting small business; and
- (3) Do any and all things necessary to effectuate the purposes of this chapter.

(f) The board shall submit an annual report to the legislature twenty days prior to each regular session detailing any requests from small business owners for review of any rule

adopted by a state agency, and any recommendations made by the board to an agency or the legislature regarding the need for a rule change or legislation. The report shall also contain a summary of the comments made by the board to agencies regarding its review of proposed new or amended rules. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §§3, 5; am L 2007, c 217, §4; am L 2012, c 241, §3]

§201M-6 Petition for regulatory review. (a) In addition to the basis for filing a petition provided in section 91-6, any affected small business may file a written petition with the agency that has adopted the rules objecting to all or part of any rule affecting small business on any of the following grounds:

- (1) The actual effect on small business was not reflected in, or significantly exceeded, the small business impact statement submitted prior to the adoption of the rules;
- (2) The small business impact statement did not consider new or significant economic information that reveals an undue impact on small business;
- (3) These impacts were not previously considered at the public hearing on the rules;
- (4) The rules create an undue barrier to the formation, operation, and expansion of small businesses in a manner that significantly outweighs its benefit to the public;
- (5) The rules duplicate, overlap, or conflict with rules adopted by another agency or violate the substantive authority under which the rules were adopted; or
- (6) The technology, economic conditions, or other relevant factors justifying the purpose for the rules have changed or no longer exist.

(b) Upon submission of the petition, the agency shall forward a copy of the petition to the board, as notification of a petition filed under this chapter. The agency shall promptly consider the petition and may seek advice and counsel regarding the petition from the appropriate departmental advisory committee on small business. Within sixty days after the submission of the petition, the agency shall determine whether the impact statement or the public hearing addressed the actual and significant impact on small business. The agency shall submit a written response of the agency's determination to the small business review board within sixty days after receipt of the petition. If the agency determines that the petition merits

the adoption, amendment, or repeal of a rule, it may initiate proceedings in accordance with section 91-3.

(c) If the agency determines that the petition does not merit the adoption, amendment, or repeal of any rule, any affected small business may seek a review of the decision by the board. The board shall promptly convene a meeting pursuant to chapter 92 for the purpose of soliciting testimony that will assist in its determination whether to recommend that the agency initiate proceedings in accordance with section 91-3. The board may base its recommendation on any of the following reasons:

- (1) The actual effect on small business was not reflected in, or significantly exceeded, the impact statement submitted prior to the adoption of the rules;
- (2) The impact statement did not consider new or significant economic information that reveals an undue impact on small business;
- (3) These impacts were not previously considered at the public hearing on the rules;
- (4) The rules create an undue barrier to the formation, operation, and expansion of small businesses in the State in a manner that significantly outweighs its benefit to the public;
- (5) The rules duplicate, overlap, or conflict with rules adopted by another agency or violate the substantive authority under which the rules were adopted; or
- (6) The technology, economic conditions, or other relevant factors justifying the purpose for the rules have changed or no longer exist.

(d) If the board recommends that an agency initiate rulemaking proceedings for any reason provided in subsection (c), it shall submit to the legislature an evaluation report and the agency's response as provided in subsection (b). The legislature may subsequently take any action in response to the evaluation report and the agency's response as it finds appropriate.

(e) If the board does not recommend that an agency initiate rulemaking proceedings, the board shall notify the small business of its decision and inform the small business that the small business may submit a complaint to the ombudsman pursuant to chapter 96 regarding the decision of the agency or board.

(f) Nothing in this section shall entitle an affected small business to a contested case hearing under chapter 91. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2007, c 217, §5]

§201M-7 Periodic review; evaluation report. (a) Each agency having rules that affect small business shall submit to the board by June 30 of each odd-numbered year, a list of those rules and a report describing the specific public purpose or interest for adopting the respective rules that affect small business and any other reasons to justify continue implementation of the rules; provided that, by June 30 of each year, each agency shall submit to the board a list of any rules to be amended or repealed, based upon any new, amended, or repealed statute that impacts small business.

