

SMALL BUSINESS REGULATORY REVIEW BOARD

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

Tel 808 586-2594

David Y. Ige
Governor

Luis P. Salaveria
DBEDT Director

Members

Anthony Borge
Chairperson
Oahu

Harris Nakamoto
Vice Chairperson
Oahu

Barbara Bennett
2nd Vice Chairperson
Kauai

Kyoko Y. Kimura
Maui

Robert Cundiff
Oahu

Nancy Atmospera-Walch
Oahu

Phillip Kasper
Maui

Garth Yamanaka
Hawaii

Director, DBEDT
Voting Ex Officio

AGENDA

Wednesday, October 21, 2015 ★ 1:00 p.m.

No. 1 Capitol District Building

250 South Hotel Street - Conference Room 436

I. Call to Order

II. Approval of September 16, 2015 Meeting Minutes

III. Old Business

- A. Discussion and Action on Proposed Amendments to Chapter 23, **Commercial Boating Activities**, Article 3, Kauai County Code 1987, **Governing Commercial Surfing and Stand-up Paddle Instruction**, Part V, Section 40, **Time of Use** (a), (b), Section 43(f), and Sections 43(u) and (v), promulgated by County of Kauai Department of Parks and Recreation – *attached and incorporated as Exhibit 1*
- B. Discussion and Action on Proposed Amendments to Hawaii Administrative Rules (HAR) Title 13 Chapter 146, **Hawaii State Park System**, Section 6, “**Fees**,” and the Small Business Statement After Public Hearing, promulgated by Department of Land and Natural Resources – *attached and incorporated as Exhibit 2*

IV. New Business

- A. Discussion and Action on Proposed Amendments to HAR Title 16, Chapter 17, **Captive Insurance Companies**, promulgated by Department of Commerce and Consumer Affairs – *attached and incorporated as Exhibit 3*

V. Administrative Matters

- A. Discussion and Action on the following:
1. Update on the Board’s Budget Proposal for Fiscal 2017
 2. Board’s On-going Outreach Efforts, in accordance with Chapter 201M, Hawaii Revised Statutes, including update of Board Member Meetings with State Department Directors

VI. **Next Meeting:** Scheduled for Wednesday, November 18, 2015, at 1:00 p.m., Conference Room 436, Capitol District Building, Honolulu, Hawaii

VII. Adjournment

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

October 21, 2015 ~ SBRRB Meeting Checklist

Member Attendance				
	Airline Preference	From	Details	Attend
Anthony Borge, Chair	NA	Oahu	Parking Pass	X
Barbara Bennett, 2nd Vice Chair	HA	Kauai	Parking Pass	✓
Kyoko Kimura	HA	Maui	Parking Pass	✓
Harris Nakamoto, Vice Chair	NA	Oahu	NA	Leaving at 2:30 p.m.
Director's ex officio - Mark Richey	NA	Oahu	NA	✓
Robert Cundiff	NA	Oahu	Parking Pass	✓
Nancy Atmospera-Walch	NA	Oahu	NA	No
Phillip Kasper	HA	Maui	Parking Pass	✓
Garth Yamanaka	HA	B.I.	Parking Pass	✓

Pre Meeting Checklist	
Conference Room #436 (Confirm each month)	X
Make 12 - 15 copies of rule packages for board packets	✓
Poll Board Attendance	✓
Prepare TAF's for Director's approval - ASAP (Linda)	✓ Done
Airline booking ASAP - Linda	✓ Done
Draft Agenda to Chair for approval	✓
Post approved agenda on 1) SBRRB website, 2) State Calendar, 3) Lte. Governor's Office	✓✓✓
Send Agendas to those people who requested it - IMPORTANT	✓
Mail Board Packets to Board members, Deputy AG	✓✓
Include "discussion leader" names on the agendas to Board members only.	✓
Photographer - Contact David H?	NA
Include parking permits in Board members' agenda packets.	✓

STAFF				
Margaret Ahn				Yes
Dori Palcovich				Yes

Post Meeting Checklist	

Visitors Sign-in-Sheet - Small Business Regulatory Review Board - October 21, 2015

	Name	Title	Organization	Email	Phone
1	Steve Soares	Prop. Mgr.	DLNR/Sparks	stephen.d.soares@hawaii.gov	587-0575
2	SANFORD SAITO	Dep. Commissioner & Asst. Dir. Admin	DECA-IRIS	SSAITD@DECA.HAWAII.GOV	526-0979
3	Holly Osumi	Chief Capital Insurance Examining	DECA-Ins DIV	hosumi@deca.hawaii.gov	586-0931
4	TOM SMYTH	Retired	PBEDT	tjsmyth6@aol.com	531-2829
5	Fuy Okamoto	Chair	H CIC	fuy-okamoto@hprisk.com	426-5906
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Exhibit 1

Recommended Park's Rules Amendments

Pursuant to the authority granted to the Director of Parks and Recreation under Kaua'i County Code section 19-1.18, section 23-3.3, section 23-3.5, and section 23-3.6, the Director proposes to amend the Department of Parks Rules and Regulations as set out below. Portions of existing Rules and Regulations to be deleted are bracketed in bold with strikethrough. Proposed additions to existing Rules and Regulations are underlined.

Rules and Regulations Governing Commercial Surfing and Stand-up Paddle Instruction

Part V, Section 40, of the Department of Parks and Recreation Rules and Regulations Governing Commercial Surfing and Stand-Up Paddle Instructions At County Beach Parks is amended to read as follows:

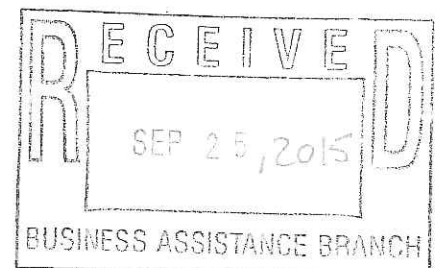
"Section 40. Time of Use.

