

SMALL BUSINESS REGULATORY REVIEW BOARD

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

Tel 808 586-2594
Fax 808586-2572

AGENDA (Corrected)
Wednesday, October 30, 2013 ★ 9:30 a.m.
No. 1 Capitol District Building
250 South Hotel Street - Conference Room 436

Neil Abercrombie
Governor

Richard C. Lim
Director, DBEDT

Mary Alice Evans
Deputy Director, DBEDT

Members

Chu Lan Shubert-Knock
Chair
Oahu

Anthony Borges
Oahu
Vice Chair

Leslie Mullens
Maui
2nd Vice Chair

Howard Lum
Oahu

Barbara Bennett
Kauai

Kyoko Y. Kimura
Maui

Craig Takamine
Hawaii

Richard C. Lim
Director, DBEDT
Voting Ex Officio

I. Call to Order

II. Approval of August 19, 2013 Meeting Minutes

III. Old Business

- A. Small Business Statement after Public Hearing for Hawaii Administrative Rules (HAR) Title 13 Sections 230-4 Penalties and Prosecution; 230-8 Definitions; 230-21 Definitions; 230-22 Twelve-month rule; 230-25 Particular categories; 230-27 Permittee required to report change of residence; 230-28 Appeals (Department of Land and Natural Resources) – Exhibit 1
- B. Small Business Statement after Public Hearing for HAR Title 15 Chapter 315 Mortgage Credit Certificate Program (Department of Business, Economic Development and Tourism – Exhibit 2

IV. New Business

- A. Repeal of HAR Title 12 Chapter 45.2 Sections 1 through 145, State Fire Code, and Adoption of Title 12 Chapter 45.3 Sections 1 through 120, State Fire Code (Department of Labor and Industrial Relations) - Exhibit 3
- B. Amendments to HAR Title 11 Chapter 25 Rules Relating to Certification of Public Water System Operators (Department of Health) – Exhibit 4

V. Administrative Matters

- A. Proposed 2014 Board Meeting Schedule
- B. Final Draft of Board's Brochure and Evaluation Survey, for outreach purposes
- C. Board Business Cards
- D. Press Release, announcing board members and 2013 & 2014 officers
- E. Draft introduction letters to State agencies to schedule meetings
- F. Reg-Alert, electronic email alert system for announcement of proposed and amended administrative rules impacting small businesses
- G. Recommendation and approval of an investigative task force to write a report regarding this Board's immediate clerical and budgetary needs for submission to the Governor and Legislature
- H. Chair's Report – Exhibit A

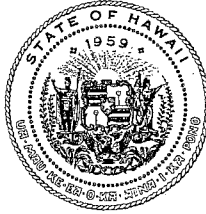
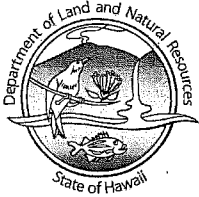
VI. Adjournment

VII. Next Meeting: Scheduled for Wednesday, November 20, 2013, at 9:30 a.m., Conference Room 436, Capitol District Building, Honolulu, Hawaii

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

Exhibit 1

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA
FIRST DEPUTY

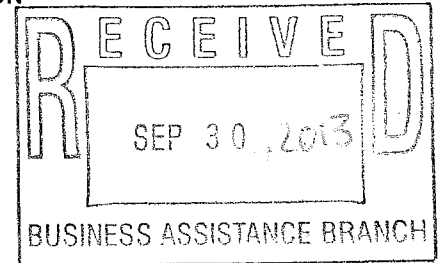
WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

EDWARD R. UNDERWOOD
ADMINISTRATOR
DIVISION OF BOATING AND OCEAN RECREATION

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION

333 QUEEN STREET, SUITE 300
HONOLULU, HAWAII 96813

October 16, 2013



MEMORANDUM

To: Ms. Chu Lan Shubert-Kwock, Acting Chair
Small Business Regulatory Review Board
Department of Business, Economic Development and Tourism

From: Edward R. Underwood, Administrator *ERU*
Division of Boating and Ocean Recreation

Subject: Post Public Hearing Statement Regarding Rule-Making Proceedings to Amend and Compile Hawaii Administrative Rules, Chapter 13-230-4 Penalties and prosecution (violation and administrative penalties); 230-8 Definitions (civil union, civil union partner, dormant vessel, personal partner, reciprocal beneficiary, spouse, stay aboard, Tahiti moor, temporary mooring, temporary permittee); 230-21 Definitions (personal partner); 230-22 Twelve-month rule (corrected citation); 230-25 Particular categories (legal relationships); 230-27 Permittee required to report change of residence (residence off-island and assumption of obligations to others); 230-28 Appeals (corrected citation).

1. Describe how opinions or comments from affected small business were solicited.

A request to engage in rulemaking was brought before the Board of Land and Natural Resources and the meeting followed proper sunshine laws. Legal ads were placed in the daily newspapers throughout the State according to Hawaii Revised Statutes, §91-3, and the proposed rule amendment package was placed on the Division of Boating and Ocean Recreation's website.

2. Summary of public and small business comments.

The three individuals who testified:

- Had concerns regarding the "Dormant vessel" definition and how a vessel would be deemed seaworthy by the department.
- Opposed amendments to 13-230-4 that pertained to penalties and prosecution and felt the rule was too vague and that it would lead to potential arbitrary enforcement.

- Felt that the rules should be rewritten to make them easier to read and understand.

3. Summary of agency's response to comments.

- The "dormant vessel" definition is defined in the Hawaii Revised Statute (HRS) and the rule merely implements the HRS.
- The penalties and prosecution guidelines are found in the HRS and the rule implements the HRS.
- The Hawaii Administrative Rules (HAR) are written to cover the majority of situations but can't always cover unforeseen situations. The HAR's are written as clearly as possible in order to implement the HRS.

4. Number of persons that attended the public hearing.

Kauai	0
Oahu	0
Maui	0
Hawaii, Kona	3
Hawaii, Hilo	0

5. Number of persons that testified at the hearing.

- Total of 3

6. Number of persons that submitted written comments.

- None

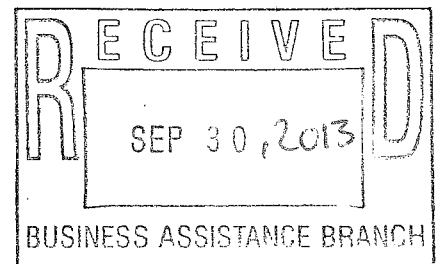
7. If a request was made to change the proposed rule at the hearing in a way that affected small business, and no change was made, state the reasons for adopting the proposed rules without the requested change.

- No requests were made for any change to the rule amendment.

Rules Amending Title 13
Hawaii Administrative Rules

DATE

1. Chapter 13-230, Hawaii Administrative Rules, entitled "General Provisions", 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 1

SMALL BOAT HARBORS AND OTHER BOATING FACILITIES

CHAPTER 230

GENERAL PROVISIONS

Subchapter 1 Scope and Definitions

- §13-230-1 Purpose and scope
- §13-230-2 Interpretation
- §13-230-3 Severability
- §13-230-4 Penalties and prosecution
- §13-230-5 Judicial review
- §13-230-6 Notice
- §13-230-7 Tampering with, defacing or removing notices
- §13-230-8 Definitions
- §§13-230-9 to 13-230-19 (Reserved)

Subchapter 2 Determination of Residency

- §13-230-20 Purpose
- §13-230-21 Definitions
- §13-230-22 Twelve-month rule
- §13-230-23 Indications of residence
- §13-230-24 Rules of construction
- §13-230-25 Particular categories

- §13-230-26 Determination of residence procedure
- §13-230-27 Permittee required to report change of residence
- §13-230-28 Appeals
- §13-230-29 Misrepresentation

SUBCHAPTER 1

SCOPE AND DEFINITIONS

Historical note. This chapter is based on general provisions, definitions, and determination of residency of the small boat harbors rules, effective November 5, 1981, and as amended thereafter, under the jurisdiction of the Department of Transportation, Harbors Division. The administrative jurisdiction for recreational boating and related vessel activities was transferred 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. [Eff 2/24/94; comp]

§13-230-1 Purpose and scope. The purpose of these rules is to secure the most effective control and management of the small boat harbors and facilities of the State in order that the general public may enjoy safe, orderly, and convenient water recreation. These rules are intended to harmonize and coordinate the department's powers and duties with all applicable public laws, and are also intended to govern the use or operation of vessels and the activities of persons in the small boat harbors, shores, ocean waters, and navigable streams of the State. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-230-2 Interpretation. If any section of these rules is inconsistent with any laws of the

United States or any rule, or standard established pursuant thereto, such section shall be construed, superseded, or governed thereby. Nothing contained in these rules shall be construed to limit the powers of any state department or agency. Each provision of these rules is also intended to be construed most liberally in light of the purpose stated in section 13-230-1. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-230-3 Severability. The provisions of these rules are declared to be severable and if any portion or the application thereof to any person or property is held invalid for any reason, the validity of the remainder of these rules or the application of such remainder to other persons or property shall not be affected. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-230-4 Penalties and prosecution. [~~Any person who violates any of these rules or who violates any lawful command issued pursuant to these rules by any small boat harbor master, harbor agent or any boating district manager, while in the discharge of that person's duty, shall be guilty of a misdemeanor. Recommended fines for each violation are as set forth in the bail schedule for boating, small boat harbors, ocean waters, navigable streams and beaches, provided that nothing in these rules shall prohibit a court from imposing the maximum fine of not more than \$10,000 for each violation as provided in section 200-14, Hawaii Revised Statutes. In addition to or as a condition to the suspension of any fines, the offender may be deprived of the privilege of operating or mooring any vessel in state waters for a period of not more than two years as prescribed in section 200-14, Hawaii Revised Statutes. Prosecution of offenders shall be as provided by law.~~] (a) Violation of rules, penalty. Any vessel, its agent, owner, or crew that violates the rules of the department, including

vehicular parking or traffic movement and unauthorized discharge, dumping, or abandoning of any petroleum product, hazardous material, or sewage in violation of the state water quality standards established by the department of health, shall be fined or deprived of the privilege of operating or mooring any vessel in state waters for a period of not more than thirty days, in accordance with section 200-14, Hawaii Revised Statutes.

(b) General administrative penalties. Except as otherwise provided by law, the board is authorized to set, charge, and collect administrative fines and to recover administrative fees and costs, including attorney's fees and costs, or bring legal action to recover administrative fines and fees and costs, including attorney's fees and costs, or payment for damages or for the cost to correct damages resulting from a violation of subtitle 8 of title 12 or any rule adopted thereunder in accordance with section 200-14.5, Hawaii Revised Statutes. Each day or instance of violation shall constitute a separate offense.

[Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-3, 200-4, 200-14, 200-14.5) (Imp: HRS §§200-2, 200-3, 200-4, 200-14, 200-14.5)

§13-230-5 Judicial review. Nothing contained in these rules shall be construed to preclude appropriate resort to judicial remedy or review. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-230-6 Notice. Where notice to a permittee, co-owner, lien holder, owner or any other party is required by this chapter the department shall effect service by one of the following:

- (1) Posting the notice in a conspicuous place aboard the permittee's vessel or at the assigned berth;
- (2) Mailing the notice to the person by certified mail, return receipt requested, at

the person's last known address, provided that service by mail is deemed received and completed five days after the date of mailing; or

(3) Personal service;

provided that in an emergency, where life or property is endangered or if a vessel may interfere with other vessels, construction or maintenance of berthing facilities, or with the free and proper navigation of a waterway unless immediate action is taken, remedial action may be taken by the department without prior notice. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-230-7 Tampering with, defacing or removing notices. No person shall tamper with, deface, or remove any notice posted by the department pursuant to section 13-230-6 except the owner of the vessel or the permittee assigned to the berth. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-230-8 Definitions. When used in [this part] these rules promulgated pursuant to chapter 200, Hawaii Revised Statutes, unless otherwise specifically provided or the context clearly indicates otherwise:

"Agreement" means the agreement between the boat owner and the State as required by section 13-231-2.

"Anchoring device" means a device made of metal or similar material, attached by rope or chain to a vessel, which can be deployed to submerged land to secure the vessel in a particular place.

"Assigned berth" means a berth that is assigned to a permittee by a valid regular mooring permit.

"Berth" means any place where a vessel is anchored, moored, or made fast or laid alongside a dock, quay, catwalk or pier.

"Boat owner" means the legal owner of a vessel where there is no security interest held by anyone on

the vessel, a buyer under a purchase money security interest, a debtor under any security interest, a demise charterer of a vessel, or a lessee or charterer of a vessel under lease or charter which provides the lessee or charterer with exclusive right to possession of the vessel to the exclusion of the lessor or the person from whom the vessel is chartered. The documentation of ownership must meet the requirements of section 13-241-5(c).

"Bona fide fishing tournament" means a fishing tournament sponsored by a boat club, fishing club or yacht club, or a business or non-profit organization formed for the primary purpose of sponsoring a fishing tournament where participation is invited from the general public.

"Business" includes all professions, trades, occupations, and callings carried on for a profit or livelihood, every kind of commercial enterprise, and the operation of games, machines, or mechanical devices.

"Chairperson" means the chairperson of the board of land and natural resources of the State of Hawaii or the chairperson's duly authorized representative or subordinate.

"Civil union" means a union between two individuals established pursuant to chapter 572B, Hawaii Revised Statutes.

"Civil union partner" means an individual who is a party to a civil union established pursuant to chapter 572B, Hawaii Revised Statutes.

"Coast Guard" means the United States Coast Guard.

"Commercial activity" means the use of or activity for which compensation is received by any person for goods or services or both rendered to customers or participants in that use or activity. Display of merchandise or demanding or requesting gifts, money, or services, shall be considered a commercial activity.

"Contrivance" means any man-made object or artificial arrangement not used or intended to be used

for transportation which may be floated upon or suspended with in or on the water.

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

"Dinghy" means a small open boat under thirteen feet in length, carried on or towed by a larger boat or yacht; it may be propelled by oars, sails or an outboard motor.

"Dormant vessel" means a vessel or contrivance, other than a houseboat, that has ~~[been determined by the department not to exhibit any activity on board or movement from its assigned berth or mooring]~~ not been navigated from or has not vacated an assigned mooring or facility within or offshore of a state small boat harbor at least once within a ninety-day period, or cannot be made [ready for sea] seaworthy upon thirty [days] days' notice to the owner.

"Firm" includes a business organization such as a sole proprietorship, partnership or corporation which is licensed to engage in or conduct business in the State.

"Harbor resident" means the owner, co-owner, spouse of each, and their legal dependents authorized by the department to reside on board a vessel used as the principal habitation of the owner.

"Highway" means "street" as defined in this section.

"Houseboat" means any vessel which is fitted for use as a permanent or temporary place of habitation, and is either stationary or to be moved by oars, sweeps, or towing.

"Immediate family" means any person and his or her spouse and dependent children under twenty-one years of age.

"Launch" means a small motorboat that is open or that has the forepart of the hull covered.

"Legal dependent" means any of the following persons who are dependent upon a permittee for all or a substantial portion of the person's living expenses:

- (1) Spouse;
- (2) A son or daughter who is
 - (A) Unmarried and under eighteen years;

- (B) Unmarried and under twenty years if a full-time student at a high school, business school, or technical school, or unmarried and under twenty-two years if a full-time undergraduate student at a college; or
- (C) Unmarried and physically handicapped so as to be incapable of self-support;
- (3) A parent or grandparent if physically handicapped so as to be incapable of self-support; or
- (4) A grandchild, brother, or sister under eighteen years of age.

"Legal owner" includes a person who holds unencumbered title to a vessel or is a secured party under a security interest for the vessel.

"Length" means "vessel length" as defined in this section.

"Living aboard" means the substantial use of a vessel as a place of abode, dwelling, living quarters, or residence, including, but not limited to, the regular use for such purposes during weekends.

"Moor" means to secure a boat by making it fast with cables, lines or anchors.

"Mooring" means a device for holding a vessel in place, when an anchor, concrete block or similar device is placed or dropped on submerged land with a rope or chain attached to a buoy to which the vessel is attached.

"Mooring device" means the use of a buoy attached by rope or chain to a permanently placed weight or structure situated within a submerged land area and to which a vessel can be made permanently or temporarily secured.

"Owner" shall be synonymous with the word "boat owner" as defined in this section.

"Park" or "parking" means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers.

"Passenger" means every person carried on board a vessel other than:

- (1) The owner or the owner's representative;
- (2) The operator;
- (3) Bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and are paid for their services; or
- (4) Any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for the guest's carriage.

"Person" means any individual, firm, partnership, corporation, trust, association, joint venture, organization, institution, or any other legal entity.

"Personal partner" is an individual considered to be a "personal partner" of the principal habitation permittee who is not a relative by biology or adoption to the principal habitation permittee. While living together on the vessel, the principal habitation permittee and personal partner shall not have a landlord-tenant relationship.

"Pram" means a small lightweight nearly flat-bottomed boat with a broad transom and usually square-bow often used as a dinghy.

"Principal owner" means a person whose name appears on a certificate of number or who is named as managing owner of a Coast Guard documented vessel.

"Reciprocal beneficiary" means two adults who are parties to a valid reciprocal beneficiary relationship and meet the requisites for a valid reciprocal beneficiary relationship as set forth in chapter 572C, Hawaii Revised Statutes.

"Regular permittee" means a person holding a valid regular mooring permit.

"Roadway" means that portion of a street or highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways, the term "roadway" shall refer to each

roadway separately but not to all such roadways collectively.

"Rules" means the rules governing small boat harbors as set forth in this part.

"SCUBA" means self-contained underwater breathing apparatus.

"Small boat harbor" means those harbors or portions of harbors, and any interest in property, whether real, personal, or mixed connected therewith under the care and control of the department, which are, as described in section 200-9, Hawaii Revised Statutes, as constructed, maintained, and operated for the primary purpose of promoting recreational boating activities and the landing of fish.

"Spouse" means a marriage partner, reciprocal beneficiary, or civil union partner of an individual.

"Stand" or "standing" means the halting of a vehicle whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers.

"State" means the State of Hawaii.

"Stay aboard" or "staying aboard" means a person or persons aboard any vessel [for a period of two hours or more] with prior notice to the department or a stay aboard permit between the hours of 12:00 [midnite] midnight and 6:00 A.M., while the vessel is moored in a state small boat harbor or offshore mooring area.

"Stop" or "stopping", when prohibited, means any halting, even momentarily, of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control sign or signal.

"Street" means the entire width between boundary lines of every way publicly maintained in any small boat harbor when any part thereof is open to the public for purposes of vehicular traffic.

"Tahiti moor" means the mooring of a vessel where one end of the vessel is moored by a rope or chain attached to a buoy that is attached to a pile or device that includes, but is not limited to, an

anchor, concrete block or similar device placed or dropped on submerged land. The other end of the vessel is moored to the facility that includes, but is not limited to, breakwaters, catwalk, piers, and docks where direct access can be made from the facility to the vessel either by gangway, plank, or stepping onto the vessel.

"Temporarily assigned berth" means a berth that is allocated to a permittee by a valid temporary mooring permit for interim use of the facility.

"Temporary mooring" means mooring pursuant to a temporary use permit. Calculation of the allowable period for temporary mooring shall include cumulative days moored with and without a permit.

"Temporary permittee" means a person holding a valid temporary mooring permit for the interim use of a berth or offshore mooring.

"Tender" means a dinghy or a larger launch used to carry persons and supplies to and from large vessels.

"Transient vessel" means any vessel visiting the State for a period of less than ninety days.

"Unassigned berth" means a berth that is not assigned to a permittee by a regular mooring permit.

"Use permit" means the authorization by the department to utilize state boating facilities, offshore mooring areas, offshore mooring and state ocean waters.

"Vacation" means a period spent away from home or business in travel or recreation.

"Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, but excludes mopeds, devices moved by human power, or devices used exclusively upon stationary rails or tracks.

"Vessel" means all description of watercraft, used or capable of being used as a means of transportation on or in the water.

"Vessel carrying passengers for hire" means any vessel which is used for the carriage of any person or persons for a valuable consideration whether directly or indirectly flowing to the owner, charterer,

operator, agent, or any person who has a lien on the vessel.

"Vessel length" means the end-to-end measurement of a vessel, taken over the deck, parallel to the waterline from the foremost part of the bow to the aftermost part of the stern; provided that hull platings, plankings, and extensions aside from the hull proper, such as bowsprit, are not to be included in the measurement; provided further that an open-type vessel or one with a cockpit shall be measured as if a complete deck existed at the upper level of the hull.

"Vessel length overall" means the distance between the fore-and-aft extremities of a vessel including hull platings, plankings and any extensions beyond the hull proper, such as bowsprit, bumpkin, steering device, or other extensions.

"Vessel used as a place of principal habitation" means a vessel on which any person remains overnight ninety times or more in a calendar year while the vessel is moored in a state small boat harbor.

"Visiting vessel" means a vessel having a mooring within the State and temporarily moored in another state small boat harbor. [Eff 2/24/94; am 4/27/02; am 6/16/03; am and comp] (Auth: HRS §§200-2, 200-4, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§§13-230-9 to 13-230-19 (Reserved)

SUBCHAPTER 2

DETERMINATION OF RESIDENCY

§13-230-20 Purpose. The purpose of this subchapter is to provide a procedure whereby a determination of residence status shall be made for all persons who own a vessel moored in a state small boat harbor or who apply for such moorage to assure that they are assessed the proper fees and charges as

established by these rules; to provide appeals mechanism for those persons who believe their residency classification is in error; and to provide sanctions for misrepresentation by a petitioner. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-230-21 Definitions. For the purpose of this subchapter:

"Adult" means a person who has reached majority.