(b) The board shall provide to the head of each agency a list of any rules adopted by the agency that affect small business and have generated complaints or concerns, including any rules that the board determines may duplicate, overlap, or conflict with other rules, or exceed statutory authority. Within forty-five days after being notified by the board of the list, the agency shall submit a written report to the board in response to the complaints or concerns. The agency shall also state whether the agency has considered the continued need for the rules and the degree to which technology, economic conditions, and other relevant factors may have diminished or eliminated the need for maintaining the rules.

(c) The board may solicit testimony from the public regarding any report submitted by the agency under this section at a public meeting held pursuant to chapter 92. Upon consideration of any report submitted by an agency under this section and any public testimony, the board shall submit an evaluation report to the legislature each even-numbered year. The evaluation report shall include an assessment as to whether the public interest significantly outweighs a rule's effect on small business and any legislative proposal to eliminate or reduce the effect on small business. The legislature may take any action in response to the report as it finds appropriate. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2007, c 217, §6; am L 2012, c 241, §4]

§201M-8 Waiver or reduction of penalties. (a) Except where a penalty or fine is assessed pursuant to a program approved, authorized, or delegated under a federal law, any agency authorized to assess civil penalties or fines upon a small business shall waive or reduce any penalty or fine as allowed by federal or state law for a violation of any statute, ordinance, or rules by a small business under the following conditions:

- (1) The small business corrects the violation within a minimum of thirty days after receipt of a notice of violation or citation; and
 - (2) The violation was unintentional or the result of excusable neglect; or
 - (3) The violation was the result of an excusable misunderstanding of an agency's interpretation of a rule.
- (b) Subsection (a) shall not apply:
- (1) When a small business fails to exercise good faith in complying with the statute or rules;
 - (2) When a violation involves willful or criminal conduct;
 - (3) When a violation results in serious health and safety impacts;
 - (4) To violations of chapters 6E, 180, 180C, 181, 182, 183, 183C, 183D, 186, 187A, 188, 188F, 189, 190, 190D, 195, 195D, 195F, 205, 205A, 340A, 340E, 341, 342B, 342C, 342D, 342E, 342F, 342G, 342H, 342I, 342J, 342L, and 342P;
 - (5) To violations of sections 200-9(b) and (c), 200-24(4), 200-37, and 200-38; or
 - (6) To violations of administrative rules promulgated pursuant to section 200-4(6); except for rules pertaining to matters listed in section 200-4(6) (A), (B), (C), and (D).
- (c) An agency may adopt rules to implement the requirements of this section. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2004, c 206, §1]

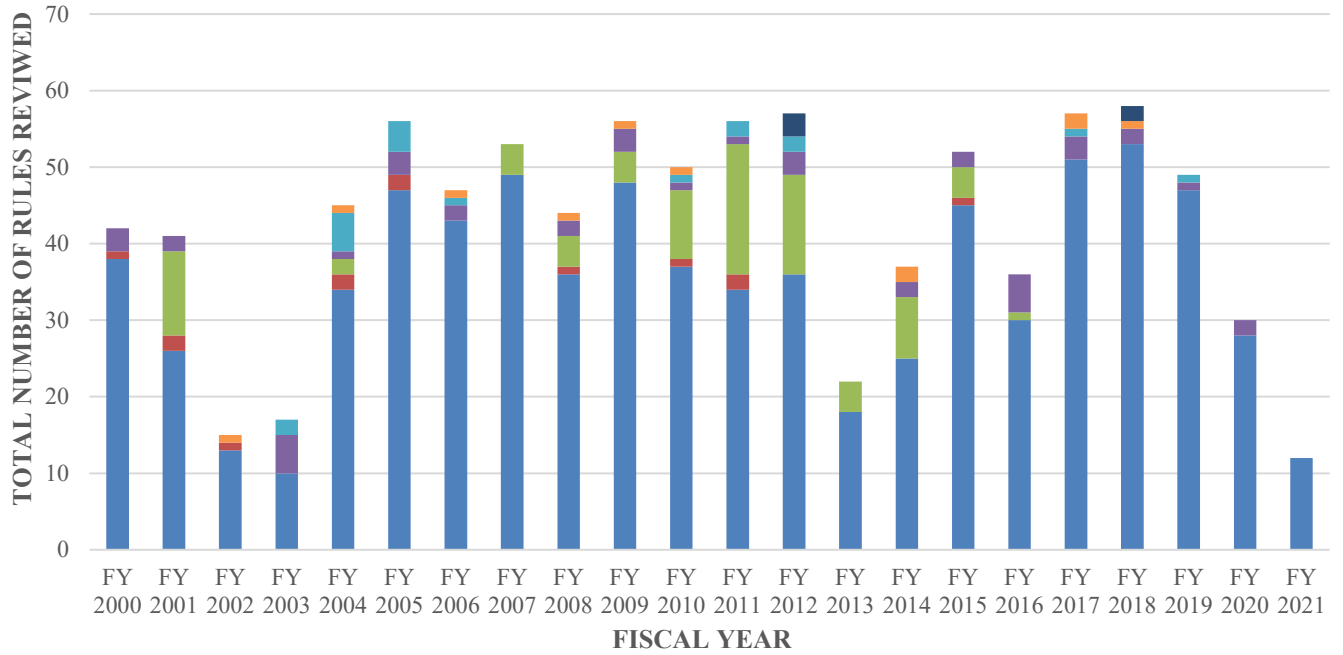
[\$201M-9] Executive order. The governor may execute any executive order, memorandum, or directive necessary to implement any provision of this chapter. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5]