(a) No commercial surfing and/or stand-up paddling instruction activity shall occur within the County parks on Sundays, or on holidays designated in Special Management Area Minor Permit SMA(M)-2013-23.

(b) Permittees shall limit their commercial surfing and/or stand-up paddling instruction activity within the County parks ~~{between the hours of 7:00 a.m. and 7:00 p.m.}~~ to the hours specified in Special Management Area Minor Permit SMA(M)-2013-23.

(c) Special events authorized by permit shall take precedence over commercial surfing and/or stand-up paddling instruction activity allowed by these rules. Permits issued under these rules shall include a provision stating that the activity may be suspended by the Director to accommodate special events.

(d) At the Director's discretion, no commercial surfing and/or stand-up paddling instruction activity shall occur within the County parks during periods of maintenance or repair of County beach park property or equipment or when park is closed. The Department will give permittees thirty days prior notice of any such scheduled activities.



Part V, Section 43(f), of the Department of Parks and Recreation Rules and Regulations Governing Commercial Surfing and Stand-Up Paddle Instructions At County Beach Parks is amended to read as follows:

"(f) Vehicles used for commercial surfing and/or stand-up paddling instruction activities shall not be driven onto or parked in any County beach area. All customers and/or employees shall be shuttled to and from the County parks and any and all loading and unloading of customers and or instructors shall take place at a loading and unloading location designated by the Department. Use of loading and unloading areas by permittees shall be limited to active loading and unloading for period not exceeding thirty minutes. All vehicles used for shuttling instructors and/or customers shall clearly indicate that they are owned and operated in behalf of the permittee and shall further display the permit issued by the Department allowing the shuttling to take place. The following areas are designated by the Department as loading and unloading areas:

- 1) Hanalei Pier Right of Way Access (State of Hawai'i) TMK 4-5-001:008
- 2) Hanalei Pavilion TMK 4-5-5-002:019
- 3) Waioli Beach Park/He'e Road Parking Lot TMK 4-5-5-003:21 & 4-5-5-004:002
- 4) Waioli Beach Park/Anae Road Parking Lot TMK 4-5-5-005:020
- 5) Weke Road Boat Ramp (SUP Only) TMK 4-5-5-001:999"

Part V, Sections 43(u) and (v), of the Department of Parks and Recreation Rules and Regulations Governing Commercial Surfing and Stand-Up Paddle Instructions At County Beach Parks is amended to read as follows:

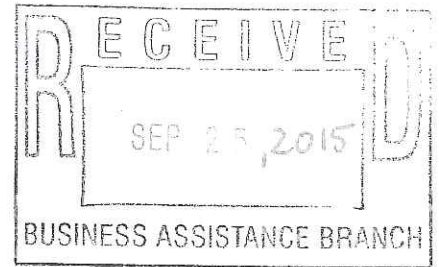
~~"[(u) Permittee failing to perform in accordance with the conditions of these rules and regulations shall forfeit any further use of an existing permit and will not be allowed to apply in person, member of a firm, corporation, or entity for a period of two-years from the date of failure to perform.]~~

~~[(v)]~~ (u) Non-compliance with any and all terms and conditions of this agreement shall subject the permit holder to civil fines of not less than two hundred dollars (\$200.00) and not more than two thousand dollars (\$2000.00) for each offense. Repeated non-compliance shall ~~{automatically}~~ render this agreement null and void, and the permittee shall be required to cease and desist all commercial operation immediately upon notification by the Department."

(v) Any permittee whose permit is revoked under these rules will not be allowed to apply for a new permit in person, or as a member of a firm, corporation, or entity for a period of two-years from the date of revocation."

Exhibit 2

Amendment to Chapter 13-146
Hawaii Administrative Rules



DATE

1. Chapter 13-146, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§ 13-146-6 Fees. (a) The following fees are hereby established:

STATE PARK CAMPING FEES:

For all state parks that allow camping, except for the Napali Coast State Wilderness Park, the camping fee shall be as follows:

Residents:

\$12 per night per camp site (up to six people)
\$2 per night for each additional person, with a maximum of ten people total per camp site

Nonresidents:

\$18 per night per camp site (up to six people)
\$3 per night for each additional person, with maximum of ten people total per camp site

NAPALI COAST STATE WILDERNESS PARK

Residents: \$15/person per night

Nonresidents: \$20/person per night

CABIN RENTAL FEES:

HAPUNA BEACH STATE RECREATION AREA

Residents: \$30/night per A-Frame

Nonresidents: \$50/night per A-Frame

KALOPIA STATE RECREATION AREA, POLIPOLI SPRINGS STATE RECREATION AREA, WAI'ANAPANAPA STATE PARK

Residents: \$60/night per cabin

Non-residents: \$90/night per cabin

FEEES FOR CHANGE OR CANCELLATION OF CAMPING OR RENTAL CABIN RESERVATIONS:

\$3 per change
\$5 per cancellation

WAILOA STATE RECREATION AREA DAY USE PAVILIONS

Large pavilions: \$125 rental fee, with a \$150 deposit
Small pavilions: \$5/hour, with a \$50 deposit

PARKING FEES

NU'UANU PALI STATE WAYSIDE

Residents: No charge
Nonresidents: \$3
Commercial PUC vehicles:
1-7 passenger vehicles: \$6
8-25 passenger vehicles: \$12
26+ passenger vehicles: \$24