"Dependent" means those persons who are defined as dependents by law, e.g., a spouse or minor child, or who are defined as dependents under Internal Revenue Service regulations or by the Armed Forces of the United States.

"Guardian" means a person invested by a court of law with the power, and charged with the duty, of taking care of the person and of managing the property of that person.

"Hanai" means a child who is taken permanently to be reared, educated, and loved by someone other than natural parents - traditionally a grandparent or other relative. The child is given outright; natural parents renounce all claims to the child. Usually the child is given at infancy.

"Hearing officer" means a person appointed by the chairperson to hear appeals concerning the determination of residency status.

"Majority" means the age specified under section 577-1, Hawaii Revised Statutes.

"Minor" means a person who has not reached majority.

"Nonresident" means a person who is not a resident of the State of Hawaii.

"Parent" includes legal guardian and legal adoptive parent, except where the guardianship or adoption was acquired primarily to obtain resident status for the ward or adopted child. It shall also include a person who can legally claim an unmarried minor as a dependent for federal income tax purposes, but only when such person has been in loco parentis to

the minor for the twelve-month period immediately preceding the residence determination date.

~~["Personal partner" is an individual considered to be a "personal partner" of the principal habitation permittee who is not a relative by biology or adoption to the principal habitation permittee. While living together on the vessel, the principal habitation permittee and personal partner shall not have a landlord-tenant relationship.]~~

"Residence" or "residence status" is a combination of physical presence in a place and the intent to make such place one's permanent home.

"Residency determination date" means:

- (1) The date a person applies for a use permit or for application renewal;
- (2) The date of issuance or renewal of a use permit;
- (3) The date the department makes a residency status determination following the receipt of a completed questionnaire submitted by a person classified as a nonresident pursuant to the provisions of ~~[under]~~ section 13-230-27; or
- (4) The date of a hearing officer's decision on a petition submitted to the department as prescribed in section 13-230-28.

[Eff 2/24/94; am 8/8/11; am and comp]
 (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-230-22 Twelve-month rule. (a) Status as a Hawaii resident must be acquired, and not subsequently lost at least twelve months prior to the residence determination date to avoid payment of the nonresidence fee differential prescribed in ~~[chapter 234]~~ section 200-34 Hawaii Revised Statutes. This twelve-month rule also applies to the person whose residency is determined by the fact of residency of another.

(b) While residency shall be lost if it is interrupted during the twelve months immediately

preceding the residence determination date, resident status derived from two or more successive periods of domicile in Hawaii may be joined together to compute the twelve-month period. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-230-23 Indications of residence. Because determination of residence in Hawaii requires a finding of subjective fact (intent to make a permanent home) as well as of objective fact (and physical presence), the following objective indications of a person's intent will be considered when determining the person's status. No single index is decisive.

- (1) Primary indications.
 - (A) Voter registration in Hawaii.
 - (B) Voting in Hawaii.
 - (C) Possession and use of Hawaii motor vehicle license plates.
 - (D) Payment of Hawaii personal income tax.
 - (E) Presence of spouse, children, and other close relatives in Hawaii.
- (2) Secondary indications.
 - (A) Membership in voluntary organizations in Hawaii.
 - (B) Licensing from the State for professional practice.
 - (C) Carrying on of a business or the holding of a position in Hawaii.
 - (D) Ownership of residential property or continuous letting of an apartment on a lease basis in Hawaii. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-230-24 Rules of construction. The following rules of construction shall be applied in all cases:

- (1) Residence in Hawaii and residence in another place cannot be held simultaneously.

- (2) Presence in Hawaii primarily to attend an institution of higher learning does not create resident status.
- (3) Resident status, once acquired, will be lost by future voluntary actions of the resident inconsistent with such status. However, Hawaii residence will not be lost solely because of absence from the State while employed in the service of the United States, while engaged in navigation, or while a student at any institution of learning. [Eff 2/24/94; comp]
(Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-230-25 Particular categories. (a) Adults. The resident status of every adult shall be established by the adult's own acts and intentions and shall not be derived from any other person, except as specifically provided otherwise in these rules.

- (b) Minors.
 - (1) Unemancipated minor. The residence of an unemancipated minor is the residence of the minor's father, if living, or the residence of the minor's mother, if the father is deceased.
 - (2) Divorced parents. If the parents of an unemancipated minor are divorced, the minor's residence is that of the person to whom the minor's custody has been awarded by the court. If no award of custody has been made, the minor's residence is that of the father. However, if the minor maintains the minor's primary abode with the parent not having legal custody, residence of the minor is determined by that parent with whom the minor's primary abode is maintained.
 - (3) Separated parents. If the parents of an unemancipated minor are separated, without a divorce having been granted or custody award having been made, the minor's residence is

- that of the father if the minor is not living with either parent. If the minor maintains primary abode with a parent, the minor's residence is the residence of that parent.
- (4) Death of a parent who had custody. The residence of an unemancipated minor becomes that of the surviving parent upon the death of the parent who had the minor's custody.
 - (5) Both parents deceased. If both parents are deceased, the residence of the unemancipated minor remains that of the last parent to die until changed by court order. Upon court appointment of a guardian for the minor, the residence of the minor becomes that of the guardian.
 - (6) A nonresident unemancipated minor attending an institution of higher learning outside of Hawaii or on active duty with the United States Armed Forces, whose parents become residents of Hawaii, and who would reach majority before deriving Hawaiian residence from the minor's parents' new status, may be classified as a resident for fee purposes when the minor's parents have completed twelve consecutive months of residence; provided that such classification will be lost if actions inconsistent with resident status are taken after leaving such institution or discharge from the military (e.g., failure to promptly make a home in Hawaii).
 - (7) If an unemancipated minor's parents lose their Hawaii residence, the minor will be classified as a nonresident at the next residence determination date. However, if the parents' change of residence is due to obedience to active-duty military orders, the minor shall continue to pay only resident fees and charges as long as one of the minor's parents remain on active duty and in a Hawaii resident status.

- (8) Emancipated minors. An emancipated minor shall be considered an adult for purposes of residence hereunder. The following shall constitute indications of emancipation, no one of which is controlling:
- (A) Financially independent or self-supporting.
 - (B) Subsistence not provided by parent or legal guardian.
 - (C) Prior military service.
 - (D) Other primary and secondary indications of residence enumerated under section 13-230-24.
 - (E) Any other conduct inconsistent with parental control and custody.

- (9) Hanai. A person may base the person's residency on that of other than the parent or legal guardian, provided that the relationship between the person and the person or persons other than the parent or legal guardian is that of "hanai".

(c) Aliens. In addition to all other requirements herein, an alien shall be classified as a resident only upon the alien's admission to the United States for permanent residence (immigration visa). Residence of a minor alien can only be derived from another person (e.g., a parent) when both that person and the minor achieve resident status.

(d) Military personnel. Service in the armed forces of the United States shall not of itself negate establishment of residence in Hawaii. For instance, a nonresident member of the United States Armed Forces whose last duty station is in Hawaii and who does all other things necessary to establish a bona fide Hawaiian domicile, including discharge from the military in Hawaii, may be classified as a resident. In addition, a person who establishes a Hawaiian domicile but who enters the military service prior to the expiration of twelve months from the date of such establishment may add the period of the ~~[persons's]~~ person's military service on to the former period to satisfy the twelve-month rule.

(e) Married persons and persons in other legal relationships. A married person or reciprocal beneficiary or civil union partner may establish resident status, either on the basis of indications of residence, or on the basis of the indications of residence of the [married] person's spouse. However, the [married] person must clearly state intent to make Hawaii the [married] person's permanent residence. For purposes of the liveaboard fee, the person holding a principal habitation permit may rely on the residency indications of a personal partner who lives on board the vessel. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-230-26 Determination of residence procedure.

(a) These rules establish a fee structure in which nonstate residents in specified instances shall pay an application and permit fee differential. Therefore, any person seeking to be classified as a Hawaii resident for fee purposes shall, at the time of application for or prior to being issued a permit, complete and submit to the department a questionnaire provided by the department designed to elicit facts which will aid the department in determining the applicant's resident, nonresident, or Armed Forces status. The applicant shall answer all pertinent questions and shall attest to the truth of the answers with the applicant's signature. The department may also require the applicant to produce certified copies of documents or other relevant proof as may be necessary for the determination of residency status.

(b) A nonresident who believes that the nonresident's residency status has changed so that the nonresident has achieved Hawaii residency status may seek reclassification as a resident by submitting a completed questionnaire as prescribed in subsection (a) on or following the date the nonresident believes that the change in residency status occurred. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-230-27 Permittee required to report change of residence. A resident permittee who subsequently takes up residence outside of the State and continues to moor the permittee's vessel in a state small boat harbor shall advise the department in writing within seven days of the permittee's change of residence. In such a case, nonresident fees and charges shall be payable [~~commencing at the first residence determination date~~] following the change of residence. A permittee who intends to assume residence outside of the state or relocate to another island yet retain a permitted vessel and assigned mooring shall cause all applicable harbor use permits to be revised to identify the individual that agrees to assume the vessel owner's obligations under the use permit and these rules during the period of the permittee's absence. This individual shall reside on the same island that the vessel is moored. ["] [Eff 2/24/1994; am and comp] (Auth: HRS §§200-2, 200-4, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-10, 200-22, 200-24)

§13-230-28 Appeals. (a) Classification as a nonresident by the department may be appealed by the aggrieved person by filing a petition for a declaratory ruling in accordance with section [~~13-230-27~~] 13-1-27.

(b) No petition for appeal shall be accepted by the department unless:

- (1) The petitioner has paid the nonresident fees and fees and charges and filing fee for residency status appeal.
- (2) The petitioner has submitted with the petition documentary evidence tending to establish that the petitioner has, for a period of twelve months prior to the residency determination date, been physically present in the State of Hawaii with the intent to make Hawaii the

petitioner's home. The documentary evidence to be furnished shall support the claim of residency by establishing acceptable indicia of residency as provided under section 13-230-23.

- (3) The petition is filed with the department within thirty days following receipt by certified mail, return receipt requested, or personal delivery, as the case may be, of the department's determination of the petitioner's nonresident status.

(c) The petition shall be signed by the petitioner ~~[, and submitted upon a form provided by the department]~~. The petition shall be filed at any division of boating and ocean recreation district office on or before the thirtieth day following receipt by certified mail, return receipt requested or personal delivery, of the department's determination of the petitioner's nonresident status. The district manager receiving the appeal shall promptly forward it to the ~~[chief]~~ administrator of the division of boating and ocean recreation.

(d) The ~~[chief]~~ administrator of the division of boating and ocean recreation shall promptly review any petition filed with the department and take appropriate action as follows within fifteen days after the filing of the petition:

- (1) Return the petition to the concerned district manager if the ~~[chief]~~ administrator of the division of boating and ocean recreation determines the petition should not have been accepted under subsection [13-230-28] (b) with an explanation of the basis for rejection, a copy of which shall be forwarded to the petitioner; ~~[or]~~
- (2) Reverse the department's prior determination that the petitioner is a nonresident if the ~~[chief]~~ administrator of the division of boating and ocean recreation determines that the petitioner has submitted adequate proof

that the petitioner is a resident of the State of Hawaii; or

- (3) Forward the petition to the chairperson for a declaratory ruling in accordance with section ~~[13-230-27]~~ 13-1-27.

(e) The nonstate resident fee differential and filing fee for residency status appeal shall be promptly refunded if the ~~[hearing officer]~~ department reverses the determination of nonresident status, as ~~[prescribed]~~ provided in section 13-234-24. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

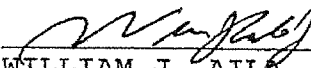
§13-230-29 Misrepresentation~~[; penalty for violation]~~. It is a violation of these rules for any person to misrepresent any fact upon any form or document intended for or used in determination of resident status for fees and charges purposes or for any person to misrepresent any fact at an appellant hearing hereunder." [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

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

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


4. These amendments to Title 13, Chapter 230, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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



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

APPROVED FOR PUBLIC HEARING:



Deputy Attorney General

Exhibit 2

NEIL ABERCROMBIE
GOVERNOR



JANICE TAKAHASHI
INTERIM EXECUTIVE DIRECTOR

STATE OF HAWAII

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION
677 QUEEN STREET, SUITE 300
Honolulu, Hawaii 96813
FAX: (808) 587-0600

IN REPLY REFER TO:

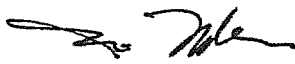
13:PEO/114

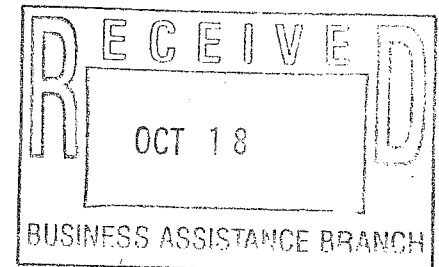
DTS No.: 20131015081139

October 18, 2013

TO: The Honorable Neil Abercrombie
Governor of Hawaii

THRU: Richard Lim, Director
Department of Business, Economic Development
and Tourism

FROM: Janice Takahashi 
Interim Executive Director



SUBJECT: Final Approval of Amendments to Chapter 15-315 "Mortgage Credit Certificate Program", Hawaii Administrative Rules.

We are requesting your final approval of the adoption of proposed amendments to Chapter 15-315 "Mortgage Credit Certificate Program", Hawaii Administrative Rules (HAR).

At their July 11, 2013 meeting, the Hawaii Housing Finance and Development Corporation (HHFDC) Board of Directors approved the proposed amendments to Chapter 15-315, HAR, and authorized staff to request the Governor's approval to conduct a public hearing on the rule amendments. This request was approved on August 30, 2013.

Following statewide publication of the public hearing notice on September 13, 2013, the public hearing was held at 10:00 a.m. on October 14, 2013 in the HHFDC Boardroom. No comments were received at the public hearing, nor at any other time.

The following information is provided pursuant to Administrative Directive No. 99-02:

- a. The facts and circumstances regarding the adoption of proposed amendments to Chapter 15-315, HAR have not changed compared to the information that was sent to the Governor before the public hearing.
- b. The proposed rule amendments were approved as to form by the HHFDC's Deputy Attorney General.

The Honorable Neil Abercrombie

October 18, 2013

Page 2 of 2

- c. The proposed rule amendments do not affect small business.

At the July 11, 2013 meeting, the HHFDC Board of Directors approved the final adoption of amendments to Chapter 15-315, HAR, provided that no substantive changes were made. No substantive changes have been made to these rule amendments following the public hearing.

Should you have any questions, please call Mavis Masaki, Planner at 587-0636.

Enclosures: 3 original copies of Amendments to Chapter 15-315, HAR.

Approved as to Form.



Deputy Attorney General

RECOMMEND:

APPROVAL

DISAPPROVAL

RICHARD LIM, Director
Department of Business, Economic
Development and Tourism

DATE

APPROVED

DISAPPROVED

NEIL ABERCROMBIE
Governor of Hawaii

DATE

c: Department of Budget and Finance

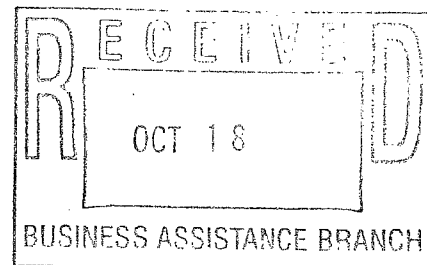
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,
AND TOURISM

Amendments to Chapter 15-315 Hawaii Administrative
Rules

October 16, 2013

SUMMARY

1. §15-315-2 is amended.
2. §15-315-21 is amended.
3. §15-315-24 is amended.



§15-315-2 Definitions. (a) Whenever used in these rules, unless the context otherwise requires:

"Annual gross household income" means an eligible borrower's gross monthly income multiplied by twelve.

"Gross monthly income" is the sum of monthly gross pay, any additional income from overtime pay, part-time employment, bonuses, commissions, dividends, interest, royalties, pensions, Department of Veterans' Affairs (VA) compensation, net rental income, etc.; and other income (such as alimony, child support, public assistance, sick pay, social security benefits, unemployment compensation, income from trusts, and income received from business activities or investments). Information with respect to gross monthly income may be obtained from available loan documents executed during the four month period ending on the date of the closing of the mortgage, provided that any gross monthly income not included on the loan documents must be included by the issuer in determining gross monthly income.

"Board" means the board of directors of the corporation.

"Certified credit rate" or "credit rate" means the rate specified by the corporation on the MCC. The credit rate applicable to the MCC program is twenty per cent.

"Corporation" means the Hawaii housing finance and development corporation, a public body and a body corporate and politic of the State of Hawaii.

"Executive director" means the executive director of the corporation or the executive director's designee.

"Eligible borrower" means a person who is eligible to be a holder of an MCC.

"Federal MCC program" means the mortgage credit certificate program which was established pursuant to the IRC, including section 25 thereof, and the regulations promulgated thereunder.

"HRS" means the Hawaii Revised Statutes.

"IRC" means the Internal Revenue Code of the Internal Revenue Service, and the corresponding regulations promulgated thereunder.

"IRS" means the Internal Revenue Service.

"MCC" means a mortgage credit certificate which is issued under the program.

"Mortgage lender" means a business enterprise authorized to do business in the State of Hawaii which has as one of its principal purposes, the origination or servicing of loans or both. Mortgage origination or servicing or both must customarily be part of the mortgage lender's regular, usual, and normal course of business. Organizations that originate or service such loans occasionally, or in special circumstances do not fall within this definition.

"Mortgage lender participation agreement" means a written contract between the corporation and mortgage lender which establish the terms by which mortgage lender will participate in the program.

"Program" means each and every qualified mortgage credit certificate program of the corporation which the corporation elects to authorize in accordance with the requirements of the federal MCC program.

"Rules" means these rules.

"State" means the State of Hawaii.

(b) The definitions of other terms used in these rules shall have the meaning ascribed to such terms under the IRC, including sections 25 and 103A thereof, for the federal MCC program, and the same are hereby incorporated by reference. [Eff 12/4/10;

am] (Auth: HRS §201H-16) (Imp: HRS §201H-16)

§15-315-21 Election not to issue qualified mortgage bonds. To establish a program, the corporation shall take action to elect not to issue an amount of qualified mortgage revenue bonds that the corporation might otherwise issue under section 103A of the IRC and the regulations thereunder during each calendar year and in lieu thereof to issue MCCs to eligible borrowers in accordance with the requirements of the federal MCC program. The corporation shall follow the requirements of the federal MCC program in making such election. [Eff 12/4/10; am]
(Auth: HRS §201H-16) (Imp: HRS §201H-16)

§15-315-24 Charges. (a) Subject to the requirements of the federal MCC program, the corporation hereby establishes the following schedule of fees.

(b) Fees to be paid by the eligible borrower are as follows:

- (1) Upon final approval of their MCC package, the eligible borrower shall pay a fee of up to \$300 to the corporation and a fee of up to \$100 to the participating mortgage lender.
- (2) Upon final approval of a request for reissuance of an MCC, the eligible borrower shall pay a fee of up to \$200 to the corporation and a fee of up to \$100 to the participating mortgage lender.
- (3) Upon making a request for a replacement MCC, the eligible borrower shall pay a fee of \$25 to the corporation.

(c) Fees to be paid by the mortgage lender to the corporation are as follows:

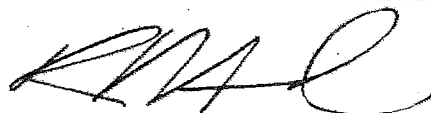
- (1) Upon election to participate in the program, the mortgage lender shall pay a fee of \$250 per year to the corporation.
- (2) Upon submission of an application for corporation review, the mortgage lender shall pay a fee of \$25 per application to the corporation.
- (3) Upon final approval of a request for an extension of up to sixty calendar days, the mortgage lender shall pay a fee of \$100 to the corporation.

[Eff 12/4/10; am] (Auth: HRS §201H-16) (Imp: HRS §201H-16)

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,
AND TOURISM

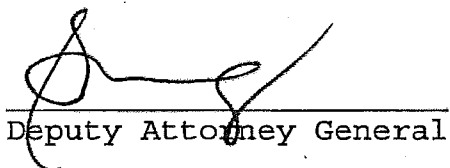
Amendments to chapter 15-315, Hawaii
Administrative Rules, on the Summary Page dated
October 16, 2013 were adopted on October 16, 2013
following public hearing held on October 14, 2013
after public notice was given in the Honolulu Star-
Advertiser, The Garden Island, The Maui News, West
Hawaii Today and The Hawaii Tribune-Herald on
September 13, 2013.

These amendments shall take effect ten days after
filing with the Office of the Lieutenant Governor.