2. Administrative Rule Review

2020 Administrative Rule Review

	Month/Year	Support	Oppose	No Comment/ No Action	Support W/ Rec. & Comments	Support w/ Reservations	Support/ Oppose	Pending/ Deferred
FY 2000 to FY 2019		720	13	81	42	21	11	0
FY 2020	Jul-19	3						
	Aug-19	4						
	Sep-19	4						
	Oct-19	2			1			
	Nov-19	7			1			
	Dec-19	NA						
	Jan-20	3						
	Feb-20	3						
	Mar-20	NA						
	Apr-20	NA						
	May-20	2						
	Jun-20	0						
FY 2021	Jul-20	5						
	Aug-20	3						
	Sep-20	2						
	Oct-20	2						
	Nov-20							
	Dec-20							
	Total :	760	13	81	44	21	11	0
	Grand Total :	930						

Administrative Rule Review Matrix



3. Administrative Directive No. 18-02



EXECUTIVE CHAMBERS
HONOLULU

DAVID IGE
GOVERNOR

January 1, 2018

ADMINISTRATIVE DIRECTIVE NO. 18-02

To: Department Directors

Subject: Policy and Procedure for the Adoption, Amendment, or Repeal of
Hawaii Administrative Rules

This administrative directive updates the policy and procedure by which departments or agencies shall request executive approval of any proposed adoption, amendment, or repeal of administrative rules. It replaces Administrative Directive No. 09-01, Policy and Procedure for the Adoption, Amendment, or Repeal of Administrative Rules, dated October 29, 2009.

Legal References:

1. Hawaii Revised Statutes Chapter 91
2. Hawaii Revised Statutes Chapter 201M, the "Hawaii Small Business Regulatory Flexibility Act," requires that if a proposed rule "affects small business," the department or agency shall submit a "small business impact statement" and a "small business statement" to the Small Business Regulatory Review Board. Chapter 201M does not apply to emergency rulemaking or rules adopted to comply with a federal requirement.

Policy:

1. All requests regarding Hawaii Administrative Rules must be submitted through Hawaii Administrative Rules Processing Site (HARPS).

<https://hawaiiomt.sharepoint.com/sites/gov/adminrules/>

Prior to all submittals, the department must obtain the Attorney General's approval "as to form".

2. Small Business Regulatory Flexibility Act

In accordance with Chapter 201M, the department must complete the following steps before submitting a request to conduct public hearing if the proposed rule affects small business:

- a. Complete Small Business Impact Statement
 - i. See HRS Section 201M-2
- b. Submit Small Business Impact Statement and proposed rules to the Small Business Regulatory Review Board

3. Public Hearing Approval

In the request to conduct public hearing, the department will provide response to the following:

- a. Summary of changes
 - i. Why is this section of Hawaii Administrative Rules being amended?
 - ii. What problem is the rule change meant to solve?
 - iii. List all changes that are being made.
- b. Impact of changes
 - i. How does this rule change address the problem?
 - ii. Who are the stakeholders? Positive and negative.
 - iii. What are the potential problems with the rule change?
 - iv. What is the fiscal impact?
 - v. What is the economic impact to the State?
- c. Consequences if changes are not made
 - i. What are the consequences if the rule change does not get adopted, amended or repealed?