IAO VALLEY STATE MONUMENT

Residents: No charge
Nonresidents: \$5
Commercial PUC vehicles:
1-7 passenger vehicles: \$10
8-25 passenger vehicles: \$20
26+ passenger vehicles: \$40

MAKENA STATE PARK

Residents: No charge
Nonresidents: \$5
Commercial PUC vehicle fees:
1-7 passenger vehicles: \$10
8-25 passenger vehicles: \$20
26+ passenger vehicles: \$40

HĀPUNA BEACH STATE RECREATION AREA

Residents: No charge
Nonresidents: \$5

<u>Commercial PUC vehicles:</u>	
<u>1-7 passenger vehicles:</u>	\$10
<u>8-25 passenger vehicles:</u>	\$20
<u>26 + passenger vehicles:</u>	\$40

ENTRANCE FEES

DIAMOND HEAD STATE MONUMENT

Daily Rates:

<u>Pedestrians:</u>	\$1
<u>Noncommercial vehicles (except mopeds):</u>	\$5
<u>Mopeds:</u>	\$1
<u>Others (not listed):</u>	\$1

Commercial Vehicles:

<u>1-15 passenger-capacity vehicles:</u>	\$10
<u>16-25 passenger-capacity vehicles:</u>	\$20
<u>26+ passenger-capacity vehicles:</u>	\$40

Annual Pass:

<u>Pedestrians:</u>	\$10
<u>Private vehicles:</u>	\$30

AKAKA FALLS STATE PARK

<u>Residents:</u>	No charge
<u>Nonresidents:</u>	\$5 per vehicle
<u>Others (not listed):</u>	\$1 per person

Commercial PUC vehicles:

<u>1-7 passenger vehicles:</u>	\$10
<u>8-25 passenger vehicles:</u>	\$20
<u>26+ passenger vehicles:</u>	\$40

WAIMEA CANYON STATE PARK AND KOKEE STATE PARK

<u>Residents:</u>	No charge
<u>Nonresidents:</u>	\$5 per vehicle
<u>Others (not listed):</u>	\$1 per person

Commercial PUC vehicles:

<u>1-7 passenger vehicles:</u>	\$10
<u>8-25 passenger vehicles:</u>	\$20
<u>26+ passenger vehicles</u>	
<u>at Waimea Canyon State Park:</u>	\$40

HA'ENA STATE PARK

<u>Residents:</u>	<u>No charge</u>
<u>Visitors:</u>	<u>\$5 per vehicle</u>
<u>Others (not listed):</u>	<u>\$1 per person</u>
<u>Commercial PUC vehicles:</u>	
<u>1-7 passenger vehicles:</u>	<u>\$10</u>
<u>8-25 passenger vehicles:</u>	<u>\$20</u>
<u>26+ passenger vehicles:</u>	<u>\$40</u>

(b) For purposes of this section, the following definitions shall apply:

"Commercial PUC vehicle" means a vehicle that is regulated by the Hawaii Public Utilities Commission.

"Resident" means a resident of the State with a valid State of Hawaii identification card or State of Hawaii driver's license." [Eff _____] (Auth: HRS §§ 184-3, 184-5) (Imp: _____)

2. New material is underscored.

3. The amendments to chapter 13-146, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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

SUZANNE D. CASE,
Chairperson
Board of Land and Natural
Resources

APPROVED AS TO FORM:

Deputy Attorney General

Exhibit 3

DRAFT # 4

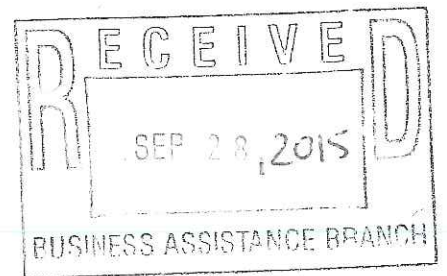
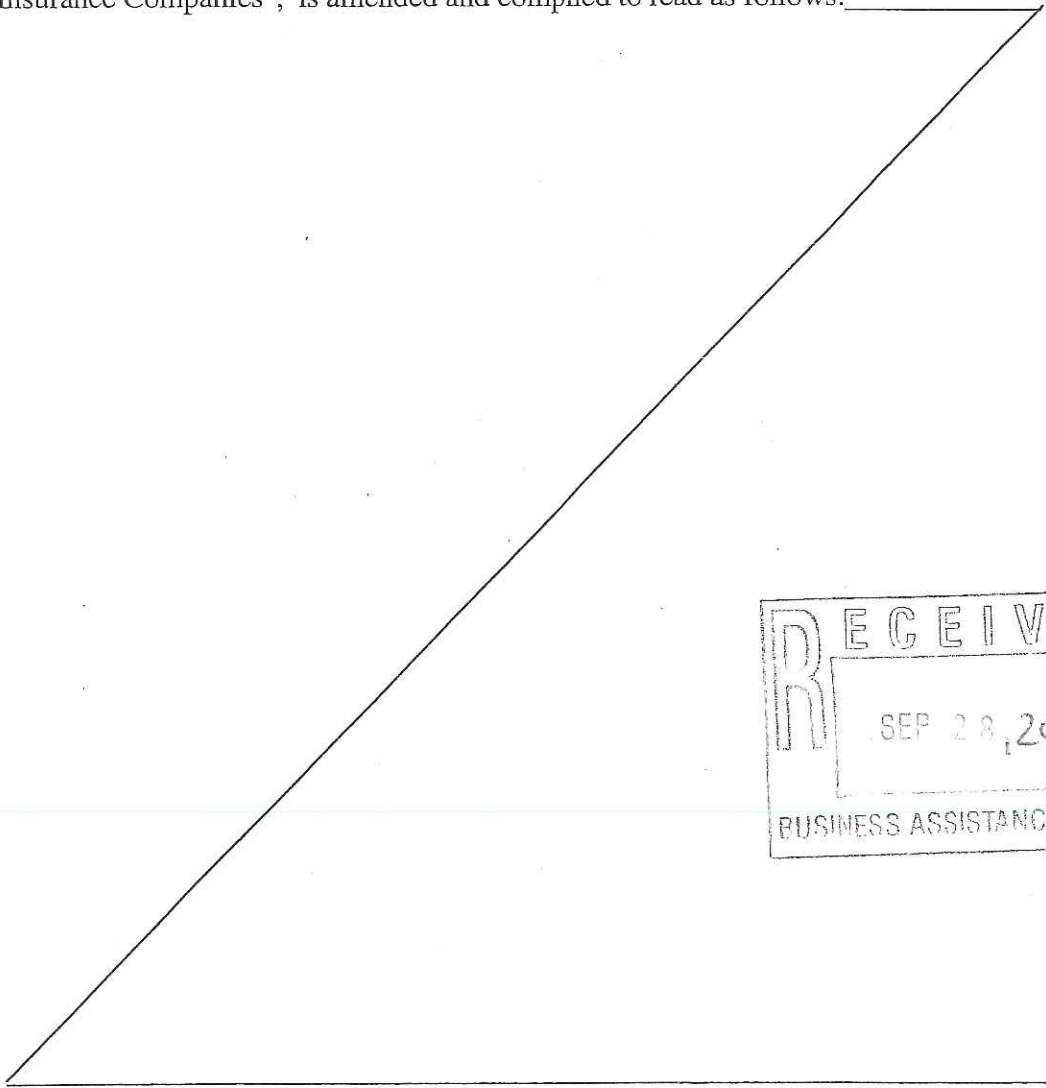
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendments to Chapter 17-16
Hawaii Administrative Rules