RALPH MESICK, Chairperson
Hawaii Housing Finance and
Development Corporation

APPROVED AS TO FORM:


Deputy Attorney General

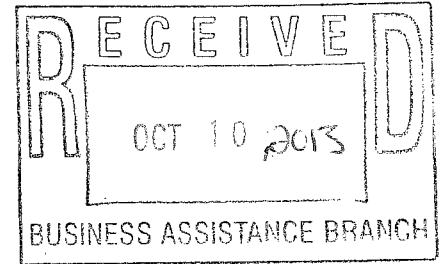
APPROVED:

NEIL ABERCROMBIE
Governor
State of Hawaii

Dated: _____

Filed

Exhibit 3



Small Business Impact Statement

Department of Labor and Industrial Relations
State Fire Council (SFC)
SFC Chair, Honolulu Fire Department Fire Chief, Manuel P. Neves
Phone: 723-7101

- A. Description: Hawaii Administrative Rules, amendments to chapter 12-45.2, repeal of chapter 12-45.2, sections 1 through 145, and the adoption of chapter 12-45.3, Sections 1 through 120, as the new State Fire Code. These amendments to the national model fire code represent a statewide consensus document for counties to base their county fire codes upon.

New Rule: Yes. Repeal of Rule : Yes. Amendments to rule(s): Yes.

- B. Provide the following information described in Items 1-7 of the Policy Section in the Governor's Administrative Directive No. 99-02.

B-1. Exact Changes/ Reasons for Changes.

- a. The purpose of these proposals is to repeal chapter 12-45.2, Sections 1 to 145, and adopt chapter 12-45.3, Sections 1 to 120, as required by sections 132-3 and 107-25, Hawaii Revised Statutes (HRS). Attached hereto is a copy of the proposed chapter 12-45.3, with justifications for each amendment.
- b. HRS section 132-3 authorizes the SFC to adopt the State Fire Code. HRS section 107-25 requires the State Fire Code to be part of the State Building Code. The current State Fire Code is based upon the 2006 edition of the National Fire Protection Association (NFPA) 1 Uniform Fire Code. The proposed State Fire Code is based on the 2012 edition of the NFPA 1 Fire Code, which is the latest edition of a national fire code. This meets the intent of HRS section 107-25, which is to adopt the latest edition of all the model building codes. Due to the impracticability of revising the current State Fire Code, it is being repealed and a new State Fire Code based upon the 2012 edition of the NFPA 1 Fire Code is being adopted.

B-2. Nature of Proposed Changes.

- a. Is the proposed rule authorized by a federal or state law or statute that does not require an agency to interpret or describe the requirements of the law or statute?

Small Business Impact Statement
State Fire Council
October 10, 2013

No.

- b. Is the proposed rule an emergency regulation?

No.

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

1. Will apply to a for-profit enterprise consisting of fewer than 200 full-time or part-time employees?

Yes.

2. Will cause a direct and significant economic burden upon a small business?

No. The adoption of chapter 12-45.3 as the State Fire Code will not increase the economic burden on small businesses compared to the current State Fire Code.

3. Is directly related to the formation, operation, or expansion of a small business?

Yes. Small businesses will provide maintenance and installation of fire protection systems, equipment, appliances and processes for new and existing buildings.

B-3. Departmental Impact?

No. There should be no direct or indirect impact to the Department of Labor and Industrial Relations, to which the SFC is administratively attached. The State Fire Code is based on a national model fire code, which upon its adoption, is transmitted to the respective county councils, which adopts it by ordinance as part of the county fire code, with local amendments for administering, permitting, and enforcement by the county fire chiefs.

B-4. Impact on General Public?

Yes. The new State Fire Code prescribes minimum requirements necessary to establish a reasonable level of fire and life safety and property protections from the hazards created by fire, explosion, and dangerous conditions.

B-5. Impact on state economy?

Small Business Impact Statement
State Fire Council
October 10, 2013

No. The new State Fire Code should not negatively impact the construction industry in the State. The latest edition of the national fire code provides for the latest technologies, materials, methods and specifications that provide the most efficient and economical means to achieve fire and life safety.

B-6. Final result anticipated from the proposed rule change.

The adoption of chapter 12-45.3 will update the State Fire Code in accordance with current nationally recognized standards for fire safety to building occupants, property protection, and enhanced emergency responder safety.

B-7. Other alternatives explored to carry out the statutory purpose other than rulemaking.

HRS 132-3 requires the SFC to review and adopt the State Fire Code. HRS 107-25 requires the State Building Code Council (SBCC) to adopt the latest edition of the State Fire Code as adopted by the SFC.

Small Business Impact Statement:

B-8. Is there a new or increased fee or fine?

No. The new State Fire Code deletes all permit or fee requirements. Permit fees may be included when the State Fire Code is adopted by county ordinance by the respective county councils.

B-9. Will the proposed rule affect small businesses?

Yes.

- a. Commercial occupancies, whether small or large, will be affected by the new State Fire Code. There is no significant changes that would impact small businesses from the current State Fire Code.
- b. As stated earlier, all references for permits or permit fees have been deleted by the proposed rules. Compliance with the State Fire Code will be the responsibility of the owner, which is to maintain all building and fire safety features and appliances in an operable condition.
- c. Indirect cost that may be incurred is the requirement for the required building or fire protection systems and appliance(s) to be inspected, tested, and maintained in an operable condition. This maintenance requirement has been required in the current State

Small Business Impact Statement
State Fire Council
October 10, 2013

- d. Fire Code and any increases will be due to the cost increases from private maintenance companies.
- e. A Small Business Advisory Committee, that were comprised of various stakeholder groups, reviewed the new State Fire Code and the draft amendments and consisted of the following agencies or organizations:
 - 1. American Institute of Architects, Hawaii Chapter
 - 2. Alert Alarm Company
 - 3. Alii Fire Protection Company
 - 4. American Society of Civil Engineers, Hawaii Section
 - 5. Automatic Fire Alarm Association
 - 6. Building Industry Association of Hawaii
 - 7. General Contractors Association of Hawaii
 - 8. Hawaii Fire Fighters Association
 - 9. Pacific Fire Protection
 - 10. SimplexGrinnell
 - 11. Society of Fire Protection Engineers, Hawaii Chapter
 - 12. State Building Code Council
 - 13. State Department of Health, Clean Air Branch

Requests for comments were solicited on August 20-27, 2013 and concluded on October 7, 2013. Comments were received from a representative from the Society of Fire Protection Engineers, Hawaii Chapter. Editorial revisions were non-substantive.

- e. The methods to reduce the impact on small businesses were:
 - 1. Deletion of permit and/or permit fee requirements. Permits and fees will be administered by the counties.
 - 2. Consistent statewide standardization of fire inspections, testing and maintenance for required fire protection systems.
 - 3. The adoption of the National Fire Protection Association Fire Code, 2012 edition, as amended, is consistent with the previously adopted state fire code.
 - 4. The proposed State Fire Code prescribes the minimum requirements necessary to establish a reasonable level of fire and life safety and property protection from the hazards created by fire, explosion, and dangerous conditions. Consideration for life safety includes occupants, fire department personnel, employees, responsible parties, and the general public.
- f. The proposed rule is not more stringent than other applicable federal or state laws, statutes or codes.

Small Business Impact Statement
State Fire Council
October 10, 2013

- B-10. The Small Business Advisory Committee reviewed the proposed amendments and made no recommendations.

- B-11. No recommendations were received by the Small Business Regulatory Review Board and we did not receive any additional recommendations from other small businesses.

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

CHAPTER 45.2

STATE FIRE CODE

Repealed

§§12-45.2-1 to 12-45.2-154 Repealed. []

DRAFT

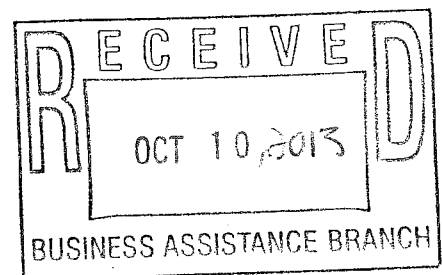
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

Repeal of Chapter 12-45.2

Hawaii Administrative Rules

SUMMARY

Chapter 12-45.2, Hawaii Administrative Rules, entitled "State Fire Code", is repealed.



DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

Adoption of Chapter 12-45.3

Hawaii Administrative Rules

SUMMARY

Chapter 12-45.3, Hawaii Administrative Rules, entitled "State Fire Code", is adopted.

DRAFT

HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 7

BOARDS

CHAPTER 45.3

STATE FIRE COUNCIL

STATE FIRE CODE

Subchapter 1 Rules of General Applicability

§12-45.3-1	Purpose
§12-45.3-2	Scope
§12-45.3-3	Definitions
§12-45.3-4	Adoption of the 2012 NFPA 1, Fire Code.
§12-45.3-5	Permit authorization

Subchapter 2 Amendments to the 2012 NFPA 1,
Fire Code

§12-45.3-6	Title
§12-45.3-7	Conflicts
§12-45.3-8	Building code
§12-45.3-9	Powers and duties
§12-45.3-10	Inspection
§12-45.3-11	Investigations
§12-45.3-12	Plans submissions
§12-45.3-13	Appeals
§12-45.3-14	Records and reports

§12-45.3-15	Permit required
§12-45.3-16	Building code
§12-45.3-17	Electrical code
§12-45.3-18	Mechanical code
§12-45.3-19	Plumbing code
§12-45.3-20	Fire watch
§12-45.3-21	Maintenance
§12-45.3-22	Means of egress
§12-45.3-23	Occupancy classification
§12-45.3-24	Separated occupancies
§12-45.3-25	Required separation of occupancies
§12-45.3-26	Occupancy separations
§12-45.3-27	Fire resistance ratings
§12-45.3-28	Occupancy separations
§12-45.3-29	Fundamental requirements
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Historical Note: Chapter 12-45.1 is based substantially upon chapter 12-45, subchapter 1. [Eff 6/6/86; am and comp 8/13/87; am and comp 4/18/92;R]

SUBCHAPTER 1

RULES OF GENERAL APPLICABILITY

§12-45.3-1 Purpose. The purpose of this chapter is to adopt the state fire code as required by section 132-3, Hawaii Revised Statutes (HRS). [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

HRS 132-3 authorizes the State Fire Council (SFC) to adopt a state fire code establishing minimum requirements relative to the protection of persons and property from fire loss. The provisions of this chapter establish a reasonable level of fire and life safety from fire to building occupants, property protection, and enhanced emergency responder safety.

§12-45.3-2 Scope. This chapter sets forth minimum requirements relative to the protection of persons and property from fire loss. [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

The scope of the state fire code include the diverse aspects relating to fire protection embodied in the latest edition of a national fire code with applicable state amendments.

§12-45.3-3 Definitions. In this chapter, unless the context otherwise requires:

“Annex” means the annex attached to the NFPA 1, Fire Code.

“Authority having jurisdiction” (AHJ) means an organization, office, or individual responsible for enforcing the requirements of a code or standard, or for approving equipment, materials, an installation, or a procedure.

“Chapter” means chapter of the NFPA 1, Fire Code.

“Building code” means the currently adopted, respective county building code.

“NFPA” means the National Fire Protection Association.

“Section” means a section of a chapter of the NFPA 1, Fire Code.

“NFPA 1, Fire Code” means the NFPA 1, *Fire Code*, 2012 edition, as copyrighted by the National Fire Protection Association. [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

These definitions seek to clarify terms used in this document to avoid confusion with similar terms in other documents or terms that are unfamiliar to the reader. The NFPA 1, Fire Code, Chapter 3, has a comprehensive list of definitions as used in this and other related NFPA documents.

§12-45.3-4 Adoption of the 2012 NFPA 1, Fire Code. The NFPA 1, *Fire Code*, 2012 edition is made a part of this chapter, subject to the amendments provided in this chapter. The annexes to the NFPA 1, *Fire Code* are not adopted except as provided in this chapter. The following annex is specifically adopted: Annex E, *Fire Hydrant Locations and Distribution*. [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

Clarifies that the NFPA 1 Fire Code, 2012 edition is the referenced national model fire code document with statewide application as amended herein. The annexes are reference documents to the fire code and unless specifically adopted, are not requirements. Annex E authorizes fire hydrant requirements where it is required by the respective adopted state and county fire code.

§12-45.3-5 Permit authorization. Each county may, by ordinance, require that a permit be obtained from the AHJ for any area

regulated by this chapter. [Eff
§132-3)(Imp: HRS §132-3)

] (Auth: HRS

Under the authority of this code, there are no state fire code permits. Permit authorization fall under the jurisdiction of each adopted county fire code and is specifically authorized by HRS 107-28(a).

SUBCHAPTER 2

AMENDMENTS TO THE NFPA 1, FIRE CODE

§12-45.3-6 Title. Section 1.1.2 is amended to read as follows: "1.1.2 Title. This code shall be known as the State Fire Code, may be cited as such, and will be referred to in this chapter as this code." [Eff
] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code and gives the title to the state amendments to the NFPA 1 Fire Code, 2012 edition.

§12-45.3-7 Conflicts. Section 1.3.3.3 is added to read as follows: "1.3.3.3 When a difference occurs in the requirements for design and construction for new construction of buildings between this code and the building code, the building code shall apply.

Exception: This code does not apply to new construction except when this code is specifically referenced from the building code." [Eff
] (Auth: HRS §132-3)(Imp: HRS §132-3)

This clarifies that the county building codes take precedence for design and construction of new buildings. "Of buildings" was added to ensure that this fire code may still apply to new construction.

§12-45.3-8 Building code. Section 1.3.6.3 is amended to read as follows: "1.3.6.3 Repairs, renovations, alterations, reconstruction, change of occupancy, and additions to buildings shall conform with the building code." [Eff
] (Auth: HRS §132-3)(Imp: HRS §132-3)

This clarifies that the general adoption by reference of NFPA 101, Life Safety Code does not apply to renovations, because it

is not currently adopted by the building departments for new construction.

§12-45.3-9 Powers and duties. Section 1.6 is amended to read as follows: "1.6 Powers and duties. The general powers and duties of the AHJ are set forth in chapter 132, HRS." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. Fire Chief was changed to AHJ to be consistent with NFPA 1. The term AHJ will usually apply to the Chief, but could include other authorities, such as the building official, if that authority applies. Also, "Chief is not defined in this code, but AHJ is defined.

§12-45.3-10 Inspection. Section 1.7.6.7 is added to read as follows: "1.7.6.7 Inspections are authorized by and shall be made in accordance with sections 132-5 and 132-6, HRS and this code." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. Authority to inspect derives from state statute.

§12-45.3-11 Investigations. Section 1.7.10.5 is added to read as follows: "1.7.10.5 Investigations are authorized by and shall be made in accordance with sections 132-4, 132-4.5 and 132-5, HRS and this code." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code, but incorrectly only referenced HRS 132-3. These are the three authorization sections.

§12-45.3-12 Plans Submissions. Section 1.7.11.11 is added to read as follows: "1.7.11.11 Submission of building plans are authorized by and shall be made in accordance with sections 132-9, HRS and this code." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

HRS 132-9 authorizes the county fire chief to review and approve building plans in accordance with the state and respective adopted county fire code. Each county has agreements with other AHJ's to avoid duplication or conflicts of jurisdictional authority.

§12-45.3-13 Appeals. Section 1.10.7 is added to read as follows: "1.10.7 Appeals are authorized and established by section 132-6, HRS and this code." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It clarifies authorization for appeals boards established by county ordinance.

§12-45.3-14 Records and reports. Section 1.11.5 is added to read as follows: "1.11.5 Upon the AHJ's request, every company or agent transacting the business of fire insurance in this State shall be required to file with the AHJ in each county a monthly record of fire losses paid or incurred on forms prescribed, permitted, or furnished by the AHJ. These forms shall contain information on each fire loss such as the name of the insured, name of the adjuster, date and time of fire, construction of building or structure burned, amount of insurance paid, and apportionment of the loss where more than one company insured the risk.

The current National Fire Incident Reporting System (NFIRS) report forms may be used." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. In addition to requirements for county records it adds an authorization for the AHJ to review insurance carrier's records of fire losses.

§12-45.3-15 Permit required. Section 1.12.8 and Tables 1.12.8(a), (b), (c), and (d) are deleted in their entirety. [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. There are no state fire code permit requirements. Permits are authorized by county ordinance through the respective adopted fire code.

§12-45.3-16 Building code. Section 3.3.54.1 is amended to read as follows: "3.3.54.1 Building Code. The building code is the building code adopted by the county." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. Each county adopts its own building code that is based on the adopted state building

code. The county building code takes precedence for new building construction.

§12-45.3-17 Electrical code. Section 3.3.54.2 is amended to read as follows: "3.3.54.2 Electrical Code. The electrical code is the electrical code adopted by the county." [Eff]
(Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. Each county adopts its own electrical code that is based on the adopted state building code. The county electrical code takes precedence for new building construction.

§12-45.3-18 Mechanical code. Section 3.3.54.3 is amended to read as follows: "3.3.54.3 Mechanical Code. The mechanical code is the mechanical code adopted by the county." [Eff]
(Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. Each county adopts its own mechanical code that is based on the adopted state mechanical code. The county mechanical code takes precedence for new building construction.

§12-45.3-19 Plumbing code. Section 3.3.54.4 is amended to read as follows: "3.3.54.4 Plumbing Code. The plumbing code is the plumbing code adopted by the county." [Eff]
(Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. Each county adopts its own plumbing code that is based on the adopted state plumbing code. The county plumbing code takes precedence for new building construction.

§12-45.3-20 Fire Watch. Section 3.3.126 is amended to read as follows: "3.3.126 Fire Watch. The assignment of a person or persons to an area for the express purpose of notifying the fire department, the building occupants, or both of an emergency; preventing a fire from occurring; extinguishing small fires; and protecting the public from fire or life safety dangers." [Eff]
(Auth: HRS §132-3)(Imp: HRS §132-3)

Changes "or" to "and" to clarify that all the criteria apply to the term.

§12-45.3-21 Maintenance. Section 4.5.8.1 is amended to read as follows: "4.5.8.1 Whenever or wherever any device, equipment, system, condition, arrangement, level of protection, fire-resistive construction, or any other feature is required for compliance with the provisions of this Code, such device, equipment, system, condition, arrangement, level of protection, fire-resistive construction, or other feature shall thereafter be continuously maintained. Maintenance shall be provided in accordance with applicable NFPA requirements and the building code or requirements developed as part of a performance-based design, or as directed by the AHJ." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. The term "and the building code" was added to this paragraph because fire inspections maintain the building's safety features to the building code requirements.

§12-45.3-22 Means of egress. Section 5.3.4 is amended to read as follows: "5.3.4 Means of Egress. The design shall comply with the following building code requirements in addition to the performance criteria of Section 5.2 and the methods of Section 5.4 through Section 5.7:

1. Changes in level in means of egress: Building Code
2. Guards: Building Code
3. Door Openings: Building Code
4. Stairs: Building Code
5. Ramps: Building Code
6. Fire escape ladders: Building Code
7. Alternating tread devices: Building Code
8. Capacity of means of egress: Building Code
9. Impediments to egress: Building Code
10. Illumination of means of egress: Building Code
11. Emergency lighting: Building Code
12. Marking of means of egress: Building Code."

[Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. The reference to NFPA 101 was replaced with "building code requirements" as the adopted county building code takes precedence.

§12-45.3-23 Occupancy classification. Section 6.1.1.1 is amended to read as follows: "6.1.1.1 Occupancy Classification. For the purposes of enforcing this code, the occupancy of a building or structure, or portion of a building or structure, shall be classified in accordance with 6.1.2 through 6.1.13. Occupancy classification shall be subject to the ruling of the AHJ where there is a question of proper classification in any individual case." [Eff]
(Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. The term "for the purposes of this code" was added because the occupancy classifications apply only to the requirements in this code and not to the enforcement of the state or respective adopted county building code. It should be noted that the occupancy classifications in this code are similar, but not identical to the adopted county building codes.

§12-45.3-24 Separated occupancies. Section 6.1.14.4.1 is amended to read as follows: "6.1.14.4.1 Where separated occupancies are provided, each part of the building comprising a distinct occupancy, as described in this chapter, shall be completely separated from other occupancies by fire-resistive assemblies as specified in the building code." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. Clarifies that for new construction, the requirements for fire-resistive assemblies for occupancy separation is authorized from the building code and should be inspected as such.

§12-45.3-25 Required separation of occupancies. Tables 6.1.14.4.1 (a) and 6.1.14.4.1 (b) are deleted in their entirety. [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. Clarifies that for new construction, the building code applies, not these tables, and should be inspected as such.

§12-45.3-26 Occupancy separations. Section 6.1.14.4.2 is amended to read as follows: "6.1.14.4.2 Occupancy separations shall be classified in accordance with the building code and comply with all the requirements for walls separating occupancies in accordance with the building code." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. Clarifies that for new construction, the requirements for occupancy separation is authorized from the building code and should be inspected as such.

§12-45.3-27 Fire resistance ratings. Section 6.1.14.4.3 is deleted in its entirety. [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. Clarifies that for new construction, the requirements for fire resistive ratings is authorized from the building code and should be inspected as such.

§12-45.3-28 Occupancy separations. Section 6.1.14.4.4 is deleted in its entirety. [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. Clarifies that for new construction, the requirements for occupancy separation is authorized from the building code and should be inspected as such.

§12-45.3-29 Fundamental requirements. Section 10.1.1 is amended to read as follows: "10.1.1 Every building or structure shall be arranged, equipped, maintained, and operated in accordance with this Code so as to provide a reasonable level of life safety, property protection, and public welfare from the actual and potential hazards created by fire, explosion, and other hazardous conditions." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. The reference to "new" has been deleted since the building code applies to new construction. This code applies to the maintenance of all the building's safety features.