4. Public Hearings

Upon approval of public hearing request, the department must enter all public hearing dates, times, and locations into HARPS.

- a. The department must be considerate of all parties being affected and schedule public hearings to allow for adequate feedback.
- b. The department must accept written testimony from all parties who are unable to attend the public hearing.
- c. The department will be responsible for transcribing the testimony from the public hearing into a public hearing summary document that will be required upon submittal of Final Rule.

5. Final Rule

In the request for approval of Final Rule, the department will provide response to the following:

- a. Changes in Final Rule
 - i. What changes were made in the Final Rule?
 - ii. Why were these changes made?
- b. Other
 - i. Describe how the department has worked with stakeholders to gain support for the rule?
 - ii. Have potential problems been addressed? Do the same problems exist with the Final Rule?
 - iii. Does the Office of the Governor staff need to meet with any people/organizations before the Governor signs this Final Rule?

6. Filing of Final Rule

Upon approval of Final Rule through HARPS, the Department will send 3 hard copies to Office of the Governor. When approved, these copies will be filed with the Office of the Lieutenant Governor. Rule will take effect 10 days after filing.

7. Department of Budget and Finance (BUF) and Department of Business, Economic Development and Tourism (BED)

BUF and BED will receive electronic notification upon submittal of public hearing request. Both departments will have the ability to submit comments and concerns through HARPS. Response will be due 10 business days after Final Rule is submitted. Comments will be optional unless the following applies:

- a. BUF will be required to provide response if the proposed rule has fees or other fiscal impacts.
- b. BED will be required to provide response if the proposed rule has economic impact or affects small business.



Department of Business, Economic Development & Tourism
Small Business Regulatory Review Board

***No. 1 Capitol District Building
250 South Hotel Street, 5th Floor
Honolulu, Hawaii 96813***

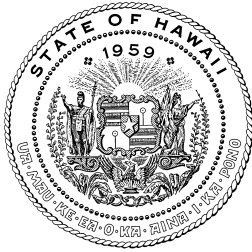
Telephone: (808) 586-2419

Website: sbrrb.hawaii.gov

Email: DBEDT.sbrrb.info@hawaii.gov

V. Administrative Matters

B. Review of Proposed Board Meeting Dates for 2021



SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)
No. 1 Capitol District Building, 250 S. Hotel Street, Fifth Floor, Honolulu, HI 96813
Mailing Address: P.O. Box 2359, Honolulu, HI 96804
Email: dbedt.SBRRB.info@hawaii.gov
Website: sbrrb.hawaii.gov

Tel: 808 586-2419

David Y. Ige
Governor

MEMORANDUM

Mike McCartney
DBEDT Director

TO: SBRRB Members

Members

Robert Cundiff
Chairperson
O'ahu

FROM: Jet'aime Alcos

Mary Albitz
Vice Chairperson
Maui

DATE: October 2, 2020

Garth Yamanaka
2nd Vice Chairperson
Hawai'i

SUBJECT: 2021 SBRRB Meeting Schedule – Begins at 10:00 a.m.

Harris Nakamoto
O'ahu

Below are the 2021 SBRRB meeting dates. All meetings are scheduled for the 3rd Thursday of the month except **December 2021**.

Dr. Nancy Atmospera-
Walch
O'ahu

January 21st

William Lydgate
Kaua'i

February 18th

Jonathan Shick
O'ahu

March 18th

James Kimo Lee
Hawai'i

April 15th

Taryn Rodighiero
Kaua'i

May 20th

Mark Ritchie, for
Voting Ex Officio
DBEDT Director

June 17th

July 15th

August 19th

September 16th

October 21st

November 18th

December 9th (2nd Thursday)

All board meetings will be held remotely until such time when meeting restrictions due to COVID-19 are lifted. Once restrictions are lifted, board meetings will be held in the Leiopapa A Kamehameha Building – State Office Tower, Room 405, 235 South Beretania Street, Honolulu, HI 96813; unless otherwise noted.

V. Administrative Matters

C. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5 (HRS) – *Any handouts will be submitted during the meeting*