Date

SUMMARY

1. Chapter 17-16, Hawaii Administrative Rules, entitled "Captive Insurance Companies", is amended and compiled to read as follows:



"HAWAII ADMINISTRATIVE RULES"

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 17

CAPTIVE INSURANCE COMPANIES

- §16-17-1 Purpose and authority
- §16-17-2 Definitions

- §16-17-5 Repealed
- §16-17-6 Fee schedule
- §16-17-7 Examination, investigation, and financial surveillance expenses

- §16-17-10 Notification of material misstatement of financial condition or adverse financial condition
- §16-17-11 Additional deposit requirement
- §16-17-11.1 Risk Based Capital regulatory action guidelines for risk retention captives
- §16-17-12 Availability and retention of work papers of the independent certified public accountant
- §16-17-13 Documentation required to be held by captives in Hawaii
- §16-17-14 Reinsurance
- §16-17-14.1 Reinsurance guidelines for risk retention captives
- §16-17-15 Business plan or plan of operation amendments; changes in ownership, governing body and officers
- §16-17-16 Suspension or revocation of license; fines

[SUBCHAPTER 1

GENERAL PROVISIONS]

§16-17-1 Purpose and authority. The purpose of this chapter is to set forth the financial, reporting, [record-keeping,] recordkeeping, and other requirements [which] the commissioner deems necessary for the regulation of captive insurance companies, as authorized by the captive insurance [law, chapter 431, article 19,

Hawaii Revised Statutes, "captive insurance code." Reference hereunder to "captive" shall mean captive insurance company or companies, as applicable, unless otherwise specified.] code. [Eff 5/13/91; am and comp 3/12/01; am. and comp] (Auth: HRS §431:19-114) (Imp: HRS §431:19-114)

§16-17-2 Definitions. For purposes of this chapter:

"Adverse financial condition" means one or more of the following conditions:

- (1) The impairment of capital resulting from an imbalance of liabilities and assets;
- (2) Financial ratios exceeding levels established by the commissioner[;] if any; or
- (3) The material degradation of financial results envisioned by the designated captive insurance manager or independent certified public accountant through predictive forecasting[.] to the end of the next annual reporting period.

"Applicant captive" means a captive applying for a certificate of authority under the captive insurance code.

"Captive" or "captive insurance company" shall have the same meaning as provided for "captive insurance company" in section 431:19-101, Hawaii Revised Statutes.

"Captive insurance code" means article 19 of chapter 431, Hawaii Revised Statutes.

"Commissioner" means the insurance commissioner of the State of Hawaii or a duly authorized representative.

"Credit for reinsurance" means taking credit for reserves on risks ceded to a reinsurer by a captive on the captive's financial statements.

"Governing body" shall have the same meaning as provided in section 431:19-101, Hawaii Revised Statutes.

"Organizational documents" shall have the same meaning as provided for "Organizational document" in section 431:19-101, Hawaii Revised Statutes.

"Risk retention captive" shall have the same meaning as provided for "risk retention captive insurance company" as defined in section 431:19-101, Hawaii Revised Statutes.

["Unauthorized reinsurer" means a reinsurer that is not licensed or authorized to conduct the business of insurance in this State.] [Eff 5/13/91; am and comp 3/12/01; am and comp] (Auth: HRS §431:19-114) (Imp: HRS §431:19-114)

[SUBCHAPTER 2

FORMATION PROVISIONS]

§16-17-5 Repealed. [R 3/12/01]

§16-17-6 Fee schedule. (a) Each applicant captive [insurance company applying for a certificate of authority under the captive insurance code] shall pay to the commissioner a nonrefundable application fee of \$1,000 for examining, investigating, and processing its license application [for license. In addition, each captive insurance company receiving a license from the commissioner shall pay a license fee for the year of registration and a renewal fee for each succeeding year as follows:]. Upon approval of the application for a certificate of authority, the applicant captive shall pay to the commissioner a license fee for the certificate of authority in the amount set forth in subsection (b). Thereafter, each captive shall pay to the commissioner a renewal fee in the amount set forth in subsection (b) for each succeeding year on or before April 1.