§12-45.3-30 Life safety code. Section 10.1.2 is amended to read as follows: "10.1.2* Life Safety Code. Every existing building shall comply with this Code and NFPA 101, Life Safety Code." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This allows application of Life Safety Code provisions to existing buildings, which are not in this code. It would not apply to new construction, whose requirements is authorized

from the building code. The Life Safety Code is not a fire code or a building code, but rather about protecting occupants in the building. Since the building code does not apply retroactively, specific requirements from the Life Safety Code may be applied to existing buildings for occupant safety.

§12-45.3-31 Building code. Section 10.1.3 is deleted in its entirety. [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. Clarifies that for new construction, the requirements from the adopted building code apply.

§12-45.3-32 Unsafe buildings. Section 10.2.4 is amended by adding a sentence at the end to read as follows: "For abatement of unsafe buildings, see the building code." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. Clarifies that the requirement for the abatement of unsafe buildings is authorized by the building code.

§12-45.3-33 On-premise firefighting. Section 10.7.1.2 is amended to read as follows: "10.7.1.2 Facilities that have established on-premises fire-fighting organizations and have coordinated and arranged procedures approved by the AHJ shall notify the fire department in accordance with the approved plan." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. Requires notification, submittal and approval of an on-premises fire fighting plan to the county fire department. This is to facilitate cooperation and awareness of the capabilities and expectations in the event of a mutual aid response to an incident.

§12-45.3-34 Open fires. Sections 10.11.1, 10.11.1.1, 10.11.1.2, 10.11.1.3 and 10.11.1.4 are deleted and replaced with sections 10.11.1 and 10.11.1.1 to read as follows: "10.11.1 Agricultural Burning. See Department of Health, Clean Air Branch, regulation of fires for agricultural burning. For fire safety regulations, see county requirements and 10.11.1.1 below.

10.11.1.1 Open Fires in Counties. Control of the following fires shall be established by each county:

1. Fires for agricultural purposes.
2. Fires for recreational, decorative, or ceremonial purposes.
3. Fires to abate a fire hazard.
4. Fires for prevention or control of disease or pests.
5. Fires for training of fire fighting personnel.
6. Fires for disposal of dangerous materials.
7. Fires for residential bathing purposes.
8. Fires for cooking of food.

Except for closed incinerators approved by the state health department, private incineration is prohibited by state health laws. Clearance by the state health department for and notification of all agricultural fires either by telephone or written notice shall be on file with the AHJ before these fires are permitted." [Eff]
 (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. These types of fires mirror state administrative rules (HAR Title 11, Chapter 60, Subchapter 3 "Open Burning"), but their control is under the jurisdiction of the county fire departments and are not subject to state air pollution laws. Fires for agricultural purposes require a permit from the State Department of Health.

§12-45.3-35 Prohibition. Section 10.11.2 is amended to read as follows: "10.11.2 The AHJ shall have the authority to prohibit any or all open flames, candles, and open, recreational, and cooking fires or other sources of ignition, or establish special regulations on the use of any form of fire or smoking material where circumstances make such conditions hazardous. Open flame devices utilizing gas or liquid fuel, such as but not limited to tiki torches, shall keep a minimum of 3 feet clearance from the flame to combustibles, and shall maintain a vertical height of 7 feet from grade to flame. The AHJ is authorized to modify these clearances based on site conditions." [Eff]
 (Auth: HRS §132-3)(Imp: HRS §132-3)

Open flame devices outside or inside of buildings pose a potential hazard and prohibitions are needed to safeguard life safety and property protection. Reasonable judgment is allowed where candles with noncombustible, substantial bases on dining tables and protected by a globe, such as in a restaurant, should not be considered overly hazardous. Open flame devices using gas or liquid fuel was added to coincide with gas company requirements. AHJ approval gives discretion to allow for unusual circumstances or events.

§12-45.3-36 Outdoor fires. Section 10.11.3.1 is amended to read as follows: "10.11.3.1* Outdoor fires shall not be built, ignited, or maintained in or upon hazardous fire areas, without approval from the AHJ." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. "Permit" was deleted because no permits are required in this code. The AHJ may include the fire department or other agencies, such as the State Department of Health (DOH).

§12-45.3-37 Open fires. Section 10.11.4.1 is amended to read as follows: "10.11.4.1 open fires shall be located not less than 50 ft (15 m) from structures or as determined by the AHJ." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This is similar to the previous state fire code. "Permitted" was deleted because the state fire code does not require permits. The deletion of "any" allows better discretion by the AHJ. The AHJ may include the fire department or other agencies, such as the State DOH and if there are conflicts the stricter rule would apply.

§12-45.3-38 Storage on balconies. Section 10.11.6.2 is deleted in its entirety. [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This is a new amendment. This requirement was felt to be unenforceable by the fire departments to inspect all balconies and would be better left to each building's homeowner's association to prohibit. Also, if residents were not allowed to store on the balcony, even though they are prohibited from using it on the balcony, but use it for the beach or camping, would they then bring it indoors and create a greater potential hazard by storing a propane tank indoors?

§12-45.3-39 Signage. Section 10.19.8 is added to read as follows: "10.19.8 Signage. In storage and mercantile occupancies, a sign shall be posted on the automatic sprinkler riser stating the maximum allowable storage height for the design of the sprinkler system as approved by the AHJ." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It addresses the allowable storage height in these occupancies based on the

original design of the sprinklers system. Businesses lease spaces in warehouses with high ceilings and bring in high-piled storage racks, which the original sprinkler system was not designed to control. This amendment assists the fire inspector with identifying these cases.

§12-45.3-40 Fire Fighters' Emergency Operation. Section 11.3.1 is deleted in its entirety. [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. This section applies to new construction and is not regulated by this code.

§12-45.3-41 Number of Cars. Section 11.3.2 is deleted in its entirety. [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. This section applies to new construction and is not regulated by this code.

§12-45.3-42 Elevator Machine Rooms. Section 11.3.3 is deleted in its entirety. [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. This section applies to new construction and is not regulated by this code.

§12-45.3-43 Maintenance. Section 11.6.2 is amended to read as follows: "11.6.2 Maintenance. Rubbish chutes, laundry chutes, and incinerators shall be maintained in accordance with NFPA 82, *Standard on Incinerators and Waste and Linen Handling Systems and Equipment*, unless such installations are approved existing installations, which shall be permitted to be continued in service." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. Deletes the term "installation", which is regulated by building code. This code addresses maintenance inspections.

§12-45.3-44 Emergency command center. Section 11.9 is amended to read as follows: "11.9 Emergency Command Center. Where required by the building code, emergency command centers shall comply with Section 11.9." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. The state building code requires emergency command centers to comply with the fire code.

§12-45.3-45 Emergency command center. Section 11.9.5 is revised by adding Items 12, 13, and 14 to read as follows: "12. The room shall be accessible from the exterior of the building

13. Control panels in the emergency command center shall be permanently identified as to its function.

14. Alarm, supervisory and trouble signals shall be annunciated in compliance with the fire code in the emergency command center by means of an audible and visual indicator." [Eff]
(Auth: HRS §132-3)(Imp: HRS §132-3)

These requirements were in the adopted state fire code Title 12 amendments to the 1997 edition of the Uniform Fire Code. They provide more direct room access and increased identification of control panel indicating devices.

§12-45.3-46 Photovoltaic Systems. Section 11.12.1 is revised by adding an exception to read as follows: "Exception: New photovoltaic systems for one- and two-family dwellings need not comply with section 11.12." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This new section of the fire code addresses installation requirements that relate to power source identification and disconnection, and access pathways for maintenance and fire fighting operational safety. Exempting one- and two-family dwellings will allow each county to determine requirements either through the building or fire code.

§12-45.3-47 General. Section 12.1 is amended to read as follows: "12.1 General. This chapter shall apply to existing, permanent, or temporary buildings. The provisions of this chapter shall not apply to new construction. For new construction see the building code. Existing buildings shall be maintained to meet the requirements of the building code in effect at the time the structure was built." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. New construction is regulated by the building code. Each county will be able to

adopt the state fire code with provisions for new construction because they have the authority to be more restrictive. Existing buildings do not need to comply with newer editions of the fire code unless there is a change in occupancy use or conditions exists that pose imminent danger to building occupants.

§12-45.3-48 Identification. Section 12.4.7 is added to read as follows: "12.4.7 Identification. When required by the AHJ, a sign shall be displayed permanently near or on each required fire door in letters not less than 1 inch (25.4 mm) high to read as follows:

**FIRE DOOR
DO NOT OBSTRUCT
or
FIRE DOOR
KEEP CLOSED**

The sign shall not be amended without authorization of the AHJ." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It provides two options to required fire door signage.

§12-45.3-49 General. Section 13.1 is amended by adding a new first paragraph and exception to read as follows: "13.1 General. The provisions of this chapter for new construction do not apply. For new construction see the building code. Existing buildings shall be maintained to the requirements to which it was built unless specifically indicated it applies to existing facilities.

Exception: When the building code does not require fire alarm systems, fire alarm systems shall be required according to Section 13.7. When the building code does require a fire alarm system, the requirements of the building code shall apply." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. The building code regulates requirements for new construction. Each county has the authority to adopt the state fire code with local amendments with provisions for new construction. Existing buildings are not required to comply with newer editions of the fire code unless there is a change in occupancy use or

conditions exists that pose imminent danger to building occupants.

§12-45.3-50 Installation acceptance testing. Section 13.1.1 is amended by adding a second and third paragraph to read as follows: "Fire alarm systems; fire hydrant systems; fire-extinguishing systems; standpipes; and other fire-protection systems and appurtenances required by this code shall be approved by the AHJ as to installation and location and shall be subject to acceptance tests required by the appropriate county agency.

A copy of a system's unsatisfactory inspection and maintenance test report shall be submitted to the AHJ within five (5) working days after the completion of the test." [Eff: _____] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. This authorizes the appropriate county agency i.e. fire hydrants (Board of Water Supply), fire sprinklers and standpipes installation (Building Department), to meet its respective requirements. The fire department does acceptance testing for fire alarm systems and commercial cooking fire extinguishing systems. This specifies that installation and location must be approved by the AHJ on these specific items.

§12-45.3-51 Responsibility. Section 13.1.2 is amended by adding a sentence to the end of the paragraph to read as follows: "A written record of the test reports verifying the operational status of these types of systems shall be maintained and shall be made available to the AHJ, upon request." [Eff: _____] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It authorizes fire inspectors to verify maintenance reports of fire protection systems to ensure operational reliability.

§12-45.3-52 Licenses. Section 13.1.2.1 is added to read as follows: "13.1.2.1 Personnel conducting inspections, testing and maintenance shall be issued a license by the AHJ. Said license shall be valid for three years for the following: 1) Automatic Fire Extinguishing Systems; 2) Class I standpipes; 3) Class II standpipes; 4) Class III standpipes; 5) Combined Systems; 6) Portable Fire Extinguishers.

EXCEPTION: Unless said license is suspended or revoked by the AHJ.

Personnel conducting the inspection, testing and maintenance shall be qualified and experienced in inspection, testing and maintenance for the specific type of system prior to conducting inspections, testing and maintenance for the specific type of system.

Procedures to be followed in accomplishing the test and inspections required by section 13.1.2.1 shall be in accordance with the appropriate NFPA standard and as promulgated by the AHJ in rules adopted pursuant to this code and HRS Chapter 91. Procedures to be followed in the issuance, suspension, or revocation for cause of licenses shall be as promulgated by the AHJ in rules adopted pursuant to this code and HRS Chapter 91." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This is a consolidated county amendment. It requires individuals conducting maintenance testing of these fire protection systems and appliances to be licensed and qualified.

§12-45.3-53 FDC. Section 13.1.4.2 is added to read as follows: "13.1.4.2 Fire department hose connections serving standpipe and sprinkler systems shall be located within 20 feet of a fire apparatus access road, not less than 18 inches and not more than 4 feet above grade, or as approved by the AHJ. Appropriate identification signs shall be provided as required by the AHJ." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It requires connections to be in readily accessible locations to roadways for fire department use. It incorporated two amendments, one for standpipes and one for sprinklers into one amendment for both types of connections.

§12-45.3-54 Records. Section 13.1.5 is amended to read as follows: "13.1.5 Detailed records documenting all systems and equipment testing, inspections and maintenance shall be kept by the property owner and shall be made available upon request for review by the AHJ." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It coincides and reinforces the amendment to section 13.1.2.

§12-45.3-55 Smoke-control systems. Section 13.1.13 is added to read as follows: "13.1.13 Mechanical smoke-control systems, such as those in high-rise buildings, buildings containing atria, covered mall buildings and mechanical ventilation systems utilized in smokeproof enclosures and for smoke-removal systems utilized in high-piled combustible storage occupancies, shall be maintained in an operable condition at all times. A written record of the test reports verifying the operational status of these types of systems shall be maintained and shall be made available to the AHJ, upon request." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It authorizes fire inspectors to verify maintenance reports of fire protection systems to ensure operational reliability.

§12-45.3-56 Existing assembly occupancies. Section 13.3.2.8 is deleted in its entirety. [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It recognizes that this code does not retroactively apply to existing assembly occupancies that were constructed to requirements in the building code of that time.

§12-45.3-57 Existing educational occupancies. Section 13.3.2.10 is deleted in its entirety. [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It recognizes that this code does not retroactively apply to existing educational occupancies that were constructed to requirements in the building code of that time.

§12-45.3-58 Existing health care occupancies. Section 13.3.2.12 is deleted in its entirety. [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It recognizes that this code does not retroactively apply to existing health care occupancies that were constructed to requirements in the building code of that time.

§12-45.3-59 Existing Detention and Correctional facilities. Section 13.3.2.14 is deleted in its entirety. [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)\

This was in the previous state fire code. It recognizes that this code does not retroactively apply to existing detention and correctional facilities that were constructed to requirements in the building code of that time.

§12-45.3-60 Existing hotels and dormitories. Section 13.3.2.16 is deleted in its entirety. [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It recognizes that this code does not retroactively apply to existing hotels and dormitories that were constructed to requirements in the building code of that time.

§12-45.3-61 Existing residential board and care facilities. Section 13.3.2.22 is deleted in its entirety. [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It recognizes that this code does not retroactively apply to existing residential board and care facilities that were constructed to requirements in the building code of that time.

§12-45.3-62 Existing mercantile occupancies. Section 13.3.2.24 is deleted in its entirety. [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It recognizes that this code does not retroactively apply to existing mercantile occupancies that were constructed to requirements in the building code of that time.

§12-45.3-63 Existing high-rise buildings. Section 13.3.2.26.2 is deleted in its entirety. [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It recognizes that this code does not retroactively apply to existing high-rise buildings that were constructed to requirements in the building code of that time.

§12-45.3-64 Positive alarm sequence. Section 13.7.1.4.10.4 is amended to read as follows: "13.7.1.4.10.4 When approved by the AHJ and where permitted by Chapter 11 through Chapter 42 of NFPA 101, a positive alarm sequence shall be permitted, provided that it is in accordance with NFPA 72." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It allows with conditions, an exception to the requirement that fire alarm initiating devices produce an audible signal throughout the entire building.

§12-45.3-65 General. Sections 13.7.2.3.1 is amended by adding a second paragraph to read as follows: "An annunciator panel shall be provided in the office of each school." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It adds the requirement for a fire alarm annunciator panel for new educational occupancies be located in the school office. This location is most reliable location to be constantly attended during operational hours and has the means to immediately notify the fire department.

§12-45.3-66 General. Sections 13.7.2.4.1 is amended by adding a second paragraph to read as follows: "An annunciator panel shall be provided in the office of each school." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It adds the requirement for fire alarm annunciator panels in existing educational occupancies be located in the school office. This has been a long-standing requirement and should be present in all educational occupancies. This area is most reliable location to be constantly attended during operational hours and has the means to immediately notify the fire department.

§12-45.3-67 Existing apartment buildings. Sections 13.7.2.12.1 and 13.7.2.12.2 are deleted in their entirety. [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It recognizes that this code does not retroactively apply to existing apartment

buildings that were constructed to requirements in the building code of that time.

§12-45.3-68 Lodging and rooming houses. Sections 13.7.2.13 and 13.7.2.13.1 are deleted in their entirety. [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It recognizes that this code does not retroactively apply to existing lodging and rooming houses that were constructed to requirements in the building code of that time.

§12-45.3-69 Existing mercantile occupancies. Section 13.7.2.18 is deleted in its entirety. [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It recognizes that this code does not retroactively apply to existing mercantile occupancies that were constructed to requirements in the building code of that time.

§12-45.3-70 Existing business occupancies. Section 13.7.2.20 is deleted in its entirety. [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It recognizes that this code does not retroactively apply to existing business occupancies that were constructed to requirements in the building code of that time.

§12-45.3-71 Tag. Section 13.7.3.2.5 is added to read as follows: "13.7.3.2.5 A tag shall be placed on the fire alarm panel when tested in accordance with section 13.7.3.2. Information on the tag shall include the date of testing, testing company and contact information, technician performing the test, and that the test was satisfactory." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was a consolidated county amendment from the NFPA Fire Code 2006 edition. It allows fire inspectors to verify fire alarm testing with contact information.

§12-45.3-72 Manual fire alarm boxes. Section 13.7.3.3.6 is amended to add a new sentence at the end to read as follows: "The location of manual fire alarm boxes may be modified by the AHJ." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This amendment allows alternate locations for fire alarm pull stations by the AHJ. An example is the agreement between the State Department of Education and the State Fire Council to allow pull stations to be placed inside of classrooms with identification signs outside of those classrooms. The justification was to reduce vandalism and false activations with the rooms being accessible during school hours.

§12-45.3-73 Application. Section 14.1 is amended to read as follows: "14.1 Application. Means of egress in existing buildings shall comply with this Code and NFPA 101, *Life Safety Code*. The provisions of this chapter do not apply for new construction. For new construction see the building code. Existing buildings shall be maintained to meet the requirements of the building code at the time the structure was built, unless specifically indicated for existing facilities. Provisions in this chapter are provided for maintenance purposes.

Exception: Stairway marking requirements set forth in Section 10.12.3 shall apply to new and existing construction." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. The reference to 14.6.4.1 in the exception of the NFPA 1 Fire Code, 2006 edition, was changed to 10.12.3 to match the appropriate section in the 2012 edition. Maintenance of building and fire protection systems and appliances are the enforceable objectives of the fire code. NFPA 101 is not a fire or building code, but is concerned with the protection of building occupants. The application to existing buildings eliminates conflicts with building code requirements for new construction. There are about 1500 sections that are extracted from NFPA 101 throughout NFPA 1 Fire Code, but there are other important provisions that are not. This means unless specifically adopted they would not apply. In addition, "grandfathering" in building codes leaves a loophole that NFPA 101 closes when imminent danger exists.

§12-45.3-74 Additional doors. Section 14.5.1.4 is amended by adding an exception at the end to read as follows: "EXCEPTION:

Double-acting screen doors used in conjunction with exit doors having panic hardware in school cafeteriums do not need to comply with this provision." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. This allows double acting screen doors to be allowed in school cafeteriums for egress. It was allowed in previous building code amendments to allow doors that swung in both directions and provided additional ventilation for Hawaii's climatic conditions.

§12-45.3-75 Latch. Section 14.5.2.13 is added to read as follows: "14.5.2.13 In accordance with the building code, security gates may be permitted across corridors or passageways in school buildings if there is a readily visible durable sign on or adjacent to the gate, stating 'THIS GATE IS TO REMAIN SECURED IN THE OPEN POSITION WHENEVER THIS BUILDING IS IN USE'. The sign shall be in letters not less than one inch high on a contrasting background. The use of this exception may be revoked by the building official for due cause." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. This was allowed in previous editions of the building code as amended, to provide security to corridors and passageways after regular school hours, and still provide clear egress width for occupants when classes are in session.

§12-45.3-76 Occupant load increases. Section 14.8.1.3.1 is amended to read as follows: "14.8.1.3.1 The occupant load in any building or portion thereof shall be allowed to be increased from the occupant load established for the given use in accordance with the building code where all other requirements of this Code are also met, based on such increased occupant load. Occupant load increases shall be approved by the AHJ. The fire department shall be notified of any increase in occupant load. " [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It allows discretionary approval by the AHJ, most likely by building/fire officials, for occupant load increases when circumstances or other elements are evaluated to determine whether approval may be granted or not, without compromising life safety. It also provides for fire department notification.

§12-45.3-77 Determination of occupant load. Section 14.8.1.7 is added to read as follows: "14.8.1.7 The number of persons in a building or portion thereof shall not exceed the amounts determined as specified in the building code." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It requires occupant loads to be determined by the building code.

§12-45.3-78 Egress capacity. Section 14.8.3.1 is amended to read as follows: "14.8.3.1 Egress capacity for approved components of means of egress shall be based on the capacity factors shown in the building code." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It requires egress capacities to be determined by the building code.

§12-45.3-79 Elevator identification. Add a Section 14.14.8.4 to read as follows: "14.14.8.4 At all elevator locations on each floor level above and below the floor of exit discharge, there shall be displayed in a conspicuous location a sign reading: 'IN CASE OF FIRE USE EXIT STAIRWAYS. DO NOT USE ELEVATORS'. Lettering shall be not less than 5/8-inch high.

EXCEPTION: Signs at least 2-3/4-inches X 2-1/4-inches in overall size with legible wording and approved by the AHJ, may be used as an alternate and shall be affixed at each elevator call button assembly.

Elevator service companies shall have their name and telephone number in the elevator key box." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. This adds a requirement for location and warning signs at every level of each elevator lobby.

§12-45.3-80 Water supply. Section 16.4.3.1.1 is amended to read as follows: "16.4.3.1.1 A water supply for fire protection, either temporary or permanent, shall be made available as soon as combustible material is present." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This is a new amendment. It changes as soon as combustible material "accumulates" to "is present" to clarify that a water supply is required as soon as combustible material exists on the property during construction.

§12-45.3-81 Modifications to Required Access. Section 18.2.3.1.3 is amended to read as follows: "18.2.3.1.3 The provisions of 18.2.3.1 through 18.2.3.2.2.1 shall be permitted to be modified by the AHJ where any of the following conditions exists:

- (1) Not more than two one- and two-family dwellings protected by an approved automatic sprinkler system in accordance with Section 13.1
- (2) Not more than two existing one- and two-family dwellings
- (3) Private garages having an area not exceeding 400 ft²
- (4) Carports having an area not exceeding 400 ft²
- (5) Agricultural buildings having an area not exceeding 400 ft²
- (6) Sheds and other detached buildings having an area not exceeding 400 ft²" [Eff _____] (Auth: HRS §132-3)(Imp: HRS §132-3)

This is a new amendment. It changes (1) and (2) to "Not more than two" one- and two-family dwellings and existing one- and two-family dwellings to limit its application.

§12-45.3-82 Dimensions. Sections 18.2.3.4.1.1 is amended to read as follows: "18.2.3.4.1.1 Fire department access roads shall have an unobstructed width of not less than 20 ft (6.1 m) or as approved by the AHJ." [Eff _____] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It requires a clear 20 foot width and allows modifications by the fire department for certain circumstances.

§12-45.3-83 Dimensions. Sections 18.2.3.4.1.2 is amended to read as follows: "18.2.3.4.1.2 Fire department access roads shall have an unobstructed vertical clearance of not less than 13 ft 6 in."

(4.1 m) or as approved by the AHJ." [Eff]
(Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It requires a 13 feet 6 inch vertical height clearance and allows modifications by the fire department for certain circumstances.

§12-45.3-84 Bridges or Culverts. Section 18.2.3.4.5.1 is amended to read as follows: "18.2.3.4.5.1 When a bridge or culvert is required to be used as part of a fire apparatus access road, it shall be constructed and maintained in accordance with county requirements." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. County requirements follow national standards to support the weight of fire department apparatus. The term "Culverts" was added because they are not addressed in the national code.

§12-45.3-85 Bridges or Culverts. Section 18.2.3.4.5.2 is amended to read as follows: "18.2.3.4.5.2 The bridge or culvert shall be designed for a live load sufficient to carry the imposed loads of fire apparatus." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. County requirements follow national standards to support the weight of fire department apparatus. The term "Culverts" was added because they are not addressed in the national code.

§12-45.3-86 Required water supply for fire protection. Section 18.3.1 is amended to read as follows: "18.3.1 A water supply approved by the county, capable of supplying the required fire flow for fire protection shall be provided to all premises upon which facilities or buildings, or portions thereof, are hereafter constructed, or moved into or within the county. When any portion of the facility or building is in excess of 150 feet (45 720 mm) from a water supply on a fire apparatus access road, as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains capable of supplying the required fire flow shall be provided when required by the AHJ. For on-site fire hydrant requirements see section 18.5.1.

EXCEPTIONS:

1. When facilities or buildings, or portions thereof, are completely protected with an approved automatic fire sprinkler system, the provisions of section 18.3.1 may be modified by the AHJ.
2. When water supply requirements cannot be installed due to topography or other conditions, the AHJ may require additional fire protection as specified in section 18.3.1.1, as amended in this code.
3. When there are not more than two dwellings, or two private garages, carports, sheds and agricultural Occupancies, the requirements of section 18.3.1 may be modified by the AHJ." [Eff _____] (Auth: HRS §132-3)(Imp: HRS §132-3).

This was in the previous state fire code. This allows similar exceptions to §12-45.3-81 when water supply requirements cannot be met by using alternative methods, such as automatic fire sprinklers.

§12-45.3-87 Required installations. Section 18.5.1 is amended to read as follows: "18.5.1 The location, number and type of fire hydrants connected to a water supply capable of delivering the required fire flow shall be provided on a fire apparatus access road or on the site of the premises or both, in accordance with the appropriate county water requirements." [Eff _____] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. This change allows consistent application of hydrant requirements for each county whether it is from a public or private water supply.

§12-45.3-88 Testing. Section 18.5.4 is amended to read as follows: "18.5.4 Private water supply systems shall be tested and maintained in accordance with NFPA 25 or county requirements as determined by the AHJ." [Eff _____] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It allows fire departments, who normally have jurisdiction for private water supply requirements for testing and maintenance, to use either county or NFPA Standard 25 for approval.

§12-45.3-89 Testing and maintenance. Section 18.5.6 is amended by adding a paragraph to read as follows: "The AHJ shall be

notified whenever any fire hydrant is placed out of service or returned to service. Owners of private property required to have hydrants shall maintain hydrant records of approval, testing, and maintenance, in accordance with the respective county water requirements. Records shall be made available for review by the AHJ upon request." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It allows additional requirements such as fire hydrant systems to be certified and approved before being placed into service, notification of the fire department when hydrants are placed out of service and owners of private hydrants to maintain records of approval, testing and maintenance.

§12-45.3-90 Nonmetallic containers. Section 19.2.1.2.1 is amended by adding an exception at the end to read as follows: "EXCEPTION: Containers used by private residences for refuse pickup." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It allows non-metallic rubbish containers for private residences.

§12-45.3-91 Decorative materials. Section 20.1.2.1 is amended by adding a new sentence at the end to read as follows: "A record of fire-resistant treatment shall be kept on the premises for review by the AHJ." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It adds a requirement for a record of fire-resistant treatment of decorative materials in assemblies to be kept on the premises for the fire department to verify.

§12-45.3-92 Plan of exit ways and aisles. Section 20.1.5.1.4 is added to read as follows: "20.1.5.1.4 A floor plan indicating the seating arrangements, location and width of exit ways and aisles shall be submitted to the AHJ for review for places of assembly with an occupant load of 300 or more persons. A copy of the plan shall be kept on display on the premises. An exit plan shall also be posted in a conspicuous location near the main entrance and shall be maintained in a legible condition by the owner or an authorized agent.

Management of the event or business shall be responsible for the inspection before each show or event of all required means of egress from each part of the building, including stairways, egress doors and any panic hardware installed thereon, aisles and corridors. Passageways and similar elements of the means of egress shall be available for immediate use and free of all obstructions before each show or event. Management shall inform all patrons of all required exit locations before each show or event in places of assembly with an occupant load of 300 or more persons." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It adds requirements for the maintenance of exit ways and aisles for places of assembly with an occupant load of 300 or more persons.

§12-45.3-93 Overcrowding. Section 20.1.5.1.5 is added to read as follows: "20.1.5.1.5 Overcrowding. Overcrowding and admittance of persons beyond the approved capacity of a place of assembly are prohibited. The AHJ, upon finding overcrowding conditions or obstructions in aisles, passageways or other means of egress, or upon finding a condition which constitutes a serious menace to life, is authorized to cause the performance, presentation, spectacle or entertainment to be stopped until such conditions or obstruction is corrected." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It authorizes fire departments to prevent a potential hazard to life safety due to overcrowding.

§12-45.3-94 Open Flame Devices and Pyrotechnics. Section 20.1.5.3, Item (1) is amended to read as follows: "(1) Pyrotechnic special effect devices shall be permitted to be used on stages before proximate audiences for ceremonial or religious purposes, as part of a demonstration in exhibits, or as part of a performance, provided that all of the following criteria are met:

(a) Precautions satisfactory to the AHJ are taken to prevent ignition of any combustible material.

(b) Use of the pyrotechnic device complies with Section 65.3.

(c) Use of pyrotechnic devices indoors shall only be allowed in buildings protected throughout with automatic fire sprinklers.

(d) Use of pyrotechnic devices indoors shall only be allowed in buildings where all fire and life safety systems are deemed appropriate as determined by the AHJ." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This amendment adds two additional requirements (c & d) in Item (1) for pyrotechnic special effects.

§12-45.3-95 Open flame devices and pyrotechnics.

Section 20.1.5.3 is amended by adding a new item (7) to read as follows: "(7) When approved by the AHJ, open-flame devices may be used by performers, provided adequate precautions are taken to prevent ignition of combustible materials. Such devices shall not be used except in areas protected by an automatic sprinkler system. In addition, a 20 foot clearance to the viewing audience shall be provided, or a suitable non-combustible net shall be erected to prevent accidental release onto the viewing audience. Performances with fire shall provide a plan for use of fire approved by the AHJ. The plan shall address fuel use and storage, device ignition, device usage and extinguishment procedures." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This amendment is additional requirement added as a separate Item (7) to address the open flames associated with fire dancing. This provision is similar to Item (1) in the previous amendment, but fire dancing does not use pyrotechnic special effects.

§12-45.3-96 Open flame devices and pyrotechnics.

Section 20.1.5.3 is amended by adding a new item (8) to read as follows: "(8) Portable heating equipment, not flue-connected, shall be permitted only as follows: Equipment fueled by small heat sources which can be readily extinguished by water, such as candles or alcohol-burning equipment (including solid alcohol) may be used provided adequate precautions satisfactory to the AHJ are taken to prevent ignition of any combustible materials." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This amendment is an additional requirement as a separate Item (8) when portable heating equipment is used to fuel open flame devices.

§12-45.3-97 Fire drills. Section 20.2.4.2.3 is amended by adding a new exception at the end to read as follows: "EXCEPTION:

Fire drills at high schools, middle schools and intermediate schools shall be conducted at least quarterly during school sessions." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It allows fire drills at high and middle schools to be conducted quarterly instead of monthly. The older age groups should be able to retain the fire drill information and practices better than elementary age students.

§12-45.3-98 Use of school facilities for sleeping. Section 20.2.4.6 is added to read as follows: "20.2.4.6 Use of School Facilities for Sleeping. Educational occupancies that allow sleeping on a temporary basis shall prohibit smoking or open flames and shall be provided with one of the following:

- 1 Smoke alarms shall be provided in the designated sleeping area. When the facility is provided with a fire alarm system, the smoke alarms shall be connected to the fire alarm system, or
- 2 An approved fire watch shall be provided." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It provides a minimum degree of protection in an occupancy not designed for sleeping purposes and for a practice of visiting neighbor island students that travel to another neighbor island and spend the evening prior to or after an athletic event at the host school at a much lower cost than a hotel. Fire watch approval is intended to include fire watch duties to the person performing that function.

§12-45.3-99 Manufactured housing. Section 20.11.5 is deleted in its entirety. [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It is deleted because it is regulated by the building code.

§12-45.3-100 Scope. Section 25.1.1 is amended by adding an exception at the end to read as follows: "Exception: The provisions of this section do not apply to tents and temporary membrane structures having an area 400 square feet or less." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. Requirements for tents and temporary membrane structures are regulated by the building code. However, county fire departments have requirements and approve permits for larger tent sizes.

§12-45.3-101 Guard posts. Section 42.3.3.7.2 is amended to read as follows: "42.3.3.7.2* Guard posts or other approved means shall be provided to protect tanks and appurtenances that are subject to vehicular damage in accordance with section 60.5.1.9." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. Reference to 60.5.1.9 provides requirements for guard post construction requirements.

§12-45.3-102 Emergency electrical disconnects. Section 42.5.7 is amended by adding new sentences at the end to read as follows: "Such devices shall be distinctly labeled as EMERGENCY FUEL SHUTOFF DEVICE. Signs shall be provided in approved locations. The signs shall be in red letters on a white background, not less than two inches high, with a ¼ inch stroke." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It adds important signage information for emergency shutoffs.

§12-45.3-103 Age limitation. Section 42.7.1.1 is added to read as follows: "42.7.1.1 Age Limitation. Persons under the age of 15 years are prohibited from dispensing fuel." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It is believed that a person 15 years or older is likely to understand the dangers involved in improperly dispensing fuel into vehicles and are able to act responsibly. Further, persons of this age are eligible to test for driving permits.

§12-45.3-104 Foreign objects. Section 42.7.1.2 is added to read as follows: "42.7.1.2 Foreign Objects. The placement of a foreign object(s), that allows the fuel dispensing lever to remain in the open position, is prohibited at all times." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It prohibits an unsafe practice and requires persons to be in constant attendance when refueling is in progress.

§12-45.3-105 Signs. Section 42.7.2.5.4 is amended to read as follows: "42.7.2.5.4* Signs. Warning signs shall be conspicuously posted in the dispensing area and shall incorporate the following or equivalent wording:

WARNING:

It is unlawful and dangerous to dispense gasoline into unapproved containers.

No smoking.

Stop motor.

No filling of portable containers in or on a motor vehicle.

Place container on ground before filling.

Discharge your static electricity before fueling by touching a metal surface away from the nozzle.

Do not re-enter your vehicle while gasoline is pumping.

If a fire starts, **do not** remove nozzle — back away immediately.

Do not allow individuals under the age of 15 years to use the pump.

The placement of a foreign object(s), that allows the fuel dispensing lever to remain in the open position, is prohibited at all times." [Eff: _____] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It keeps the most important safety information and adds the last two items that is consistent with previous amendment requirements.

§12-45.3-106 Latch-open device. Section 42.7.4.3.2 is added to read as follows: "42.7.4.3.2 The hose nozzle valve shall not be equipped with an integral latch-open device where dispensing of Class I, II or III-A liquids is performed by someone other than a qualified attendant. The placement of a foreign object(s), that allows the fuel dispensing lever to remain in the open position, is prohibited at all times." [Eff: _____] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It is to prevent the unsafe practice of unattended refueling, which may lead to spills and possible ignition. It is in the section that addresses attendants at fuel dispensing facilities. This also means where

a qualified attendant is performing the refueling operation, a latch-open device is permitted. The refueling station operator is responsible for the training and safe operations of refueling operations. The AHJ may determine what "qualified means.

§12-45.3-107 Latch-open device. Section 42.7.5.4 is amended to read as follows: "42.7.5.4 The hose nozzle valve shall not be equipped with an integral latch-open device where dispensing of Class I, II or III-A liquids is performed by someone other than a qualified attendant. The placement of a foreign object(s), that allows the fuel dispensing lever to remain in the open position, is prohibited at all times." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It is to prevent the unsafe practice of unattended refueling, which may lead to spills and possible ignition. It replaces the section of the code that allows latch-open devices. This also means where a qualified attendant is performing the refueling operation, a latch-open device is permitted. The refueling station operator is responsible for the training and safe operations of refueling operations. The AHJ may determine what "qualified means.

§12-45.3-108 Acceptance Test. Section 50.4.3.3 is added to read as follows: "50.4.3.3. Prior to the commencement of initial cooking operations, a satisfactory acceptance test of the system shall be made in accordance with the manufacturer's instructions. The acceptance test shall be of an approved method and witnessed by the AHJ." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This is a consolidated county amendment. It authorizes the AHJ to approve and witness the acceptance test of commercial cooking extinguishing systems before cooking operations commence.

§12-45.3-109 Operations and maintenance. Section 50.5.2.1 is amended to read as follows: "50.5.2.1 Extinguishing systems shall be serviced at least every six months or after activation of the system. Inspections shall be conducted by a qualified individual as approved by the AHJ. A copy of the inspection test report shall be kept on the premises and a copy of the inspection report shall be

forwarded to the AHJ within five (5) working days of completion of the required servicing and testing.

The AHJ shall be notified a minimum of four (4) working days prior to the service date by the company conducting the test. The AHJ shall be informed of the name of the business being serviced, date and time of servicing, and the company and the individual conducting the servicing." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It requires frequency of maintenance testing of commercial cooking extinguishing systems, notification to the AHJ of the testing date and test results, and the individual conducting the test.

§12-45.3-110 Available. Section 60.1.6.1 is revised by adding a sentence to read as follows: "The HMMP shall be made available on site." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It requires the Hazardous Materials Management Plan (HMMP) for buildings containing high hazard contents to be available on the premises for review by the AHJ.

§12-45.3-111 Protection from vehicles. Section 60.5.1.9.2, Item (2) is amended to read as follows: "(2) They shall be spaced not more than 3 feet between posts on center," [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. To protect hazardous material storage in tanks from vehicle damage it requires three feet spacing instead of four feet for guard posts.

§12-45.3-112 Protection from vehicles. Section 60.5.1.9.2, Item (5) is amended to read as follows: "(5) They shall be located not less than 3 feet from the tank." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. This requires guard posts to protect hazardous material storage in tanks from vehicle damage to be not less than three feet from the tank instead of five feet.

§12-45.3-113 Attended Delivery. Section 63.4.14.1.2.1 is added to read as follows: "63.4.14.1.2.1 Tank vehicles transporting cryogenic fluids shall not be left unattended on any residential street or within 500 feet of any residential area, apartment or hotel complex, educational, hospital or care facility at any time; or at any other place or location that would present a hazard to persons or property from fire loss.

EXCEPTION: When unattendance is necessary in connection with unloading the vehicle or servicing tanks; or when in case of accident or other emergency, the operator must leave the vehicle to obtain assistance." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It adds requirements for vehicles transporting cryogenic fluids by prohibiting unattended vehicles in areas with residential, educational, or health care facilities. It does provide exceptions for justifiable reasons.

§12-45.3-114 Seizure of fireworks. Section 65.1.3 is added to read as follows: "65.1.3 The AHJ is authorized to require the owner to remove at the expense of the owner, all fireworks offered for sale, stored, or possessed in violation of Chapter 65, or other applicable state or county laws or rules." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It authorizes the AHJ to have the owner, at their expense, to remove all fireworks from the premises when violations of this chapter or other laws governing fireworks are discovered.

§12-45.3-115 Prohibition. Section 65.1.4 is added to read as follows: "65.1.4 Importation, storage, possession, sale, purchase, transfer, public displays and discharge of fireworks shall be in accordance with chapter 132D, HRS." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. It references HRS 132D, which regulates fireworks in the state.

§12-45.3-116 Permits. Section 65.9.2.2 is deleted in its entirety. [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. Fireworks permits are issued and approved by the counties.

§12-45.3-117 Permits and plans. Section 66.1.5 is amended to read as follows: "66.1.5 Permits and Plans. Permits, where required, shall comply with Section 1.12 and applications for permits shall be submitted with a proposed site plan." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. This allows the language for permits to remain because specific permit requirements were deleted in Section 1.12.8 so each county can place them in their county fire code. Plans were added to clarify that they shall be submitted with the permit application.

§12-45.3-118 Filling unpermitted tanks prohibited. Section 66.1.5.1 is added to read as follows: "66.1.5.1. No fuel supplier shall fill or cause to be filled, an unpermitted storage tank. It is the supplier's responsibility to request and be presented with a copy of the approved permit issued by the authority having jurisdiction." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was a consolidated county fire code amendment. It prohibits fuel suppliers from filling an unpermitted tank and requires an copy of the approved permit to be available to the fuel supplier for verification.

§12-45.3-119 Tanks abandoned in place. Section 66.21.7.4.3.3 is amended to read as follows: "66.21.7.4.3.3 Tanks Abandoned in Place. Tanks may be abandoned in place only if a certified structural engineer confirms that the removal of the tank will jeopardize the structural integrity of the existing building. An affidavit attesting to this determination shall be submitted to the AHJ prior to taking abandonment measures. Tanks abandoned in place shall be abandoned as follows:

1. Flammable and combustible liquids shall be removed from the tank and connected piping,
2. The suction, inlet, gage, vapor return and vapor lines shall be disconnected.
3. The tank shall be filled completely with an approved, inert solid material.
4. Remaining underground piping shall be capped or plugged, and

5. A record of tank size, location and date of abandonment shall be retained by the owner and a copy submitted to the AHJ." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This was in the previous state fire code. This adds requirements for tanks that cannot be removed only due to the structural integrity of existing buildings above or nearby underground fuel storage tanks. The provisions provide reasonable safety precautions for tanks to be left in its underground location.

§12-45.3-120 Authority to fill. Section 69.1.2.1 is added to read as follows: "69.1.2.1. No fuel supplier shall fill or cause to be filled, an unpermitted storage tank. It is the supplier's responsibility to request and be presented with a copy of the approved permit issued by the authority having jurisdiction." [Eff] (Auth: HRS §132-3)(Imp: HRS §132-3)

This is a consolidated county fire code amendment. It applies to liquefied petroleum gases and liquefied natural gases and prohibits fuel suppliers from filling an unpermitted tank and requires an copy of the approved permit to be available to the fuel supplier for verification. This is the same requirement for flammable liquid tanks.

August 23, 2013

**RATIONALE FOR THE PROPOSED REVISIONS TO
HAWAII ADMINISTRATIVE RULES
TITLE 11, DEPARTMENT OF HEALTH
CHAPTER 25, "RULES RELATING TO CERTIFICATION OF
PUBLIC WATER SYSTEM OPERATORS"**

PART I: INTRODUCTION

This rationale document serves to provide an explanation for the changes which are proposed for Chapter 11-25. These changes are administrative in nature; there are no changes to certification requirements. The three most significant changes deal with: 1) Continuing Education Units, 2) the initial certification period after an examination, and 3) certification fees. The first proposed change is to revise the definition of a "Continuing Education Unit" so that it is equal to 10 contact hours instead of eight. The second proposed change would alter the initial certification period after an operator passes an exam. The third proposed change is an increase in the fees for certification. These proposed changes are discussed in more detail in Part III of this rationale document.