(b) Depending on its class, a captive shall be subject to the following license and annual renewal fees:

- (1) \$300 for each class 1 or class 2 captive insurance company;
- (2) \$500 for each class 3 captive insurance company; or
- (3) \$1,000 for each class 4 or class 5 captive insurance company.

[(b)] (c) Each captive [insurance company] shall pay to the commissioner a nonrefundable fee of \$25 for the preparation and issuance of each of the following: certificates of compliance, deposit, application, capital and surplus, transcript of records, annual statements, report of examination, and other certifications as may be necessary, but excluding certificates of authority.

[(c)] (d) Each captive [insurance company] shall pay to the commissioner a nonrefundable fee of twenty-five cents per side of each page for photocopies of documents.

[(d)] (e) The rates and fees charged by approved independent advisors and consultants used by the commissioner shall be subject to the review of the commissioner. [Eff 5/13/91; am and comp 3/12/01; am and comp

] (Auth: HRS §§431:19-102, 431:19-102.3, 431:19-106, 431:19-114, 431:19-115) (Imp: HRS §431:19-102)

§16-17-7 Examination [charges], investigation, and financial surveillance expenses. (a) [The commissioner shall charge an examination fee to each captive insurance company examined. Examination fees shall include fees, costs, mileage,

and other reasonable and appropriate expenses, as determined by the commissioner.] Captive insurance companies subject to examination, investigation, or financial surveillance shall be responsible for the payment of the expenses associated with the examination, investigation, or financial surveillance. Examination, investigation, and financial surveillance expenses shall include costs, mileage, and other reasonable and appropriate expenses associated with the examination, investigation, or financial surveillance, as determined by the commissioner.

[(b)](1) If insurance division staff are employed in the examination, investigation, or financial surveillance of a captive insurance company, the captive insurance company shall be liable for the following additional examination fees:

- [1](A) Administration at a rate of [\$100] \$30 per [half day] hour or fraction thereof;
- [2](B) Examiner I at a rate of [\$145] \$50 per [half day] hour or fraction thereof;
- [3](C) Examiner II at a rate of [\$165] \$55 per [half day] hour or fraction thereof; and
- [4](D) Examiner III at a rate of [\$175] \$60 per [half day] hour or fraction thereof.

[(c)](2) If an independent contractor is employed or retained by the commissioner in the examination, investigation, or financial surveillance of a captive insurance company, the captive insurance company shall be liable for the [actual] charges of the services rendered.

(b) Upon presentation of an invoice incurred from the examination, investigation, or financial surveillance, the captive insurance companies shall pay the commissioner for the expenses incurred from the examination, investigation, or financial surveillance. The payment shall be credited to the captive insurance administrative fund. [Eff and comp 3/12/01; am and comp]
(Auth: HRS §§431:2-306, 431:19-108, 431:19-114, 431:19-115) (Imp: HRS §§431:2-306, 431:19-108, 431:19-115)

[SUBCHAPTER 3

POST-FORMATION PROVISIONS]

§16-17-10 Notification of material misstatement of financial condition or adverse financial condition. (a) A captive shall require its independent certified public accountant to immediately notify [the executive officers and board of directors of the captive] the captive's governing body or audit committee in writing of any determination by the independent certified public accountant that the captive

has materially misstated its financial condition [or that, since its last financial report the captive has experienced results which lead the certified public accountant to the determination that the captive is in adverse financial condition. The captive and its designated captive insurance manager shall notify the commissioner in writing within five working days of receipt thereof.] in the captive's annual report or is in adverse financial condition. The independent certified public accountant shall provide written notification of material misstatement of financial condition or adverse financial condition to the commissioner within five working days of providing such notice to the captive. The captive manager shall provide a written remediation or corrective action plan to the commissioner within thirty days of the independent certified public accountant providing such notice to the commissioner.

(b) As used in this section, "annual report" means the audited financial statement or National Association of Insurance Commissioners' Annual Statement and audit prepared by an independent certified public accountant for a captive and required to be filed with the commissioner pursuant to section 431:19-107, Hawaii Revised Statutes. [Eff 5/13/91; am and comp 3/12/01; am and comp]
(Auth: HRS §§431:19-114, 431:19-115) (Imp: HRS §§431:19-107, 431:19-108, 431:19-115)

§16-17-11 Additional deposit requirement. (a) Whenever the commissioner deems that the financial condition or change in business plan of a captive warrants additional security, the commissioner may require the captive to deposit with the commissioner, in trust for the captive, cash, securities approved by the commissioner, or an irrevocable letter of credit issued by a bank chartered by the State of Hawaii or a member bank of the Federal Reserve System.