Additional information may be obtained by calling 586-4258 or by writing to the following address:

Hawaii Department of Health
Safe Drinking Water Branch
919 Ala Moana Boulevard, #308
Honolulu, Hawaii 96814

PART II: FORMAT REVISIONS

By direction of the Legislative Reference Bureau (LRB) and pursuant to the procedures established in the Hawaii Administrative Rules Drafting Manual (LRB, June 1994,) parts of Chapter 11-25 have been reformatted. These reformatting changes do not affect the content of the document. Content, or technical changes, are discussed thoroughly in the next part (Part III) of this rationale document.

PART III: CONTENT OR TECHNICAL CHANGES

For clarity, **[deleted text]** has been bracketed and bolded, while all new material has been underlined.

1. §11-25-2 Definitions.

Proposed: "Continuing education unit" or "CEU" means **[eight hours of participation in, and successful completion of, an organized continuing education experience approved by the board.]** a nationally recognized unit of measurement similar to college credits. One CEU is awarded for every 10 contact lecture hours

of participation in, and successful completion of, an organized continuing education experience approved by the board.

* * * * *

["Wastewater treatment plant operator" means any individual who operates a wastewater treatment plant, or a major segment of a wastewater treatment plant.]

Rationale: It is proposed that one CEU will equal 10 contact hours instead of eight contact hours. This is a bookkeeping change which will bring Hawaii's standards for CEUs into line with the national standard. Although the standard for one CEU is proposed to change, the number of *contact hours* that an operator will need to earn to maintain his or her certification will not change. In addition, this change will simplify the conversion of contact hours to CEUs (one contact hour will equal 0.1 CEU as opposed to 0.125 CEU).

The definition of "wastewater treatment plant operator" is proposed to be deleted because this term is no longer used in these rules. Prior to 2002, an operator with wastewater treatment plant experience could use that experience to qualify as a water treatment plant operator. Since the last rule revision in 2002, the board no longer considers wastewater experience to be a valid substitute for water treatment plant experience. The term "wastewater treatment plant operator" no longer appears in the rules, therefore the definition should be deleted.

2. §11-25-2.50(b) & (d) Public water system operation and management.

Proposed: (b) This chapter applies to all WTPs in community and nontransient noncommunity public water systems and all WTPs serving surface water or ground water under the direct influence of surface water. All WTPs covered by this chapter shall be operated by certified WTP operators. Each WTP shall at all times be under the responsible charge of an operator holding a [regular] valid certification equal to or greater than the WTP classification.

* * * * *

(d) Each DS shall at all times be under the responsible charge of an operator holding a [regular] valid certification equal to or greater than the DS classification.

Rationale: The word "regular" is changed to "valid" because an operator with reciprocity certification, a different category than regular certification, is also able to act as the responsible charge operator for a WTP or DS.

3. §11-25-3(2)&(6) Classes of certification.

Proposed: Operators may obtain certification by the following methods provided in this section:

- * * * * *
- (2) Regular certification.
 - (A) An applicant meeting the educational and experience requirements of section 11-25-4 may apply for certification with examination.
 - (B) An applicant already certified in the State may apply for certification with examination in a higher grade if the applicant meets the following requirements:
- * * * * *

Rationale: The words "with examination" are added to clarify that regular certification is obtained through passing an examination (as opposed to reciprocity certification which is obtained without passing an examination.)

Proposed: (6) Conditional certification. Operators in responsible charge of a DS, or a WTP treating ground water, and who [have] had a minimum of one year of such work experience in the State by June 30, 2001, [qualify] qualified for conditional certification. The category of conditional certification [~~shall expire~~] expired on December 31, 2003. Applications for WTPO conditional certification were accepted until June 29, 1993 for operators operating surface water treatment plants. These conditional certificates expired on December 31, 1994, if not canceled earlier.

- [(A) The board may approve the issuance of a conditional certificate without an initial examination for a WTP operator operating a WTP treating ground water, or a DS operator. The conditional certificate shall be valid for two years. The conditional certification shall be site-specific.
- (B) The educational requirements are waived by the board for conditionally certified operators for the two-year period that the certificate is valid. If the operator fails the first examination, the operator may take subsequent examination(s) at the same or lower grade level.
- (C) If the operator is unable to pass an exam within the two-year period, the operator shall no longer perform the duties of an operator after the certificate expires. Also, the operator must then meet the educational and work experience requirements before applying for regular certification with a written examination.]

Rationale: Conditional certifications were allowed until December 31, 2003, as a means of transitioning in the certification requirements for new Distribution System Operators. The text is proposed to be changed to show that this category of certification has expired.

4. §11-25-5(a) & (b) Continuing education units.

Proposed: (a) Certified operators shall obtain CEUs in order to maintain their certification. **[Eight hours are required for each CEU.]** The CEUs shall be earned in the **[three-year]** certification period prior to certification expiration. Ten contact hours equals one CEU. The number of CEUs required every **[three]** two years to renew Grades 1 through 4 certification are as follows:

TABLE 2
CEU REQUIREMENTS

Operator Classification	CEUs Required
Grade 1 <u>or 2</u>	[1.5] <u>0.8</u>
[Grade 2]	1.5
Grade 3 <u>or 4</u>	[3.0] <u>1.6</u>
[Grade 4]	3.0

(b) For operators with less than **[three]** two years of certification in the State prior to the renewal date, the CEU requirements shall be prorated.

Rationale: It is proposed that one CEU will equal 10 contact hours instead of eight contact hours. Although the standard will be changed, the number of contact hours an operator will need to earn to maintain his or her certification will not change. For example, a grade 1 operator currently needs to earn eight contact hours (1 CEU) to maintain certification. Under the revised standard, an operator will still need to earn the eight contact hours, but these contact hours will be designated as 0.8 CEUs. This bookkeeping change is consistent with other states' and continuing education providers' 10-hour standard for CEUs. This change will also simplify the conversion of contact hours to CEUs.

It is also clarified in this section that the certification period is two years and not three years.

5. §11-25-5(c) Continuing education units.

Proposed: (c) If an operator wants to receive CEU credit for a course not previously approved by the board, the operator shall make a written request for approval to the board.

* * * * *

(2) The board will respond in writing to the operator on its determination on the CEU credit request. **[Approved courses will be assigned a course approval number.]**

(d) If the operator has attended a course pre-approved by the board for CEU credits, when applying for renewal the operator

Chapter 11-25 Rationale

shall send to the board a confirmation record of attendance, the certification renewal form [with the course approval number], and the renewal fee. The courses pre-approved for CEUs include:

* * * * *

Rationale: CEUs are tracked in-house in an Access database; no course approval number is assigned or used.

6. §11-25-6(d) & (e) Application for certification.

Proposed: (d) Application for regular certification with exam:
(1) The applicant shall apply at least three months prior to the exam date, and attach [a] separate payments for the application fee and the exam fee.

(e) Application for certification without exam (OIT, reciprocity, temporary, or provisional[, or conditional]):

(1) Applications can be submitted throughout the year.

* * * * *

Rationale: It is clarified that two separate payments will be required, one for the application fee and one for the exam fee. Currently, if the applicant sends in only one combined fee and the application is denied, the exam fee cannot be returned. It is proposed that the applicant will be required to send in two separate fees, so that the exam fee can be returned upon a certification denial.

7. §11-25-8(b) Issuance and renewal of certification.

Proposed: (b) The certificate indicates the operator grade and date the certification was issued. The identification card indicates the grade and expiration date of the certification period. The certification expiration date [for certification] is at least [two full years] one full year from the issuance date. The certificate itself cannot represent certification unless a current identification card is produced to substantiate certification. The certificate shall be prominently displayed at the applicant's principal work station.

Rationale: The program is run using a two-year even-odd system. The certification of operators with names starting with A-K expires in odd years. Likewise, the certification of operators with names starting with L-Z expires in even years. Currently, if an operator passes an exam, he/she is given a full two years of certification. By reducing the initial period of certification, after a passed exam, to a minimum of one year, an operator can be "placed" into his or her correct certification year immediately.

For example, in the current system, an operator with a last name of Smith, who took the exam in 2013, would be granted certification to 2015. The branch was then required to issue the next certification for either one year or three years so that Mr. Smith's certification expiration could fall in an even year. It is simpler and more streamlined to place the operator in his/her correct certification expiration year as soon as possible, right after the operator passes the exam. This also reduces confusion for operators with both water treatment plant operator and distribution system operator certifications, because their certification expiration years would be correct as soon as issued.

8. §11-25-8(c) Issuance and renewal of certification.

- Proposed: (c) The certified operator shall renew his or her certification by the date two weeks before the expiration date. After the expiration date, the operator certification shall expire. After the date one month after the expiration date, the operator with expired certification shall no longer perform the duties of an operator until he or she has applied for renewal, and the renewal has been approved. OIT, temporary, and provisional [and conditional] certifications are not renewable.
- (1) To renew his or her certification, the operator shall submit the renewal application form, the renewal fee[,] and proof of CEU course attendance[, and the CEU code number].
 - (2) For the second through twelfth months following the expiration date, the renewal fee shall [be doubled.] increase by \$20. If the operator has not applied for renewal by the date one year after the expiration date, the certification shall not be renewable. The operator shall not be re-certified unless he or she submits the exam [application] registration form and exam fee, is accepted for, and passes the exam.

Rationale: Conditional certification is no longer a valid category of certification, so it is proposed to be removed. As previously stated, the CEU course approval number or code number is not used to track CEUs.

The penalty for an operator renewing late is proposed to be changed from "doubled" to \$20. Currently, operators who renew for three years (\$30) are charged \$30 plus a \$30 late fee. Operators who renew for only one year are charged \$10 and a \$10 late fee. Charging one standard late fee (\$20) is fair for all operators.

9. §11-25-10 Schedule of fees for certification.

Proposed: The schedule of fees relating to certification shall be as follows:

- (1) Regular certification. The applicant shall submit the application, application fee [~~(\$20)~~ (\$30), and exam fee [~~(\$30)~~ (\$70) at least three months prior to the examination date. If the examinee passes the exam, he or she shall be certified through the expiration date at least [two full years] one full year from the issuance date [~~(a period less than thirty-six months)]~~. A person with temporary[,] or provisional[, or conditional] certification, who applies for regular certification at the same grade level, shall submit the application and exam fee, but does not need to submit a new application fee.
- (2) Reciprocity certification. The applicant shall submit the application, [~~and application fee (\$50)~~ application fee (\$30), and certificate fee (\$70) at the time of application. If the application is not approved, the [~~application fee includes the fee for the certificate and I.D. card.]~~certificate fee will be returned. The certification is valid through the expiration date at least [two full years] one full year from the issuance date [~~(a period less than thirty-six months)]~~.
- (3) Operator-in-training, temporary, or provisional[, or conditional] certification. The applicant shall submit the application [~~and application fee (\$40)~~ application fee (\$30) and certificate fee (\$40) at the time of application. If the application is not approved, the [~~fee includes the fee for the certificate and I.D. card.]~~ certificate fee will be returned. The OIT or temporary[, or conditional] certification shall be valid for twenty-four months.
- (4) Renewal - [~~\$10~~ \$20 per full year of renewal. The certification shall be renewed for a period no longer than three years and the renewal fee shall be due by the date two weeks before the expiration date.

Rationale: The existing fees for certification application (\$20), the exam (\$30), and renewal (\$10 per year) have not increased since the program was initiated in 1993, 20 years ago. It is proposed to implement fee increases as follows: application fee (\$20 to \$30), exam fee (\$30 to \$70), renewal fee (\$10 per year to \$20 per year).

The number of certified operators and workload has increased dramatically since 1993. In 1993, the operator certification program began with 12 certified Water Treatment Plant Operators (WTPOs). In 2001, following EPA's mandate, the state was required to also certify Distribution System Operators (DSOs).

As of June 1, 2013, there are 595 certified operators (218 WTPOs and 526 DSOs).

The current Hawaii public water system operator program fees are much lower than other similar certification fees in Hawaii. Current and proposed fees, and similar certification or licensing fees in Hawaii (for a wastewater treatment plant operator (WWTPO) and electrician or plumber) are summarized below:

	Current Hi. 1993	Proposed Hi.	Hi WWTPO 2002	Hi. Electrician or plumber
App fee	\$20	\$30	\$25	\$40
Exam fee	\$30	\$70	\$50	\$95
License fee				\$75
Total (1st time)	\$50	\$100	\$75	\$210
Reciprocity	\$50	\$100	\$75	
Renewal	\$10/yr.	\$20/yr.	\$25/yr.	\$75/yr.

Similarly, Hawaii's current public water system operator fees are significantly lower than other state water system operator certification fees. These fees are summarized below.

	Current Hi. 1993	Proposed Hi.	Ca. grade 1 2001	Ca. grade 3 2001	Colo 2008	Wa. State 2012
App fee	\$20	\$30			\$15	\$87
Exam fee	\$30	\$70	\$50	\$100	\$45	\$87
Cert fee			\$70	\$120	\$55	
Total (1st time)	\$50	\$100	\$120	\$220	\$115	\$174
Reciprocity	\$50	\$100	\$70	\$120	\$85	\$177
Renewal	\$10/yr.	\$20/yr.	\$70/3 yrs.	\$120/3 yrs.	\$85/3 yrs.	\$42/yr

Hawaii's current fees, and especially the renewal fee, are significantly lower than the fees in these other states. Hawaii's fees do not accurately reflect the time and effort that maintaining the operator certification program entail.

It is proposed to increase the exam fee from \$30 to \$70. It is justified to raise this fee because the fees that the state pays to a private certification exam provider (Association of Boards of Certification) for exam creation and scoring have increased to \$37 per exam, plus additional costs for membership, shipping, review exams, unreturned exams, and expedited requests.

It is proposed to increase the renewal fee from \$10 per year to \$20 per year. Operators who apply for renewal must earn Continuing Education Units (CEUs) in order to maintain their certification. Program staff must review operators' individual

course requests for CEU approval, and also review each operator's CEU earned in order to determine if the operator has met his/her renewal requirement. Colorado charges a "Training Unit Approval Fee" of \$50 per request, while Hawaii does not charge a separate fee. Hawaii also provides a valuable service to each operator of maintaining a record of the operator's earned CEUs. Some operators have asked if Hawaii could provide a copy of this record to other states so that these operators could renew their certifications in these other states.

It is proposed to increase the reciprocity fee (\$50), to separate fees for the application (\$30) and the reciprocity certificate (\$70). The reciprocity fee has always been equivalent to the certification fee for an operator taking the exam (i.e. the application fee plus the exam fee). It is also clarified that the application fee and certificate fee payments should be made separately, so that if an operator is denied reciprocity, the certificate fee (\$70) can be returned to him/her.

It is proposed to increase the operator-in-training, temporary or provisional certification fee from \$40 to \$70. These fees have always been calculated as equivalent to the application fee plus the fee for two years of certification. If the application fee is increased to \$30, and the certification (renewal) fee is increased to \$20 per year, it is consistent to increase the operator-in-training, temporary or provisional certification fee to \$70.

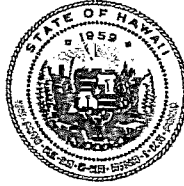
Exhibit A

Chair's Monthly Report for
September and October 2013

1. Board press release, and contact list
2. Board website update
3. Board meeting preparation – agendas, August minutes, brochure & evaluation survey, introduction letters to agencies, noted administrative rules listed on agenda
4. Budget request for fiscal year 2015 Board's clerical and administrative needs
5. Review of RegAlert service
6. Board business cards
7. Attended Hawaii Ethics Commission Workshop, 9/27/13
8. Meeting with State of Hawaii Office of the Auditor, 10/03/13, to discuss Act 97, Sessions Law Hawaii, Relating to Workers' Compensation Medical Fee Schedule; requires the auditor to assist the director of labor and industrial relations to identify medical or health care services or procedures for which fee adjustments are necessary to ensure that injured employees have better access to treatment; a methodology for conducting the statistically valid surveys of prevailing charges that are necessary for adjustment of the fees; and recommending adjusted fees to the director after applying the methodology

Exhibit 4

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



LORETTA J. FUDDY, A.C.S.W., M.P.H.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
SAFE DRINKING WATER BRANCH
919 Ala Moana Boulevard, Room 308
Honolulu, Hawaii 96814

In reply, please refer to:
File: SDWB
Palcovich01.docx

October 18, 2013

TO: Dori Palcovich
Small Business Regulatory Review Board

THROUGH: Joanna L. Seto, P.E., Chief
Safe Drinking Water Branch

FROM: Jodi Yamami
Compliance Section
Safe Drinking Water Branch

SUBJECT: SMALL BUSINESS IMPACT STATEMENT FOR
PROPOSED REVISIONS TO ADMINISTRATIVE RULES
TITLE 11, CHAPTER 25, "RULES RELATING TO CERTIFICATION OF
PUBLIC WATER SYSTEM OPERATORS"

In accordance with Hawaii Revised Statutes Chapter 201M, Small Business Regulatory Flexibility Act, we are forwarding a copy of the following documents for your review and comment:

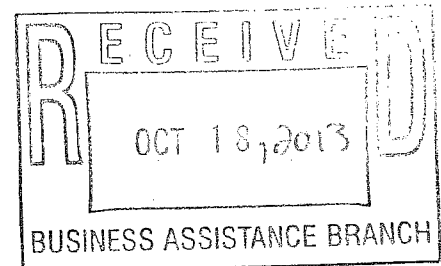
Small Business Impact Statement for the Proposed Revisions to Hawaii Administrative Rules Title 11, Department of Health Chapter 25, "Rules Relating to Certification of Public Water System Operators," dated October 17, 2013

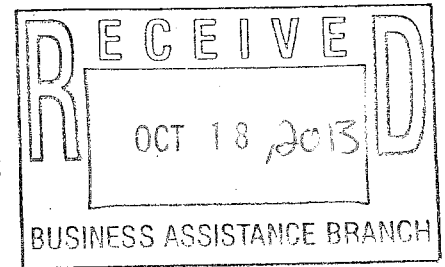
DRAFT Ramseyer version of Hawaii Administrative Rules, Title 11, Chapter 25, "Rules Relating to Certification of Public Water System Operators"

Rationale for the Proposed Revisions to Hawaii Administrative Rules, Title 11, Chapter 25, "Rules Relating to Certification of Public Water System Operators."

Should you have any questions, please contact Ms. Jodi Yamami of the SDWB Compliance Section at 586-4258 or jodi.yamami@doh.hawaii.gov.

JY:slm





**Small Business Impact Statement
For the Proposed Revisions to
Hawaii Administrative Rules
Title 11, Department of Health**

**Chapter 25, "Rules Relating to Certification of Public Water System Operators"
Proposed 10/17/2013**

Changes have been proposed for Hawaii Administrative Rules, Chapter 11-25, Rules Relating to Certification of Public Water System Operators. The changes are administrative in nature with the three (3) most significant changes dealing with: 1) Continuing Education Units, 2) the initial certification period after an examination, and 3) certification fees. The third proposed change to certification fees is an increase in fees. This Small Business Impact Statement describes the impact of increasing certification fees on for-profit businesses with fewer than 100 employees.

1. Businesses Affected

The State of Hawaii regulates 132 public water systems which provide water for human consumption. These water systems are required to have certified operators in responsible charge of the water system who make process control and system integrity decisions in an effort to protect public health. Of the 132 public water systems, 26 are owned by small businesses defined as for-profit enterprises consisting of fewer than 100 employees. The for-profit status was established from filings found on the State of Hawaii, Department of Commerce & Consumer Affairs (DCCA), Business Registration Division (BREG) website. The number of employees per company was obtained from the Hawaii Workforce Infonet (HIWI) website. Five (5) of these 26 small businesses own multiple public water systems. The resulting number of small businesses which will be affected by the certification fee increases is 21. The listing is as follows:

- | | |
|-------------------------------------|-------------------------------------|
| 1. Punaluu Water & Sanitation Corp. | 12. Laniupoko Water Company, Inc. |
| 2. Hawaiian Beaches Water Co., Inc. | 13. Waiola O Molokai, Inc. |
| 3. Hawaii Water Service Co., Inc. | 14. Hawaii Country Club |
| 4. Pural Water Specialty Co., Inc. | 15. Mililani Memorial Park |
| 5. Kohala Ranch Water Company | 16. Laie Water Company, Inc. |
| 6. Kaupulehu Water Company | 17. North Shore Water Company, LLC |
| 7. Hana Water Resources, Inc. | 18. Kipapa Acres C.P.R. |
| 8. Hana Water Company, Inc. | 19. Gill Ewa Lands, LLC |
| 9. Ohanui Corporation | 20. Kealia Water Co. Holdings, LLC |
| 10. Kapalua Water Company, Ltd. | 21. Princeville Utilities Co., Inc. |
| 11. Olowalu Water Company, Inc. | |

2. Description of Businesses Affected

15 of these 21 small businesses are utility companies that have their rates regulated by the State of Hawaii, Public Utilities Commission (PUC). These PUC regulated utilities are able to incorporate the fees of the certified operators when determining their rate schedules.

There are six (6) remaining small businesses which do not sell their water for profit and are not regulated by the PUC.