(b) The commissioner shall return the deposit or letter of credit of a captive insurance company if the captive ceases to do any business only after being satisfied that all obligations of the company have been discharged. [Eff 5/13/91; am and comp 3/12/01] (Auth: HRS §§431:19-114, 431:19-115) (Imp: HRS §§431:19-104, 431:19-105, 431:19-115)

§16-17-11.1 Risk Based Capital regulatory action guidelines for risk retention captives. Risk retention captives subject to the Risk Based Capital requirements pursuant to sections §§ 431:3-401 to 431:3-408, Hawaii Revised Statutes may petition the commissioner to waive any Risk Based Capital regulatory action requirement if the risk retention captive can demonstrate to the satisfaction of the commissioner by filing five years of projected pro forma financial statements of the risk retention captive and that any of the following exists:

(a) The financial condition and support of the risk retention captive members or sponsoring organization or both is evidenced by the members or sponsoring organization or both maintaining:

- (1) An investment grade rating from a nationally recognized statistical rating organization, or an A.M. Best rating A- or higher; or
- (2) Equity equal to or greater than \$100 million; or equity equal to or greater than twenty times the risk retention captive's largest net retained per occurrence limit; as evidenced by the filing of at least the five most recent years of audited financial statements of the members and/or sponsoring organization.

(b) The risk retention captive's Certificate of Authority is dated prior to January 1, 2011 and based upon review of the risk retention captive's five most recent years of successful operating history, the commissioner issues a written exemption from the mandatory Risk Based Capital action requirements.

[Eff and comp] (Auth: HRS §§ 431:19-107, 431:19-114, 431:19-115) (Imp: HRS §431:19-107)

§16-17-12 Availability and [maintenance] retention of work papers of the independent certified public accountant. (a) Each captive shall require its independent certified public accountant to make available for review by the commissioner or appointed agent the work papers prepared in the conduct of the annual statement and the audit of the captive. The captive shall require that the independent certified public accountant retain the audit work papers for a period of not less than [five] seven years after [conclusion of transactions to which they relate.] the period reported upon.

(b) The review conducted in subsection (a) [above] shall be considered to be an investigation and all work papers obtained during the course of that investigation shall be confidential in accordance with the captive insurance code. The captive shall require that the independent certified public accountant provide photocopies of any and all work papers that the commissioner deems relevant. [These] The commissioner may retain these copies [may be retained by the insurance division].

(c) ["Work papers" as referred to in this section] As used in this section, "work papers" include, but are not limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of company records, or other documents prepared or obtained by the independent certified public accountant in the conduct of the examination of the captive. [Eff 5/13/91; am and comp 3/12/01; am and comp] (Auth: HRS §§431:19-114, 431:19-115) (Imp: HRS §§431:19-102.5, 431:19-107, 431:19-108, 431:19-115)

§16-17-13 Documentation required to be held by captives in Hawaii[, by Hawaii licensed captives]. [(a) All captives licensed by the State of Hawaii, shall maintain and make ready for inspection and examination by the commissioner, or the commissioner's agent, any and all documents pertaining to the formation, operation, management, finances, insurance, and reinsurance of each captive.

(b) Original documents may be kept in the offices of the captive manager, the captive's parent, or the captive itself. Accurate and complete copies shall be held in a Hawaii office designated by the captive and approved by the commissioner. The documents shall include but are not limited to the following:

- (1) Regulatory records:
 - (A) Certificate of authority;
 - (B) Certificate of public good;
 - (C) Articles of incorporation and by-laws;
 - (D) Corporate resolutions and minutes;
 - (E) Full application for admission and related documents, and all changes and amendments to application;
 - (F) All filings and correspondence with other jurisdictions;
 - (G) Annual reports filed with the Hawaii insurance division since the captive insurance company's commencement of business; and
 - (H) Correspondence with the commissioner, the Hawaii insurance division and its advisors.
- (2) Loss and expense records:
 - (A) Reports certifying loss reserves, allocated loss adjustment expense reserves and rates by an actuary according to section 431:19-107(c);
 - (B) Incurred loss reports (loss runs) including:
 - (i) Claim numbers;
 - (ii) Occurrence dates;
 - (iii) Report dates;
 - (iv) Lines of coverage;
 - (v) Payments to date;
 - (vi) Reserve amounts;
 - (vii) Date closed;
 - (viii) Policy periods; and
 - (ix) Loss valuation dates;
 - (C) Schedule of subrogation, salvage, reinsurance, or recoverables;
 - (D) Claim file summaries and correspondence; and
 - (E) Summary narrative review of each large loss (exceeding ten per cent of retention).

- (3) Accounting files:
 - (A) Audited financial statements since start-up;
 - (B) Auditors' opinion letters and reports;
 - (C) Charts of general ledger accounts;
 - (D) Ledgers (general, payable, receivable);
 - (E) Journals (general, cash receipts, disbursements);
 - (F) Documentation supporting accounting records;
 - (i) Bank statements and reconciliations;
 - (ii) Checks and deposit slips;
 - (iii) Signature authorization cards and board resolutions of approval;
 - (iv) Letters of credit and other approved securities or guarantees, with board approvals;
 - (v) Investment statements, documentation, with board approvals;
 - (vi) Premium invoices, deferrals, and payment plans;
 - (vii) Deferred start-up/acquisition cost statements, with board approval; and
 - (viii) Schedule of premium taxes and fees paid and payable.
- (4) Fronting arrangements:
 - (A) Signed, approved fronting agreements, with board approval;
 - (B) Reports and correspondence with front or underwriters; and
 - (C) Audit reports and board acceptances.
- (5) Reinsurance reports:
 - (A) Reinsurance agreements and amendments, with board approvals;
 - (B) Binders, cover notes, slips;
 - (C) Correspondence with brokers and underwriters;
 - (D) Evidence of reinsurance premium payments with board approvals;
 - (E) Reinsurance audit reports or letters with board approvals; and
 - (F) Letters of credit with notice to the commissioner if "call" is made.
- (6) Insurance policy records:
 - (A) Policy registers - numeric control;
 - (B) Application summaries;
 - (C) Declaration pages, forms, and endorsements;
 - (D) Binders, cover notes, certificates of insurance;
 - (E) Schedules of exceptions to normal underwriting/implementation process;

- (F) Risk control reports and policyholder response/ implementation plans; and
- (G) Underwriting and rating plans, with board approvals.
- (7) Professional services providers:
 - (A) Contracts or agreements with providers of captive services, with board approvals, including but not limited to:
 - (i) Actuaries;
 - (ii) Banker/trust departments;
 - (iii) Insurance and reinsurance brokers;
 - (iv) Claim managers;
 - (v) Investment managers/advisors/custodians;
 - (vi) Lawyers;
 - (vii) Program/underwriting managers;
 - (viii) Risk control advisors; and
 - (ix) Risk management advisors;
 - (B) Non-privileged reports and correspondence with each.

(8) Other information which the commissioner deems pertinent.] (a) The captive shall maintain, in the form of the original document, photocopy, or electronic document, accurate, legible, and complete records of the captive's operations in its principal office in Hawaii or another Hawaii location designated by the captive and approved by the commissioner. Upon the request of the commissioner to review the captive's records, the captive shall provide the commissioner timely access to the requested documents, which may be in the form of the original document, photocopy, or electronic document. If any document is in a foreign language, a translation under oath of the translator shall accompany the document.

(b) Each captive shall designate in writing one of its service providers to serve as the captive's representative with respect to the maintenance and production of the captive's records. The captive's designated representative shall be:

- (1) Physically present in Hawaii; and
- (2) Able to respond to questions about the captive, including matters related to the captive's operation, management, financial condition, investments, and insurance and reinsurance programs.

(c) All captives licensed by the State of Hawaii shall maintain and make ready for inspection, investigation, financial surveillance, and examination by the commissioner or the commissioner's agents, any and all documents pertaining to the formation, operation, management, finances, investments, insurance, and reinsurance of each captive. These documents shall include:

- (1) The captive's corporate records, including all organizational documents, resolutions, and minutes of the captive's governing body;
- (2) Verification of the captive's principal place of business;
- (3) Records relative to the captive's capital, surplus, assets, and liabilities, including actuarial opinions, reports of independent certified public accountants, and supporting documentation;
- (4) The captive's business plan and plan of operation, including changes in management, ownership, qualifications of officers and directors, service providers, and strategic investment policy;
- (5) The captive's correspondence and filings with the commissioner and insurance division staff and with other jurisdictions;
- (6) All executed agreements materially affecting the captive's business, including insurance policies and, reinsurance bordereau; and
- (7) Other information as the commissioner deems necessary.

[Eff 5/13/91; am and comp 3/12/01; am and comp] (Auth: HRS §§431:19-114, 431:19-115) (Imp: HRS §§431:19-108, 431:19-115)

§16-17-14 Reinsurance. (a) Reinsurance under this section shall be effected through a written agreement of reinsurance setting forth the terms, provisions, and conditions governing the reinsurance.

[(b) Prior to the issuance of the certificate of authority, the reinsurance should be in place to commence upon issuance of the certificate of authority.

(c) Unauthorized reinsurance companies shall be subject to approval by the insurance commissioner and shall, at the commissioner's discretion, be required to submit for review the following:

- (1) A copy of its most recent interim or annual report;
- (2) An actuarial reserve opinion; and
- (3) Audited financial reports.]

(b) In the case of a risk retention captive, a risk retention captive:

- (1) Shall qualify for credit for reinsurance on risks ceded to a reinsurer if the reinsurer is in compliance with article 431:4A of the Hawaii Revised Statutes; or
- (2) May qualify for credit for reinsurance on risks ceded to a reinsurer; provided that the reinsurer meets the reinsurance guidelines for risk retention captives pursuant to section 16-17-14.1.

(c) A captive taking credit for reinsurance pursuant to this section shall provide copies of all reinsurance binders, slips, treaties, or agreements to the commissioner for the commissioner's review and approval. [Eff 5/13/91; am and

comp 3/12/01; am and comp
431:19-115) (Imp: HRS §431:19-111)

] (Auth: HRS §§431:19-114,

§16-17-14.1 Reinsurance guidelines for risk retention captives. (a) A risk retention captive may qualify for credit for reinsurance on risks ceded to a reinsurer if:

- (1) The reinsurer maintains an A- or higher A.M. Best rating, or other comparable rating from a nationally recognized statistical rating organization, the reinsurer maintains a minimum policyholder surplus in an amount acceptable to the commissioner based upon a review of the reinsurer's most recent audited financial statements, and the reinsurer is licensed and domiciled in a jurisdiction acceptable to the commissioner; or
- (2) The reinsurer satisfies all of the following requirements and any other requirements deemed necessary by the commissioner:
 - (A) The risk retention captive or its captive manager shall file annually, on or before June 30, the reinsurer's audited financial statements, which shall be analyzed by the commissioner to assess the appropriateness of the reserve credit or the initial and continued financial condition of the reinsurer;
 - (B) The reinsurer shall demonstrate to the satisfaction of the commissioner that it maintains a ratio of net written premium, wherever written, to surplus and capital of not more than 3 to 1;
 - (C) If the reinsurer is an affiliate of the risk retention captive, the reinsurer shall not write third-party business without obtaining prior written approval from the commissioner;
 - (D) The reinsurer shall not use cell arrangements without obtaining prior written approval from the commissioner;
 - (E) The reinsurer shall be licensed and domiciled in a jurisdiction acceptable to the commissioner; and
 - (F) The reinsurer shall submit to the examination authority of the commissioner.

For the purposes of this paragraph, a reinsurer is affiliated with a risk retention captive if more than fifty per cent of the equity interests in the reinsurer are owned, directly or indirectly, by one or more of the members of the risk retention captive.