3. Dollar Amount Increases for Businesses Affected

The fee increases for renewal, certification application, and exam registration would have the greatest impact on small businesses. These existing fees have not increased since the program was initiated in 1993, 20 years ago. The fee increases are proposed as shown in the following table.

Fee Type	Current Fee	Proposed Fee
Renewal	\$10/year	\$20/year
Certification Application	\$20	\$30
Exam Registration	\$30	\$70

The renewal fee increase would double the cost of renewing certification licenses. The following table indicates the number of operator licenses and the associated dollar amounts for the 21 small businesses affected.

Small Business	# of Licenses	Current Total Renewal Fee/Year	Proposed Total Renewal Fee/Year	Increase /Year
Punaluu Water & Sanitation Corp.	2	\$20	\$40	\$20
Hawaiian Beaches Water Co. Inc.	3	\$30	\$60	\$30
Hawaii Water Service Company	45	\$450	\$900	\$450
*Pural Water Specialty Co., Inc.	7	\$70	\$140	\$70
Kohala Ranch Water Company	2	\$20	\$40	\$20
Kaupulehu Water Company	4	\$40	\$80	\$40
Hana Water Resources, Inc.	1	\$10	\$20	\$10
Hana Water Company, Inc.	1	\$10	\$20	\$10
*Ohanui Corporation	2	\$20	\$40	\$20
Kapalua Water Company, Ltd.	3	\$30	\$60	\$30
Olowalu Water Company Inc.	1	\$10	\$20	\$10

Small Business	# of Licenses	Current Total Renewal Fee/Year	Proposed Total Renewal Fee/Year	Increase /Year
Laniupoko Water Company, Inc.	1	\$10	\$20	\$10
Waiola O Molokai, Inc.	2	\$20	\$40	\$20
*Hawaii Country Club	6	\$60	\$120	\$60
*Mililani Memorial Park	5	\$50	\$100	\$50
Laie Water Company, Inc.	3	\$30	\$60	\$30
North Shore Water Company, LLC	2	\$20	\$40	\$20
*Kipapa Acres C.P.R.	2	\$20	\$40	\$20
*Gill Ewa Lands LLC	2	\$20	\$40	\$20
Kealia Water Co. Holdings, LLC	2	\$20	\$40	\$20
Princeville Utilities Co., Inc.	5	\$50	\$100	\$50

* not regulated by PUC

Currently, all the affected small businesses have the required number of certified operators. However, as operators come and go there may be a need for these water systems to submit new certification applications and exam registrations. The increase in those fees would also double with the total increase depending on the number of applications submitted. For example, if a water system required one (1) more certified operator, the current fees to apply for and take an exam would be \$50. With the new proposed fees, the total cost would be \$100, an increase of \$50.

4. Costs for Implementing Agency

The fee increases that would greatly affect the small businesses would be the renewal fee, certification application fee, and exam registration fee as stated in the prior section. Besides these increases, there are other fee increases being proposed. The reciprocity fee would only affect operators from different states and not Hawaii small businesses. The operator-in-training, temporary and provisional certification fees are rarely collected because there has not been a requirement for those types of certifications and therefore those fee increases will not affect Hawaii small businesses. The rationale for all fee increases is described below.

Costs to the Program

The largest proposed fee increase is the exam registration fee which would increase

from \$30 to \$70. It is justified to raise this fee because the fees that the state pays to a private certification exam provider, Association of Boards of Certification (ABC) for exam creation and scoring, have increased from \$20 in 2000 to \$37 in 2013 per exam. This cost is higher than the current exam registration fee. There are also additional costs for membership dues of \$1,200 per year, shipping, review exams, unreturned exams, expedited requests, and proctor travel costs state wide.

It is proposed to increase the renewal fee from \$10 per year to \$20 per year. Operators who apply for renewal must earn Continuing Education Units (CEUs) in order to maintain their certification. Program staff must review operators' individual course requests for CEU approval, and also review each operator's CEU earned in order to determine if the operator has met his/her renewal requirement. Colorado charges a "Training Unit Approval Fee" of \$50 per request, while Hawaii does not charge a separate fee.

The fee increases for other categories that would not affect small businesses are shown in the table below.

Fee Type	Current Fee	Proposed Fee
Reciprocity	\$50	\$100
Operator-in-training	\$40	\$70
Temporary Certification	\$40	\$70
Provisional Certification	\$40	\$70

It is proposed to increase the reciprocity fee (\$50), to separate fees for the application (\$30) and the reciprocity certificate (\$70). The reciprocity fee has always been equivalent to the certification fee for an operator taking the exam (i.e. the application fee plus the exam fee).

It is proposed to increase the operator-in-training, temporary or provisional certification fee from \$40 to \$70. These fees have always been calculated as equivalent to the application fee plus the fee for two years of certification. If the application fee is increased to \$30, and the certification (renewal) fee is increased to \$20 per year, it is consistent to increase the operator-in-training, temporary or provisional certification fee to \$70.

Increase in Number of Certified Operators

The number of certified operators has increased dramatically since 1993. In 1993, the operator certification program began with 12 certified Water Treatment Plant Operators (WTPOs). In 2001, following EPA's mandate, the state was required to also certify Distribution System Operators (DSOs). As of June 1, 2013, there are 595 certified operators, 218 WTPOs and 526 DSOs. Because of the increase in the number of

operators, the program is more costly to operate.

Comparison to Other Fees in Hawaii

The current Hawaii public water system operator program fees are much lower than other similar certification fees in Hawaii. Current and proposed fees, and similar certification or licensing fees in Hawaii (for a wastewater treatment plant operator and electrician or plumber) are summarized in the table below.

Fee Type	Hawaii Water Current	Hawaii Water Proposed	Hawaii Wastewater	Hawaii Electrician/Plumber
Certification Application	\$20	\$30	\$25	\$40
Exam Registration	\$30	\$70	\$50	\$95
License				\$75
Total	\$50	\$100	\$75	\$210
Reciprocity	\$50	\$100	\$75	
Renewal	\$10/year	\$20/year	\$25/year	\$75/year

Comparison to Fees in Other States

Similarly, Hawaii's current public water system operator fees are significantly lower than other states' water system operator certification fees. These fees are summarized below.

Fee Type	Hawaii Current	Hawaii Proposed	California Grade 1	California Grade 3	Colorado	Washington
Certification Application	\$20	\$30			\$15	\$87
Exam Registration	\$30	\$70	\$50	\$100	\$45	\$87
Certificate			\$70	\$120	\$55	
Total	\$50	\$100	\$120	\$220	\$115	\$174
Reciprocity	\$50	\$100	\$70	\$120	\$85	\$177

Fee Type	Hawaii Current	Hawaii Proposed	California Grade 1	California Grade 3	Colorado	Washington
Renewal	\$10/year	\$20/year	\$70/ 3 yrs.	\$120/ 3 yrs.	\$85/ 3 yrs.	\$42/year

5. Reducing Impact on Small Businesses

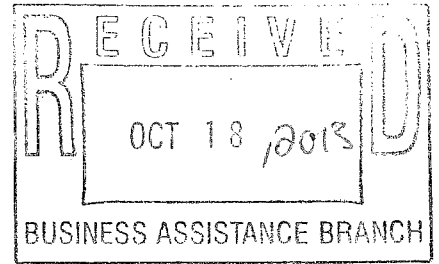
Because the requirements for certified operators of public water systems are federally mandated, there was no consideration given to differentiating small business owned water systems with those owned by government, non-profit, or large business entities.

6. Small Business Involvement

The Board of Certification of Public Water System Operators developed the proposed rule changes including the fee schedule. There are five (5) members on the Board and two (2) of these members are employed by and represent small businesses. One (1) of these members is employed by Hawaii Water Service Company, Inc. which is the most affected small business based on dollar amount. The proposed increase in fees was developed in comparison to actual costs the implementing agency incurs. The Board unanimously felt this comparison was crucial in determining the fee schedule in an effort to make this program financially prudent.

7. Proposed Rules Comparison to Other Standards

All of the proposed changes to Hawaii Administrative Rules, Chapter 11-25, are consistent with other federal, state, and county standards. These rules consist of federally mandated requirements originating from the Safe Drinking Water Act. The fee schedule developed within this rule was determined by comparisons of actual costs and fee schedules of similar programs in similar disciplines and other states.



Department of Health
Rules Amending Title 11
Hawaii Administrative Rules

(Adoption Date)

1. Chapter 11-25, Hawaii Administrative Rules, entitled "Rules Relating to Certification of Public Water System Operators", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 25

RULES RELATING TO CERTIFICATION
OF PUBLIC WATER SYSTEM OPERATORS

\$11-25-1	Purpose
\$11-25-2	Definitions
\$11-25-2.50	Public water system operation and management
\$11-25-3	Classes of certification
\$11-25-4	Education and work experience requirements for certification
\$11-25-5	Continuing education units
\$11-25-6	Application for certification
\$11-25-7	Examination for certification
\$11-25-8	Issuance and renewal of certification
\$11-25-9	Revocation, suspension, and refusal to renew certification
\$11-25-10	Schedule of fees for certification
\$11-25-11	Classification of water treatment plants
\$11-25-11.5	Classification of distribution systems
\$11-25-12	Repealed
\$11-25-13	Procedures of the board
\$11-25-14	Penalties and remedies
\$11-25-15	Severability clause

§11-25-1

§11-25-1 Purpose. The purpose of this chapter is to protect public health through the use of trained and experienced personnel to operate public water systems, and to set standards for the certification of such personnel. [Eff 2/8/93; am and comp 4/29/95; am and comp 8/25/97; am and comp 1/8/01; comp 5/24/02; comp] (Auth: HRS §§340F-7, 340F-11(1)) (Imp: HRS §§340F-3, 340F-7, 340F-8, 340F-11(1); 40 C.F.R. §141.70; 42 U.S.C. §300g-8)

§11-25-2 Definitions. As used in this chapter:

"Association of boards of certification for operating personnel in water and wastewater utilities" or "ABC" means that organization which serves as an information center for certification activities, recommends minimum standards and guidelines for the classification of potable water supply and wastewater systems and facilities and for certification of operators, facilitates reciprocity between state programs, and assists authorities in establishing new certification programs and upgrading existing programs.

"Available" means, based on system size, complexity, and source water quality, a certified operator must be on site or able to be contacted as needed to initiate the appropriate action in a timely manner.

"Board" means the board of certification of public water system operators, established by section 340F-4, HRS.

"Certification" means the approval by the board of, and the issuance of a certificate and identification card to, a person who meets the requirements of this chapter.

"Community water system" means a public water system providing water to at least fifteen service connections used by year-round residents or regularly serving at least twenty-five year-round residents.

"Continuing education unit" or "CEU" means [eight hours of participation in, and successful completion of, an organized continuing education experience approved by the board.] a nationally recognized unit of measurement similar to college credits. One CEU is awarded for every ten contact lecture hours of

participation in, and successful completion of, an organized continuing education experience approved by the board.

"Director" means the director of health.

"Distribution system" or "DS" means that portion of a public water system in which water is stored and conveyed from the water treatment plant or other source, and distributed to consumers. Chlorination facilities for sources other than surface water or groundwater under the direct influence of surface water, and fluoridation facilities may be considered to be part of a distribution system.

"Distribution system operator" or "DS operator" or "DSO" means any individual who operates a distribution system, or a major segment of a distribution system.

"Nontransient Noncommunity" or "NTNC" water system means a public water system that is not a community water system and that regularly serves at least twenty-five of the same persons over six months per year. Common types of NTNC water systems are those serving schools, day care centers, factories, restaurants, and hospitals.

"Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, municipality, or any other private, county, state, or federal legal entity.

"Responsible charge": The operator(s) in responsible charge is the person(s) designated by the purveyor to be the certified operator(s) who makes decisions regarding the daily operational activities of a public water system, water treatment facility, or distribution system, that will directly impact the quality or quantity of drinking water.

["Wastewater treatment plant operator" means any individual who operates a wastewater treatment plant, or a major segment of a wastewater treatment plant.]

"Water treatment plant" or "WTP" means the various facilities used in the treatment of water serving a public water system. Facilities for chemical addition to control pH or inhibit corrosion shall be considered to be part of a water treatment plant. Chlorination or fluoridation facilities may be considered to be part of

§11-25-2

a water treatment plant.

"Water treatment plant operator" or "WTP operator" or "WTPO" means any individual who operates a WTP, or a major segment of a WTP.

"Work experience" is experience in the operation of a WTP for WTPO certification, or experience in the operation of a DS for DSO certification, as defined in section 11-25-4(e). [Eff 2/8/93; am and comp 4/29/95; am and comp 8/25/97; am and comp 1/8/01; am and comp 5/24/02; am and comp] (Auth: HRS §§340F-7, 340F-11(1)) (Imp: HRS §§340F-1, 340F-3, 340F-7, 340F-8, 340F-11(1); 40 C.F.R. §141.70; 42 U.S.C. §300g-8)

§11-25-2.50 Public water system operation and management. (a) This chapter applies to all community and nontransient noncommunity public water systems.

- (1) Each public water system covered by this chapter shall be under the responsible charge of an operator(s) holding a valid certification equal to or greater than the classification of the WTP or DS;
- (2) All operating personnel making daily process control or system integrity decisions about water quality or quantity that affect public health shall be certified; and
- (3) A designated certified operator shall be available for each operating shift.

(b) This chapter applies to all WTPs in community and nontransient noncommunity public water systems and all WTPs serving surface water or ground water under the direct influence of surface water. All WTPs covered by this chapter shall be operated by certified WTP operators. Each WTP shall at all times be under the responsible charge of an operator holding a [regular] valid certification equal to or greater than the WTP classification.

(c) All fluoridation facilities shall be operated by certified operators who have received board-approved fluoridation training.

(d) Each DS shall at all times be under the responsible charge of an operator holding a [regular] valid certification equal to or greater than the DS

classification. [Eff and comp 4/29/95; am and comp 8/25/97; am and comp 1/8/01, am and comp 5/24/02; am and comp] (Auth: HRS §§340F-7, 340F-11(1)) (Imp: HRS §§340F-3, 340F-6, 340F-7, 340F-8, 340F-11; 40 C.F.R. §141.70; 42 U.S.C. §300g-8)

Historical note: §11-25-2.50 is based substantially upon §11-25-12. [Eff. 2/8/93; R 4/29/95]

§11-25-3 Classes of certification. Operators may obtain certification by the following methods provided in this section:

- (1) Operator-in-training (OIT) certification.
 - (A) An applicant may apply for OIT certification if the applicant meets the following requirements:
 - (i) The applicant meets the educational requirements of section 11-25-4 and,
 - (ii) The applicant is hired or assigned to work at a WTP or DS, in order to gain experience to qualify for certification at the Grade 1 level.
 - (B) No exam is required for OIT certification.
 - (C) An OIT shall not make process control or system integrity decisions about water quality or quantity that effect public health. An OIT shall work under the direct supervision of a certified Grade 1 or higher operator.
- (2) Regular certification.
 - (A) An applicant meeting the educational and experience requirements of section 11-25-4 may apply for certification with examination.
 - (B) An applicant already certified in the State may apply for certification with examination in a higher grade if the applicant meets the following requirements:
 - (i) The applicant shows proof that the applicant obtained the continuing

- education units (CEUs) required in section 11-25-5 and maintained certification in the applicant's present grade; and
- (ii) The applicant meets the educational and work experience requirements noted in section 11-25-4 for the higher grade.
- (C) The board may approve the issuance of a regular DSO certification to an operator who has, by June 30, 2001, at least one year of experience in operating a DS, has attended board-approved DSO training, and passed a board-approved DSO certification exam.
- (3) Reciprocity certification. An applicant currently certified by another state, territory, or possession of the United States of America, or by another country or entity that is listed in the "Certification Contacts" section in ABC's annual directory, may apply for certification without an examination in the grade in which the applicant is currently certified.
- (4) Temporary certification. When the board determines that there is a shortage of operators at the Grade 2, 3, or 4 level, the board may approve issuance of temporary certification for the shortage grade. The temporary certification grade may be one grade higher than the operator's current grade. An operator's temporary certification shall expire no later than twenty-four months from the issuance date. The category of Grade 4 WTP temporary certification expired on October 31, 2000.
- (A) Temporary certification without an initial exam shall be requested by the water purveyor. The applicant shall work at the purveyor's WTP or DS, under the direction of an operator with regular certification at the same or higher level as the class of that WTP or DS.

- (B) The applicant shall be able to meet the minimum educational and work experience requirements and pass the exam for that grade level within twenty-four months of the certificate issuance date.
 - (C) If the operator with temporary certification does not pass one of the exams available at that grade within twenty-four months, the temporary certification shall expire and shall not be renewed.
- (5) Provisional certification for operators of new WTPs.
- (A) Operators who operate new class 1 or 2 WTPs brought online after June 30, 2000, and who do not qualify for conditional certification, may apply for provisional certification to operate the new WTPs.
 - (B) Water purveyors shall meet the following conditions in order to qualify operators for provisional certification:
 - (i) The contractor or approved agent for the water treatment equipment shall provide on-site training for the operators in a manner approved by the director;
 - (ii) The operator shall pass a combined written exam and hands-on exam, provided by the contractor or approved agent, and approved by the director. The contractor or approved agent shall provide a report on the qualification status of each operator; and
 - (iii) The manufacturer or approved agent shall be available to provide on-call service to the water purveyor for a period of not less than one year.
 - (C) The operator with provisional certification shall have two opportunities to take the certification exam. If the operator is unable to pass one of the next two examinations offered

by the board, the provisional certification is canceled.

- (6) Conditional certification. Operators in responsible charge of a DS, or a WTP treating ground water, and who [have] had a minimum of one year of such work experience in the State by June 30, 2001, [qualify] qualified for conditional certification. The category of conditional certification [shall expire] expired on December 31, 2003. Applications for WTPO conditional certification were accepted until June 29, 1993 for operators operating surface water treatment plants. These conditional certificates expired on December 31, 1994, if not canceled earlier.
- [(A) The board may approve the issuance of a conditional certificate without an initial examination for a WTP operator operating a WTP treating ground water, or a DS operator. The conditional certificate shall be valid for two years. The conditional certification shall be site-specific.
- (B) The educational requirements are waived by the board for conditionally certified operators for the two-year period that the certificate is valid. If the operator fails the first examination, the operator may take subsequent examination(s) at the same or lower grade level.
- (C) If the operator is unable to pass an exam within the two-year period, the operator shall no longer perform the duties of an operator after the certificate expires. Also, the operator must then meet the educational and work experience requirements before applying for regular certification with a written examination.] [Eff 2/8/93; am and comp 4/29/95; am and comp 8/25/97; am and comp 1/8/01, am and comp 5/24/02; am and comp] (Auth: HRS §§340F-7, 340F-11(1)) (Imp: HRS §§340F-

3, 340F-5, 340F-6, 340F-7, 340F-8, 340F-11, 340F-12; 40 C.F.R. §141.70; 42 U.S.C. §300g-8)

§11-25-4 Education and work experience requirements for certification. (a) To qualify for certification, operators shall have the following education and work experience unless otherwise provided in section 11-25-3. The minimum educational requirement for all five grades is a high school degree, or general equivalency diploma (GED).

- (1) A high school degree consists of a high school diploma properly awarded in any state, territory, or possession of the United States of America, or by another country that is listed in the "Certification Contacts" section in ABC's annual directory, from an accredited public, private, or parochial high school.
- (2) A GED consists of a diploma earned through an equivalency program administered by the state department of education, or any state, county, territory, or possession of the United States of America.
- (3) For the DSO certification, work experience can substitute for a high school diploma or GED. An operator shall have a minimum of an eighth grade education. An operator with an eighth grade education and four years of work experience can be considered to have the equivalent of a GED. Work experience that is used to meet the GED requirement shall not also be used to meet the work experience requirement beyond the GED.

(b) The minimum work experience requirements for WTPO certification are as follows:

- (1) WTP Operator-in-training: no work experience.
- (2) WTPO Grade 1: a high school degree and one year of work experience.
- (3) WTPO Grade 2:
 - (A) One year of work experience at a Class 2 or higher WTP, as an operator with

- Hawaii WTPO Grade 1 regular certification;
- (B) A high school degree and two years of work experience (including one year of work experience at a Class 2 or higher WTP); or
 - (C) A qualifying bachelor's degree and one year of work experience at a Class 2 or higher WTP.
- (4) WTPO Grade 3:
- (A) One year of full-time work experience at a membrane filtration, Class 3, or Class 4 WTP (including one month of work experience at a Class 3 or 4 plant), as an operator with Hawaii WTPO Grade 2 regular certification;
 - (B) A high school degree, and three years of work experience (including one year of full-time work experience at a membrane filtration, Class 3, or Class 4 WTP (including one month of work experience at a Class 3 or 4 WTP));
 - (C) A qualifying associate degree, and two years of work experience (including one year of full-time work experience at a membrane filtration, Class 3, or Class 4 WTP (including one month of work experience at a Class 3 or 4 WTP)); or
 - (D) A qualifying bachelor's degree and one year of full-time work experience at a membrane filtration, Class 3, or Class 4 WTP (including one month of work experience at a Class 3 or 4 WTP).
- (5) WTPO Grade 4:
- (A) One year of full-time work experience at a Class 3 or 4 WTP, as an operator with Hawaii WTPO Grade 3 regular certification;
 - (B) A high school degree, and four years of work experience (including one year of full-time work experience at a membrane filtration, Class 3, or Class 4 WTP; and one year of full-time work experience at a Class 3 or 4 WTP);

- (C) A qualifying associate degree, and three years of work experience (including one year of full-time work experience at a membrane filtration, Class 3, or Class 4 WTP, and one year of full-time work experience at a Class 3 or 4 WTP); or
- (D) A qualifying bachelor's degree and two years of work experience (one year of full-time work experience at a membrane filtration, Class 3, or Class 4 WTP, and one year of full-time work experience at a Class 3 or 4 WTP).

(c) The minimum work experience requirements for DSO certification are as follows:

- (1) DS Operator-in-training: no work experience.
- (2) DSO Grade 1: a high school degree and one year of work experience.
- (3) DSO Grade 2:
 - (A) One year of work experience as an operator with Hawaii DSO Grade 1 regular certification;
 - (B) A high school degree and two years of work experience; or
 - (C) A qualifying bachelor's degree and one year of work experience.
- (4) DSO Grade 3:
 - (A) One year of work experience as an operator with Hawaii DSO Grade 2 regular certification;
 - (B) A high school degree and three years of work experience;
 - (C) A qualifying associate degree, and two years of work experience; or
 - (D) A qualifying bachelor's degree and one year of work experience.
- (5) DSO Grade 4:
 - (A) One year of work experience as an operator with Hawaii DSO Grade 3 regular certification;
 - (B) A high school degree and four years of work experience;
 - (C) A qualifying associate degree, and three years of work experience; or
 - (D) A qualifying bachelor's degree and two

years of work experience.

(d) The minimum education and work experience requirements in years are summarized as follows:

TABLE 1
MINIMUM WORK EXPERIENCE REQUIREMENTS

Degree	Total Years of Work Experience				
	OIT	1	2	3 ^a	4 ^b
High School	0	1	2	3	4
Qualifying Associate degree	0	1	2	2	3
Qualifying Bachelor's degree	0	1	1	1	2

^aFor the WTPO Grade 3 certification, the years of work experience must include at least one year of full-time work experience at a membrane filtration, Class 3, or Class 4 WTP (of which at least one month of work experience is at a Class 3 or 4 WTP).

^bFor the WTPO Grade 4 certification, the years of work experience must include at least one year of full-time work experience at a membrane filtration, Class 3, or Class 4 WTP, and at least one year of full-time work experience at a Class 3 or 4 WTP.

(e) The duration of the work experience in a currently held position shall be calculated up to the examination date. For WTPO certification, to earn a "year of work experience," a person shall operate a WTP for at least one hour per day for each of at least two hundred days. To earn a "year of full-time work experience," a person shall either operate a WTP for at least eight hours per day for each of at least two hundred days or for a cumulative time of 1,600 hours (two hundred days times eight hours per day). For DSO certification, to earn a "year of work experience", a person shall operate a DS for at least one hour per day for each of at least two hundred days. A "year of work experience" or a "year of full-time work experience" may be accumulated over the course of more than twelve consecutive months, but no more than one year of such

experience may be accumulated within a twelve-consecutive-month period.

(f) A qualifying bachelor's degree is a bachelor's degree or higher from an accredited university in which the applicant has earned at least twenty adjusted semester credits from the courses listed in Appendix A entitled "Courses for Qualifying Bachelor's or Associate Degrees (May 1, 2000)", located at the end of this chapter.

(g) A qualifying associate degree is an associate degree or higher in which the applicant has earned at least twelve adjusted semester credits from the courses listed in Appendix A, entitled "Courses for Qualifying Bachelor's or Associate Degrees (May 1, 2000)", located at the end of this chapter. [Eff 2/8/93; am and comp 4/29/95; am and comp 8/25/97; am and comp 1/8/01; am and comp 5/24/02; comp] (Auth: HRS §§340F-7, 340F-11(1)) (Imp: HRS §§340F-3, 340F-6, 340F-7, 340F-8, 340F-11; 40 C.F.R. §141.70; 42 U.S.C. §300g-8)

§11-25-5 Continuing education units. (a) Certified operators shall obtain CEUs in order to maintain their certification. [Eight hours are required for each CEU.] The CEUs shall be earned in the [three-year] certification period prior to certification expiration. Ten contact hours equals one CEU. The number of CEUs required every [three] two years to renew Grades 1 through 4 certification are as follows:

TABLE 2
CEU REQUIREMENTS

Operator Classification	CEUs Required
Grade 1 <u>or</u> 2	[1.5] <u>0.8</u>
[Grade 2	1.5]
Grade 3 <u>or</u> 4	[3.0] <u>1.6</u>
[Grade 4	3.0]

(b) For operators with less than [three] two years of certification in the State prior to the renewal date, the CEU requirements shall be prorated.

(c) If an operator wants to receive CEU credit for a course not previously approved by the board, the operator shall make a written request for approval to the board. The operator shall request the CEU approval as soon as possible after attending the course. The operator shall send the request to the board for receipt no later than two weeks before the certification expires. The operator shall submit sufficient material with the written request for the board to determine whether to approve the CEUs.

- (1) The material shall include but not be limited to the following: the name and date of the course as listed in paragraph (3); the subject matter covered in the course (including one or more paragraphs describing the course); and the number of CEUs offered, if any, by the organization which conducts the course.
- (2) The board will respond in writing to the operator on its determination on the CEU credit request. [Approved courses will be assigned a course approval number.]
- (3) The following courses may be approved for CEUs by the board, on a case-by-case basis, taking into consideration subject matter and length of training.
 - (A) American Water Works Association workshops and conventions (national and local sections).
 - (B) Hawaii Water Works Association workshops and conventions.
 - (C) Formal in-house training classes.
 - (D) Correspondence courses.

(d) If the operator has attended a course pre-approved by the board for CEU credits, when applying for renewal the operator shall send to the board a confirmation record of attendance, the certification renewal form [with the course approval number], and the renewal fee. The courses pre-approved for CEUs include:

- (1) Courses listed in Appendix A, entitled "Courses for Qualifying Bachelor's or Associate Degrees (May 1, 2000)", found at the end of this chapter, from an accredited

- university, or
- (2) Selected courses approved from the Statewide Wastewater Operator Training Center Schedule. [Eff 2/8/93; am and comp 4/29/95; am and comp 8/25/97; am and comp 1/8/01; comp 5/24/02; am and comp] (Auth: HRS §§340F-7, 340F-11(1)) (Imp: HRS §§340F-3, 340F-6, 340F-7, 340F-8, 340F-11; 40 C.F.R. §141.70; 42 U.S.C. §300g-8)

§11-25-6 Application for certification. (a) The applicant shall submit the completed certification application form and application fee to:

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Public Water System Operators
Hawaii Department of Health
Environmental Management Division
Safe Drinking Water Branch

(b) The board shall not act on incomplete applications or applications not accompanied by the application fee or the required attachments.

(c) The board shall notify each applicant of the board's decision on the acceptance or denial of the application either by letter or by form prescribed by the board. The board shall send notice within six months of receipt of the application. All correspondence with the applicant shall be mailed to the address given in the application form. It is the responsibility of each applicant to keep the board informed of any changes in his or her mailing address.

(d) Application for regular certification with exam:

- (1) The applicant shall apply at least three months prior to the exam date, and attach [a] separate [payment] payments for the application fee and the exam fee.
- (2) The applicant who has provisional certification shall also submit a letter from the water purveyor stating that the applicant continues to perform satisfactorily.
- (3) The board shall notify the applicant of its decision a minimum of forty-five days before the exam date, or the application shall be

automatically accepted.

- (4) The board shall notify the applicant of the date, time, and location of the examination.
- (e) Application for certification without exam (OIT, reciprocity, temporary, or provisional[, or conditional]):
 - (1) Applications can be submitted throughout the year.
 - (2) The applicant shall submit the application fee with the application.
 - (3) The applicant for OIT certification shall submit with the application a letter from the water purveyor acknowledging that the applicant is working at a WTP or DS in order to gain experience to qualify for Grade 1 certification.
 - (4) The applicant for reciprocity certification shall submit the following with the application:
 - (A) A copy of the applicant's current certificate, identification card, or other proof of certification, and
 - (B) Proof that the certificate was issued based on the applicant satisfactorily passing an examination prepared by the Association of Boards of Certification. The exam may also have been prepared by a state, territory, or possession of the United States of America, or by another country or entity that is listed in the "Certification Contacts" section in ABC's annual directory (if the respective certifying board states that its written examination is equivalent to or better than that prepared by the Association of Boards of Certification, and the Hawaii board concurs).
 - (5) The applicant for temporary certification shall submit with the application a letter, signed by the certified operator who will train the applicant, describing the proposed training. [Eff 2/8/93; am and comp 4/29/95; am and comp 8/25/97; am and comp 1/8/01, am and comp 5/24/02; am and comp

] (Auth: HRS §§340F-7,
340F-11(1)) (Imp: HRS §§340F-3, 340F-6,
340F-7, 340F-8, 340F-11; 40 C.F.R. §141.70;
42 U.S.C. §300g-8)

§11-25-7 Examination for certification. (a) A minimum grade of seventy per cent on the examination is required for certification. All examinees will be notified by letter or form prescribed by the board as to whether they passed or failed the examination.

(b) All examination papers and related records shall be filed with the board's records and retained for a minimum of five years.

(c) All examinees failing an examination may apply for future examinations by submitting an exam registration form and the exam fee three months prior to the new examination date. [Eff 2/8/93; am and comp 4/29/95; am and comp 8/25/97; am and comp 1/8/01; comp 5/24/02; comp] (Auth: HRS §§340F-7, 340F-11(1)) (Imp: HRS §§340F-3, 340F-6, 340F-7, 340F-8, 340F-11; 40 C.F.R. §141.70; 42 U.S.C. §300g-8)

§11-25-8 Issuance and renewal of certification.

(a) Once the applicant has satisfied certification requirements, and upon receipt of the certification or renewal fee, the board shall approve the certification within five months. For certification, the board shall issue a certificate and identification card; for renewal, the board shall issue a new identification card. The board shall issue certificates and cards within one month after it approves certification. For applicants who pass the examination, the initial certification fee is included in the examination fee.

(b) The certificate indicates the operator grade and date the certification was issued. The identification card indicates the grade and expiration date of the certification period. The certification expiration date [for certification] is at least [two full years] one full year from the issuance date. The certificate itself cannot represent certification unless a current identification card is produced to substantiate certification. The certificate shall be

§11-25-8

prominently displayed at the applicant's principal work station.

(c) The certified operator shall renew his or her certification by the date two weeks before the expiration date. After the expiration date, the operator certification shall expire. After the date one month after the expiration date, the operator with expired certification shall no longer perform the duties of an operator until he or she has applied for renewal, and the renewal has been approved. OIT, temporary, and provisional [and conditional] certifications are not renewable.

- (1) To renew his or her certification, the operator shall submit the renewal application form, the renewal fee[,] and proof of CEU course attendance[, and the CEU code number].
- (2) For the second through twelfth months following the expiration date, the renewal fee shall [be doubled.] increase by \$20. If the operator has not applied for renewal by the date one year after the expiration date, the certification shall not be renewable. The operator shall not be re-certified unless he or she submits the exam [application] registration form and exam fee, is accepted for, and passes the exam. [Eff 2/8/93; am and comp 4/29/95; am and comp 8/25/97; am and comp 1/8/01; am and comp 5/24/02; am and comp] (Auth: HRS §§340F-7, 340F-11(1)) (Imp: §§340F-3, 340F-6, 340F-7, 340F-8, 340F-11; 40 C.F.R. §141.70; 42 U.S.C. §300g-8)

§11-25-9 Revocation, suspension, and refusal to renew certification. (a) The board may revoke, suspend, or refuse to renew the certification of an operator when it is found that the operator has practiced fraud or deceit in obtaining certification or in performing his or her duties; that reasonable care, judgment, or the application of knowledge or ability, was not used in the performance of his or her duties; that the operator is unable to properly perform his or her duties; or that the operator has violated chapter

340F, HRS, or this chapter.

(b) The operator shall be afforded an opportunity for a contested case hearing after reasonable notice, in accordance with chapter 91, HRS. The operator shall have twenty days after receiving notice to request a hearing. [Eff. 2/8/93; am and comp 4/29/95; comp 8/25/97; comp 1/8/01; comp 5/24/02; comp

] (Auth: HRS §§340F-7, 340F-11(1))

(Imp: §§340F-3, 340F-6, 340F-7, 340F-8, 340F-11; 40 C.F.R. §141.70; 42 U.S.C. §300g-8)

§11-25-10 Schedule of fees for certification. The schedule of fees relating to certification shall be as follows:

- (1) Regular certification. The applicant shall submit the application, application fee [(\$20),] (\$30), and exam fee [(\$30)] (\$70) at least three months prior to the examination date. If the examinee passes the exam, he or she shall be certified through the expiration date at least [two full years] one full year from the issuance date [(a period less than thirty-six months)]. A person with temporary[, or provisional[, or conditional] certification, who applies for regular certification at the same grade level, shall submit the application and exam fee, but does not need to submit a new application fee.
- (2) Reciprocity certification. The applicant shall submit the application, [and application fee (\$50)] application fee (\$30), and certificate fee (\$70) at the time of application. If the application is not approved, the [application fee includes the fee for the certificate and I.D. card.] certificate fee will be returned. The certification is valid through the expiration date at least [two full years] one full year from the issuance date [(a period less than thirty-six months)].
- (3) Operator-in-training, temporary, or provisional[, or conditional] certification. The applicant shall submit the application

- [and application fee [(\$40)], application fee (\$30), and certificate fee (\$40) at the time of application. If the application is not approved, [the fee includes the fee for the certificate and I.D. card.] the certificate fee will be returned. The OIT, or temporary[, or conditional] certification shall be valid for twenty-four months.
- (4) Renewal - [\$10] \$20 per full year of renewal. The certification shall be renewed for a period no longer than three years and the renewal fee shall be due by the date two weeks before the expiration date.
- (5) Replacement of certificate - \$10.
Replacement of identification card - \$15.
[Eff. 2/8/93; am and comp 4/29/95; am and comp 8/25/97; am and comp 1/8/01; am and comp 5/24/02; am and comp]
(Auth: HRS §§340F-7, 340F-11(1)) (Imp: HRS §§340F-3, 340F-6, 340F-7, 340F-8, 340F-11; 40 C.F.R. §141.70; 42 U.S.C. §300g-8)

§11-25-11 Classification of water treatment plants. The classification of WTPs ascends with the complexity of treatment processes used. Class 1 plants are the simplest to operate and Class 4 plants the most difficult.

- (1) Class 1 WTPs use the following technologies:
- (A) Slow sand filtration;
 - (B) Chemical addition, such as for chlorination, fluoridation, pH control or corrosion control;
 - (C) Granular activated carbon filtration; or
 - (D) Packed aeration towers or air stripping towers.
- (2) Class 2 WTPs use the following technologies:
- (A) Membrane filtration;
 - (B) Cartridge filtration; or
 - (C) Desalting (including distillation, electrodialysis, and reverse osmosis).
- (3) Class 3 WTPs use the following technologies:
- (A) Diatomaceous earth filtration; or
 - (B) Package WTPs with features similar to

- those of diatomaceous earth filtration.
- (4) Class 4 WTPs use the following technologies:
 - (A) Conventional treatment (coagulation with rapid mixing, flocculation, sedimentation, and filtration);
 - (B) Direct filtration (conventional treatment without sedimentation); or
 - (C) Package WTPs with features similar to those of conventional treatment or direct filtration plants. [Eff 2/8/93; am and comp 4/29/95; am and comp 8/25/97; am and comp 1/8/01; am and comp 5/24/02; comp] (Auth: HRS §§340F-7(1), 340F-11(1)) (Imp: HRS §§340F-2, 340F-3, 340F-6, 340F-7, 340F-8, 340F-11; 40 C.F.R. §141.70; 42 U.S.C. §300g-8)

§11-25-11.5 Classification of distribution systems. The classification of DSs ascends with the size of the population served by the public water system:

- (1) Class 1 DSs serve water systems with a population of 1500 or less persons;
- (2) Class 2 DSs serve water systems with a population of 1501 to 15,000 persons;
- (3) Class 3 DSs serve water systems with a population of 15,001 to 50,000 persons;
- (4) Class 4 DSs serve water systems with a population of over 50,000 persons. [Eff and comp 1/8/01, comp 5/24/02; comp] (Auth: HRS §§340F-7(1), 340F-11(1)) (Imp: HRS §§340F-2, 340F-3, 340F-6, 340F-7, 340F-8, 340F-11; 42 U.S.C. §300g-8)

§11-25-12 REPEALED. [R 4/29/95]

§11-25-13 Procedures of the board. (a) The records of the board shall be kept in the office of the state department of health, environmental management

division, safe drinking water branch for a minimum of five years.

(b) The board consists of five members appointed by the governor. Three members of the board shall constitute a quorum to do business, and the concurrence of a majority of all of the members to which the board is entitled shall be necessary to make any action of the board valid.

(c) There shall be a minimum of two scheduled meetings per year at such time and place adopted by the board. Additional meetings may be called by the chairperson.

(d) The board may conduct meetings by videoconference.

- (1) The videoconference system used by the board shall allow both audio and visual interaction between all members of the board participating in the meeting and the public attending the meeting, at any videoconference location. The notice required by section 92-7, HRS, shall specify all locations at which board members will be physically present during a videoconference meeting, and the public shall be allowed to attend the meeting at any such location.
- (2) Any board member participating in a meeting by videoconference shall be considered present at the meeting for the purposes of determining compliance with the quorum and voting requirements of the board.
- (3) A meeting held by videoconference shall be terminated if both audio and video communication cannot be maintained with all locations where the meeting is being held, even if a quorum of the board is physically present in one location. [Eff 2/8/93; am and comp 4/29/95; comp 8/25/97; am and comp 1/8/01; comp 5/24/02; comp]
(Auth: HRS §§340F-7, 340F-11(1)) (Imp: HRS §§340F-4, 340F-7, 340F-8, 340F-11(1); 40 C.F.R. §141.70; 42 U.S.C. §300g-8)

§11-25-14 Penalties and remedies. Any person who

violates any provision of this chapter shall be subject to the penalties and remedies provided under sections 340F-9 and 340F-10, HRS. [Eff 2/8/93; comp 4/29/95; comp 8/25/97; comp 1/8/01; comp 5/24/02; comp] (Auth: HRS §§340F-7, 340F-11(1)) (Imp: HRS §§340F-3, 340F-6, 340F-7, 340F-8, 340F-9, 340F-10, 340F-11; 40 C.F.R. §141.70; 42 U.S.C. §300g-8)

§11-25-15 Severability clause. If any provision of this chapter or its application to any person or circumstances is held invalid, the application of such provision to other persons or circumstances, and the remainder of this chapter, shall not be affected thereby." [Eff 2/8/93; comp 4/29/95; comp 8/25/97; comp 1/8/01; comp 5/24/02; comp] (Auth: HRS §§340F-7, 340F-11(1)) (Imp: HRS §§340F-7, 340F-11(1))

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

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

4. These amendments to and compilation of chapter 11-25, 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.

Chairperson, Board of Certification
of Public Water System Operators

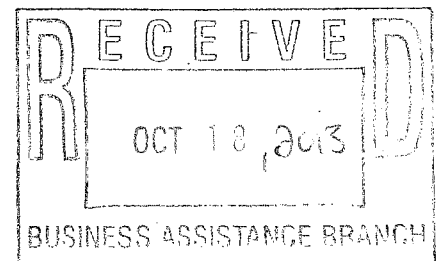
LORETTA J. FUDDY, A.C.S.W., M.P.H.
Director of Health

APPROVED AS TO FORM:

Deputy Attorney General

Appendix A
Courses for Qualifying Bachelor's or Associate Degrees
May 1, 2000

- (a) Courses for which *full credit* shall be given:
- (1) Courses in water quality, treatment or distribution. Any number of courses allowed as long as no courses are duplicated.
 - (2) Chemistry of water, a maximum of three semester credits.
 - (3) Water microbiology, up to three semester credits.
 - (4) Engineering courses in the water treatment or distribution fields. Any number of courses allowed as long as no courses are duplicated.
- (b) Courses for which *half credit* shall be given:
- (1) General chemistry, up to twelve semester credits.
 - (2) Biological sciences, including microbiology, pathogenic bacteriology, virology, etc., a maximum of nine semester credits.
 - (3) Mathematics, including algebra, geometry, trigonometry, and statistics, up to twelve semester credits. Does not include basic, introductory, or business mathematics courses.
 - (4) General physics, up to nine semester credits.
 - (5) Engineering courses such as fluid mechanics, and environmental engineering courses not directly related to water treatment or distribution. Any number of courses allowed as long as no courses are duplicated.
- (c) Courses for which *half credit* shall be given:
- (1) Public or business administration courses. Up to nine semester credits in organization, management, finance, supervision, budgeting, etc.
 - (2) Technical writing, a maximum of three semester credits.
 - (3) Public speaking, up to three semester credits.



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Note: A qualifying bachelor's degree is a bachelor's degree or higher from an accredited university in which the applicant has earned at least twenty adjusted semester credits from freshman or higher level courses from the courses listed above.

A qualifying associate degree is an associate degree or higher in which the applicant has earned at least twelve adjusted semester credits from freshman or higher level courses from the courses listed above.