(b) A risk retention captive using these reinsurance guidelines shall not receive credit for reinsurance if all of its policies are ceded through:

- (1) One hundred per cent reinsurance arrangements; or
- (2) A lesser percentage that has been approved by the commissioner and the risk retention captive exceeds the approved percentage. While no credit for reinsurance shall be allowed for the amount in excess of the approved percentage, the risk retention captive may qualify for credit for reinsurance for the amount within the approved percentage.

(c) The commissioner shall either require a reinsurer not domiciled in the United States to include language in the reinsurance agreement that states that in the event of the reinsurer's failure to perform its obligations under the terms of its reinsurance agreement, the reinsurer shall submit to the jurisdiction of any court of competent jurisdiction in the United States or shall require the reinsurer to comply with subsection (d).

(d) For credit for reinsurance and solvency regulatory purposes, the commissioner may require an approved funds-held agreement, letter of credit, trust, or other acceptable collateral based on unearned premium, loss and loss adjustment expense reserves, and incurred but not reported reserves.

(e) Upon application, the commissioner may waive either of the reinsurance requirements in subsection (a)(2)(B) or subsection (a)(2)(F) in circumstances where the risk retention captive or reinsurer can demonstrate to the satisfaction of the commissioner that the reinsurer is sufficiently capitalized based upon an annual review of the reinsurer's most recent audited financial statements, the reinsurer is licensed and domiciled in a jurisdiction satisfactory to the commissioner, and the proposed reinsurance agreement adequately protects the risk retention captive and its policyholders. Any waiver shall be included in the plan of operation, or any subsequent revision or amendment of the plan, pursuant to 15 U.S.C. section 3902(d)(1) and the plan shall be submitted by the risk retention captive to the commissioner of its state of domicile and each state in which the risk retention captive intends to do business or is currently registered. Any waiver of a requirement in subsection (a)(2) shall constitute a change in the risk retention captive's plan of operation in each of those states.

(f) Upon application, the commissioner may waive the requirement in subsection (c) that a reinsurance arrangement must satisfy either subsection (c) or (d) in circumstances where the risk retention captive or reinsurer can demonstrate to the satisfaction of the commissioner that the reinsurer is sufficiently capitalized based upon an annual review of the reinsurer's most recent audited financial statements, the reinsurer is licensed and domiciled in a jurisdiction satisfactory to the commissioner, and the proposed reinsurance agreement adequately protects the risk retention captive and its policyholders. Any waiver shall be disclosed in Note 1 of the risk retention captive's annual statutory financial statement.

(g) Each risk retention captive or captive manager of a risk retention captive shall assess the reinsurance programs of the risk retention captives under their management, and within 60 days of the effective date of these guidelines, submit a written report to the commissioner indicating whether such risk retention captives are in compliance with these guidelines. All risk retention captives that fail to submit the report in a timely manner shall be examined, at the risk retention captive's expense, to determine compliance with these guidelines.

(h) The guidelines set forth in this section shall be effective the same date as when these Administrative Rules become effective and shall apply prospectively to risk retention captives. Credit for reinsurance may be granted for a risk retention captive's reinsurers in place as of January 1, 2011, without meeting the requirements set forth in this section. The requirements set forth in this section shall be used for new reinsurers not in place as of January 1, 2011, with which business is placed after January 1, 2011. [Eff and comp] (Auth: HRS §§431:19-114, 431:19-115) (Imp: HRS §431:19-111)

§16-17-15 [Changes in captive business plan, operations, leadership, and ownership. (a) The captive shall obtain prior approval from the commissioner before implementing changes in its business plan, operations, leadership, or ownership.

(b) The captive shall immediately notify the insurance commissioner upon making changes in board members or officers.

(c) Notification to the commissioner of a request for approval or changes in business plan, operations, leadership, or ownership shall be accompanied by an appropriate board resolution authorizing such changes.] Business plan or plan of operation amendments; changes in ownership, governing body and officers. (a) The captive shall provide written notice and obtain prior approval from the commissioner for any change in ownership or material change to the captive's business plan or plan of operation that was filed with the commissioner upon application or as otherwise required by statute.

(b) The captive shall provide written notice to the commissioner for any nonmaterial changes to the captive's business plan or plan of operation or as otherwise required by statute.

(c) The captive shall provide written notice to the commissioner within thirty days after any change to its governing body or its officers, including the submission of the completed biographical affidavit of any new member of the captive's governing body or officer. The captive shall obtain prior approval from the commissioner for any new appointment who does not already have a biographical affidavit on file with the commissioner. [Eff 5/13/91; am and comp 3/12/01; am and

comp] (Auth: HRS §§431:19-114, 431:19-115) (Imp: HRS §§431:19-106, 431:19-109, 431:19-115)

§16-17-16 Suspension or revocation of license[.]; fines. (a) The commissioner may by order fine, suspend or revoke the license of a captive, or any combination of these actions [for]:

(1) For any reason provided in section 431:19-109, [HRS or pursuant] Hawaii Revised Statutes; or

(2) Pursuant to the captive's request.

(b) In case of suspension or revocation, the commissioner [will] shall advise the captive of procedures and requirements for ongoing operations and winding up of the captive's business." [Eff 5/13/91; am and comp 3/12/01; am and comp] (Auth: HRS §§431:19-114, 431:19-115) (Imp: HRS §§431:19-109, 431:19-115)

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

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

4. These amendments to and compilation of chapter 16-17, 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.

GORDON I. ITO
Insurance Commissioner

APPROVED AS TO FORM:

Deputy Attorney General